

**ANGUILLA**

**VARIABLE CAPITAL COMPANIES ACT, 2020**

**DRAFT**

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# ANGUILLA

## VARIABLE CAPITAL COMPANIES ACT, 2020

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DRAFT



I Assent

Governor

00/00/2020

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ANGUILLA

No. /2020

## VARIABLE CAPITAL COMPANIES ACT, 2020

An Act to provide for the incorporation, operation and regulation of bodies corporate to be known as variable capital companies and to provide for related matters, and to make consequential and related amendments to certain other Acts

ENACTED by the Legislature of Anguilla

### PART 1

### PRELIMINARY

#### **Purpose and object**

1. The purpose of this Act is to enable a body corporate known as a variable capital company or VCC, to be formed, and to provide for its operation and regulation.

#### **Interpretation**

2. (1) In this Act, unless the context otherwise requires —

“Accounting Standards” in relation to a VCC means —

(a) the accounting standards mentioned in section 87(8)(a) or the accounting standards or practices prescribed under section 87(8)(b); or

(b) where those accounting standards or practices (as the case may be) are substituted with other accounting standards under section 87(9) in relation to that VCC, the other accounting standards;

“accounts” means profit and loss accounts and balance sheets and includes notes (other than auditors’ reports or directors’ reports) attached or intended to be read with any of those profit and loss accounts or balance sheets;

“books” includes any account, deed, writing or document and any other record of information, however compiled, recorded or stored, whether in written or printed form or on microfilm or by electronic process or otherwise;

“borrowing VCC” means a VCC that is or will be under a liability (whether or not such liability is present or future) to repay any money received or to be received by it in response to an invitation to the public to subscribe for or purchase debentures of the VCC;

“business day” means any day other than a Saturday, Sunday or public holiday;

“certified” —

(a) in relation to a copy of a document, means certified in the prescribed manner to be a true copy of the document; and

(b) in relation to a translation of a document, means certified in the prescribed manner to be a correct translation of the document into the English language;

“charge” includes a mortgage and any agreement to give or execute a charge or mortgage whether upon demand or otherwise;

“closed-end fund” means a private or professional fund recognised under the Securities and Investment Funds Act, where subscribers do not have a right to redemption

“collective investment scheme” means any arrangements with respect to property of any description. The purpose or effect of the arrangements must be to enable the persons taking part in them to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

“Commission” means the Anguilla Financial Services Commission;

“company” means a company incorporated pursuant to this Act or pursuant to any corresponding previous written law;

“consolidated financial statements” has the meaning given by the Accounting Standards;

“constitution”, in relation to a VCC, means the constitution of the VCC that is registered with the Registrar under section 16(4), as may be amended from time to time;

“contributory” —

(a) in relation to a VCC, means a person liable to contribute to the assets of the VCC in the event of its being wound up, and includes the holder of fully paid shares in the VCC and (before the final determination of the persons who are contributories) any person alleged to be a contributory of the VCC; and

(b) in relation to a sub-fund, means a person liable to contribute to the assets of the sub-fund in the event of its being wound up, and includes the holder of fully paid shares in the VCC that are issued in respect of that sub-fund and (before the final determination of the persons who are contributories) any person alleged to be a contributory of the sub-fund;

“corporation” means any body corporate formed or incorporated or existing in Anguilla or outside Anguilla and includes any foreign company but does not include an exempt competent authority, partnerships and philanthropic entities

“Commission” means the Financial Services Commission established under the Financial Services Commission Act;

“Court” means the High Court;

“custodian” —

(a) in relation to a non-umbrella VCC, means an entity to which the assets of the VCC are entrusted for safekeeping; and

(b) in relation to a sub-fund, means an entity to which the assets of the sub-fund are entrusted for safekeeping;

“debenture” includes debenture stock, bonds, notes and any other securities of a VCC whether constituting a charge on the assets of the VCC or not, but does not include —

(a) a cheque, letter of credit, order for the payment of money or bill of exchange;

(b) subject to the regulations made under section 165, a promissory note having a face value of not less than \$100,000 and having a maturity period of not more than 12 months; and

(c) for the purposes of a prescribed provision of this Act, such instrument or class of instruments as may be prescribed;

“default penalty” means a default penalty within the meaning of section 134;

“document” includes any summons, order and other legal process, and any notice and register;

“emoluments”, in relation to any director or auditor of a VCC, includes any fees, percentages and other payments made (including the money value of any allowances or perquisites) or consideration given, directly or indirectly, to the director or auditor by that VCC or by a holding company or a subsidiary of that VCC, whether made or given to him or her in his or her capacity as a director or an auditor or otherwise in connection with the affairs of that VCC or of the holding company or the subsidiary;

“expert” includes an engineer, a valuer, an accountant and any other person whose profession or reputation gives authority to a statement made by him or her;

“financial statements”, in relation to a VCC, means the financial statements of the VCC required to be prepared in accordance with the Accounting Standards;

“financial year”, in relation to a VCC, means —

(a) the period in respect of which its financial statements are made up, whether that period is a year or not; and

(b) which is determined in accordance with section 85;

“fund administration service” includes valuation, accounting, settlement of expenses and acting as a transfer agent;

“Governor” means Governor in Council

“holding company” has the meaning given by section 5 of the Anguilla Business Companies Act;

“liquidator” includes the Official Receiver when acting as the liquidator of a VCC or a sub-fund;

“manager”, in relation to a VCC, means the manager appointed by the VCC to manage its property or to operate the collective investment scheme or schemes that comprise the VCC;

“marketable securities” means debentures, funds, stocks, shares or bonds of any government or of any local authority or of any corporation or society and includes any right or option in respect of shares in any corporation and units in a collective investment scheme;

“director” in relation to a company, a foreign company and any other body corporate includes a person occupying or action in the position of director by whatever name called;

“Financial Intelligence Unit” means the Anguilla Financial Intelligence Unit;

“net asset value”, in relation to a VCC, means the total assets less the total liabilities of the VCC, as determined in accordance with the Accounting Standards;

“non-umbrella VCC” means a VCC that is not an umbrella VCC;

“officer”, in relation to a VCC or other corporation, includes —

(a) any director or secretary of the corporation or a person employed in an executive capacity by the corporation;

(b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and

(c) any liquidator of the corporation (being a VCC or company) appointed

- in a voluntary winding up,  
but does not include —
- (d) any receiver who is not also a manager;
  - (e) any receiver and manager appointed by the Court;
  - (f) any liquidator appointed by the Court or by the creditors; or
  - (g) a judicial manager appointed by the Court under the Anguilla Business Companies Act (if applicable);

“Official Receiver” means an officer who may be appointed by the High Court to act as a liquidator

“profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a corporation for a period;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other document used to make an offer of shares in a VCC or proposed VCC, but does not include —

- (a) a profile statement;
- (b) any other material, advertisement or publication; or
- (c) a product highlights sheet ;

“public accountant” means a person who is registered or treated as registered under an enactment as a public accountant;

“qualified representative”, in relation to the manager of a VCC, means a director of the VCC or a director or approved senior officer (with the designation of manager) of an associated investment manager by way of an agreement that acts as the manager of the VCC;

“register of managers” means a register of managers kept by the Registrar under section 71(3);

“register of members” means a register of members kept by a VCC under section 81;

“registered qualified individual” means a qualified individual registered under SIFA who is a director or approved senior officer of an Anguillan investment manager;

“Registrar” means the Registrar of VCCs appointed under this Act, and includes any Deputy or Assistant Registrar of VCCs;

“registration number”, in relation to a sub-fund, means the registration number given by the Registrar to the sub-fund upon its registration under section 27;

“related corporation”, in relation to a corporation, means a corporation

that is treated as related to the first mentioned corporation under section 4;

“share”, in relation to a VCC, means a unit in a collective investment scheme that is part of the VCC, and includes a share taken by a subscriber to the constitution of a VCC, whether or not it is such unit;

“sub-fund” means a collective investment scheme that is part of an umbrella VCC;

“subsidiary” has the meaning given by section 2 of the Anguilla Business Companies Act;

“umbrella VCC” means a VCC the constitution of which provides that it consists of, or is to consist of, 2 or more collective investment schemes, or words to that effect;

“unit”, in relation to a collective investment scheme, means a right or interest in a collective investment scheme, whether or not constituted as an entity, and includes an option to acquire any such right or interest in the collective investment scheme; and

“VCC” or “variable capital company” means a body corporate incorporated as such under this Act;

(2) In this Act (including a provision of the Anguilla Business Companies Act applied by this Act) —

(a) a reference to the directors of a VCC is, in the case of a VCC that has only two directors, to those directors; and

(b) a reference to the doing of any act by 2 or more directors is, in the case of a VCC that has only two directors, to the doing of that act by those directors.

(3) In this Act —

(a) a reference to a debt, obligation or liability of a sub-fund is to a debt, obligation or liability that is incurred by the umbrella VCC concerned on behalf of or that is attributable to that sub-fund;

(b) a reference to a debenture of a sub-fund is to a debenture issued by the umbrella VCC concerned in respect of a debt, obligation or liability of the sub-fund;

(c) a reference to any asset, property or undertaking of a sub-fund is to any asset, property or undertaking that is held by the umbrella VCC concerned on behalf of or that is attributable to that sub-fund; and

(d) a reference to a creditor of a sub-fund is to a creditor of the umbrella VCC concerned in respect of a debt, obligation or liability of the sub-fund.

(8) For the purposes of any provision of this Act (including a provision of the Anguilla Business Companies Act applied by this Act) that provides that an officer of a

corporation who is in default is guilty of an offence or is liable to a penalty or punishment, an officer of the corporation is in default if the officer knowingly and wilfully —

- (a) commits the offence; or
- (b) authorises or permits the commission of the offence.

(9) Where it is necessary, in a proceeding for an offence under this Act, to establish the conduct of the manager of a VCC or the custodian of a non-umbrella VCC or sub-fund, any conduct engaged in or on behalf of the manager or custodian —

- (a) by a director, an employee or an agent of the manager or custodian within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee or an agent of the manager or custodian, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent,

is treated as having been engaged in by the manager or custodian.

(10) Where it is necessary, in a proceeding for an offence under this Act, to establish the state of mind of a manager of a VCC, or a custodian of a non-umbrella VCC or sub-fund, in respect of conduct engaged in, or treated under subsection (9) as having been engaged in by the manager or custodian, it is sufficient to show that a director, an employee or an agent of the manager or custodian, being one by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(11) A reference in subsection (10) to the state of mind of a person includes the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

### **Affairs of corporation or sub-fund**

**3.** — (1) Unless the context otherwise requires, a reference to the affairs of a VCC or other corporation (called in this subsection the corporation) in the following provisions:

- (a) Part XVI, including a provision of the Anguilla Business Companies Act applied by that Part;
- (b) section 129;
- (c) section 132;
- (d) section 142

is a reference to —

- (g) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the corporation;

- (h) in the case of a corporation (not being a trustee corporation) that is a trustee (but without affecting paragraph (g)), matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust;
  - (i) the internal management and proceeding of the corporation;
  - (j) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the corporation, or to or in relation to the corporation or its business or property, at a time when —
    - (i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the corporation;
    - (ii) the corporation is under judicial management, where applicable;
    - (iii) a compromise or an arrangement made between the corporation and another person or other persons is being administered; or
    - (iv) the corporation or, if it is an umbrella VCC, the corporation or any of its sub-funds, is being wound up,
 and includes any conduct of the receiver, the receiver and manager, or the judicial manager of the person administering the compromise or arrangement or of any liquidator or provisional liquidator of the corporation or sub-fund (where applicable);
  - (k) the ownership of shares in, debentures of, and interests issued by, the corporation;
  - (l) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the corporation or to dispose of, or to exercise control over the disposal of, such shares;
  - (m) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the corporation or are or have been able to control or materially influence the policy of the corporation;
  - (n) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests issued by, the corporation;
  - (o) where the corporation has issued interests, matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which those interests relate; and
  - (p) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters in paragraphs (g) to (o).
- (2) Unless the context otherwise requires, a reference to the affairs of a sub-fund is a reference to —
- (a) the promotion, formation, control, business, trading, transactions and dealings of the sub-fund (whether by the umbrella VCC alone or jointly with another person



- and including transactions and dealings as agent, bailee or trustee), property of the sub-fund (whether held by the umbrella VCC alone or jointly with another person and including property held as agent, bailee or trustee), liabilities of the sub-fund (including liabilities owed by the umbrella VCC jointly with another person and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the umbrella VCC received or incurred on behalf of the sub-fund;
- (b) the internal management and proceeding of the umbrella VCC in respect of the sub-fund;
  - (c) any act or thing done (including any contract made and any transaction entered into) —
    - (i) by the umbrella VCC on behalf of the sub-fund; or
    - (ii) to or in relation to the umbrella VCC in respect of the sub-fund or the business or property of the sub-fund,at a time when —
    - (iii) a receiver, or a receiver and manager, is in possession of, or has control over, property of the sub-fund;
    - (iv) a compromise or an arrangement made between the umbrella VCC (on behalf of the sub-fund) and the creditors of the sub-fund (or any class of them), members holding shares issued in respect of that sub-fund (or any class of them), or another person or other persons, is being administered; or
    - (v) the sub-fund is being wound up,and includes any conduct of the receiver, the receiver and manager, of the person administering the compromise or arrangement or of any liquidator or provisional liquidator of the sub-fund, as the case may be;
  - (d) the ownership of shares in and interests issued by the umbrella VCC in respect of the sub-fund, or the debentures of the sub-fund;
  - (e) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares issued by the umbrella VCC in respect of the sub-fund, or to dispose of, or to exercise control over the disposal of, such shares;
  - (f) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the sub-fund or are or have been able to control or materially influence the policy of the umbrella VCC in relation to the sub-fund;
  - (g) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in or interests issued by the umbrella VCC in respect of the sub-fund, or the debentures of the sub-fund;
  - (h) matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the shares of the umbrella VCC in respect of the sub-fund relate; and

- (i) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters in paragraphs (f) to (h).

#### **When corporations related to each other**

**4.** For the purposes of this Act, where a corporation —

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation; or
- (c) is a subsidiary of the holding company of another corporation,

then the first mentioned corporation and the other corporation are treated as related to each other.

#### **Application of Anguilla Business Companies Act provisions in this Act**

**5.** — (1) This Act applies the provisions of the Anguilla Business Companies Act subject to the modifications set out by this Act.

(2) Where a provision of the Anguilla Business Companies Act, called in this section an incorporated provision, is incorporated by reference in this Act, whether with or without modifications, then, in addition to any specific modifications set out in this Act —

- (a) the incorporated provision applies with the necessary modifications;
- (b) a reference in the incorporated provision to another incorporated provision is to that other provision as applied by this Act;
- (c) a reference in the incorporated provision to the Registrar of Companies is to the Registrar;
- (d) a reference in the incorporated provision to a default penalty is to the default penalty in section 134;
- (e) a reference in the incorporated provision to a prescribed matter is to the matter prescribed by regulations made under section 165; and
- (f) the incorporated provision applies subject to such other modifications as may be prescribed by regulations made under subsection (4).

(3) The Governor may make regulations to prescribe further modifications to an incorporated provision in its application by this Act.

#### **Application of Anguilla Business Companies Act to VCC, etc.**

**6.** — (1) Where a provision of the Anguilla Business Companies Act is incorporated by reference in this Act and applies to or in relation to a VCC, a person of a VCC or a matter concerning a VCC, as that Anguilla Business Companies Act provision applies to or in relation to a corporation, a person of a corporation or a matter concerning a corporation, then (despite a VCC being a corporation within the meaning of the Anguilla Business

Companies Act) the Anguilla Business Companies Act provision is disapplied, but only to the extent of such application in this Act.

(2) Where a provision of the Anguilla Business Companies Act has a corresponding provision in this Act that applies to or in relation to a VCC, a person of a VCC or a matter concerning a VCC, as that Anguilla Business Companies Act provision applies to or in relation to a corporation, a person of a corporation or a matter concerning a corporation, then (despite a VCC being a corporation within the meaning of the Anguilla Business Companies Act) the Anguilla Business Companies Act provision is disapplied, but only to the extent of such application in the corresponding provision.

## **PART II**

### **ADMINISTRATION OF ACT**

#### **Commission**

7. The Commission is responsible for the administration of this Act subject to the general or special directions of the Governor.

#### **Administration of Act and appointment of Registrar of VCCs, etc.**

8.— (1) The Registrar of Companies shall be the Registrar of VCCs.

(2) The Commission may give to the Registrar such directions, not inconsistent with the provisions of this Act, as to the exercise of the Registrar's powers, functions or duties under this Act, and the Registrar is to give effect to the directions.

(3) Subject to the general direction and control of the Registrar and to such restrictions and limitations as may be prescribed by regulations made under section 152, anything which the Registrar is authorised or required to do or sign under this Act may be done or signed by a Deputy or an Assistant Registrar and is as valid and effectual as if done or signed by the Registrar.

(4) A person dealing with a Deputy or an Assistant Registrar need not inquire whether any restrictions or limitations have been prescribed, and every act or omission of a Deputy or an Assistant Registrar so far as it affects that person is as valid and effectual as if done or omitted by the Registrar.

(5) A court, judge or person acting judicially must take judicial notice of the seal and signature of the Registrar or of a Deputy or an Assistant Registrar.

#### **Registers, etc.**

9. — (1) Subject to this Act, the Registrar must keep such registers as the Registrar considers necessary and in such form as the Registrar thinks fit.

(2) Any person may, on payment of the prescribed fee —

- (a) inspect any document (other than a return or a copy of the constitution of a VCC) filed or lodged with the Registrar, including a microfilm of such document;
- (b) require a copy of the notice of incorporation of a VCC, any certificate issued under this Act, or any document or extract from any document kept by the Registrar (other than a return or a copy of the constitution of a VCC), to be given or certified by the Registrar; or
- (c) inspect any register of directors, managers, secretaries or auditors, or require a copy of or an extract from any such register.

(3) Despite subsection (2)(b), a certificate of confirmation of incorporation of a VCC mentioned in section 16(7) may only be issued to the VCC upon an application made in accordance with that provision.

(4) Despite subsection (2)(a) and (c), a director, manager, secretary, auditor or member of a VCC or a custodian of a non-umbrella VCC or a sub-fund may, without charge —

- (a) inspect the register of directors, managers, secretaries or auditors of that VCC; or
- (b) obtain from the Registrar a copy of or an extract from such a register.

(5) A copy of or an extract from any document (including a copy produced by way of microfilm) filed or lodged with the Registrar using a non-electronic medium that is certified to be a true copy or an extract by the Registrar is, in any proceedings, admissible in evidence as of equal validity with the original document.

(6) In any legal proceedings, a certificate issued by the Registrar that a requirement of this Act specified in the certificate —

- (a) had or had not been complied with on a date or within a period specified in the certificate; or
- (b) had been complied with upon a date specified in the certificate but not before that date,

is prima facie evidence of the matters specified in the certificate.

(7) If the Registrar is of the opinion that any document submitted to the Registrar —

- (a) contains any matter contrary to any law;
- (b) by reason of any omission or mis-description, has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains any error, alteration or erasure; or
- (e) is not authentic,

the Registrar may refuse to register or receive the document, and may request that the document be appropriately amended or completed and resubmitted, or that a fresh document be submitted in its place.

(8) In subsection (5), “non-electronic medium” means a medium other than the C R E S system.

### **Electronic transactions**

**10.** — (1) The Registrar may —

- (a) require or permit any person to carry out any transaction with the Registrar under this Act; and
- (b) issue any approval, certificate, notice, determination or other document pursuant or connected to a transaction mentioned in paragraph (a),

using electronic means.

“transaction”, in relation to the Registrar, includes —

- (a) the filing or lodging of any document with the Registrar, or the submission, production, delivery, furnishing or sending of any document to the Registrar;
- (b) the making of any application, submission or request to the Registrar;
- (c) the provision of any undertaking or declaration to the Registrar; or
- (d) the extraction, retrieval or accessing of any document, record or information maintained by the Registrar.

### **Rectification of registers**

**11.** Subject to section 5, the Anguilla Business Companies Act apply in relation to a register kept by the Registrar as they apply in relation to a register kept by the Registrar of Companies under that Act.

### **Enforcement of duty to make returns**

**12.** — (1) This section applies if a VCC or any person —

- (a) having failed to comply with any provision of this Act or of any other law which requires any return, account, notice or other document to be filed or lodged with, or submitted to, the Registrar or the Official Receiver;
- (b) having failed to comply with any request of the Registrar or the Official Receiver to amend or complete and resubmit any document or to submit a fresh document; or
- (c) having failed to comply with the Registrar’s request under the Anguilla Business Companies Act (as applied by section 11) to take such steps within such time as the Registrar may specify to ensure that any error or defect in any particulars or document in a register is rectified,

fails to make good the failure within 14 days after service of the notice of the Registrar or the Official Receiver on the VCC or the person requiring compliance with the provision or

request.

(2) The Court may, on an application by any member or creditor of the VCC or by the Registrar or the Official Receiver, make an order directing the VCC, any officer of the VCC, or such person to make good the failure within the time specified in the order.

(3) Such order may provide that all costs of and incidental to the application are to be borne by the VCC or by any officer of the VCC responsible for the failure, or by the person mentioned in subsection (2).

(4) Nothing in this section limits the operation of any written law imposing penalties on a VCC or its officers or such person in respect of the failure.

### **Relodgment of lost registered documents, and size, durability and legibility of documents lodged with Registrar**

**13.** Where any company registered under this Act or any corresponding previous written law the constitution or any other document relating to the corporation filed or lodged with the Registrar has been lost or destroyed, the corporation may apply to the Registrar for leave to lodge a copy of the document as originally filed or lodged.

### **VCC auditors**

**14.—** (1) No person other than an accounting entity or qualified Accountant shall —

- (a) knowingly consent to be appointed as auditor for a company; or
- (b) knowingly act as an auditor for a company.

(2) Without prejudice to the generality of subsection (1)(b), a person acts as an auditor for a company if the person prepares any report required by this Act to be prepared by an auditor of the company.

## **PART 11I**

### **CONSTITUTION OF VCC**

#### **Object of VCC**

**15.—** (1) The sole object of a VCC is to be one or more collective investment schemes in the form of a body corporate.

(2) A VCC may not carry on, or enter into any partnership, joint venture or other arrangement with any person to carry on, whether in Anguilla or elsewhere, any business that is inconsistent with the object in subsection (1).

(3) If a VCC contravenes subsection (2), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and —

- (a) the VCC shall be liable on conviction to a fine not exceeding \$150,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction; and
- (b) the officer shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part of a day during which the offence continues after conviction.

### **Registration of VCC**

**16.**—(1) Subject to this Act, any person may, whether alone or together with another person, by subscribing the person's name or their names to a constitution and complying with the requirements in subsection (2), incorporate a VCC.

(2) The person or persons must —

- (a) submit to the Registrar the constitution of the proposed VCC and such other documents as may be prescribed;
- (b) submit to the Registrar the name of the manager of the proposed VCC;
- (c) submit to the Registrar the names of the directors of the proposed VCC;
- (d) provide the Registrar with the last day of the first financial year of the proposed VCC and such other information as may be prescribed; and
- (e) pay the Registrar the prescribed fee.

(3) Either of the following persons:

- (a) a registered qualified individual engaged in the formation of the proposed VCC;
- (b) a person named in the constitution as a director or the secretary of the proposed VCC,

must make a declaration to the Registrar that —

- (c) all of the requirements of this Act relating to the formation of the VCC have been complied with; and
- (d) the person has verified the identities of the subscribers to the constitution, and of the persons named in the constitution as officers of the proposed VCC,

and the Registrar may accept such declaration as sufficient evidence of those matters.

(4) Subject to this Act, if the requirements in subsections (2) and (3) are satisfied, the Registrar must —

- (a) register the VCC by registering its constitution; and
- (b) issue to the VCC a notice of incorporation.

(5) Subject to this Act, beginning on the date of registration specified in the notice of incorporation, the subscribers to the constitution, together with such other persons as may from time to time become members of the VCC, are a body corporate by the name contained in the constitution —

- (a) capable immediately of exercising all of the functions of a VCC and of suing and being sued;
- (b) having perpetual succession with power to hold land; and
- (c) with such liability on the part of the members to contribute to the assets of the VCC in the event of it or any of its sub-funds being wound up, as is provided by this Act.

(6) Subject to this Act and any other written law and its constitution, a VCC has —

- (a) in furtherance of its sole object under section 15(1), full capacity to do any act or enter into any transaction; and
- (b) for the purposes of paragraph (a), full rights, powers and privileges.

(7) Upon the application of a VCC and payment of the prescribed fee, the Registrar must issue to the VCC a certificate of confirmation of incorporation.

(8) Each subscriber to the constitution of a VCC must make a declaration to the Registrar, either personally or through a registered qualified individual, as to the number of shares that the subscriber agrees to take.

### **Members of VCC**

**17.—**(1) The subscribers to the constitution of a VCC are considered to have agreed to become members of the VCC and, on the incorporation of the VCC, must be entered as members in the register of members.

(2) Apart from the subscribers, every other person who agrees to become a member of the VCC and whose name is entered in the register of members is a member of the VCC.

(3) The liability of a member of a VCC is limited to the amount (if any) unpaid on the shares held by the member.

(4) Subsection (3) does not affect any other liability to which a member may be subject under this Act.

### **Duty to refuse registration**

**18.—**(1) Without affecting the powers of the Registrar under section 9(7), the Registrar must not register a constitution of a proposed VCC under section 16 unless the Registrar is satisfied that all the requirements of this Act in respect of the registration have been complied with.

(2) Despite anything in this Act or any rule of law, the Registrar must refuse to register the constitution of a proposed VCC if the Registrar is satisfied that —



- (a) the person named as its manager does not satisfy section 46(2);
- (b) none of its directors is either a director or qualified representative of the manager;
- (c) it is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Anguilla; or
- (d) it would be contrary to national security or the national interest for it to be registered.

(3) Any person aggrieved by the Registrar's decision under subsection (2) may, within 30 days after the date of the decision, appeal to the Governor whose decision is final.

### **Constitution of VCC**

**19.—** (1) The following provisions are implied in the constitution of every VCC:

- (a) the liability of a member of the VCC is limited to the amount, (if any) unpaid on the shares held by the member;
- (b) the sole object of the VCC is to be one or more collective investment schemes in the form of a body corporate;
- (c) the property of the VCC must be measured on a fair value basis;
- (d) the actual value of the paid-up share capital of the VCC is at all times equal to the net asset value of the VCC;
- (e) shares of the VCC are to be issued, redeemed or repurchased at a price equal to the proportion of the net asset value of the VCC represented by each share, although the price may be adjusted by adding or subtracting (as the case may be) fees and charges in accordance with the constitution;
- (f) shares of the VCC that relate to a closed-end fund and listed for quotation on a securities exchange, are to be issued, redeemed or repurchased in accordance with the applicable listing requirements of the securities exchange;
- (g) the provisions in paragraphs (e) and (f) do not apply in relation to any shares during the initial offer period of the shares.

(2) It is also implied in the constitution of every VCC that is an umbrella VCC that the VCC's assets and liabilities must be allocated to, and used to discharge the liabilities of, each of its sub-funds in accordance with section 29(1) and (3).

(3) Any provision in the constitution is void to the extent that it is inconsistent with any provision implied in it under subsection (1) or (2).

(4) The constitution of every VCC must state —

- (a) the name of the VCC and that it is incorporated under this Act;
- (b) the name of the manager of the VCC;
- (c) the full name, address and occupation of the subscriber or each subscriber to the constitution;

- (d) that the subscriber or each subscriber is desirous of being formed into a VCC and agrees to take the number of shares in the capital of the VCC set out opposite the subscriber's name;
  - (e) details of the right of the holder of a share in the VCC to participate in or receive profits, income, or other payments or returns arising from the acquisition, holding, management or disposal of, the exercise of, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property of the VCC, or to receive sums paid out of such profits, income, or other payments or returns;
  - (f) details of the following rights (if any) of the holder of a share in the VCC:
    - (i) the right to vote at any general meeting or at any meeting of shareholders of that class of shares;
    - (ii) the right to redeem or repurchase shares;
    - (iii) the right in respect of a scheme of arrangement, merger, reconstruction or amalgamation involving the VCC;
  - (g) if any right in paragraph (f) does not apply, that fact; and
  - (h) in respect of a VCC that consists of, or is to consist of, 2 or more collective investment schemes —
    - (i) that fact; and
    - (ii) the policy of the VCC for forming a sub-fund, and allocating in accordance with section 29(3) any assets and liabilities mentioned in that provision between sub-funds.
- (5) The constitution of a VCC must contain the regulations for the VCC.
- (6) The constitution of each VCC must comply with such additional requirements as may be prescribed, and must be dated.
- (7) A copy of the constitution, duly signed by the subscriber or each subscriber and stating the number of shares that the subscriber has agreed to take, must be kept at the registered office of the VCC.
- (8) (1) Subject to the provisions of this Act and any other written law and its constitution, a company has —
- (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, powers and privileges.
- (2) Subject to this Act, the constitution of a company shall when registered bind the company and the members thereof to the same extent as if it respectively had been signed and

sealed by each member and contained covenants on the part of each member to observe all the provisions of the constitution.

(3) All money payable by any member to the company under the constitution shall be a debt due from him to the company.

(4) Notwithstanding anything in the constitution of a company, no member of the company, unless either before or after the alteration is made he agrees in writing to be bound thereby, shall be bound by an alteration made in the constitution after the date on which he became a member so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made or in any way increases his liability as at that date to contribute to the share capital of or otherwise to pay money to the company.

### **Alteration of constitution**

**20.**— (1) Unless otherwise provided in this Act, the constitution of a VCC may not be altered unless the alteration has been approved —

- (a) by ordinary resolution, or by a resolution passed by such majority of the members as may be prescribed; or
- (b) if the constitution so requires, by a resolution passed by a majority specified in the constitution of the votes cast by the members of the VCC who are entitled to vote on the resolution and who vote in person or by proxy at a general meeting of the VCC.

(2) Subsection (1) does not apply to an alteration of any of the following in the constitution of a VCC, if (and only if) the constitution provides that the directors of the VCC may so alter the constitution without the approval of its members:

- (a) an alteration for the purpose of forming a sub-fund;
- (b) an alteration to reflect any appointment or change of the manager of the VCC;
- (c) an alteration that does not prejudice the interests of any member, and does not release to any material extent the manager or any director from any responsibility to the members;
- (d) an alteration that is necessary for the purpose of complying with any order of court, law, direction of a competent authority, code of conduct or other quasi-legislation;
- (e) the removal of an obsolete provision or the correction of any manifest error.

(3) Subject to this Act, any alteration to the constitution under subsection (1) is treated as part of the original constitution starting on the date of the resolution approving the alteration or such later date as may be specified in the resolution.

### **Name of VCC**

**21.**— (1) Except with the consent of the Registrar or as provided in subsection (3), the Registrar must refuse to register a VCC under a name which, in the opinion of the Registrar —

- (a) is undesirable;
- (b) is identical to the name of any other VCC or any company, limited liability partnership, limited partnership or corporation or to any registered business name;
- (d) is a name of a kind that the Commission has directed the Registrar not to accept for registration.

(2) In addition to subsection (1), the Registrar must (except with the consent of the Governor) refuse to register a VCC under a name if —

- (a) it is identical to the name of a VCC or company that was dissolved unless —
  - (i) in a case where the VCC or company was dissolved following its winding up under the Anguilla Business Companies Act (as the case may be), a period of at least 2 years has passed after the date of dissolution; or
  - (ii) in a case where the VCC or company was dissolved following its name being struck off the register under the Anguilla Business Companies Act, a period of at least 6 years has passed after the date of dissolution;
- (b) it is identical to the business name of a person whose registration and registration of that business name has been cancelled, unless a period of at least one year has passed after the date of cancellation or cessation;

(3) Where the Registrar is satisfied that the VCC has been registered (whether through inadvertence or otherwise) by a name —

- (a) which is one that is not permitted to be registered under subsection (1)(a), (b) or (d);
- (b) which is one that is not permitted to be registered under subsection (2) until the expiry of the relevant period mentioned in that subsection;
- (c) which is one that is permitted to be registered under subsection (3) only after the expiry of the relevant period mentioned in that subsection;
- (d) which so nearly resembles the name of any other VCC or an company, corporation, or any registered business name, as to be likely to be mistaken for it;

the Registrar may direct the first mentioned VCC to change its name, and the VCC must comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled on appeal by the Governor.

(7) A VCC must have “VCC” as part of and at the end of its name.

### **Membership of holding company**

**22.—** (1) A corporation cannot be a member of a VCC which is its holding company, and any allotment or transfer of shares in a VCC to its subsidiary is void.

(2) Subsection (1), insofar as it provides that any transfer of shares in contravention of it is void, does not apply to a disposition of book-entry securities, but the Court, on

being satisfied that a disposition of book-entry securities would in the absence of this subsection be void may, on the application of the Registrar or any other person, order the transfer of the shares acquired in contravention of subsection (1).

(3) Subsection (1) does not apply where the subsidiary is concerned as personal representative, or as trustee, unless the VCC or a subsidiary of the VCC is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business (including the lending of money).

(4) This section does not prevent a subsidiary from continuing to be a member of a VCC that is its holding company if, at the time when it becomes a subsidiary of the VCC, it already holds shares in that VCC, but —

(a) subject to subsection (3), the subsidiary has no right to vote at meetings of the VCC or any class of members of the VCC; and

(b) subject to subsections (5) and (6), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of the VCC, dispose of all of its shares in the VCC.

(5) To avoid doubt, subsection (4)(b) ceases to apply if, during the period in that provision, the subsidiary ceases to be a subsidiary of the VCC.

(6) Any shares in the VCC that are not disposed of in accordance with subsection (4)(b) may, subject to subsections (12) and (13) and sections 23 and 24, be held or continued to be held by the subsidiary.

(7) Subject to subsection (3), subsections (1), (4), (6), (9) and (11) apply in relation to a nominee for a corporation which is a subsidiary, as if references in those subsections to such a corporation included references to a nominee for it.

(8) This section does not prevent the allotment of shares in a holding company that is a VCC to a subsidiary which already lawfully holds shares in the VCC, if the allotment is made by way of capitalisation of reserves of the VCC and is made to all members of the VCC on a basis which is in direct proportion to the number of shares held by each member in the VCC.

(9) This section does not prevent the transfer of shares in a holding company that is a VCC to a subsidiary by way of a distribution in specie, amalgamation or scheme of arrangement but —

(a) subject to subsection (3), the subsidiary has no right to vote at meetings of the VCC or any class of members of the VCC; and

(b) subject to subsections (10) and (11), the subsidiary must, within the period of 12 months or such longer period as the Court may allow after the transfer to the subsidiary of the shares in the VCC, dispose of all of the shares in the VCC.

(10) To avoid doubt, subsection (9)(b) ceases to apply if, during the period mentioned in that subsection, the subsidiary ceases to be a subsidiary of the holding company.

(11) Any shares in the VCC that are not disposed of in accordance with subsection (9)(b)

may, subject to subsections (12) and (13) and sections 23 and 24, be held or continued to be held by the subsidiary.

(12) The VCC must, within 14 days after any change in the number of shares in the VCC which are held by any of its subsidiaries under subsection (6) or (11), lodge with the Registrar a notice in the prescribed form of this change.

(13) With respect to any share mentioned in subsection (6) or (11) —

- (a) where the VCC has shares of only one class, the total number of shares held by all its subsidiaries under subsection (6) or (11), must not at any time exceed 10% of the total number of shares of the VCC at that time;
- (b) where the share capital of the VCC is divided into shares of different classes, the total number of the shares of any class held by all its subsidiaries under subsection (6) or (11), must not at any time exceed 10% of the total number of the shares in that class of the VCC at that time;
- (c) where paragraph (a) or (b) is contravened, the VCC must dispose of or cancel the excess shares, or procure the disposal of the excess shares by its subsidiary, in accordance with section 24 before the end of the period of 6 months beginning with the day on which that contravention occurs, or such further period as the Registrar may allow;
- (d) where the subsidiary is a wholly-owned subsidiary of the VCC, no dividend may be paid, and no other distribution (whether in cash or otherwise) of the VCC's assets (including any distribution of assets to members on a winding up of the VCC or any of its sub-funds (if applicable)) may be made, to the subsidiary in respect of the shares mentioned in subsection (6) or (11); and
- (e) where the subsidiary is not a wholly-owned subsidiary of the VCC, a dividend may be paid and other distribution (whether in cash or otherwise) of the VCC's assets (including any distribution of assets to members on a winding up of the VCC or any of its sub-funds (if applicable)) may be made, to the subsidiary in respect of the shares mentioned in subsection (6) or (11).

(14) In subsection (13)(c), “excess shares” means such number of the shares, held by any subsidiary under subsection (6) or (11) at the time in question, as resulted in the limit mentioned in subsection (13)(a) or (b) being exceeded.

(15) Where, but for this section, a subsidiary would have been entitled to subscribe for shares in the VCC, the VCC may, on behalf of the subsidiary, sell the shares for which the subsidiary would otherwise have been entitled to subscribe.

(16) For the purposes of this section, a VCC must inform the Registrar of the occurrence of any of the following events by lodging a notice in the prescribed form within 14 days after the date of occurrence:

- (a) where a shareholder of a VCC becomes a subsidiary of the VCC;
- (b) where shares of the VCC are held by a subsidiary of the VCC and there is a change in the number of shares held by the subsidiary.

### **Rights attached to shares in section 22(6) and (11)**

**23.—** (1) This section applies to the shares mentioned in section 22(6) and (11).

(2) The subsidiary mentioned in section 22(6) or (11) must not exercise any right in respect of those shares and any purported exercise of such right is void.

(3) The rights mentioned in subsection (2) include any right to attend or vote at meetings and for the purposes of this Act, the subsidiary is treated as having no right to vote and the shares are treated as having no voting rights.

(4) Nothing in this section prevents —

(a) an allotment of shares as fully paid bonus shares in respect of the shares mentioned in section 22(6) or (11); or

(b) the subdivision or consolidation of any share mentioned in section 22(6) or (11) into shares of a greater or smaller number, if the total value of the shares after the subdivision or consolidation is the same as the total value of the shares before the subdivision or consolidation, as the case may be.

(5) Any shares allotted as fully paid bonus shares in respect of the shares in section 22(6) are treated for the purposes of this Act as if they were already held by the subsidiary at the time they were allotted, in circumstances in which section 22(4) applied.

(6) Any shares allotted as fully paid bonus shares in respect of the shares in section 22(11) are treated for the purposes of this Act as if they were transferred to the subsidiary at the time they were allotted, in circumstances in which section 22(9) applied.

### **Disposal and cancellation of shares in section 22(6) and (11)**

**24.—** (1) This section applies to the shares in a VCC mentioned in section 22(6) and (11).

(2) The subsidiary mentioned in section 22(6) or (11) may at any time —

(a) sell the shares (or any of them) for cash;

(b) transfer the shares (or any of them) for the purposes of or pursuant to any share scheme, whether for employees, directors or other persons;

(c) transfer the shares (or any of them) as consideration for the acquisition of shares in or assets of another company or VCC or assets of a person;

(d) cancel the shares (or any of them); or

(e) sell, transfer or otherwise use the shares for such other purposes as the Governor may by order prescribe.

(3) Any cancellation or disposal of shares under subsection (2) by a subsidiary that is a private company within the meaning of the Anguilla Business Companies Act, must be done by lodging a prescribed notice of the cancellation or disposal with the Registrar together with the prescribed fee.

(4) A cancellation or disposal of shares under subsection (2) does not take effect until

the electronic register of members of the subsidiary is updated by the Registrar under section 196A (5) of the Anguilla Business Companies Act.

(5) Where the subsidiary is a public company within the meaning of the Anguilla Business Companies Act or a VCC, the directors of the VCC must, within 30 days after cancelling or disposing of shares under subsection (2), lodge a prescribed notice of the cancellation or disposal of shares with the Registrar together with the prescribed fee.

(6) In subsection (2), “cash”, in relation to a sale of shares by the subsidiary, means —

- (a) cash (including foreign currency) received by the subsidiary;
- (b) a cheque received by the subsidiary in good faith which the directors have no reason for suspecting will not be paid;
- (c) a release of a liability of the subsidiary for a liquidated sum; or
- (d) an undertaking to pay cash to the subsidiary on or before a date not more than 90 days after the date on which the subsidiary agrees to sell the shares.

(7) But if the subsidiary (being a company) receives a notice under section 215 of the Anguilla Business Companies Act that a person desires to acquire any of the shares, the subsidiary must not, under subsection (2), sell or transfer the shares to which the notice relates except to that person.

(8) The directors of the subsidiary (being a company) may take such steps as are requisite to enable the subsidiary to cancel its shares under subsection (2), without complying with section 78B, 78C or 78I of the Anguilla Business Companies Act (if applicable).

### **Ultra vires transactions**

**25.**— (1) No act or purported act of a company (including the entering into of an agreement by the company and including any act done on behalf of a company by an officer or agent of the company under any purported authority, whether express or implied, of the company) and no conveyance or transfer of property, whether real or personal, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do such act or to execute or take such conveyance or transfer.

(2) Subsection 1 does not apply to any limitation or lack of capacity arising from section 19(2).

### **Holding out as VCC**

**26.** A person other than a VCC, that —

- (a) uses any name or title, or trades or carries on business under any name or title, that includes the words “Variable Capital Company” or any abbreviation, imitation or translation of those words; or
- (b) in any way holds out that the business is incorporated under this Act,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to



imprisonment for a term not exceeding 2 years or to both.

## **PART IV SUB-FUNDS**

### **Registration of sub-fund**

**27.**— (1) Within 7 days after forming a sub-fund, an umbrella VCC must apply to the Registrar for the registration of the sub-fund.

- (2) An application for the registration of a sub-fund —
  - (a) must be made in the form and manner determined by the Registrar; and
  - (b) must be accompanied by such information as the Registrar may require and the prescribed fee, as determined in the Regulations.
- (3) If subsections (2)(a) and (b) are satisfied, the Registrar must —
  - (a) register the sub-fund; and
  - (b) issue a notice of the registration together with its registration number to the umbrella VCC.

(4) If an umbrella VCC contravenes subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

### **Duty to provide certain information to Registrar**

**28.**— (1) An umbrella VCC must, within one business day after —

- (a) the name of any of its sub-funds is changed; or
- (b) any of its sub-funds is dissolved, give a written notice of this to the Registrar.

(2) The written notice must be given in the form and manner determined by the Registrar.

(3) If an umbrella VCC contravenes subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

### **Segregated assets and liabilities of sub-funds**

**29.**—(1) Despite any written law or rule of law to the contrary —

- (a) the assets of a sub-fund of an umbrella VCC must not be used to discharge any liability of the VCC or any other sub-fund of the VCC, including in the winding up of the VCC or the other sub-fund; and
- (b) any liability of a sub-fund of an umbrella VCC must be discharged solely out of the assets of that sub-fund, including in the winding up of the sub-fund.

(2) Any provision of the constitution of an umbrella VCC, an agreement, a contract or otherwise, is void to the extent that it is inconsistent with subsection (1), and any application of or agreement to apply assets in contravention of subsection (1) is likewise void.

(3) An umbrella VCC may allocate any assets or liabilities —

- (a) that it holds or incurs on behalf of its sub-funds or in order to enable the operation of the sub-funds; and
- (b) that are not attributable to any particular sub-fund,

between its sub-funds in a manner that it considers fair to shareholders.

(4) Where an umbrella VCC without reasonable excuse contravenes subsection (1), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction —

- (a) if the offence was committed with intent to defraud any person, to a fine not exceeding \$150,000; or
- (b) in any other case, to a fine not exceeding \$50,000.

#### **Disclosure of sub-fund details**

**30.**—(1) An umbrella VCC must set out in every agreement, business letter, statement of account, invoice, official notice, publication, bill of exchange, promissory note, endorsement, cheque, order, receipt or letter of credit in which any of its sub-funds is mentioned, all of the following:

- (a) the name of the sub-fund;
- (b) the registration number of the sub-fund;
- (c) the fact that the assets and liabilities of the sub-fund are segregated in accordance with section 29.

(2) Before entering into an oral agreement on behalf of any of its sub-funds, an umbrella VCC must disclose to the other party to the agreement all of the following:

- (a) the name of the sub-fund;
- (b) the registration number of the sub-fund;
- (c) the fact that the assets and liabilities of the sub-fund are segregated in accordance with section 29.

(3) An umbrella VCC that fails to comply with subsection (1) or (2) shall be guilty of an offence.

(4) An officer of an umbrella VCC, or a person acting on his or her behalf, who —

- (a) signs, issues, or authorises to be signed or issued, on behalf of the VCC any document mentioned in subsection (1) in which the information in subsection (1)(a), (b) or (c) is not set out; or
- (b) authorises or enters into any agreement on behalf of a sub-fund of the VCC

without ensuring that the information in subsection (2)(a), (b) and (c) has been disclosed to the other party to the agreement,

shall be guilty of an offence and, if the document mentioned in paragraph (a) is a bill of exchange, promissory note, endorsement, cheque or order, be liable to the holder of it for the amount due on it, unless that liability has been discharged by the VCC.

### **Cross sub-fund investment**

**31.** Despite any written law or rule of law to the contrary, an umbrella VCC may, for the account of any of its sub-funds and in accordance with regulations made under section 165, acquire by subscription or transfer for consideration, shares of any class or classes (however described) that are issued in respect of other sub-funds of the VCC.

### **Further matters about sub-funds**

**32.—**(1) A sub-fund of an umbrella VCC is not a legal person separate from the VCC, but the VCC may sue or be sued in respect of a sub-fund and may exercise rights of set-off (if any) as between its sub-funds as if each sub-fund were a legal person.

(2) The property of a sub-fund is subject to orders of a court as it would have been if the sub-fund were a separate legal person.

### **Winding up of sub-fund**

**33.—**(1) Despite not being a legal person, a sub-fund of an umbrella VCC may be wound up in accordance with subsection (2) as if it were a legal person.

(2) The Anguilla Business Companies Act apply in relation to the winding up of a sub-fund of an umbrella VCC as they apply in relation to the winding up of a company limited by shares, subject to section 5 and the modifications in the First Schedule.

(3) Section 116 applies (with the necessary modifications) in relation to the appointment of a liquidator of a sub-fund and a person acting as such liquidator, as it applies in relation to the appointment of a liquidator of a VCC and a person acting as such liquidator, and for this purpose —

- (a) a reference in section 116(1)(b) and (c) to the VCC is to the umbrella VCC of which the sub-fund is a part; and
- (b) the reference in section 116(2)(b) to creditors is to the creditors of the sub-fund.

## **PART V**

### **SHARES, DEBENTURES AND CHARGES**

#### **Division 1 — Shares**

### **Shares of VCC**

**34.—**(1) The shares or other interest of any member in a VCC are movable property and

transferable in the manner provided by the constitution of the VCC and is not of the nature of immovable property.

- (2) A shareholder has no interest in the property of a VCC.
- (3) Subject to its constitution, a VCC may issue more than one class of shares.
- (4) The rights which attach to each share of any given class are —
  - (a) the right, in accordance with the constitution of the VCC, to participate in or receive profits, income or other payments or returns arising from —
    - (i) the acquisition, holding, management or disposal of the property or part of the property of the VCC; or
    - (ii) the exercise, redemption or expiry of any right, interest, title or benefit in the property or part of the property of the VCC, or to receive sums paid out of such profits, income or other payments or returns;
  - (b) the right (if any), in accordance with the constitution of the VCC, to vote at any general meeting of the VCC or at any meeting of shareholders of that class of shares; and
  - (c) such other rights as may be provided in the constitution in relation to shares of that class.
- (5) A VCC may make provision in its constitution to authorise the conversion of one class of shares into another class of shares.
- (6) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the constitution for authorising the variation or abrogation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of that provision, the rights attached to any such class of shares are at any time varied or abrogated, the holders of not less in the aggregate than 5% of the total number of issued shares of that class may apply to the Court to have the variation or abrogation cancelled, and, if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court.

### **Power to repurchase or redeem own shares**

- 35.—** (1) The repurchase or redemption by a VCC of its own shares must be —
- (a) on such terms and carried out in such manner as may be provided by its constitution; and
  - (b) in accordance with subsections (2) and (4).
- (2) A VCC must not repurchase or redeem its own shares unless they are fully paid.
- (3) Subsection (2) does not prevent a repurchase or redemption being made under section 31.

(4) Shares of a VCC which have been repurchased or redeemed by or otherwise transferred to the VCC must be cancelled and the amount of the issued share capital of the VCC must be reduced by the amount of the consideration paid by the VCC for the repurchase, redemption or transfer of the shares.

(5) Subsection (4) does not apply to any repurchase or redemption made under section 31.

## **Shares and Dividends**

**36.—** (1) A company if so authorised by its constitution may —

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;
- (b) accept from any member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

(2) A VCC may, by special resolution of its members, or by resolution of one or more members holding shares that represent —

- (a) at least 75%; or
- (b) if the constitution of the VCC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members holding shares that are issued in respect of a particular sub-fund, determine that any portion of its share capital which has not already been called up is not capable of being called up except in the event and for the purposes of the VCC or the sub-fund (as the case may be) being wound up, and in that event that portion of its share capital is not capable of being called up except in such event and for such purposes; but such resolution does not affect the rights of any person acquired before the passing of the resolution.

## Division 2 — Debentures

### **Register of holders**

**37.—** (1) (1) Every company which issues debentures (not being debentures transferable by delivery) shall keep a register of holders of the debentures at the registered office of the company or at some other place.

(2) The register of holders of debentures required to be kept by a VCC under this section must contain, where the debenture in question is a debenture of a sub-fund, the name and registration number of the sub-fund.

## Division 3 — Title and Transfer of Shares and Debentures

## **Duties of VCC with respect to allotments and transfers**

**38.**— (1) Subject to subsection (2), every VCC must —

- (a) within 60 days after the allotment of any of its shares or debentures; and
- (b) within 30 days after the date on which a transfer (other than a transfer that the VCC is for any reason entitled to refuse to register and does not register) of any of its shares or debentures is lodged with the VCC,

complete and have ready for delivery all the appropriate certificates and debentures in connection with the allotment or transfer.

(2) Subsection (1) does not require a VCC to complete and have ready for delivery share certificates in the following circumstances:

- (a) where the VCC's constitution states that share certificates will not be issued, and contains a provision for the issue of written confirmations of entry in the register of members;
- (b) where the shareholder has indicated to the VCC in writing that the shareholder does not wish to receive a certificate

(3) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(4) If any VCC on which a notice has been served requiring the VCC to make good a failure to comply with subsection (1), fails to make good the failure within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificate or debenture delivered to the person, make an order directing the VCC and any officer of the VCC to make good the failure within the time specified in the order.

(5) The order in subsection (4) may provide that all costs of and incidental to the application are to be borne by the VCC or by any officer of the VCC in default in such proportions as the Court thinks fit.

## **Certificate is evidence of title**

**39.**— (1) A certificate under the common seal or official seal of a VCC specifying any shares held by any member of the VCC is prima facie evidence of the title of the member to the shares.

(2) Every share certificate must be under the common seal of the VCC and must state as at the date of the issue of the certificate —

- (a) the name of the VCC and the authority under which the VCC is constituted;
- (b) the address of the registered office of the VCC in Anguilla, or, where the certificate is issued through a branch office, the address of that branch office; and
- (c) the class of the shares (if applicable), the name and registration number of the sub-fund to which the shares relate (if applicable), whether the shares are

fully or partly paid up, and the amount (if any) unpaid on the shares.

(3) Failure to comply with this section does not affect the rights of any holder of the shares.

(4) If this section is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence.

### **Transfer of shares or debentures**

**40.**— (1) Notwithstanding anything in its constitution, a public company shall not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company, but this subsection shall not prejudice any power to register as a shareholder or debenture holder any person to whom the right to any shares in or debentures of the company has been transmitted by operation of law.

(2) Where there has been a transfer of shares, a public company may lodge with the Registrar a notice of that transfer of shares in the prescribed form.

(3) The notice must state —

(a) every other transfer of shares effected prior to the date of the notice, other than a transfer that has been previously notified to the Registrar; or

(b) the prescribed information in relation to the shares held by each of the 50 members who hold the most number of shares in the public company after the transfer.

(2) Where any certification by a VCC of an instrument of transfer of shares, debentures or other interests in the VCC is expressed to be limited to 42 days or any longer period from the date of certification, the VCC and its officers are not (in the absence of fraud) liable in respect of the registration of any transfer comprised in the certification after the expiry of the period so limited or any extension of the period given by the VCC, if the instrument has not within that period been lodged with the VCC for registration.

(3) Despite anything in its constitution, a VCC must not register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the VCC.

(4) Subsection (3) does not affect any power of the VCC to register as shareholder or debenture holder any person to whom the right to any shares or debentures of the VCC has been transmitted by operation of law.

(5) A VCC may refuse to register a transfer of shares under the Anguilla Business Companies Act if —

(a) there exists a minimum requirement under the VCC's constitution or the prospectus in respect of the issue of those shares, as to the number or value of shares that are to be held by any shareholder of the VCC, and the transfer would result in either the transferor or transferee holding less than the required minimum; or

(b) the transfer is inconsistent with any provision of the VCC's constitution.

(6) Nothing in this Act requires a VCC to register a transfer or give notice to any person of a refusal to register a transfer where registering the transfer or giving the notice would result in a contravention of any law (including any law that is for the time being in force in a country or territory other than Anguilla).

## **Shares**

**41.—** (1) Each share in a company shall be distinguished by an appropriate number.

(2) Notwithstanding subsection (1) —

- (a) if at any time all the issued shares in a company or all the issued shares therein of a particular class are fully paid up and rank equally for all purposes, none of those shares need thereafter have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or
- (b) if all the issued shares in a company are evidenced by certificates in accordance with section 39 and each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares need have a distinguishing number.

### **Division 4 — Charges**

#### **Registration of charges**

**42.—** (1) (1) A company shall as from the date of its incorporation have a registered office within Anguilla to which all communications and notices may be addressed and which shall be open and accessible to the public for not less than 3 hours during ordinary business hours on each business day.

(2) If default is made in complying with subsection (1), the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 and also to a default penalty.

#### **Duty of VCC to register charges existing on property acquired**

**43.—** (1) Where a VCC acquires any property which is subject to a charge of any such kind as would, if it had been created by the VCC after the acquisition of the property, have been required to be registered under the Companies Act (as applied by section 42), the VCC must lodge a statement of the prescribed particulars with the Registrar for registration within 30 days after the date on which the acquisition is completed.

(3) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.



**PART VI**  
**MANAGEMENT AND ADMINISTRATION**

Division 1 — Preliminary

**Interpretation of this Part**

**44.—** (1) In this Part —

“Investment manager licence ” means a licence that is granted to an Investment Manager under the Securities and Investment Funds Act

“Registered Investment Manager”; a means a licensee holding a category 1, subcategory A licence in accordance with the Securities and Investment Funds Act

(2) A reference to a secretary in the provisions of the Anguilla Business Companies Act, includes an assistant or a deputy secretary.

Division 2 — Office and Name

**Registered office, and publication of name and registration number**

**45.** (1) The name of a company shall appear in legible romanised letters on —

(a) its seal, if any; and

(b) all business letters, statements of account, invoices, official notices, publications, bills of exchange, promissory notes, endorsements, cheques, orders, receipts and letters of credit of or purporting to be issued or signed by or on behalf of the company.

Division 3 — Managers

**Manager**

**46.—** (1) A VCC must at all times have a manager that complies with subsection (2), to manage its property or operate the collective investment scheme or schemes that comprise the VCC.

(2) A manager of a VCC must be —

(a) a holder of an investment manager licence authorized under the Securities and Investment Funds Act

(b) such person, or a person within such class of persons, as may be prescribed.

(3) A VCC cannot be its own manager.

(4) To avoid doubt, the reference in subsection (2)(a) to a holder of an investment manager licence does not include a holder of a suspended licence.

**Restrictions on naming of manager in document or register**

**47.—** (1) A person must not be named as manager or proposed manager of a VCC in —

- (a) any document filed or lodged with or submitted to the Registrar for the purposes of the incorporation of the VCC; or
- (b) the register of managers of the VCC, unless, before  
—
- (c) the incorporation of the VCC; or
- (d) the filing of any return containing the particulars required to be specified in the register of managers,

as the case may be, the person has complied with the condition set out in subsection (2).

(2) The condition in subsection (1) is that the person must have, by itself or through a registered qualified individual authorised by the person, filed with the Registrar —

- (a) a declaration in the prescribed form that the person has consented to act as manager of the VCC; and
- (b) a statement in the prescribed form stating that the person is a person mentioned in section 46(2).

(3) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$10,000, and also to a default penalty.

#### **Division 4 — Directors and Secretaries**

##### **Subdivision (1) — Preliminary provisions**

##### **VCC must have certain description of director, etc.**

**48.—** (1) Every VCC must have —

- [(a) at least one director who is ordinarily resident in Anguilla;] and
- (b) at least one director (who may be the same person as in paragraph (a)) who is either a director or a qualified representative of the manager of the VCC.

(2) A director of a VCC must be a natural person who has attained the age of 18 years and who is otherwise of full legal capacity.

(3) Subject to subsection (5), unless the constitution otherwise provides, a director of a VCC may resign by giving the VCC a written notice of his or her resignation.

(4) Subject to subsection (5), the resignation of a director is not conditional upon the VCC's acceptance of his or her resignation.

(5) Despite anything in this Act, the constitution of the VCC or any agreement with the VCC, a director of a VCC must not resign or vacate his or her office unless there is remaining in the VCC —

- [(a) at least one director who is ordinarily resident in Anguilla;] and

(b) at least one director (who may be the same person as in paragraph (a)) who is either a director or a qualified representative of the manager of the VCC.

(6) Any purported resignation or vacation of office in breach of subsection (5) is invalid.

(7) Subsection (5) does not apply where a director of a VCC is required to resign or vacate his or her office by reason of his or her disqualification or removal or the revocation of his or her appointment as a director (as the case may be) under section 53, 55, 56, 57, 58, 59, 60 or 61.

(8) If there is a contravention of subsection (1), the Registrar may, either of his or her own motion or on the application of any person, direct the members of the VCC to appoint —

[(a) a director who is ordinarily resident in Anguilla]; or

(b) a director who is either a director or a qualified representative of the manager of the VCC,

if the Registrar considers it to be in the interests of the VCC for such appointment to be made.

(9) If the direction under subsection (8) is not complied with, each member in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues after conviction.

(10) If there is a contravention of subsection (1) and —

(a) the Registrar fails to give the direction under subsection (8); or

(b) such direction has been given but is not complied with,

the court may, on the application of the Registrar or any person, order the members of the VCC to appoint —

(c) a director who is ordinarily resident in Anguilla; or

(d) a director who is either a director or a qualified representative of the manager of the VCC,

if the court considers it to be in the interests of the VCC for such appointment to be made.

(11) If a VCC carries on business for more than 6 months without having —

[(a) at least one director who is ordinarily resident in Anguilla]; and

(b) at least one director (who may be the same person as in paragraph (a)) who is either a director or a qualified representative of the manager of the VCC,

a person who, for the whole or any part of the period that the VCC so carries on business after those 6 months —

(c) is a member of the VCC; and

(d) knows that the VCC is carrying on business in that manner,

is liable for the payment of all the debts of the VCC contracted during the period or (as the case may be) that part of the period, and may be sued for the debts.

### **Restrictions on naming of director in document or register**

49. A person to be named as a director or proposed director in a document or register of the Anguilla Business Companies Act must —

- (i) by himself or herself; or
- (ii) through a registered qualified individual authorised by him or her,

file with the Registrar a statement in the prescribed form and made by both the VCC and the person as to the person's compliance with the prescribed factors in section 53(3);

### **Appointment of directors**

50. Subject to section 5, the Anguilla Business Companies Act apply in relation to the appointment of a director of a VCC as they apply in relation to the appointment of a director of a company or a public company, as the case may be.

### **Validity of acts of directors and secretary**

51. The acts of a director or secretary of a VCC are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

### **Removal of director**

52. Subject to section 5, the Anguilla Business Companies Act applies in relation to a VCC as it applies in relation to a public company with respect to the removal of a director.

Subdivision (2) — Qualifications and disqualifications of directors and officers

### **Directors must be fit and proper persons**

53.— (1) A VCC must appoint only fit and proper persons as the VCC's directors.

(2) The Registrar may by notice direct a VCC to remove a director or replace the director where the Registrar —

- (a) is satisfied that the director is not a fit and proper person to act as director; and
- (b) considers that the removal or replacement is necessary in the interests of the VCC, the VCC's shareholders or potential shareholders, the public or a section of the public.

(3) In determining whether a person is a fit and proper person to act as a director of a VCC, the Registrar may consider such factors as may be prescribed.

(4) Before directing a VCC under subsection (2), the Registrar must notify the VCC and the director in writing that —

- (a) the Registrar intends to make the direction; and

- (b) the VCC and the director may show cause within such time as may be specified in the notice why that director should not be removed or replaced.
- (5) The Registrar may give a direction under subsection (2) only if the VCC and the director —
- (a) fail to show cause within the time specified in the notice mentioned in subsection (4) or within such extended period of time as the Registrar may allow; or
  - (b) fail to show sufficient cause.
- (6) The direction under subsection (2) must state the date on or before which the removal or replacement of the director must take effect.
- (7) Any person who is aggrieved by a direction of the Registrar under subsection (2) may, within 30 days after receiving the direction, appeal to the Governor.
- (8) Despite the lodging of an appeal under subsection (7), a direction under subsection (2) has effect pending the decision of the Governor.
- (9) Subject to subsection (11), a VCC that fails to comply with subsection (1), and every officer of the VCC who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$500 for every day or part of a day during which the offence continues after conviction.
- (10) Subject to subsection (11), a VCC that fails to comply with any direction of the Registrar under subsection (2), and every officer of the VCC who is in default, shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$10,000, and also to a default penalty.
- (11) No criminal or civil liability is incurred by a VCC, or any person acting on behalf of the VCC, in respect of anything done or omitted to be done with reasonable care and in good faith in the discharge or purported discharge of the obligations of the VCC under this section.

### **Qualification of director**

**54.** (1) Without affecting the operation of section 48, every director, who is by the constitution required to hold a specified share qualification and who is not already qualified, shall obtain his qualification within 2 months after his appointment or such shorter period as is fixed by the constitution.

(2) Unless otherwise provided by the constitution, the qualification of any director of a company must be held by him solely and not as

(3) A director shall vacate his office if he has not within the period referred to in subsection (1) obtained his qualification or if after so obtaining it he ceases at any time to hold his qualification.

(4) Any person who fails to comply with subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$4,000 and also to a default penalty.

(5) A person vacating office under this section shall be incapable of being reappointed as director until he has obtained his qualification.

### **Restriction on undischarged bankrupt**

**55—** Every person who, being an undischarged bankrupt (being adjudged bankrupt by the Anguillan Court or a foreign court having jurisdiction in bankruptcy), acts as director of, or directly or indirectly takes part in or is concerned in the management of, any corporation, except with the leave of the Court, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Disqualification of unfit director of insolvent VCC**

**56.** — (1) The Court may —

- (a) on the application of the Commission or the Official Receiver; and
- (b) on being satisfied as to the matters in subsection (2),

make an order (called in this section a disqualification order), which must not in any case exceed 5 years after the date of the disqualification order disqualifying a person specified in the order from being a director or in any way (whether directly or indirectly) being concerned in, or take part in, the management of a VCC during such period as is specified in the order.

(2) The Court must make a disqualification order under subsection (1) if the Court is satisfied that —

- (a) the person is or has been a director of a VCC which has at any time gone into liquidation (either while he or she was a director or within 3 years of his or her ceasing to be a director) and was insolvent at that time;
- (b) the conduct of the person as director of that VCC (either taken alone or together with his or her conduct as a director of any other VCC or corporation) makes him or her unfit to be a director of or in any way (whether directly or indirectly) be concerned in, or to take part in, the management of a VCC; and
- (c) the person has been given not less than 14 days' notice of the application.

(3) If —

- (a) in the case of a person who is or has been a director of a VCC which is being wound up by the Court, it appears to the Official Receiver or the liquidator (if the liquidator is not the Official Receiver); or
- (b) in the case of a person who is or has been a director of a VCC which is being wound up otherwise than as mentioned in paragraph (a), it appears to the liquidator,

that the conditions mentioned in subsection (2)(a) and (b) are satisfied as respects that person, the Official Receiver or the liquidator (as the case may be) must immediately report the matter to the Governor.

(4) The Governor may require the Official Receiver, the liquidator or the former liquidator of the VCC —

- (a) to furnish the Governor with such information of any person's conduct as a director of the VCC; and
- (b) to produce any books, papers and other records relevant to that person's conduct as such a director,

as the Governor may reasonably require for the purpose of determining whether to exercise, or of exercising, any of the Governor's functions under this section.

(5) If any person fails to comply with a requirement of the Governor under subsection (4), the Court may, on the application of the Governor, make an order requiring that person to comply with the requirement within the time specified in the order.

(6) For the purposes of this section —

(a) a VCC has gone into liquidation —

- (i) if it is wound up by the Court, on the date of the filing of the winding up application;
- (ii) if a provisional liquidator was appointed under section 291(1) of the Anguilla Business Companies Act as applied by section 130, at the time when the declaration made under that provision was lodged with the Registrar; and
- (iii) in any other case, on the date of the passing of the resolution for the voluntary winding up;

(b) a VCC was insolvent at the time it has gone into liquidation if it was unable to pay its debts, within the meaning of section the Anguilla Business Companies Act as applied by section 117; and

(c) a reference to a person's conduct as a director of any VCC or other corporation that has become insolvent includes that person's conduct in relation to any matter connected with or arising out of the insolvency of that VCC or corporation.

(7) In deciding whether subsection (2)(b) is satisfied, the Court —

- (a) must have regard generally to the matters mentioned in subsection (8); and
- (b) must have regard particularly to the matters mentioned in subsection (9),

Regardless of whether or not the director has been convicted or may be criminally liable in respect of any of these matters.

(8) The matters to which the Court must have regard generally are —

- (a) whether there has been any misfeasance or breach of any fiduciary or other duty by the director in relation to the VCC;

- (b) whether there has been any misapplication or retention by the director of, or any conduct by the director giving rise to an obligation to account for, any money or other property of the VCC; and
- (c) the extent of the director's responsibility for any failure by the VCC to comply with his obligations under the Anguilla Business Companies Act.

(9) The matters to which the Court must have regard particularly are —

- (a) the extent of the director's responsibility for the causes of the VCC becoming insolvent;
- (b) the extent of the director's responsibility for any failure by the VCC to supply any goods or services which have been paid for (in whole or in part);
- (d) whether the causes of the VCC becoming insolvent are attributable to the VCC carrying on business in a particular industry where the risk of insolvency is generally recognised to be higher.

(10) The Governor may, by notification in the Gazette, add to, vary or amend the matters mentioned in subsections (8) and (9) and that notification may contain such transitional provisions as may appear to the Governor to be necessary or expedient.

**Disqualification of director on conviction of certain offences, etc.**

57.— (1) A person is subject to the disqualifications in subsection (3) if —

- (a) the person is convicted of any of the following:
  - (i) any offence, whether in Anguilla or elsewhere, involving fraud or dishonesty and punishable with imprisonment for a term of 3 months or more;

(2) Where a person is convicted in Anguilla of —

- (a) any offence in connection with the formation or management of a VCC; or
- (b) any offence under section the Anguilla Business Companies Act as applied by section 63 or 117 (as the case may be),

the court may make a disqualification order against the person in addition to any other sentence imposed.

(3) Subject to any leave which the Court may give pursuant to an application under subsection (6), a person who —

- (a) is disqualified under subsection (1); or
- (b) has had a disqualification order made against him or her under subsection (2),

must not act as a director, or take part (whether directly or indirectly) in the management of a VCC



during the period of the disqualification or disqualification order.

## **Disqualifications**

**58.**— (1) The disqualifications in section 57—

- (a) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1)(a) or (2)(a) or (b) but has not been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years or for such shorter period as the court may order under subsection (2);
- (b) in a case where the disqualified person has been convicted of any offence mentioned in subsection (1)(a) or (2)(a) or (b) and has been sentenced to imprisonment, take effect upon conviction and continue for a period of 5 years after his or her release from prison;

(2) A person who contravenes section 57(3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who —

- (a) is disqualified under section 57(1); or
- (b) has had a disqualification order made against him or her under subsection (2),

may apply to the Court for leave to act as a director, or to take part (whether directly or indirectly) in the management of a VCC during the period of the disqualification or disqualification order, upon giving the Governor not less than 14 days' notice of his or her intention to apply for such leave.

(4) On the hearing of an application under subsection (6), the Commission may be represented at the hearing and may oppose the granting of the application.

## **Disqualification and debarment from being director or secretary in connection with default in filing documents under this Act**

**59.** — A certificate of the Registrar stating that a person —

- (a) has been adjudged guilty of 3 or more offences; or
- (b) has had made against him or her 3 or more orders under section 12, or under the Anguilla Business Companies Act as applied by section 147, in relation to any relevant requirement of this Act, is prima facie evidence of the facts stated in the certificate.

## **Disqualification for being director of not less than 3 VCCs that were struck off within 5-year period**

**60.**— (1) Subject to section 5, a person —

- (a) who was a director of a VCC (VCC A) at the time that the name of VCC A had

been struck off the register under the Anguilla Business Companies Act as applied by section 117; and

(b) who, within a period of 5 years immediately before the date on which the name of VCC A was struck off the register —

(i) had been a director of not less than 2 other VCCs the names of which have been struck off that register; and

(ii) was a director of each of those VCCs at the time its name was so struck off,

must not act as a director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any other VCC for a period of 5 years commencing immediately after the date on which the name of VCC A was struck off.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(3) A person who is subject to a disqualification under subsection (1) may apply to the Court for leave to act as a director of, or to take part in or be concerned in the management of, a VCC during the period of disqualification upon giving the Commission not less than 14 days' notice of his or her intention to apply for such leave.

(4) On the hearing of the application, the Commission may be represented at the hearing and may oppose the granting of the application.

### **Disqualification under Anguilla Business Companies Act**

**61.**—(1) Subject to any leave which the Court may give pursuant to an application under subsection (3), a person who is subject to a disqualification, disqualification order or debarment order under the Anguilla Business Companies Act must not act as a director of, or in any way (whether directly or indirectly) take part in or be concerned in the management of, any VCC during the period of the disqualification, disqualification order or debarment order.

(2) A person who is subject to a disqualification, disqualification order or debarment order under the Anguilla Business Companies Act, may apply to the Court for leave to act as a director of, or to take part in or be concerned in the management of, a VCC during the period of the disqualification, disqualification order or debarment order, upon giving the Governor not less than 14 days' notice of his or her intention to apply for such leave.

(3) On the hearing of any application under subsection (3), the Commission may be represented at the hearing and may oppose the granting of the application.

(4) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Subdivision (3) — Duties and powers of directors, etc.

## **Disclosure by director of interests in transactions, property, offices, etc.**

**62.**—(1) Subject to this section, every director or chief executive officer of a company who in any way, whether directly or indirectly, holds an interest in a transaction or proposed transaction with the company shall as soon as is practicable after the relevant facts have come to his knowledge —

- (a) declare the nature of his interest at a meeting of the directors of the company; or
- (b) send a written notice to the company containing details on the nature, character and extent of his interest in the transaction or proposed transaction with the company.

(2) A notice under subsection (1)(b) shall be given as soon as is practicable after —

- (a) the date on which the director or chief executive officer became a director or chief executive officer (as the case may be); or
- (b) if already a director or chief executive officer, as the case may be) the date on which the director or chief executive officer became, directly or indirectly, interested in a transaction or proposed transaction with the company,

as the case requires.

(3) The requirements of subsection (1) shall not apply in any case where the interest of the director or chief executive officer (as the case may be) consists only of being a member or creditor of a corporation which is interested in a transaction or proposed transaction with the first-mentioned company if the interest of the director or chief executive officer (as the case may be) may properly be regarded as not being a material interest.

(4) A director or chief executive officer of a company shall not be deemed to be interested or to have been at any time interested in any transaction or proposed transaction by reason only —

- (a) in the case where the transaction or proposed transaction relates to any loan to the company — that he has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or
- (b) in the case where the transaction or proposed transaction has been or will be made with or for the benefit of or on behalf of a corporation which by virtue of section 6 is deemed to be related to the company — that he is a director or chief executive officer (as the case may be) of that corporation,

and this subsection shall have effect not only for the purposes of this Act but also for the purposes of any other law, but shall not affect the operation of any provision in the constitution of the company.

## **Duty and liability of officers, etc.**

**63.** (1) A director shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(2) An officer or agent of a company shall not make improper use of his position as an officer or agent of the company or any information acquired by virtue of his position as an officer or agent of the company

(3) A reference in this section to an agent of the company is to an agent of the VCC, the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC), or any person who at any time has been such agent, manager or custodian company to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

(4) An officer or agent who commits a breach of any of the provisions of this section shall be —

(a) liable to the company for any profit made by him or for any damage suffered by the company as a result of the breach of any of those provisions; and

(b) guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

(4) In addition to the duties imposed on a director or officer of a VCC under subsection (1), a director or officer of a VCC also owes the same duties to the VCC as those owed by a director or officer of a company to the company under the common law.

(5) In this section —

“officer” includes a person who at any time has been an officer of the company;

“agent” includes a banker, solicitor or auditor of the company and any person who at any time has been a banker, solicitor or auditor of the company.

### **Powers of directors**

**64.** The powers of directors under the Anguilla Business Companies Act apply in relation to a VCC and a director of a VCC as they apply in relation to a company and a director of a company, subject to section 5 and any modifications made by order of the Governor.

### **Loans and quasi-loans to directors, credit transactions and related arrangements, etc., and related provisions**

**65.—**(1) For the purposes of this section, a company makes a restricted transaction if it —

(a) makes a loan or quasi-loan to a director —

- (i) of the company; or
- (ii) of a company which by virtue of section 6 is deemed to be related to that company,

(referred to in this section as a relevant director);

- (b) enters into any guarantee or provides any security in connection with a loan or quasi-loan made to a relevant director by any other person;
- (c) enters into a credit transaction as creditor for the benefit of a relevant director;
- (d) enters into any guarantee or provides any security in connection with a credit transaction entered into by any person for the benefit of a relevant director;
- (e) takes part in an arrangement under which another person enters into a transaction that, if it had been entered into by the company, would have been a restricted transaction under paragraph (a) – (d)

### **Register of director's shareholdings**

**66.**— (1) A VCC must keep a register showing, with respect to each director of the VCC, particulars of —

- (a) shares in the VCC or in a related corporation, being shares of which the director is a registered holder or in which the director has an interest, and the nature and extent of that interest;
- (b) debentures of the VCC or a related corporation which are held by the director or in which the director has an interest, and the nature and extent of that interest;
- (c) units in a collective investment scheme made available by a related corporation of the VCC which are held by the director or in which the director has an interest, and the nature and extent of that interest;
- (d) rights or options of the director or of the director and another person in respect of the acquisition or disposal of shares in the VCC or a related corporation; and
- (e) contracts to which the director is a party or under which the director is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in the VCC or in a related corporation.

(2) A VCC need not show in its register, with respect to a director, particulars of shares in a related corporation that is a wholly-owned subsidiary of the VCC or of another corporation.

(3) A VCC that is a wholly-owned subsidiary of another company or VCC (called in this subsection an entity) is treated as having complied with this section in relation to —

- (a) a director of that entity; or
- (b) a chief executive officer (of that entity (being a company)), whether or not he or she is also a director of that entity,

if the particulars required by this section to be shown in the registers of the VCC with respect to the director or chief executive officer (as the case may be) are shown in the registers of the entity.

(4) For the purposes of subsections (2) and (3), a company or VCC (called in this subsection the first entity) is a wholly-owned subsidiary of another company or VCC (called in this subsection the second entity) if the first entity does not have any member that is not —

- (a) the second entity;
- (b) a nominee of the second entity;
- (c) a subsidiary of the second entity, being a subsidiary that does not have any member that is not the second entity or a nominee of the second entity; or
- (d) a nominee of such a subsidiary.

(5) A VCC must, within 3 days after receiving notice from a director under of the Anguilla Business Companies Act as applied by section 67, enter in its register in relation to the director the particulars mentioned in subsection (1), including —

- (a) the number and description of shares, debentures, units in a collective investment scheme (if applicable), rights, options and contracts to which the notice relates; and
- (b) the particulars mentioned in subsection (6) in respect of shares, debentures, units in a collective investment scheme (if applicable), rights or options acquired or contracts entered into after the director became a director.

(6) The particulars in subsection (5)(b) are —

- (a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section; and
- (b) the date of —
  - (i) the agreement for the transaction or (if it is later) the completion of the transaction; or
  - (ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(7) A VCC must, within 3 days after receiving a notice from a director under the Anguilla Business Companies Act as applied by section 67, enter in its register the particulars of the change mentioned in the notice.

(8) A VCC is not, by reason of anything done under this section, to be taken for any purpose to have notice of, or to be put upon inquiry as to, the right of a person or in relation to a share in the VCC or a debenture of the VCC.

(9) Subject to this section, a VCC must keep its register at its registered office, and the register must be open for inspection —

- (a) by a member of the VCC without charge; and
- (b) by any other person on payment for each inspection of a sum of \$20 or such

lesser sum as the VCC requires.

(10) A person may request a VCC to furnish the person with a copy of its register or any part of the register, and the VCC must send the copy to that person within 21 days or such longer period as the Registrar thinks fit after the day the VCC received the request.

(11) The Registrar may by notice in writing require a VCC to send to the Registrar within such time as may be specified in the notice a copy of its register or any part of its register.

(12) It is a defence to a prosecution for failing to comply with subsection (1) or (5) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply this section with respect to those particulars.

(13) In this section, a reference to a person who holds or acquires shares, debentures or units in a collective investment scheme, or an interest in any of these, includes a person who, under an option, holds or acquires a right to acquire or dispose of a share, debenture or a unit in a collective investment scheme, or an interest in any of these.

### **Disclosure of director's emoluments and general duty to make disclosure**

**67.** (1) Every director and chief executive officer of a company shall give notice in writing to the company —

- (a) of such particulars relating to shares, debentures, participatory interests, rights, options and contracts as are necessary for the purposes of compliance by a company or subsidiary with disclosure of emoluments and other benefits received by the directors that are applicable in relation to him;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a) of which notice has been given to the company including the consideration, if any, received as a result of the event giving rise to the change.

### **Payments to director for loss of office, and director's emoluments**

**68.** (1) It shall not be lawful —

- (a) for a company to make to any director any payment by way of compensation for loss of office as an officer of the company or of a subsidiary of the company or as consideration for or in connection with his retirement from any such office; or
- (b) for any payment to be made to any director of a company in connection with the transfer of the whole or any part of the undertaking or property of the company,

unless particulars with respect to the proposed payment, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting and when any such payment has been unlawfully made the amount received by the director shall be deemed to have been received by him in trust for the company.

Subdivision (4) — Secretaries

## **Secretary**

**69.** — (1) Every company shall have one or more secretaries each of whom shall be a natural person who has his principal place of residence in Anguilla.

### **Division 5 — Provisions Applicable to Officers**

#### **Officer liability**

**70.** — (1) Any provision that purports to exempt an officer of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for an officer of the company against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(3) This section shall apply to any provision, whether contained in a company's constitution or in any contract with the company or otherwise.

#### **Registers of directors, secretaries, auditors and managers**

**71.**—(1) The Registrar shall, in respect of each company, keep a register of the company's —

- (a) directors;
- (b) chief executive officers;
- (c) secretaries; and
- (d) auditors (if any).

(2) The Registrar must, in respect of each VCC, keep a register of the VCC's managers.

(3) The register of managers of a VCC must contain the following information in respect of each manager of the VCC:

- (a) full name and any former name;
- (b) the address of the manager's principal place of business; (c) date of appointment;
- (d) date of cessation of appointment.

(4) Any document required to be served under this Act on a person who is for the time being a manager of a VCC is sufficiently served if addressed to the person and left at or sent by post to the address that is entered in the register of managers.

(5) Where the Registrar has reasonable cause to believe that a manager has ceased to be a person mentioned in section 46(2), the Registrar may on his or her own initiative amend the register of managers of the VCC to indicate that the person has ceased to be a manager of the VCC by virtue of that fact.



### **Duty to provide information**

**72.**— (1) A company shall by notice furnish to the Registrar —

- (a) within 14 days after a person becomes a director, chief executive officer, secretary or auditor, the information required under this Act; and
- (b) within 14 days after any change in —
  - (i) the appointment of any director, chief executive officer, secretary or auditor; or
  - (ii) any information required to be contained in the registers of directors, chief executive officers, secretaries and auditors referred to in section 71.

### **Duty to keep consents of directors, secretaries and managers**

**73.**— (1) Every VCC must keep at its registered office —

- (a) in respect of each director, the statement mentioned in section 49(b); and
- (b) in respect of each manager —
  - (i) a signed copy of the manager's consent to act as manager; and
  - (ii) the statement mentioned in section 47(2)(b).

### **Self-notification in certain circumstances**

**74.**— (1) A director or secretary of a VCC who ceases to act as a director or secretary of a company must give notice to the Registrar if he has reasonable cause to believe that the company will not do so

(2) A manager of a VCC that ceases to be a person mentioned in section 46(2) —

- (a) must notify the VCC of the cessation as soon as practicable but not later than 14 days after the manager ceases to be such a person; and
- (b) may give the notice to the Registrar if the manager has reasonable cause to believe that the VCC will not do so.

(3) The manager of a VCC the appointment of which is revoked or has otherwise ceased may give to the Registrar the notice mentioned if the manager has reasonable cause to believe that the VCC will not do so.

### **Provision of residential address to Registrar**

**75.—** (1) Subject to this section, every director and secretary of a VCC must —

- (a) at incorporation or within 14 days after the date of his or her appointment (as the case may be), give notice to the Registrar of his or her residential address, unless his or her residential address has already been entered in the register of directors or register of secretaries; and
- (b) if there is any change to his or her residential address, give notice to the Registrar of the particulars of the change within 14 days after the change, unless such change has already been entered in the register of directors or register of secretaries.

(3) Subject to subsection (4), a person who fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(4) A director or secretary who has opted to provide the VCC with an alternate address instead of his or her residential address must ensure that the alternate address that he or she has provided is and continues to be an address at which he or she may be located.

#### **When residential address may be entered in register in place of alternate address**

**76.—**(1) Where —

- (a) the alternate address of a director or secretary is entered in the register of directors or register of secretaries, as the case may be; and
- (b) the circumstances set out in subsection (2) apply,

the Registrar may enter the residential address of the director or secretary in the register of directors or register of secretaries, as the case may be.

(2) Subsection (1) applies where —

- (a) communications sent by the Registrar under this Act, or by any officer of The Commission under any The Commission-administered Act to the director or secretary (as the case may be) at his or her alternate address and requiring a response within a specified period remain unanswered; or
- (b) there is evidence to show that service of any document under this Act or under any Commission-administered Act at the alternate address is not effective to bring it to the notice of the director or secretary, as the case may be.

(3) Before proceeding under subsection (1), the Registrar must give notice to the director or secretary affected, and to every VCC of which the Registrar has been notified under this Act that the individual is a director or secretary, as the case may be.

(4) The notice mentioned in subsection (3) must —

- (a) state the grounds on which it is proposed to enter the individual's residential address in the register of directors or register of secretaries, as the case may be; and

(b) specify a period within which representations may be made before that is done.

(5) The Registrar must take account of any representations received within the specified period.

(6) Where the Registrar enters the residential address in the register of directors or register of secretaries under subsection (1), the Registrar must give notice of that fact to the director or secretary affected, and to every VCC of which the Registrar has been notified under this Act that the individual is a director or secretary, as the case may be.

(7) A notice to a director or secretary under subsection (3) or (6) must be sent to the individual at his or her residential address unless it appears to the Registrar that service at that address may be ineffective to bring it to the individual's notice, in which case it may be sent to any other last known address of that individual.

## Division 6 — Meetings and Proceedings

### **Annual general meeting**

**77.**—(1) Subject to this section and section 78, a general meeting of every VCC called the “annual general meeting” must, in addition to any other meeting, be held after the end of each financial year within 6 months.

(2) The Registrar may extend the period mentioned in subsection (1) —

(a) upon an application by the VCC, if the Registrar thinks there are special reasons to do so; or

(b) in respect of any prescribed class of VCCs.

(3) Subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any time and the VCC may resolve that any meeting held or summoned to be held is the annual general meeting of the VCC.

(4) If default is made in holding an annual general meeting —

(a) the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty; and

(b) the Court may on the application of any member order a general meeting to be called.

(5) The Governor may, by order in the Gazette, specify such other period in substitution of the period mentioned in subsection (1).

### **When VCC need not hold annual general meeting**

**78.**—(1) A VCC need not hold an annual general meeting for a financial year if —

(a) the directors of the VCC give written notice to the VCC's members, at least 60 days before the last date on which a VCC must hold an annual general meeting under section 77, that an annual general meeting for the financial year will not be held; or

(b) the VCC has sent to all persons entitled to receive notice of general meetings of the

VCC the documents mentioned in section 92(1) and (2) within the period specified in section 92(1)(b).

(2) The notice under subsection (1) may specify more than one financial year for which an annual general meeting will not be held, and subsection (1) is effective for each of those years.

(3) However, subsection (1) does not affect any liability already incurred by reason of default in holding an annual general meeting.

(4) For any financial year in which —

- (a) an annual general meeting would be required to be held but for this section; and
- (b) no such meeting has been held,

one or more members of the VCC holding, or together holding, not less than 10% of the total number of paid-up shares carrying the right of voting at general meetings may, by notice to the VCC not later than 14 days before the date by which an annual general meeting would have been required under section 77 to be held, require the holding of an annual general meeting for that financial year.

(5) The power of a member under subsection (4) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the VCC at such address as may for the time being be specified for the purpose by or on behalf of the VCC of an electronic communication containing the requirement.

(6) If such a notice is given or an electronic communication is transmitted, section 77(1) and (4) applies with respect to the calling of the meeting and the consequences of default.

(7) Unless the contrary intention appears, if a VCC need not hold an annual general meeting for a financial year then, for that financial year —

- (a) a reference in a provision of this Act (including a provision of the Anguilla Business Companies Act as applied by this Act) to the doing of anything at an annual general meeting is to the doing of that thing by way of a resolution as applied by section 80(3);
- (c) a reference in a provision of this Act (including a provision of the Anguilla Business Companies Act as applied by this Act) to the date or conclusion of an annual general meeting is, unless the meeting is held, to the date of expiry of the period within which an annual general meeting is required under section 77 to be held; and
- (d) the reference in section 84(1) to the lodging of a return with the Registrar after its annual general meeting is to the lodging of that return after the VCC has sent to all persons entitled to receive notice of general meetings of the VCC the documents mentioned in section 92(1) and (2).

(8) In this section, an address of a person includes any number or address used for electronic communication.

(9) For the avoidance of doubt an annual general meeting may be held electronically.

### **Convening of extraordinary general meeting on requisition and calling of meetings**

**79.**— The directors of a company, notwithstanding anything in its constitution, shall, on the requisition of members holding at the date of the deposit of the requisition not less than 10% of the total number of paid-up shares as at the date of the deposit carries the right of voting at general meetings, immediately proceed duly to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than 2 months after the receipt by the company of the requisition.

### **Other provisions as to meetings and resolutions**

**80.**—(1) A member shall, notwithstanding any provision in the constitution of the company, have a right to attend any general meeting of the company and to speak on any resolution before the meeting.

(2) In the case of a company limited by shares, the holder of a share may vote on a resolution before a general meeting of the company if the share confers on the holder a right to vote on that resolution

(3) a member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting.

## Division 7 — Register of Members

### **Register of members**

**81.**— (1) A VCC must keep a register of its members and enter in it —

- (a) the name and address of each member;
- (b) a statement of the shares held by each member, distinguishing each share by its number (if any) or by the number (if any) of the certificate (if any) evidencing the member's holding;
- (c) the name and registration number of the sub-fund, and share class, if applicable, to which the shares held by each member relates;
- (d) the amount paid or agreed to be considered as paid on the shares of each member;
- (e) the date at which the name of each person was entered in the register as a member;
- (f) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and
- (g) the date of every allotment of shares to members and the number of shares comprised in each allotment.

(2) Despite subsection (1), a VCC may keep the names and particulars relating to persons who have ceased to be members of the VCC separately, and the names and particulars relating to former members need not be supplied to any person who applies for a copy of the register unless that person specifically requests the names and particulars of former members.

(3) The register of members is prima facie evidence of any matter required or authorised by this Act to be included in it.

(4) Every VCC having more than 50 members must —

(a) unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members; and

(b) within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration to the index.

(5) The index must, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be readily found.

(6) If subsection (1), (4) or (5) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(9) A VCC may, without an application to the Court, at any time rectify any error or omission in the register of members (including any overstatement or understatement of the VCC's issued share capital), but only if —

(a) the rectification does not adversely affect any person; or (b) the person so adversely affected agrees to the rectification.

(10) Any trustee, executor or administrator of the estate of any deceased person who was registered in a register as the holder of a share in any company may become registered as the holder of that share as trustee, executor or administrator of that estate and shall in respect of that share be subject to the same liabilities and no more as he would have been subject to if the share had remained registered in the name of the deceased person.

(11) Any trustee, executor or administrator of the estate of any deceased person who was beneficially entitled to a share in any company being a share registered in a register may with the consent of the company and of the registered holder of that share become registered as the holder of the share as trustee, executor or administrator of that estate and shall in respect of the share be subject to the same liabilities and no more as he would have been subject to if the share had been registered in the name of the deceased person.

### **Inspection of register**

**82.**—(1) Despite any duty of confidentiality or other restriction on the disclosure of information under any written law, common law or contract, a VCC must, on the request of —

(a) the manager of the VCC;

(b) the custodian of the VCC (being a non-umbrella VCC);

- (c) a competent authority, or any person acting on behalf of a competent authority, for the purpose of enabling the competent authority to administer or enforce any written law; or
- (d) any person entitled to inspect the register of members of the VCC pursuant to an order of the Court,

provide to that person or competent authority any information in the register of members of the VCC, or allow that person or competent authority to inspect the register.

(2) Despite any duty of confidentiality or other restriction on the disclosure of information under any written law, common law or contract, a VCC must, on the request of a member of the VCC, provide to the member any information in the register of members of the VCC relating to that member, or allow that member to inspect any part of the register relating to that member.

(3) Despite any duty of confidentiality or other restriction on the disclosure of information under any written law, common law or contract, an umbrella VCC must, on the request of the custodian of a sub-fund of the VCC, provide to the custodian any information in the register of members of the VCC relating to members holding shares issued in respect of that sub-fund, or allow the custodian to inspect any part of the register relating to those members.

(4) Any person or competent authority allowed to inspect the register under subsection (1) may request the VCC to furnish the person with a copy of the register, or any part of the register.

(5) A member of a VCC or the custodian of a sub-fund of a VCC may request the VCC to furnish the member or custodian with a copy of any part of the register that relates to the member or a member of the VCC holding shares in respect of the sub-fund (as the case may be).

(6) The VCC must cause any copy requested under subsection (4) or (5) to be sent to the person, competent authority, member or custodian within a period of 21 days (or such further period as agreed with the person, competent authority, member or custodian) starting on the day immediately after the day on which the request is received by the VCC.

(7) If any copy so requested is not sent within the period mentioned in subsection (6), the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$400, and also to a default penalty.

(8) If subsection (1), (2) or (3) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(9) In this section, “competent authority” means —

- (a) the Government, including any ministry, department or agency of the Government;
- (b) The Commission;
- (d) any other statutory body; or
- (e) any tribunal appointed under any written law.

**PART VII**  
**ANNUAL RETURN, FINANCIAL STATEMENTS AND AUDIT**

Division 1 — Interpretation

**Interpretation of this Part**

**83.** — Unless the contrary intention appears, in this Part (including the provisions of the Anguilla Business Companies Act applied by this Part) —

“accounting records”, in relation to a VCC or its sub-fund, includes such working papers and other documents as are necessary to explain the methods and calculations by which the accounts of the VCC or sub-fund (as the case may be) are made up;

“balance sheet”, in relation to a VCC, means the balance sheet (by whatever name called) of the VCC prepared in accordance with the Accounting Standards;

“group” has the meaning given by the Accounting Standards;

“parent company” means a company or VCC that is required under the Accounting Standards to prepare financial statements in relation to a group;

“subsidiary company” means a company or VCC that is a subsidiary as defined in the Accounting Standards;

“subsidiary corporation” means a corporation that is a subsidiary as defined in the Accounting Standards;

“ultimate parent corporation” means a corporation that is a parent but not a subsidiary, within the meaning of the Accounting Standards.

Division 2 — Annual Return

**Annual return**

**84.**— (1) Every VCC must lodge a return with the Registrar after its annual general meeting and within 6 months after the end of its financial year.

(2) Within 7 days prior to the expiry of the period under which a return must be lodged as stipulated in subsection (1), the Registrar may, if the Registrar determines that there are special reasons to do so, extend any period within which a VCC must lodge a return under subsection (1) —

- (a) upon an application by the VCC; or
- (b) in respect of any prescribed class of VCCs.

(3) The return in subsection (1) —

- (a) must be in such form;
- (b) must contain such particulars and information; and
- (c) must be accompanied by such documents,



as may be prescribed.

(4) The particulars to be contained in, and the documents that are to accompany, the return in subsection (1) may differ according to the class or description of VCC prescribed.

(5) If a VCC is required under section 78(4) to hold an annual general meeting for a financial year after it has lodged its annual return for that financial year, the VCC must lodge a notice of the date on which the annual general meeting was held with the Registrar within 14 days after that date.

(6) If a VCC fails to comply with this section, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

### Division 3 — Financial Statements

#### Financial year

**85.**— (1) A VCC's financial year is determined as follows:

- (a) the VCC's first financial year starts on the VCC's date of incorporation and (subject to subsection (3)) ends on the last day of the VCC's first financial year as provided under section 16(2)(d);
- (b) each of the VCC's subsequent financial years starts immediately after the end of the previous financial year and ends on the last day of a period of 12 months (or such other regular interval as the Registrar may allow).

(2) The VCC's first financial year must not be longer than 18 months unless the Registrar on the application of the VCC otherwise approves.

(3) Despite subsection (1), but subject to subsections (4) and (5), a VCC may, by notice lodged with the Registrar in the prescribed form, specify a new date as the last day of the VCC's financial year to apply to its previous or current financial year.

(4) The Registrar's approval must be obtained if the notice mentioned in subsection (3) —

- (a) results in a financial year being longer than 18 months; or
- (b) is lodged less than 5 years after the end of an earlier financial year, if the end of that earlier financial year was changed under this section.

(5) The notice in subsection (3) cannot specify a new date as the last day of the VCC's financial year —

- (a) after the expiry of the period under section 77 within which an annual general meeting of the VCC must be held after that financial year;
- (b) after the expiry of the period under section 84 within which an annual return of the VCC must be lodged with the Registrar after that financial year; or

- (c) after the expiry of the period under section 92 within which a copy of the financial statements, or consolidated financial statements and balance sheet, and other documents mentioned in section 105(1) and (2) are required to be sent to all persons entitled to receive notice of general meetings of the VCC.

### **Accounting records and systems of control**

**86.**—(1) Subject to section 5, the Anguilla Business Companies Act applies in relation to a VCC and a subsidiary company of a VCC, as it applies in relation to the accounting records of a company or public company, and a subsidiary company of a public company.

(2) In addition to the requirements of subsection (1) an umbrella VCC must also —

(a) keep separate accounting and other records for each sub-fund —

- (i) that sufficiently explain the transactions and financial position of the sub-fund; and
- (ii) that will enable true and fair financial statements, and any document required to be attached to those records, to be prepared from time to time; and

(b) devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that —

- (i) assets of each sub-fund are safeguarded against loss from unauthorised use or disposition; and
- (ii) transactions of each sub-fund are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements of the VCC and to maintain accountability of assets.

(3) The VCC mentioned in subsection (2) must —

- (a) keep the records mentioned in subsection (2)(a) in a manner that will enable them to be conveniently and properly audited; and
- (b) keep any such record that relates to a particular transaction or operation for a period of not less than 5 years starting on the last day of the financial year in which the transaction or operation is completed.
- (c) where this section is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000.

### **Financial statements and consolidated financial statements**

**87.**—(1) The directors of every VCC must lay before the VCC at its annual general meeting the financial statements for the financial year in respect of which the annual general meeting is held.

(2) The financial statements in subsection (1) must —

(a) comply with the requirements of the Accounting Standards and give a true and fair

view of the financial position and performance of the VCC and its sub-funds (if any); and

- (b) if the VCC is an umbrella VCC, contain separate accounts for each sub-fund that are prepared using the same Accounting Standards as those used to prepare the accounts of the VCC.

(3) The directors of a VCC that is a parent company at the end of its financial year need not comply with subsection (1), but must cause to be made out and laid before the VCC at its annual general meeting —

- (a) consolidated financial statements dealing with the financial position and performance of the group for the financial year in respect of which the annual general meeting is held; and
- (b) a balance sheet dealing with the state of affairs of the VCC and its sub-funds (if any) at the end of its financial year.

(4) The consolidated financial statements in subsection (3)(a) and the balance sheet in subsection (3)(b) must —

- (a) comply with the requirements of the Accounting Standards and give a true and fair view of the matters mentioned in subsection (3)(a) and (b) (respectively), so far as they concern members of the VCC; and
- (b) if the VCC is an umbrella VCC, contain separate accounts for each sub-fund that are prepared using the same Accounting Standards as those used to prepare the accounts of the VCC.

(5) Statements in subsection (1) and the balance sheet in subsection (3)(b) are made out, the directors of the VCC must take reasonable steps —

- (a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts, and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;
- (b) to ascertain whether any current assets (other than current assets to which paragraph (a) applies) are unlikely to realise in the ordinary course of business their value as shown in the accounting records of the VCC or its sub-funds (if any) and, if so, to cause —
  - (i) those assets to be written down to an amount which they might be expected so to realise; or
  - (ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realise; and
- (c) to ascertain whether any non-current asset is shown in the books of the VCC or its sub-funds (if any) at an amount which, having regard to its value to the VCC or the sub-fund (as the case may be) as a going concern, exceeds the amount which would be recoverable over its useful life or on its disposal and (unless adequate provision for writing down that asset is made) to cause to be included in

the financial statements such information and explanations as will prevent the financial statements from being misleading by reason of the overstatement of the amount of that asset.

(6) In this section, “Accounting Standards” means —

- (a) accounting standards made or formulated by the Accounting Standards Board and applicable to companies, with each reference to a company substituted with a reference to a VCC, and with such other modifications as may be prescribed; or
- (b) such other accounting standards or practices as may be prescribed.

(7) The Governor may, by order in the Gazette, in respect of VCCs of a specified class or description, substitute other accounting standards for the Accounting Standards applicable to those VCCs.

### **Retention of documents laid before VCC at annual general meeting**

**88.**—(1) Every VCC must cause to be kept at the VCC’s registered office, or such other place as the directors think fit —

- (a) a copy of each of the documents that was laid before the VCC at its annual general meeting under section 87, for a period of not less than 5 years after the date of the annual general meeting; or
- (b) in respect of any financial year for which the VCC need not hold an annual general meeting because of section 78(1) —
  - (i) a copy of the financial statements; or
  - (ii) in the case of a VCC that is a parent company, a copy of the consolidated financial statements and balance sheet (including every document required by law to be attached to them),

and a copy of the auditors’ report where such financial statements or consolidated financial statements are duly audited, that were sent to all persons entitled to receive notice of general meetings of the VCC in accordance with section 92(1) and (2), for a period of not less than 5 years after the date on which the documents were sent.

(2) Kept includes kept electronically.

### **When directors need not lay financial statements before VCC**

**89.**—The directors of a VCC need not comply with the requirement in section 100 to lay before the VCC at its annual general meeting the financial statements, or the consolidated financial statements and balance sheet (as the case may be), of the VCC if the VCC need not hold an annual general meeting because of section 78(1).

### **Relief from requirements as to form and content of financial statements, consolidated financial statements and directors’ statement**

**90.** (1) The directors of a company may apply to the Registrar in writing for an order relieving them from any requirement of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) and the Registrar may make such an order either unconditionally or on condition that the directors comply with such other requirements relating to the form and content of the financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

(2) The Registrar may, where he considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company in that class from compliance with any specified requirements of this Act relating to the form and content of financial statements or consolidated financial statements (other than a requirement of the Accounting Standards) and the order may be made either unconditionally or on condition that the directors of the company comply with such other requirements relating to the form and content of financial statements or consolidated financial statements or directors' statement as the Registrar thinks fit to impose.

(3) The Registrar shall not make an order under subsection (1) unless he is of the opinion that compliance with the requirements of this Act would render the financial statements or consolidated financial statements or directors' statement, as the case may be, misleading or inappropriate to the circumstances of the company or would impose unreasonable burdens on the company or any officer of the company.

(4) The Registrar may make an order under subsection (1) which may be limited to a specific period and may from time to time either on application by the directors or without any such application (in which case the Registrar shall give to the directors an opportunity of being heard) revoke or suspend the operation of any such order.

### **Defective financial statements, or consolidated financial statements and balance sheet**

**91.**—(1) If it appears to the Registrar that there is, or may be, a question whether the financial statements or, in the case of a parent company, consolidated financial statements and balance-sheet comply with the requirements of this Act (including compliance with the Accounting Standards), the Registrar may give notice to the directors of the company indicating the respects in which it appears that such a question arises or may arise, and specify the period within which the directors must respond.

(2) The directors of the company to whom notice under subsection (1) is given must at the end of the period referred to in subsection (1), or such longer period as the Registrar may allow —

- (a) give the Registrar an explanation of the financial statements, or consolidated financial statements and balance-sheet, as the case may be, if the directors do not propose to revise the financial statements, or consolidated financial statements or balance-sheet, as the case may be; or
- (b) inform the Registrar how the directors propose to revise the financial statements, or consolidated financial statements or balance-sheet, as the case may be, to address the questions in respect of which the Registrar has given notice.

(3) If the Registrar is satisfied with the explanation of the financial statements, or consolidated financial statements and balance-sheet, as the case may be, referred to in subsection (2)(a), no further action need be taken by the directors in respect of the notice under subsection (1).

### **Members of VCC entitled to financial statements, etc.**

**92.—**(1) A copy of the financial statements or (in the case of a VCC that is a parent company) of the consolidated financial statements and balance sheet (including every document required by law to be attached to them), which is duly audited and which (or which, but for section 89) is to be laid before the VCC in general meeting, must be sent to all persons entitled to receive notice of general meetings of the VCC —

(a) not less than 14 days before the date of the meeting; or

(b) if the VCC is not required to hold an annual general meeting because of section 78(1)(a), not later than 4 months after the end of the financial year to which the financial statements, or consolidated financial statements and balance sheet, relate.

(2) The documents mentioned in subsection (1) must be accompanied by a copy of the auditor's report on them.

(3) Despite subsection (1)(a), the documents mentioned in subsections (1) and (2) may be sent less than 14 days before the date of the meeting if all the persons entitled to receive notice of general meetings of the VCC so agree.

(4) On a request made to a VCC by —

(a) any member of the VCC to whom the documents mentioned in subsections (1) and (2) have not been sent (whether or not the member is entitled to be sent such documents); or

(b) any holder of a debenture,

the VCC must, without charge, send to the member or holder the documents mentioned in subsections (1) and (2), as the case may be.

(5) If subsection (1) or (4) is contravened, the VCC and every officer of the VCC who is in default (unless it is proved that the member or holder of a debenture in question has already made a request for and has been furnished with a copy of the financial statements, or consolidated financial statements and balance sheet, and all documents mentioned in subsections (1) and (2)), shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$5,000, and also to a default penalty.

(6) In a case mentioned in subsection (1)(b), any member or auditor of the VCC may, by notice to the VCC not later than 14 days after the day on which the documents mentioned in subsections (1) and (2) were sent out, require that a general meeting be held for the purpose of laying those documents before the VCC.

(7) Where a VCC is not required to hold an annual general meeting because of section 78(1)(b), any member or auditor of the VCC may, by notice to the VCC not later than 14 days after the day on which the documents mentioned in subsections (1) and (2) were sent out, require

that a general meeting be held for the purpose of laying those documents before the VCC.

(8) Section 78(5) applies, with the necessary modifications, to the giving of a notice under subsection (6) or (7).

(9) The directors of the VCC must, within 14 days after the date of giving the notice in subsection (6) or (7), convene a meeting for the purpose mentioned in that subsection.

(10) If subsection (9) is contravened —

- (a) each director in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000; and
- (b) the Court may, on application of the member or auditor, order a general meeting to be called.

### **Penalty**

**93.** — (1) If any director of a company fails to comply with section 87 he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

### **Division 4 — Audit**

#### **Appointment and remuneration of auditors**

**94.**— (1) Where a VCC need not hold an annual general meeting for a financial year under section 78(1), and the auditor or auditors of the VCC is or are appointed by a resolution by written means under (as applied by section 80(3)) by reason of section 78(7), the references to the date of an annual general meeting are to the time agreement to the resolution is sought.

#### **Resignation of auditor of VCC non-public interest company**

**95.** (1) An auditor of a non-public interest company (other than a company which is a subsidiary company of a public interest company) may resign before the end of the term of office for which he was appointed by giving the company a notice of resignation in writing.

(2) Where a notice of resignation is given under subsection (1), the auditor's term of office expires —

- (a) with immediate effect when the notice is given to the company; or
- (b) if the notice specifies a time on a later day for the purpose, at that time.

(3) Within 14 days beginning on the date on which a company receives a notice of resignation under subsection (1), the company must lodge with the Registrar a notification of that fact in such form as the Registrar may require.

(4) In this section and section 96

“public interest company” means a company which is listed or in the process of issuing its debt or equity instruments for trading on an approved exchange.

### **Resignation of auditor of VCC public interest company**

**96.** — (1) An auditor of a public interest company, or a subsidiary company of a public interest company, may by giving the company a notice of resignation in writing, resign before the end of the term of office for which he was appointed, if —

- (a) the auditor has applied for consent from the Registrar to the resignation and provided a written statement of his reasons for his resignation and, at or about the same time as the application, notified the company in writing of the application to the Registrar and provided the company with the written statement of his reasons for his resignation;
- (b) and the consent of the Registrar has been given.

(2) The Registrar shall, as soon as practicable after receiving the application from an auditor under subsection (1), notify the auditor and the company whether it consents to the resignation of the auditor.

(3) A statement made by an auditor in an application to the Registrar under subsection (1)(a) or in answer to an inquiry by the Registrar relating to the reasons for the application —

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
- (b) subject to subsection (4), may not be made the ground of a prosecution, an action or a suit against the auditor,

and a certificate by the Registrar that the statement was made in the application or in the answer to the inquiry by the Registrar is conclusive evidence that the statement was so made.

(4) The resignation of an auditor of a public interest company, or subsidiary company of a public interest company, takes effect —

- (a) on the day(if any) specified for the purpose in the notice of resignation;
- (b) on the day on which the Registrar notifies the auditor and the company of his consent to the resignation; or
- (c) on the day (if any) fixed by the Registrar for the purpose,

whichever last occurs.

## PART VIII INVESTIGATIONS



## **Interpretation of this Part**

**97.**—(1) This section applies for the interpretation of the provisions of this Part, including provisions of the Anguilla Business Companies Act applied by this Part.

(2) A reference to a declared VCC is to a VCC declared by an order under section 98 as a VCC to which this Part applies.

(3) A reference to an officer or agent of a corporation that is not a VCC includes —

- (a) a director, a banker, an attorney-at-law or an auditor of the corporation;
- (b) a person who at any time —
  - (i) has been a person mentioned in paragraph (a); or
  - (ii) has been otherwise employed or appointed by the corporation;
- (c) a person who —
  - (i) has in the person's possession any property of the corporation;
  - (ii) is a creditor of the corporation; or
  - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the corporation; and
- (d) where there are reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (c) — that person.

(4) Except as otherwise provided in section 103(c), a reference to an officer or agent of a corporation that is a VCC includes —

- (a) a director, a banker, an attorney-at-law or an auditor of the VCC or a person who has been such a person at any time;
- (b) the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC, or a person who has been such a person at any time;
- (c) a person who has been otherwise employed or appointed at any time by the VCC;
- (d) a person who —
  - (i) has in the person's possession any property of the VCC;
  - (ii) is a creditor of the VCC; or
  - (iii) is capable of giving information concerning the promotion, formation, trading, dealings, affairs or property of the VCC; and
- (e) where there are reasonable grounds for suspecting or believing that a person is a person mentioned in paragraph (d) — that person.

## **Power to declare VCC**

**98.** The Governor may by order declare that a VCC is one to which this Part applies if the Governor is satisfied —

- (a) that a prima facie case has been established that, for the protection of the public or the shareholders or creditors of the VCC, it is desirable that the affairs of the VCC should be investigated under this Part;
- (b) that it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the VCC should be investigated under this Part; or
- (c) that for any other reason it is in the public interest that the affairs of the VCC should be investigated under this Part.

### **Appointment and powers of inspector**

**99.**— (1) Where a VCC has been declared as a VCC to which this Part applies, the Governor must appoint one or more inspectors to investigate the affairs of that VCC, and to report his or her opinion on those affairs to the Governor.

### **Investigation of affairs of VCC by inspectors at direction of Commission**

**100.**—(1) The Commission may, on an application mentioned in subsection (2) or (3), appoint one or more inspectors to investigate the affairs of a VCC or such aspects of the affairs of the VCC as are specified in the instrument of appointment, and to report on those affairs or aspects in such manner as the Governor directs.

(2) For an investigation into any matter other than one specified in subsection (3), the Commission may exercise the power under subsection (1) —

- (a) on the application of —
  - (i) not less than 200 members (excluding the VCC itself or a subsidiary of the VCC if the VCC or subsidiary, as the case may be, is registered as a member) or of members holding not less than 10% of the shares issued (excluding shares held by a subsidiary of the VCC under section 22(6) or (11), if any); or
  - (ii) holders of debentures holding not less than 20% in nominal value of all debentures issued by the VCC; or

(b) on the application of the VCC pursuant to a special resolution.

(3) For an investigation that relates solely to a sub-fund of an umbrella VCC, the Governor may exercise the power under subsection (1) —

- (a) on the application of —
  - (i) not less than 200 members holding shares that are issued in respect of that sub-fund;
  - (ii) members holding not less than 10% of the shares that are issued in respect of that sub-fund (excluding shares held by a subsidiary of the VCC under section 22(6) or (11), if any); or
  - (iii) holders of debentures holding not less than 20% in nominal value of all debentures issued in respect of that sub-fund by the VCC; or

(b) on the application of the VCC pursuant to a resolution passed, in accordance with the VCC's constitution, by one or more members holding shares that represent —

(i) at least 75%; or

(ii) if the constitution of the VCC requires a greater majority for that resolution, that greater majority,

of the total voting rights of all the members holding shares that are issued in respect of that sub-fund who have the right to vote on that resolution.

(4) An application under this section must be supported by such evidence as the Commission requires as to the reasons for the application and the motives of the applicants in requiring the investigation.

(5) The Commission may, before appointing an inspector, require the applicants to give security for such amount as the Commission thinks fit for payment of the cost of the investigation.

### **Reports of inspectors**

**101.**—(1) An inspector appointed by the Commission may and, if so directed by the Commission must, make one or more interim reports to the Commission.

(2) On the conclusion of an investigation, the inspector must make a report to the Commission of —

(a) the inspector's opinion on or in relation to the affairs that the inspector is appointed to investigate; and

(b) the facts upon which that opinion is based.

(3) If from a report of an inspector, it appears to the Commission that proceedings ought in the public interest to be brought by the VCC that is the subject of, or whose sub-fund is the subject of, the report —

(a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct —

(i) in connection with the promotion or formation of the VCC or sub-fund; or

(ii) in the management of the affairs of the VCC or the affairs of the sub-fund; or

(b) for the recovery of any property of the VCC or sub-fund which has been misapplied or wrongfully retained,

the Commission may itself bring proceedings for that purpose in the name of the VCC.

### **Investigation of affairs of related corporation**

**102.** Where an inspector thinks it necessary for the purpose of an investigation of the affairs of a VCC to investigate the affairs of a corporation that is or has at any relevant time been a related corporation of the VCC, the inspector may, with the written consent of the Governor, investigate the affairs of that corporation.

## Procedure and powers of inspector

**103.** (1) Every officer and agent of a corporation the affairs of which are being investigated under this Part shall, if required by an inspector appointed under this Part, produce to the inspector all books and documents in his custody or power and shall give to the inspector all assistance in connection with the investigation which he is reasonably able to give.

(2) An inspector may, by notice in the prescribed form, require any officer or agent of any corporation whose affairs are being investigated pursuant to this Part to appear for examination on oath or affirmation (which he is hereby authorised to administer) in relation to its business; and the notice may require the production of all books and documents in the custody or under the control of that officer or agent.

(3) An inspector who, pursuant to this section, requires the production of all books and documents in the custody or power or under the control of an officer or agent of any corporation whose affairs are being investigated under or pursuant to this Part —

- (a) may take possession of all such books and documents;
- (b) may retain all such books and documents for such time as he considers to be necessary for the purpose of the investigation; and
- (c) shall permit such corporation to have access at all reasonable times to all such books and documents so long as they are in his possession.

(4) No person, who is or has formerly been an officer or agent of a corporation the affairs of which are being investigated under this Part, shall be entitled to refuse to answer any question which is relevant or material to the investigation on the ground that his answer might tend to incriminate him but if he claims that the answer to any question, might incriminate him and but for this subsection he would have been entitled to refuse to answer the question, the answer to the question shall not be used in any subsequent criminal proceedings except in the case of a charge against him for making a false statement in answer to that question.

(5) Subject to subsection (5), any person shall be entitled to refuse to answer a question on the ground that the answer might tend to incriminate him.

(6) An inspector may cause notes of any examination under this Part to be recorded and reduced to writing and to be read to or by and signed by the person examined and any such signed notes may except in the case of any answer which that person would not have been required to give but for subsection (5) thereafter be used in evidence in any legal proceedings against that person.

(7) a reference in subsection (5) to a director or past director of the company or the corporation whose affairs are being investigated, is to a person who is or was —

- (a) a director of the VCC or the VCC's related corporation;
- (b) the manager of the VCC or of the VCC's related corporation (being also a VCC); or
- (c) the custodian of the VCC (being a non-umbrella VCC) or of the VCC's related corporation (being also a non-umbrella VCC).

### **Costs of investigations**

**104.**— (1) Section 237 of the Anguilla Business Companies Act applies in relation to an investigation of the affairs of a VCC under section 100 or 121 and any proceedings brought by the Governor in the name of the VCC, as it applies in relation to an investigation and proceedings mentioned in subsection (1) of that section, subject to section 5 and subsection (2).

(2) The expenses of and incidental to an investigation under section 100 or 107 that relates solely to a sub-fund of an umbrella VCC (including the costs of any proceedings brought by the Governor in the name of the umbrella VCC in relation to such investigation) are to be paid —

- (a) out of the assets of the sub-fund; or
- (b) if the Governor so directs —
  - (i) by the applicant for the investigation; or
  - (ii) in part out of such assets and in part by the applicant,

and section 237(2) of the Anguilla Business Companies Act (as applied by subsection (1)) applies accordingly.

### **Suspension of actions and proceedings in respect of VCC**

**105.**— (1) On and after the appointment of an inspector in respect of any declared company until the expiration of 3 months after the inspector has presented his final report to the Commission, no action or proceeding shall without the consent of the Commission (which may be given generally or in a particular case and which may be given subject to such conditions and limitations as it thinks fit) be commenced or proceeded with in any Court —

- (a) by the company upon or in respect of any contract, bill of exchange or promissory note; or
- (b) by the holder or any other person in respect of any bill of exchange or promissory note made, drawn or accepted by or issued, transferred, negotiated or endorsed by or to the company unless the holder or other person —
  - (i) at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him gave therefor adequate pecuniary consideration; and

- (ii) was not at the time of the negotiation, transfer, issue, endorsement or delivery thereof to him or at any time within 3 years before that time a member, officer, agent or employee of the company or the wife or husband of any member, officer, agent or employee of the company.

(2) Any action or proceeding which is commenced or proceeded with in contravention of this section shall be void and of no effect.

(3) Where the investigation relates solely to a sub-fund of an umbrella VCC that is a declared VCC, then sub section (1) and (2) only applies to an action or proceeding in respect of any instrument mentioned in that section that is made, drawn or accepted by, or issued, transferred, negotiated or endorsed by or to the VCC on behalf of the sub-fund.

### **Winding up of VCC**

**106.**— (1) An application to the Court for the winding up of a declared VCC may be made by the [Commission] at any time after a report has been made by an inspector in respect of the VCC (but not one mentioned in subsection (2)), whereupon the provisions of this Act as to the winding up of a VCC apply with the necessary modifications, as if an application for such winding up had been made by the VCC to the Court.

(2) An application to the Court for the winding up of a sub-fund of an umbrella VCC that is a declared VCC may be made by the Governor at any time after a report has been made by an inspector in respect of the sub-fund, whereupon the provisions of this Act as to the winding up of a sub-fund of a VCC apply with the necessary modifications, as if an application for such winding up had been made by the VCC to the Court.

### **Appointment and powers of inspectors to investigate ownership of VCC**

**107.**— (1) Where it appears to the [Commission] that there is good reason to do so, the [Commission] may appoint one or more inspectors to investigate and report on the membership of any VCC (whether or not it is a declared VCC), and otherwise for the purpose of determining the true persons who are or have been —

(a) financially interested in the success or failure (real or apparent) of the VCC;  
or

(b) able to control or materially influence the policy of the VCC.

(2) An application may be made to the [Commission] for an investigation with respect to particular shares in or debentures of any VCC (whether or not it is a declared VCC), for the purpose mentioned in subsection (1), by —

(3) On an application made under subsection (2), the [Commission] must appoint an inspector or inspectors to conduct an investigation, unless the Governor is satisfied that the application is vexatious.

(4) An inspector appointed pursuant to an application made under subsection (2) may investigate any matter which the application seeks to have investigated, except insofar as the [Commission] is satisfied that it is unreasonable for that matter to be investigated.

(5) The provisions of this Part applicable to an investigation into the affairs of a declared VCC apply to an investigation under this section, subject to the necessary modifications and the following further modifications

- (a) a reference in this Part (including a provision of the Anguilla Business Companies Act applied by this Part) to an officer or agent of a VCC or other corporation is to a person who is or has been, or whom the inspector has reasonable cause to believe to be or to have been —
  - (i) financially interested in the success or failure or the apparent success or failure of the VCC or any other corporation the membership of which is investigated with that of the VCC; or
  - (ii) able to control or materially influence the policy of that VCC or corporation, and a person concerned only on behalf of others; and
- (b) the Governor is not bound to furnish to the VCC or any other person a copy of any report by an inspector appointed under this section if the Governor is of the opinion that there is good reason for not divulging the contents of the report or any part of it, but may (if the Governor thinks fit) cause to be kept by the Registrar a copy of the report or (as the case may be) the parts of the report, as respects which the Governor is not of that opinion.

### **Power to require information as to persons interested in shares or debentures**

**108.**— (1) Where it appears to the Commission that —

- (a) there is good reason to investigate the ownership of any shares in or debentures of a VCC; and
- (b) it is unnecessary to appoint an inspector for the purpose,

the Governor may require any person whom the Governor has reasonable cause to believe to have or to be able to obtain any information as to —

- (c) the present and past interests in those shares or debentures; and
- (d) the names and addresses of the persons interested and of any person who act or have acted on their behalf in relation to the shares or debentures,

to give such information to the Governor.

### **Power to impose restrictions on shares or debentures**

**109.**— Where in connection with an investigation under this part it appears to the Commission that there is difficulty in finding out the relevant facts about any shares, whether issued or to be issued, the Commission may by order published in the Gazette direct that the shares are until further order subject to the following restrictions:

- (a) that any transfer of those shares or any exercise of the right to acquire or dispose of those shares or in the case of unissued shares any transfer of the right to be issued therewith and any issue thereof, shall be void;
- (b) that no voting rights shall be exercisable in respect of those shares;
- (c) that no further shares shall be issued in right of those shares or in pursuance of any offer made to the holder thereof;
- (d) that, except in a liquidation, no payment shall be made of any sums due from the company on those shares, whether in respect of capital or otherwise.

### **Inspectors appointed in other countries**

**110.** (1) Where —

- (a) under a corresponding law of another country, an inspector has been appointed to investigate the affairs of a VCC; and
- (b) the [Commission] is of the opinion that, in connection with that investigation, it is expedient that an investigation be made in Anguilla,

the [Commission] may by notice declare that the inspector so appointed has the same powers and duties in Anguilla in relation to the investigation as if the VCC were a declared VCC.

(2) Upon the declaration, the inspector has the powers and duties mentioned in subsection (1).

### **Miscellaneous provisions**

**111.**— An inspector appointed under this Part must not require an attorney-at-law to disclose any privileged communication made to the attorney at law in that capacity, except as respects the name and address of the attorney at law 's client.

## **PART IX**

### **RECEIVERS AND MANAGERS**

#### **Application of Part VIII of Anguilla Business Companies Act**

**112.**— (1) The following persons are also not qualified to be appointed as a receiver of the property of the VCC or the sub-fund of the VCC, and must not act as such:

- (a) the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC;
- (b) a director, a secretary or an employee of such manager or custodian.

(2) The Court may —

- (a) on an application by the liquidator of a VCC, by order fix the amount to be paid as remuneration to a person who, under a power contained in any instrument, has



been appointed as receiver or manager of the property of the VCC or its sub-fund;  
or

- (b) on an application by the liquidator of a sub-fund, by order fix the amount to be paid as remuneration to a person who, under a power contained in any instrument, has been appointed as receiver or manager of the property of the sub-fund.

(3) Where an application is made to the Court to appoint a receiver on behalf of holders of debentures or other creditors of —

- (a) a VCC; or
- (b) a sub-fund,

which is being wound up by the Court, the Court may appoint the liquidator as such receiver.

### **Statement that receiver appointed**

**113.**— (1) Where a receiver or manager of the property of a VCC has been appointed, every invoice order for goods or business letter issued by or on behalf of —

- (a) the VCC or any of its sub-funds;
- (b) the receiver or manager of the property of the VCC or any of its sub-funds (if applicable); or
- (c) the liquidator of the VCC or any of its sub-funds (if applicable),

being a document in which the name of the VCC or any of its sub-funds appears, must contain a statement immediately following the name of the VCC or sub-fund, that a receiver or manager has been appointed in respect of the property of the VCC.

(2) Where a receiver or manager of the property of a sub-fund of an umbrella VCC has been appointed, every invoice order for goods or business letter issued by or on behalf of —

- (a) the umbrella VCC for the sub-fund;
- (b) the receiver or manager of the property of the sub-fund; or (c) the liquidator of the sub-fund,

being a document in which the name of the sub-fund appears, must contain a statement immediately following the name of that sub-fund, that a receiver or manager has been appointed in respect of the property of the sub-fund.

(4) To avoid doubt, subsections (1) and (2) apply cumulatively in a case where a receiver or manager has been appointed in respect of the property of an umbrella VCC, and the same or another receiver or manager has been appointed in respect of the property of any of its sub-funds.

(5) If subsection (1) or (2) is contravened, the VCC and each of the following shall be guilty of an offence:

- (a) every officer of the VCC who knowingly and wilfully authorises or permits the

default;

- (b) the liquidator of the VCC or the sub-fund (as the case may be), if he or she knowingly and wilfully authorises or permits the default;
- (c) the receiver or manager of the property of the VCC or the sub-fund (as the case may be), if he or she knowingly and wilfully authorises or permits the default.

**Payment of certain debts out of assets subject to floating charge in priority to claims under charge**

**114.**— (1) Where —

- (a) a receiver is appointed on behalf of the holders of any debentures of a VCC secured by a floating charge; or
- (b) possession is taken, by or on behalf of holders of debentures of a VCC, of any property of a VCC comprised in or subject to a floating charge,

then, if the VCC is not at the time in the course of being wound up, the following:

- (c) debts which in every winding up of a VCC are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments;
- (d) any amount which in the winding up of a VCC is payable pursuant to the Anguilla Business Companies Act

must be —

- (e) paid out of any assets coming in to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures; and
- (f) paid in the same order of priority as prescribed by the Anguilla Business Companies Act (as applied by section 117) in respect of those debts and amount.

(2) Where —

- (a) a receiver is appointed on behalf of the holders of any debentures of a particular sub-fund of an umbrella VCC secured by a floating charge; or
- (b) possession is taken, by or on behalf of holders of debentures of a particular sub-fund of an umbrella VCC, of any property comprised in or subject to a floating charge,

then, if the sub-fund is not at the time in the course of being wound up, the following:

- (c) debts which in every winding up of a sub-fund are preferential debts and are due by way of wages, salary, retrenchment benefit or ex gratia payment, vacation leave or superannuation or provident fund payments;
- (d) any amount which in the winding up of a sub-fund is payable pursuant to the Anguilla Business Companies Act as applied by section 33 or as

prescribed,

must be —

- (e) paid out of any assets coming in to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures; and
  - (f) paid in the same order of priority as under the Anguilla Business Companies Act (as applied by section 33) or as prescribed in respect of those debts and amount.
- (3) For the purposes of subsections (1) and (2) —
- (a) a floating charge is a charge which, as created, was a floating charge; and
  - (b) the commencement of the winding up is to the date of the appointment of the receiver or of the possession being taken as described in subsection (1) or (2), as the case may be.

(4) Any payments made under this section must be recouped, as far as possible, out of the assets of the VCC or the sub-fund (as the case may be) that are available for payment of general creditors.

#### **Enforcement of duty of receiver, etc., to make returns**

**115.**— (1) If a receiver or manager of the property of a VCC that is a non-umbrella VCC fails to make good any default by him or her in making or lodging any return, account or other document or in giving any notice required by law, within 14 days after the service on him or her of a notice requiring him or her to do so by —

- (a) a member of the VCC; (b) a creditor of the VCC; or
- (c) a trustee for holders of debentures of the VCC,

the Court may, on an application by the person who gave the notice, make an order directing the receiver or manager to make good the default within the time specified in the order.

(2) If a receiver or manager of the property of an umbrella VCC fails to make good any default by him or her in making or lodging any return, account or other document or in giving any notice required by law, within 14 days after the service on him or her of a notice requiring him or her to do so by —

- (a) a creditor of the umbrella VCC; or
- (b) a trustee for holders of debentures of the umbrella VCC,

the Court may, on an application by the person who gave the notice, make an order directing the receiver or manager to make good the default within the time specified in the order.

(3) If a receiver or manager of the property of a particular sub-fund of an umbrella VCC fails to make good any default by him or her in making or lodging any return, account or other document or in giving any notice required by law, within 14 days after the service on him or her of a notice requiring him or her to do so by —

- (a) a member of the umbrella VCC holding shares issued in respect of the sub-fund;
- (b) a creditor of the sub-fund; or
- (c) a trustee for holders of debentures of the sub-fund,

the Court may, on an application by the person who gave the notice, make an order directing the receiver or manager to make good the default within the time specified in the order.

- (4) If it appears that a receiver or manager of the property of a VCC —
  - (a) has misapplied, retained or become liable or accountable for any money or property of the VCC; or
  - (b) has been guilty of any misfeasance or breach of trust or duty in relation to the VCC,

the Court may, on an application by a creditor or contributory or the liquidator of the VCC, examine the conduct of the receiver or manager and compel him or her to —

- (c) repay or restore the money or property or part of it with interest at such rate as the Court thinks just; or
- (d) contribute such sum to the assets of the VCC by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty, as the Court thinks just.

(5) If it appears that a receiver or manager of the property of a particular sub-fund of an umbrella VCC —

- (a) has misapplied, retained or become liable or accountable for any money or property of the sub-fund; or
- (b) has been guilty of any misfeasance or breach of trust or duty in relation to the property of the sub-fund,

the Court may, on an application by a creditor or contributory or the liquidator of the sub-fund, examine the conduct of the receiver or manager and compel him or her to —

- (c) repay or restore the money or property or part of it with interest at such rate as the Court thinks just; or
- (d) contribute such sum to the assets of the sub-fund by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty, as the Court thinks just.

(6) This section has effect whether or not the act in question is one for which the receiver or manager is criminally liable.

## PART X WINDING UP

### **Disqualification of liquidators**

**116.**— (1) Subject to this section, a person must not, except with the leave of the Court, consent to be appointed, and must not act as liquidator of a VCC —

- (a) if the person is not an approved liquidator;
- (b) if the person is indebted to the VCC, any sub-fund of the VCC or a related corporation of the VCC in an amount exceeding \$10,000;
- (c) if the person is —
  - (i) an officer of the VCC;
  - (ii) a partner, an employer or an employee of an officer of the VCC;
  - (iii) a partner or an employee of an employee of an officer of the VCC;
  - (iv) the manager of the VCC, the custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC; or
  - (v) an officer or employee of such manager or custodian;
- (d) if the person is an undischarged bankrupt;
- (e) if the person has assigned the person's estate for the benefit of the person's creditors or has made an arrangement with the person's creditors pursuant to any law relating to bankruptcy; or
- (f) if the person has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more.

(2) Subsection (1)(a) and (c) does not apply to —

- (a) a members' voluntary winding up; or
- (b) a creditors' voluntary winding up, if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which 7 days' notice has been given to every creditor stating the object of the meeting, it is determined that that provision does not so apply.

(3) For the purposes of subsection (1) —

- (a) a person is treated as an officer of a VCC if the person is an officer of a related corporation of the VCC or has, at any time within the preceding period of 24 months, been an officer or a promoter of the VCC or of such a corporation; and
- (b) a person is treated as a manager of the VCC, a custodian of the VCC (being a non-umbrella VCC) or the custodian of a sub-fund of the VCC if it has, at any time within the preceding period of 24 months, been such manager or custodian.

(4) A person must not be appointed as liquidator of a VCC unless the person has prior to such appointment consented in writing to act as such liquidator.

(5) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

(6) In this section —

- (a) a person is an approved liquidator if —
  - (i) the person falls within a class of persons declared as approved liquidators under the Anguilla Business Companies Act; or
  - (ii) the person has been approved under the Anguilla Business Companies Act as a liquidator and the approval has not been revoked; and
- (b) a person is indebted to a sub-fund if the debt is incurred in relation to the sub-fund.

### **Winding up**

**117.—**(1) A VCC, whether or not it is being wound up voluntarily, may be wound up under an order of the Court on the application of one or more of the following:

- (a) the VCC;
  - (b) any creditor, including a contingent or prospective creditor, of the VCC;
  - (c) a contributory or any person who is the personal representative of a deceased contributory or the Official Assignee of the estate of a bankrupt contributory;
  - (d) the liquidator;
  - (e) the Commission.
- (2) The Court may order the winding up of a VCC if —
- (a) the VCC has by special resolution resolved that it be wound up by the Court;
  - (b) the VCC does not commence business within a year starting on the date of its incorporation or suspends its business for a whole year;
  - (c) the VCC has no member;
  - (d) the VCC is unable to pay its debts;
  - (e) the Commission has revoked or withdrawn the authorisation of the collective investment scheme constituted as the VCC;
  - (f) the directors have acted in the affairs of the VCC in their own interests rather than in the interests of the members as a whole, or in any other manner which appears to be unfair or unjust to other members;
  - (g) an inspector appointed under Part VIII has reported that he or she is of the opinion —
    - (i) that the VCC cannot pay its debts and should be wound up; or
    - (ii) that it is in the interests of the public or of the shareholders or of the creditors that the VCC should be wound up;
  - (h) when the period, if any, fixed for the duration of the VCC by the constitution expires or the event, if any, happens on the occurrence of which the constitution provides that the VCC is to be dissolved;

- (i) upon an application, the Court is of the opinion that it is just and equitable that the VCC be wound up;
- (j) the VCC has carried on multi-level marketing or pyramid selling in contravention of any written law that prohibits multi-level marketing or pyramid selling;
- (k) the VCC is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Anguilla or against national security or the national interest;
- (l) the VCC, being a foreign corporate entity that was registered as a VCC under section 122(1), has breached any of the conditions imposed under that section for its registration;
- (m) the VCC has conducted business outside the scope of its sole object in section 15; or
- (n) the VCC has contravened section 46 for no less than the period prescribed by regulations under section 152;

(3) The Court may make an order directing any contributory on the list of contributories to pay to the VCC, in the manner directed by the order, any money due from the contributory or from the estate of the person whom the contributory represents (excluding any money payable by the contributory or the estate by virtue of any call in pursuance of this Act), and when all the creditors are paid in full, any money due on any account to a contributory from the VCC may be allowed to the contributory by way of set-off against any subsequent call.

(4) Rules made under section 152 may make provision enabling or requiring all or any of the powers and duties conferred and imposed on the Court under the Anguilla Business Companies Act (as applied by this section) in respect of —

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator may not, except with the special leave of the Court, rectify the register of members, or make any call except with the special leave of the Court or the sanction of the committee of inspection.

(5) For the purposes of this part proper books or accounts are considered not to have been kept if

- (a) there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the VCC, including —
  - (i) books containing entries from day to day in sufficient detail of all cash received and cash paid; and
  - (ii) where the trade or business involved dealings in goods, statements of the annual stocktakings and of all goods sold and purchased, showing the goods and the buyers and sellers of those goods in sufficient detail to enable those goods and those buyers and sellers to be identified; or
- (b) such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the VCC has appointed an auditor.
- (6) For the purposes of this Part, an agent of the VCC includes —
  - (a) a banker or attorney at law of the VCC;
  - (b) any person employed by the VCC as an auditor, whether or not an officer of the VCC; and
  - (c) any person engaged by the VCC to provide any fund administration service.

## **PART XI**

### **TRANSFER OF REGISTRATION**

#### **Foreign corporate entities to which this Part applies**

**118**— This Part applies to a foreign corporate entity that intends to be registered as a VCC under this Act.

#### **Interpretation of this Part**

**119**— In this Part, unless the context otherwise requires —

“date of registration”, in relation to a foreign corporate entity that has applied to be registered as a VCC, means the date of registration of the foreign corporate entity specified in the notice of transfer of registration;

“foreign corporate entity” means a body corporate that is incorporated outside Anguilla, and that comprises one or more collective investment schemes;

“notice of transfer of registration” means the notice of transfer of registration issued under section 122(3);

“place of incorporation” means, in the case of a foreign corporate entity that had transferred its domicile after its incorporation, the jurisdiction where the foreign corporate entity is domiciled at the time it applies for registration;

“registration”, in relation to a foreign corporate entity that has applied to be registered as a VCC under this Part, means registration by the Registrar under section 122(1),



and “register” and “registered” are to be construed accordingly.

### **Name of VCCs to be registered under this Part**

**120.**— (1) A foreign corporate entity that intends to be registered as a VCC under this Act must apply to reserve the name of the intended VCC.

(2) Section 21 applies to and in respect of an application under subsection (1) as if it were an application to reserve the name of an intended VCC under that section.

(3) A foreign corporate entity must not be registered under section 122(1) unless the name which it is proposed to be registered has been reserved under section 21, as applied by subsection (2).

### **Application for registration**

**121.**— (1) A foreign corporate entity may apply to the Registrar to be registered as a VCC under this Act.

(2) An application under subsection (1) —

(a) must be made in such form and manner, and contain such particulars, as may be prescribed; and

(b) must be accompanied by —

(i) a certified copy of the charter, statute, constitution or memorandum or articles or other instrument constituting or defining its constitution (if any), in its place of incorporation;

(ii) the constitution by which the foreign corporate entity proposes to be registered;

(iii) the name of the manager and directors of the proposed VCC;

(iv) such other documents as may be prescribed; and (v) the prescribed fee.

(3) The Registrar may require an applicant to furnish to the Registrar such further information or documents as the Registrar may require.

### **Registration**

**122.**— (1) Subject to section 123, upon compliance by the foreign corporate entity with section 121, the Registrar may, if he or she thinks fit, register the foreign corporate entity as a VCC by registering its constitution.

(2) The registration of the foreign corporate entity is subject to such conditions that the Registrar may impose.

(3) Upon registration of the foreign corporate entity, the Registrar must issue a notice of transfer of registration in the prescribed form stating that the entity is, on and starting on the date specified in the notice —

(a) registered by way of transfer of registration under this Act; and

(b) a VCC.

(4) A certificate of confirmation of registration must be issued by the Registrar upon

the application of the VCC.

(5) A notice of transfer of registration issued under subsection (3), and a certificate of confirmation of registration issued under subsection (4), is each conclusive evidence —

- (a) that the foreign corporate entity is registered under this section; and
- (b) of the date of the VCC's registration.

(6) A foreign corporate entity registered under this section must, within 60 days after the issue of the notice of transfer of registration under subsection (3), or such further period as may be extended under subsection (7), submit to the Registrar a document evidencing that the foreign corporate entity has been de-registered in its place of incorporation.

(7) The Registrar may, on the application of the foreign corporate entity registered under this section, extend the 60-day period mentioned in subsection (6) subject to such conditions as the Registrar considers fit.

(8) The Registrar may, at any time in the Registrar's discretion, waive or modify any condition imposed by the Registrar under subsection (2).

(9) Any person aggrieved by —

- (a) the refusal of the Registrar to register a foreign corporate entity under subsection (1);
- (b) any condition of registration imposed by the Registrar under subsection (2);  
or
- (c) the modification of any condition by the Registrar under subsection (8),

may within 30 days after the date of the refusal to register, or the imposition or modification of the condition, as the case may be, appeal to the Governor whose decision is final.

### **When registration must be refused**

**123.**— (1) The Registrar must refuse to register a foreign corporate entity if the Registrar is not satisfied that the minimum requirement prescribed for registration have been met and that all other requirements for registration have been complied with.

(2) The Registrar must refuse to register a foreign corporate entity if the Registrar is satisfied that —

- (a) the person named as manager of the proposed VCC does not satisfy section 46(2);
- (b) none of the directors of the proposed VCC is a qualified representative of the manager;
- (c) the proposed VCC is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Anguilla;  
or
- (d) it would be contrary to national security or the national interest for the proposed VCC to be registered.

(3) Any person aggrieved by the Registrar's decision under subsection (1) or

(2) may, within 30 days after the date of the decision, appeal to the Governor whose decision is final.

### **Effect of registration**

**124.**— (1) Starting on the date of registration specified in the notice of transfer of registration

- (a) the foreign corporate entity is treated as a VCC and all provisions of this Act pertaining to a VCC apply with such adaptations, exceptions and modifications as may be specified in the regulations;
  - (b) the collective investment schemes of the foreign corporate entity are treated as sub-funds of an umbrella VCC and all provisions of this Act pertaining to sub-funds apply with such adaptations, exceptions and modifications as may be specified in the regulations; and
- (2) To avoid doubt, the registration of a foreign corporate entity does not —
- (a) create a new legal entity;
  - (b) prejudice or affect the identity of the body corporate constituted by the foreign corporate entity, or its continuity as a body corporate;
  - (c) affect the property, or the rights or obligations, of the foreign corporate entity; or
  - (d) render defective any legal proceedings by or against the foreign corporate entity,

and any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its registration may be continued or commenced by or against the VCC after the registration.

### **Revocation of registration**

**125.**— (1) The Registrar may by order revoke the registration of a VCC if the VCC fails to comply with section 122(6).

- (2) The Registrar must, before making such an order of revocation —
- (a) give the VCC notice in writing of the Registrar's intention to revoke the registration;
  - (b) specify in the notice a period of at least 30 days within which the VCC may make written representations to the Registrar and remedy the breach under section 122 (6); and
  - (c) consider the VCC's written representations (if any) that are received by the Registrar within the time specified in the notice.
- (3) At the expiration of the time specified in the notice mentioned in subsection (2), the Registrar may, unless cause to the contrary is previously shown, order that the registration of the VCC be revoked.

- (4) The Registrar must —
- (a) cause a notice of the order of revocation to be published in the Gazette; and
  - (b) serve a copy of the notice of the order of revocation on the VCC which registration is revoked.

(5) Upon publication of the notice of the order of revocation in the Gazette, the order of revocation takes effect, and the VCC ceases to be a VCC, and the provisions of this Act cease to apply to the VCC and to its sub-funds (if any).

(6) An order of revocation under subsection (3) is final.

(7) Despite the order of revocation in respect of a VCC under subsection (3), the liability, if any, of every officer and member of the VCC continues.

(8) Nothing in this section affects —

- (a) the enforcement by any person of any right or claim against the VCC; or
- (b) the enforcement by the VCC of any right or claim against any person,

whether such right or claim is enforced against, or by the VCC in its own right or in respect of any of its sub-funds.

#### **Duty of VCC to register pre-existing charges**

**126.**—(1) If, before the registration of a foreign corporate entity, there are any charges, whether created by the foreign corporate entity or otherwise, which would have been required to be registered under the Anguilla Business Companies Act (as applied by section 42) if the foreign corporate entity had been incorporated as a VCC under this Act, there must be lodged with the Registrar in the prescribed manner for registration, within 30 days after the date of registration of the VCC, a statement containing the prescribed particulars of the charge.

(2) Documents and particulars required to be lodged for registration under subsection (1) may be lodged by the VCC concerned or by any person interested in the documents.

(3) Where registration under subsection (1) is effected by some person other than the VCC concerned, that person is entitled to recover from the VCC the amount of any fees properly paid by him or her for the registration.

(4) If subsection (1) is contravened, the VCC and every officer of the VCC who is in default shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$1,000, and also to a default penalty.

(5) To avoid doubt, a failure to comply with subsection (1) does not affect the continuity of status, operation or effect of any security, right, priority or obligation of the charge.

(6) The Court, on being satisfied —

- (a) that the omission to register a charge requiring registration under subsection (1), or that the omission or misstatement of any particular with respect to such charge, was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders; or
- (b) that on other grounds it is just and equitable to grant relief,

may on the application of the VCC or any person interested and on such terms and conditions as seem to the Court just and expedient (including a term or condition that the rectification is to be without prejudice to any liability already incurred by the VCC or any of its officers in respect of the default) order that the time for registration be extended or that the omission or misstatement be rectified.

(7) In respect of any charge that is required to be lodged under subsection (1), the Anguilla Business Companies Act (as applied by section 42) apply as if the charge were a charge to the Anguilla Business Companies Act (as applied by section 42) applied.

### **Duties of VCC with respect to issue of certificates**

**127.**— (1) Within 60 days after the date of registration of a VCC, the VCC must complete and have ready for delivery appropriate certificates in respect of all persons registered as holders of existing shares or debentures, as the case may be, as at the date of registration.

(2) Section 38(2) applies with the necessary modifications to the duty of the VCC under subsection (1).

(3) Upon the delivery of the certificates to the holders of existing shares or debentures under subsection (1), all prior certificates in respect of such shares or debentures cease to be operative and cease to have any validity for the purposes of this Act.

(4) Any share warrant, stating that the bearer of the warrant is entitled to the shares specified in the warrant and enabling the shares to be transferred by delivery of the warrant, that had been issued by the foreign corporate entity before the date of registration of the VCC is void.

(5) If any VCC on which a notice has been served requiring the VCC to make good any default in complying with this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or the debentures delivered to him or her, make an order directing the VCC and any officer of the VCC to make good the default within such time as is specified in the order.

(6) An order under subsection (5) may provide that all costs of and incidental to the application are to be borne by the VCC or by any officer of the VCC in default in such proportions as the Court thinks fit.

### **Regulations**

**128.** The Governor may make regulations under section 152 in respect of applications for registration, and registration of a foreign corporate entity, under this Part, including —

- (a) prescribing the minimum and other requirements that a foreign corporate entity must meet before it may be registered under section 122(1);
- (b) waiving any requirement of this Part in respect of any foreign corporate entity, or class of foreign corporate entities; and
- (c) adapting, modifying or excluding the provisions of this Act in their application to any foreign corporate entity or class of foreign corporate entities registered under this Part.

**PART XII**  
**GENERAL PROVISIONS**

Division 1 — Remedies of Members and Debenture Holders for Oppression, etc.

**Personal remedies in cases of oppression or injustice, and derivative or representative action**

**129.** (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, [the Minister] [the Commission] may apply to the Court for an order under this section on the ground —

- (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interests as members, shareholders or holders of debentures of the company; or
- (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of such grounds is established the Court may, with a view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and, without prejudice to the generality of the foregoing, the order may —

- (a) direct or prohibit any act or cancel or vary any transaction or resolution;
- (b) regulate the conduct of the affairs of the company in future;
- (c) authorise civil proceedings to be brought in the name of or on behalf of the company by such person or persons and on such terms as the Court may direct;
- (d) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself; or
- (f) provide that the company be wound up.

Division 2 — Offences

**Offences**

**130.**— (1) Every person who, while an officer or the manager of a VCC —

- (a) by deceitful, fraudulent or dishonest means, induces any person to grant credit to the VCC, whether for the VCC itself or on account of any of its sub-funds (if applicable);
- (b) with intent to defraud creditors of the VCC or any of its sub-funds, makes or causes to be made any gift or transfer of or charge on, or causes or connives at the levying of any execution against, the property of the VCC or any of its sub-funds (if applicable); or
- (c) with intent to defraud creditors of the VCC or any of its sub-funds, has concealed or removed any part of the property of the VCC or any of its sub-funds after or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against the VCC or the property of any of its sub-funds (if applicable),

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 3 years or to both.

### **Offence provisions**

**131.**— Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to the penalty specified for the commission of the offence.

### **False statements or reports**

**132.** A person who, while an officer or the manager of a VCC, the custodian of a VCC (being a non-umbrella VCC) or the custodian of a sub-fund, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report relating to the affairs of the VCC or sub-fund (as the case may be), to —

- (a) a director, an auditor, a member, the holder of a debenture of the VCC or sub-fund or a trustee for such holder;
- (b) in the case of a VCC that is a subsidiary, an auditor of the holding company,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

### **Obtaining payment, etc., to VCC by false promise of officer or agent of VCC**

**133.**—(1) A person who, while an officer, the manager or an agent of a VCC, by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid, or any chattel or marketable security to be delivered to the VCC or to the person or any other person for the use or benefit or on account of the VCC or its sub-funds (if any), shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding 5 years or to both.

(2) In a proceeding for an offence under subsection (1), the opinion of a registered or public accountant as to the financial position of a VCC or its sub-funds (if any) at any time or during any period in respect of which the accountant has made an audit or examination of its

affairs according to recognised audit practice, is admissible either for the prosecution or the defence as evidence of the financial position of the VCC or its sub-funds at that time or during that period.

(3) Subsection (2) applies even if the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.

### **Default penalties**

**134.**— (1) Where a default penalty is provided in a provision of this Act, a person who —

- (a) is convicted of an offence in relation to that provision; or
- (b) who has been dealt with under section 135 for an offence in relation to that provision,

shall be guilty of a further offence if the offence continues after the person is so convicted or after the person has been so dealt with, and shall be liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the provision as the amount of the default penalty or, if an amount is not so expressed, of not more than \$200.

(2) For the purposes of subsection (1), where any offence is committed by a person by reason of a failure to do anything within a particular period, that offence is considered to continue so long as the thing remains undone, even if the period has elapsed.

(3) A reference in subsection (1) to a provision of this Act includes a provision of the Anguilla Business Companies Act applied by this Act.

### **Composition of offences**

**135.**— (1) The Registrar may, in his or her discretion, compound any offence under a provision of this Act that is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding the lower of the following:

- (a) one half of the amount of the maximum fine that is prescribed for the offence;
- (b) \$5,000.

(2) The Registrar may, in his or her discretion, compound any offence under a provision of this Act (including an offence under a provision that has been repealed) that —

- (a) was compoundable under this Act at the time the offence was committed; but
- (b) has ceased to be so compoundable, by collecting from a person reasonably suspected of having committed the offence a sum of money not exceeding the lower of the following:
  - (c) one half of the amount of the maximum fine that is prescribed for the offence at the time it was committed;
  - (d) \$5,000.



(3) On payment of the sum of money mentioned in subsection (1) or (2), no further proceedings may be taken against that person in respect of the offence.

(4) The Governor may prescribe the offences which may be compounded.

(5) All sums collected under this section must be paid into the Consolidated Fund.

(6) A reference in this section to a provision of this Act includes a provision of the Anguilla Business Companies Act applied by this Act.

### Division 3 — Other General Provisions

#### **Service of documents**

**136.** A document may be served on a VCC by leaving it at or sending it by registered post to the registered office of the VCC.

#### **Electronic transmission of documents and meetings**

**137.**—All documents required to be sent under this Act may be sent electronically subject to any requirements of the Registrar and all meetings required to be held under this Act may be held electronically.

#### **Costs of proceedings and security for costs**

**138.**— Where a VCC is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the VCC will be unable to pay the costs of the defendant if successful in his or her defence —

- (a) require sufficient security to be given for those costs; and
- (b) stay all proceedings until the security is given.

#### **Disposal of shares of shareholder whose whereabouts are unknown**

**139.**— (1) Where by the exercise of reasonable diligence a company is unable to discover the whereabouts of a shareholder for a period of not less than 7 years, the company may cause an advertisement to be published in a newspaper circulating in the place shown in the register of members as the address of the shareholder stating that the company after the expiration of one month from the date of the advertisement intends to transfer the shares to the Official Receiver.

(2) If, after the expiration of one month from the date of the advertisement, the whereabouts of the shareholder remain unknown, the company may transfer the shares held by the shareholder in the company to the Official Receiver and for that purpose may execute for and on behalf of the owner a transfer of those shares to the Official Receiver.

#### **Power to grant relief**

**140.** (1) If in any proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies it appears to the court before which the proceedings are taken that he is or may be liable in respect thereof but that he has acted honestly and reasonably and

that, having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused for the negligence, default or breach the court may relieve him either wholly or partly from his liability on such terms as the court thinks fit.

(2) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust he may apply to the Court for relief, and the Court shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are —

- (a) officers of a VCC;
- (b) the manager of a VCC, the custodian of a VCC (being a non-umbrella VCC) or the custodian of a sub-fund;
- (c) persons engaged by a VCC to provide any fund administration service;
- (d) persons engaged by a VCC as auditors, whether they are or are not officers of the VCC;
- (e) experts of a VCC;
- (f) persons who are receivers, receivers and managers or liquidators appointed or directed by the Court to carry out any duty under this Act in relation to a VCC or a sub-fund of an umbrella VCC, and all other persons so appointed or so directed.

## **Irregularities**

**141.** (1) In this section, unless the contrary intention appears a reference to a procedural irregularity includes a reference to —

- (a) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and
- (b) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated by reason of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

## **Inspection of books of VCC and related provisions**

**142—**(1) Where the Commission is satisfied that there is good reason for so doing, it may at any time —

- (a) give directions to a corporation requiring that corporation at such place and time as may be specified in the directions to produce such books relating to the affairs of a corporation as may be so specified; or
- (b) authorise any person, on producing (if required to do so) evidence of his authority to require that corporation to produce to him any books relating to the affairs of a corporation which the authorised person may specify.

### **Production and inspection of books or papers where offence suspected**

**143.** — (1) If, on an application made to a judge of the Court in chambers by or on behalf of the Commission, there is shown to be reasonable cause to believe that —

- (a) a person has, while an officer of a VCC, committed an offence in connection with the management of the VCC's affairs; and
- (b) evidence of the commission of the offence is to be found in any books or papers of or under the control of the VCC,

an order may be made —

- (c) authorising any person named in it to inspect such books or papers or any of them for the purpose of investigating and obtaining evidence of the offence; or
- (d) requiring the secretary or such other officer as is named in the order to produce such books or papers or any of them to a person named in the order at a place so named.

(2) For the purposes of subsection (1), a reference to an officer of a VCC includes the manager of the VCC.

- (3) No appeal lies against any order or decision of a judge under subsection (1).

### **VCC records**

**144.** — A company shall adequately record for future reference the information required to be contained in any company records for a period not less than 6 years.

### **Translations of instruments, etc.**

**145.**— (1) Where under this Act a corporation is required to lodge with the Registrar any instrument, certificate, contract or document or a certified copy thereof and the same is not written in the English language, the corporation shall lodge at the same time with the Registrar a certified translation thereof in the English language.

(2) Where under this Act a corporation is required to make available for public inspection any instrument, certificate, contract or document and the same is not written in the English language, the corporation shall keep at its registered office in Anguilla certified translation thereof in the English language.

### **Certificate of incorporation is conclusive evidence**

**146.** A notice of incorporation issued by the Registrar under this Act and a certificate of confirmation of incorporation of the Registrar issued under this Act is each conclusive evidence that —

- (a) all the requirements of this Act in respect of registration and of matters precedent and incidental to it have been complied with; and
- (b) the VCC mentioned in it is duly incorporated under this Act.

### **Court may compel compliance**

**147.**— (1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.

(2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which under this Act he is or was required or directed to do, the Court on the application of the Registrar or any member of the company or the Official Receiver or liquidator may, by order, require that officer or former officer to do such act, matter or thing immediately or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

### **Disclosure of information by Registrar to the Commission**

**148.** Despite the provisions of this Act or any requirement imposed under any written law, rule of law, contract or rule of professional conduct, the Registrar or any person authorised by the Registrar may furnish any information, report or document obtained in the performance of his or her duties or in the exercise of their functions under this Act to the Commission or any person authorised by the Commission, for the purpose of enabling the performance or discharge by the Commission of its functions or duties under any other written law.

### **Disclosure of information by the Commission to [FIU] or Registrar**

**149.** Despite the provisions of this Act or any requirement imposed under any written law, rule of law, contract or rule of professional conduct, the Commission or any person authorised by the Commission may furnish any information, report or document obtained in the performance of their duties or in the exercise of their functions under any other written law, to the Registrar, the FIU or any person authorised by the Commission, for the purpose of —

- (a) enabling the Registrar to carry out his or her function or duty under a provision of this Act set out in the Third Schedule; or
- (b) enabling the Commission or the person authorised by the Commission to enforce a provision of this Act set out in the Third Schedule.

### **Appeals against act or decision of Registrar**

**150.**— (1) Any party aggrieved by an act or a decision of the Registrar under this Act may, within 28 days after the date of the act or decision, appeal to the Court against the act or decision.

(2) The Court may confirm the act or decision or give such directions in the matter as seem proper or otherwise determine the matter.

(3) This section shall not apply to any act or decision of the Registrar —

(a) in respect of which any provision in the nature of an appeal or a review is expressly provided in this Act; or

(b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

### **Rules of Court**

**151.**— Rules of Court may make provision generally with respect to the winding up of a VCC or a sub-fund of a VCC.

### **Regulations**

**152.**— (1) The Governor may make such regulations as are necessary or expedient for carrying out the purposes and provisions of this Act.

(2) Any regulation made under this section may make provision for or in relation to a matter by applying, adopting or incorporating by reference, with or without modification, any regulation made under the Anguilla Business Companies Act or a part of any such regulations, as in force at a particular time or from time to time, which relates to any matter with which the regulations deal.

(3) Any regulation made under this section may provide that a contravention of a provision of the regulations shall be an offence, and may provide for penalties not exceeding a fine of \$50,000.

### **Amendment of Schedules**

**153.** (1) The Governor may, by notification in the Gazette, add to, vary or amend the Second or Third Schedule.

## **FIRST SCHEDULE**

1. The Court may make an order directing any contributory on the list of contributories to pay to the umbrella VCC (on behalf of the sub-fund), in the manner directed by the order, any money due from the contributory or from the estate of the person whom the contributory represents (excluding any money payable by the contributory or the estate by virtue of any call in pursuance of this Act) and when all the creditors are paid in full, any money due on any account whatever to a contributory from the VCC (in respect of the sub-fund) may be allowed to the

contributory by way of set-off against any subsequent call.”.

2. Rules made under section 141 may make provision enabling or requiring all or any of the powers and duties conferred and imposed on the Court by a Part IX provision (as applied by section 33) in respect of —

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;
- (b) the settling of lists of contributories, the rectifying of the register of members where required, and the collecting and applying of the assets;
- (c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;
- (d) the making of calls and the adjusting of the rights of contributories; and
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator may not, except with the special leave of the Court, rectify the register of members in respect of any information of members holding shares issued in respect of the sub-fund, or make any call except with the special leave of the Court or the sanction of the committee of inspection.

## SECOND SCHEDULE CONTENT OF DIRECTORS' STATEMENT

1. A statement as to whether in the opinion of the directors —

- (a) the financial statements and, where applicable, the consolidated financial statements are drawn up so as to give a true and fair view of the financial position and performance of the VCC and its sub-funds (if any) and, if applicable, of the financial position and performance of the group for the period covered by the financial statements or consolidated financial statements; and
- (b) at the date of the statement there are reasonable grounds to believe that the VCC will be able to pay its debts and the debts of its sub-funds (if any) as and when they fall due.

2. The names of the persons who are the directors in office at the date of the statement.

3. Whether at the end of the financial year to which the financial statements or, where the VCC is a parent company, consolidated financial statements relate —

- (a) there subsist arrangements to which the VCC is a party, being arrangements whose objects are, or one of whose objects is, to enable directors of the VCC to acquire benefits by means of the acquisition of shares in, or debentures of, the VCC or any other body corporate; or
- (b) there have, at any time in that year, subsisted any arrangements mentioned in subparagraph (a) to which the VCC was a party,

and if so, a statement explaining the effect of the arrangements and giving the names of the persons who at any time in that year were directors of the VCC and held, or whose nominees held, shares or debentures acquired in pursuance of the arrangements.

4. In respect of each person who, at the end of the financial year, was a director of the VCC —
  - (a) whether or not (according to the register kept by the VCC for the purposes of section 66) the person was, at the end of that year, interested in shares in, or debentures of, the VCC, a subsidiary or the holding company of the VCC, or a subsidiary of the VCC's holding company; and
  - (b) if the person was interested as mentioned in sub-paragraph (a) —
    - (i) the number and amount of shares in, and debentures of, each VCC or body corporate (specifying the VCC or body corporate) in which, according to that register, the person was then interested;
    - (ii) whether or not, according to that register, the person was, at the beginning of that year (or, if the person was not then a director, when the person became a director), interested in shares in, or debentures of, the VCC or any other body corporate; and
    - (iii) if the person was interested as mentioned in sub-paragraph (ii), the number and amount of shares in, and debentures of, each VCC or body corporate (specifying the VCC or body corporate) in which, according to that register, the person was interested at the beginning of that year or (as the case may be) when the person became a director.

### THIRD SCHEDULE PROVISIONS FOR APPLICATION OF SECTION 149

1. For the purposes of section 149, the provisions of this Act are —
    - (a) section 15;
    - (b) section 18(1) and (2)(a) and (b);
    - (c) section 29;
    - (d) section 46;
    - (e) section 47(2)(b);
    - (f) section 48(1)(b);
    - (g) section 49(b);
    - (h) section 53;and
    - (i) section 58
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