

MONTSERAT

STATUTORY RULES AND ORDERS

S.R.O. 16 OF 2024

COMPANIES REGULATIONS 2024

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THE COMPANIES REGULATIONS 2024 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET, AFTER CONSULTATION WITH THE COMMISSION UNDER SECTION 382 OF THE COMPANIES ACT, 2023 (NO. 15 OF 2023).

PART 1—PRELIMINARY

1 Short title

These Regulations may be cited as the Companies Regulations, 2024.

2 Interpretation

(1) In these Regulations—

“**Act**” means the Companies Act, 2023;

“**business day**” means any day other than a Saturday, Sunday or public holiday under the Public Holidays Act (Cap. 6.09);

“**Civil Procedure Rules**” means the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023, made under section 17 of the Supreme Court Order (S.I. 1967 No. 223);

“**close family member**” has the meaning specified in subregulation (2);

“**Electronic Registration System**” means the electronic system established by the Registrar for—

(a) keeping in electronic form—

(i) the Registers maintained by the Registrar under the Act; and

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(ii) documents filed under the Act or these Regulations and the information contained in the documents; and

(b) enabling the electronic filing and retrieval of documents and information;

“form of proxy” means a written or printed form that, on completion and signature by or on behalf of a member, becomes a proxy;

“proposal” means a notice given by a member of a company to the board in accordance with regulation 16(1);

“proxy” means a completed and signed form of proxy by means of which a member appoints a proxy holder to attend and act on his behalf at a meeting of members;

“voluntary liquidation” has the meaning specified in subregulation (3).

- (2) A person’s close family members are the person’s—
- (a) spouse;
 - (b) child, including a stepchild and an adopted child;
 - (c) parent, including a stepparent and an adoptive parent;
 - (d) brother or sister, including a stepbrother or sister and an adoptive brother or sister; or
 - (e) grandchild.
- (3) A company is in voluntary liquidation for the purposes of the Act and these Regulations if a liquidator of the company has been appointed by the members under section 258 of the Act.

PART 2—COMPANY ADMINISTRATION AND GOVERNANCE

Articles

3 Articles of incorporation

The articles of a non-profit company shall state that the company is not authorised to carry on its activities outside Montserrat otherwise than in furtherance of its activities within Montserrat.

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Registers and records

4 Register of members

- (1) The register of members of a company limited by shares shall, in addition to the information specified in section 64(1) of the Act—
 - (a) set out either—
 - (i) the voting rights attached to, or associated with, each class of shares held by a member; or
 - (ii) that a class of shares held by a member carries no voting rights;
 - (b) state whether a shareholder is a nominee shareholder and, with respect to each nominee shareholder, set out the name and address of the person for whom the shareholder is a nominee; and
 - (c) in the case of a guarantee member, state the amount which the member is liable to contribute to the company's assets in the event that the company is wound up whilst the person is a member.
- (2) Information relating to a former member of a company may be deleted from the register of members twenty years following the date that the person ceased to be a member.

5 Register of directors

- (1) In the case of a director who is an individual, the register of directors shall set out the director's—
 - (a) full legal name and any former names;
 - (b) date of birth;
 - (c) nationality; and
 - (d) usual residential address and, if different, an address for service.
- (2) In the case of a director that is a body corporate, the register of directors shall set out the director's—
 - (a) full corporate name;
 - (b) registered office or, if it does not have a registered office, its principal place of business;
 - (c) legal form and the jurisdiction by which it is governed; and

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- (d) date of incorporation or formation.
- (3) For the purposes of section 148 of the Act and this regulation, “director” includes an alternate director and, in the case of a person who is an alternate director, the register shall state that the person is an alternate director.

6 Retention of records

- (1) A company shall keep—
 - (a) its articles, register of members, register of directors, and register of charges until it is dissolved;
 - (b) minutes of meetings and resolutions required to be kept under section 101 of the Act, for a period of seven years after the date of the resolution or meeting.
- (2) If a company is dissolved, the records specified in subregulation (1) shall be kept for a period of five years following the date of the company’s dissolution—
 - (a) if the company was dissolved following the termination of its liquidation, by the liquidator of the company; or
 - (b) in any other case, by the person who was the last registered agent of the company.
- (3) This regulation applies to records kept in paper and electronic form.
- (4) A company that fails to comply with subregulation (1) or a person who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000.

Written resolutions and meetings of members

7 Notice to be given of written resolutions

- (1) If a written resolution is passed under section 73 of the Act, the company shall, within five business days of the resolution being passed, send a copy of the resolution to every member of the company who did not sign the resolution.
- (2) A resolution may be signed under subregulation (1) without any prior notice being given to members.
- (3) A company that fails to comply with subregulation (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

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8 Meeting requested by members

- (1) A request by members of a company to the directors to call a meeting under section 68(3) of the Act—
 - (a) shall state the general nature of the business to be dealt with at the meeting; and
 - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (2) The directors of a company shall call a meeting of members—
 - (a) within twenty-one days from the date on which they receive a request from members that complies with section 68(3) of the Act; and
 - (b) to be held on a date not more than twenty-eight days after the date of the notice calling the meeting.

9 Notice calling meeting of members

- (1) A notice calling a meeting of members shall state—
 - (a) the place, date and time of the meeting;
 - (b) the general nature of the business to be conducted at the meeting in sufficient detail to enable a member to form a reasoned judgment in relation to it; and
 - (c) the text of any special resolution to be submitted to the meeting.
- (2) Subject to the articles, if a meeting of members of a company is adjourned for less than thirty days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

10 Quorum for meetings

- (1) Subject to the articles of a company, for the purposes of section 70 of the Act, if a quorum is not present within thirty minutes after the time appointed for the meeting—
 - (a) in the case of a meeting called under section 68(3) of the Act, the meeting is dissolved; and
 - (b) in the case of any other meeting, the meeting is adjourned to the date, time, and place fixed by the directors or, if the directors do not fix a date, time, and place for the adjourned

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meeting, to the same day in the following week at the same time and place.

- (2) Subject to the articles of a company, if, at the adjourned meeting, a quorum is not present within thirty minutes after the time appointed for the meeting, the members or their proxy holders present are a quorum.

11 Voting

- (1) Subject to the articles of a company, if a meeting is held between members who are all present at the meeting in person, unless a poll is demanded, voting at the meeting shall be by—
- (a) voting by show of hands; or
 - (b) such other method as may be determined by the chair of the meeting.
- (2) If some or all of the members of a company are deemed present at a meeting in accordance with section 68(5) of the Act, unless a poll is demanded, voting at the meeting shall be by any method permitted by the chair of the meeting.
- (3) A declaration by the chair of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with regulation 12.

12 Voting by poll

- (1) Subject to the articles of a company, a poll may be demanded at a meeting of members by—
- (a) not less than five members having the right to vote at the meeting;
 - (b) a member or members representing not less than 10% of the total voting rights of all members having the right to vote at the meeting; or
 - (c) the chair of the meeting.
- (2) A poll may be demanded either before or after the vote is taken on a resolution.
- (3) If a poll is taken, votes must be counted according to the voting rights of each member present in person or by proxy holder and voting.

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- (4) Subject to the articles of the company, the chair of a members' meeting is not entitled to a casting vote.
- (5) For the purposes of this regulation, the instrument appointing a proxy holder to vote at a meeting of a company confers authority to demand or join in demanding a poll and a demand by a person as proxy holder for a member has the same effect as a demand by the member.

13 Proxies

- (1) A proxy holder appointed to represent a member of a company at a meeting of members shall be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the member and the notice must state whether the appointment is for a particular meeting or a specified term.
- (2) A proxy is not effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- (3) The articles of a company may provide that a proxy is not effective unless it is produced by a specified time before the start of a meeting, provided that the time specified is not earlier than forty-eight hours before the start of the meeting.
- (4) For the purposes of subregulation (3), the articles may provide for different matters for different kinds of proxies, including a different specified time for the production of a proxy by electronic means.

14 Postal votes

- (1) Subject to the articles of the company, a member may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this regulation.
- (2) For the purposes of this regulation, "postal vote" includes a vote cast using electronic means permitted by the directors.
- (3) The notice of a meeting at which members are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.
- (4) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

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- (5) A member may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the member's votes are to be cast to a person authorised to receive and count postal votes at that meeting.
- (6) A notice under subregulation (5) must reach that person not less than forty-eight hours before the start of the meeting.
- (7) Despite subregulation (6)—
- (a) the articles of a company may specify a time by which postal votes that are cast using electronic means must reach the person who is authorised to receive and count postal votes at the meeting; and
 - (b) that time may be less than forty-eight hours before the start of the meeting.
- (8) A person authorised to receive and count postal votes at a meeting shall—
- (a) collect together all postal votes the received by the person or by the company;
 - (b) in relation to each resolution to be voted on at the meeting, count—
 - (i) the number of members voting in favour of the resolution and the number of votes cast by each member in favour of the resolution; and
 - (ii) the number of members voting against the resolution, and the number of votes cast by each member against the resolution;
 - (c) sign a certificate that the person has carried out the duties set out in paragraphs (a) and (b) and which sets out the results of the counts required by paragraph (b); and
 - (d) ensure that the certificate required by paragraph (c) is presented to the chair of the meeting.
- (9) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chair of the meeting must—
- (a) on a vote by show of hands, count each member who has submitted a postal vote for or against the resolution;
 - (b) on a poll, count the votes cast by each member who has submitted a postal vote for or against the resolution.

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- (10) The chair of a meeting must call for a poll on a resolution on which he holds sufficient postal votes that he believes that if a poll is taken the result may differ from that obtained on a show of hands.
- (11) The chair of a meeting must ensure that a certificate of postal votes held by him is annexed to the minutes of the meeting.

15 Minutes

- (1) The directors shall ensure that minutes are kept of all proceedings at meetings of members.
- (2) Minutes which have been signed correct by the chair of the meeting are prima facie evidence of the proceedings.

16 Proposals of members

- (1) A member of a company may give written notice to the board of a matter the member proposes to raise for discussion or resolution at the next meeting of members at which the member is entitled to vote.
- (2) Subject to subregulation (3), if the proposal is received by the board not less than five days before the last day on which notice of the relevant meeting of members is required to be given, the board shall give notice of the proposal, including the text of any proposed resolution, to all members entitled to receive notice of the meeting.
- (3) If the proposal is received by the board less than fourteen days before the last day on which notice of the relevant meeting of members is required to be given, the board may, as a condition of giving notice of the proposal to members, require the member making the proposal to pay the expenses of giving notice of the proposal.
- (4) If the proposal is received by the board less than five working days before the last day on which notice of the relevant meeting of members is required to be given, the board shall, if practicable, and at the expense of the member, give notice of the proposal, including the text of any proposed resolution, to all members entitled to receive notice of the meeting.
- (5) If the directors intend that members may vote on the proposal by proxy or by postal vote, they must give the proposing member the right to include in or with the notice given by the board a statement prepared by the proposing member in support of the proposal, together with the name and address of the proposing member.

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- (6) The board is not required to include in or with the notice given by the board any part of a proposal or statement prepared by a member that the directors consider to be unlawful, defamatory, frivolous or vexatious or that the directors consider, on reasonable grounds, could give rise to any liability on the part of the company or themselves as directors.
- (7) If the costs of giving notice of the proposal and the text of any proposed resolution are required to be met by the proposing member, the proposing member must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

17 Body corporate may act by representatives

A body corporate which is a member of a company may appoint a representative to attend a meeting of members on its behalf in the same manner as that in which it could appoint a proxy holder.

18 Loss of voting right if calls unpaid

Subject to the articles of a company, if a sum due to a company in respect of a share has not been paid, that share may not be voted at a members' meeting.

19 Other procedures at meeting of members

Except as provided in these Regulations, and subject to the articles, a meeting of members of a company may regulate its own procedure.

Directors

20 Circumstances in which director interested in a transaction

- (1) Without limiting sections 155(1) and 156 of the Act, a director of a company is considered to be interested in a transaction with the company if the director—
 - (a) is a party to the transaction;
 - (b) will or may derive a material financial or other benefit from the transaction;
 - (c) has a material interest in another party to the transaction;
 - (d) subject to subregulation (2), is a director, officer, or trustee of another party to, or person who will or may derive a material financial or other benefit from, the transaction; or

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- (e)* is a close family member of another party to the transaction or of a person who will or may derive a material financial or other benefit from the transaction; or
 - (f)* is otherwise directly or indirectly materially interested in the transaction.
 - (2) Subregulation (1)(*d*) does not apply if the other person who is a party to, or will or may derive a material financial or other benefit from, the transaction is—
 - (a)* the company’s parent, of which the company is a wholly owned subsidiary;
 - (b)* a wholly owned subsidiary of the company; or
 - (c)* a wholly owned subsidiary of a parent of which the company is also a wholly owned subsidiary.

PART 3—FINANCIAL REPORTING

21 Prescribed thresholds for large companies

- (1) For the purposes of determining whether a company is a large company within the meaning of section 2(8) of the Act—
 - (a)* the prescribed revenue threshold is gross revenue of \$4,000,000; and
 - (b)* the prescribed assets threshold is gross assets of \$2,000,000.
- (2) For the purposes of subregulation (1), the gross revenue and gross assets of a company include the gross revenue and assets of its affiliates.

22 Prescribed accounting standards

The financial statements referred to in section 106(1) of the Act and the auditor’s report referred to in section 110(2)(*b*) of the Act must, except as otherwise provided by these Regulations, be prepared in accordance with standards approved by the Institute of Chartered Accountants of the Caribbean or other similar body approved by the Commission.

23 Financial statements

- (1) The financial statements referred to in section 105(1)(*c*) of the Act shall include, at least—

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- (a) a balance sheet setting out the financial position of the company as at the last date of the financial year;
 - (b) a statement of the financial performance of the company in relation to the financial year, including its income and expenditure;
 - (c) a statement of cash flows for the company in relation to the financial year;
 - (d) a statement of retained earnings; and
 - (e) a statement of changes in financial position.
- (2) The financial statements specified in subregulation (1) are not required to be designated by the names set out in subregulation 1(a) to (e).

24 Exemptions

- (1) Disclosure of information by a reporting company may be detrimental to the company in accordance with section 108(2) of the Act if, in addition to any other reason, the company would be at a disadvantage—
- (a) in its dealings with suppliers, customers or others; or
 - (b) because it deals in only one line of products or services and—
 - (i) its competitors are not required to make similar disclosure; or
 - (ii) its competitors deal in several lines of products or services and disclose information in a form that prevents identification of financial information in respect of any particular product or service.
- (2) The Registrar may, on such reasonable conditions as the Registrar considers fit, exempt a reporting company from the application of section 112(1) of the Act if—
- (a) the reporting company is a subsidiary of a parent body corporate incorporated—
 - (i) under the laws of Montserrat;
 - (ii) outside Montserrat and the business of the reporting company is not economically significant in Montserrat having regard to its products or services or its share of any market;

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- (b) it sends to the Registrar for public disclosure a summary of its financial statements that are the subject of the application showing the amounts set out in the financial statements with respect to—
- (i) current assets;
 - (ii) fixed assets;
 - (iii) other assets;
 - (iv) total assets;
 - (v) current liabilities;
 - (vi) long term liabilities;
 - (vii) total liabilities;
 - (viii) shareholders' equity;
 - (ix) investments in affiliated bodies corporate;
 - (x) loans and advances from affiliated bodies corporate; and
 - (xi) the percentage of change of gross revenue from the immediately preceding financial period; and
- (c) it sends to the Registrar for public disclosure consolidated financial statements for all of its affiliates that carry on business in Montserrat.
- (3) The Registrar may, on such reasonable conditions as the Registrar considers fit, exempt a reporting company from the application of section 112(1) of the Act if the company is affiliated with another body corporate by reason only that some or all of its shares are held by another person—
- (a) in trust; or
 - (b) subject to an agreement or arrangement under which, upon the fulfilment of a condition or the happening of an event that it is reasonable to expect will be fulfilled or will happen, the affiliation with the other body corporate will terminate.
- (4) The Registrar, may on such conditions as the Registrar considers fit, exempt a disclosing company from the application of section 112(1) of the Act if the company (the “controlled company”) would be affiliated with another body corporate by reason of being controlled by the other body corporate or by reason of both bodies corporate being controlled by the same person (which body

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corporate or person so controlling the controlled company is hereinafter referred to as the “controller”) and—

- (a) the controlled company is a party to an agreement or arrangement under which, upon the fulfilment of a condition or the happening of an event that it is reasonable to expect will be fulfilled or will happen, the controlled company will—
 - (i) cease to be controlled by the controller; and
 - (ii) become controlled by a person with whom the controller deals at arm’s length; and
- (b) the principal reason for the control of the controlled company by the controller is to secure the interest of the controller in respect of—
 - (i) any loan made by the controller, the whole or part of which is outstanding; or
 - (ii) any shares issued by the controlled company that are held by the controller and that are, under the agreement or arrangement, to be redeemed by the controlled company or purchased by a person referred to in paragraph (a)(ii).

25 Application for exemption

- (1) An application for an exemption under regulation 24 shall be in the approved form and shall be made at least sixty days before the documents in respect of which the authorisation or exemption requested are to be sent to the Registrar.
- (2) Despite subregulation (1), the Registrar may, on such reasonable conditions as the Registrar considers fit, extend the time for making an application for an exemption.

26 Determination of application by Registrar

- (1) The Registrar shall, within thirty days after receipt of an application for an exemption, grant the request or send the applicant written notice of his refusal together with reasons therefor.
- (2) The Registrar may request that an applicant for an exemption provide him with further information or that any other person provide him with information in writing that is relevant to the application.

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- (3) The Registrar must provide an applicant for an exemption with a copy of any information received from any other person under subregulation (2) and shall allow the applicant a reasonable opportunity to respond in writing.
- (4) If an applicant for an exemption or a person from whom the Registrar has requested information under subregulation (2) does not provide the information within the time specified by the Registrar, the Registrar may deal with the application without regard to the information.
- (5) If the Registrar does not grant an exemption or send written notice of refusal within the time specified in subregulation (1), the applicant may appeal to the Court as if the Registrar had refused the exemption.

27 Ineligibility for appointment as auditor

For the purposes of section 117(c) of the Act, a person is ineligible for appointment as the auditor of a company if the person is a close family member of a director, officer or employee of the company or an affiliate of the company.

PART 4—COMPANY NAMES

28 Company number name

The registered name of a company may comprise the expression “Montserrat Company Number” followed by its company number in figures and the appropriate ending required by section 14 of the Act.

29 Requirements concerning company names

- (1) The name of a company shall contain no more than one hundred permitted characters.
- (2) A permitted character is a character specified in Schedule 1.
- (3) A registered company name, other than a company number name, may only contain one or more numerals if the Registrar is satisfied that it is clear from the context that the name is not a company number name.

30 Company names in a foreign language

- (1) Subregulation (2) applies if—

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- (a)* an application is made to incorporate a company under, or change the name of a company to, a name that has a meaning in a language other than English;
 - (b)* an application is made to register a foreign company under Part 12 with a corporate or alternate name that has a meaning in a language other than English; or
 - (c)* a foreign company files a notice under section 220(1)(a) of the Act notifying a change of corporate name that has a meaning in a language other than English.
- (2) An application or notice specified in subregulation (1) shall be accompanied by a translation of the name, alternate name or proposed name that has been certified, in accordance with regulation 162, by the person who translated the name.

31 Reuse of company names

- (1) The Registrar may incorporate or continue a company under, or register a change of name of a company to, a name that is identical or similar to—
- (a)* the former name of another company or a former Act company that has changed its name under this Act or a former Act, in the circumstances specified in subregulation (2);
 - (b)* the name of a company that has been struck off the Register or the Register maintained under a former Act for a continuous period of more than seven years and that has not been restored to the Register under that name;
 - (c)* the name of a company or a former Act company that has been dissolved and not restored under that name;
 - (d)* the name of a company in respect of which a certificate of discontinuance was issued under section 206 of the Act more than five years prior to the reuse of the name.
- (2) The former name of a company or former Act company that has changed its name can be reused under subregulation (1)(a) only if—
- (a)* the company or former Act company changed its name more than seven years prior to the reuse of the name; or
 - (b)* in the case of a company, but not a former Act company, that has changed its name, the company provides its written consent, and—

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- (i) the Registrar is satisfied that the change of name is part of a genuine sale of the business or undertaking, or a substantial part of the business or undertaking, of the consenting company to the company seeking to re-use the name, at any time after the consenting company has changed its name;
- (ii) the Registrar is satisfied that both companies are affiliates; or
- (iii) in any other case, a period of three years has passed since the consenting company changed its name.

32 Restrictions on the reuse of company names

- (1) The Registrar shall not permit a name to be registered to—
 - (a) more than two different companies; or
 - (b) more than twice to the same company,in any period of seven years.
- (2) The name of a company that is in liquidation under this Act or a former Act or has been dissolved following its liquidation, may only be registered to another company—
 - (a) if the liquidator has sold the business or undertaking, or a substantial part of the business or undertaking, of the company to the second company; or
 - (b) with the leave of the Court.

PART 5—LIQUIDATION

Eligible insolvency practitioners

33 Eligible insolvency practitioner

- (1) Subject to subregulation (2), a person meets the prescribed criteria for an insolvency practitioner if the person is a natural person who—
 - (a) is in good standing as a member of the Institute of Chartered Accountants of the Caribbean; or
 - (b) holds an accounting or insolvency qualification approved by the Commission.

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- (2) A person is ineligible to act as an insolvency practitioner in relation to a company if the person is, or at any time in the previous five years has been—
- (i) an officer or employee of the company; or
 - (ii) the auditor of the company.

Debts and claims

34 Preferential debts and claims

- (1) For the purposes of section 244(1) of the Act, the claims against a company in liquidation set out in column 1 of the table below are preferential debts up to the maximum amount specified in column 2 of the table or up to an unlimited amount if specified in column 2.
- (2) Preferential claims rank equally between themselves and, if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

Column 1	Column 2
Nature of Claim	Maximum amount of claim to be regarded as preferential
1.	The amount due to a person as a present or past employee of the company that represents—
(a) wages and salary, including commission and any amount payable by way of allowance or reimbursement, due in respect of the whole or any part of the period of six months immediately prior to the commencement of the liquidation of the company; or	
(b) accrued holiday pay in respect of any period of employment before the commencement of the liquidation of the company, whether the employee's contract of employment was terminated	

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	before or after the liquidation commenced.	
	Maximum amount for paragraphs (a) and (b) taken together.	\$20,000.00
2.	Sums due to the Government in respect of any tax, duty, licence fee or permit.	\$40,000.00
3.	Sums due to the Commission with respect to any fee or penalty	\$20,000.00

35 Prescribed priority

The following costs and expenses of the liquidation of a company shall be paid in the order of priority in which they are listed (the “prescribed priority”)—

- (a) the costs and expenses properly incurred by the liquidator in preserving, realising or getting in the property of the company or in carrying on the company’s business, including—
 - (i) the costs and expenses of any legal proceedings which the liquidator has brought or defended whether in his own name or in the name of the company; and
 - (ii) the costs of and in connection with an examination ordered under regulation 118;
- (b) the remuneration of the provisional liquidator;
- (c) the deposit lodged on an application for the appointment of a provisional liquidator;
- (d) the costs of the application on which the liquidator was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;
- (e) any costs allowed in respect of the preparation of a statement of affairs;
- (f) the cost of and in respect of any creditors’ committee appointed in the liquidation;
- (g) any disbursements properly paid by the liquidator;
- (h) the remuneration of anyone employed by the liquidator;
- (i) the remuneration of the liquidator;

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- (j) any other fees, costs, charges or expenses properly incurred in the course of the liquidation or properly chargeable by the liquidator in carrying out his functions in the liquidation.

36 Claim in currency other than dollars

- (1) The amount of a claim based on a liability incurred or payable in a currency other than dollars shall be converted into dollars at the daily indicative exchange rate published by the Eastern Caribbean Central Bank, if available for the currency concerned.
- (2) In the absence of an indicative rate, as referred to in subregulation (1), the rate used shall be the closing mid-point rate published in The Financial Times (US Edition) or such other rate as may be determined by the Court.

37 Discounts

- (1) Any trade and other discounts which would have been available to the company but for its liquidation, except any discount for immediate, early or cash settlement, shall be deducted from a creditor's claim.
- (2) If a claim is based on a liability that, at the commencement of the liquidation, was not payable by the company until after the commencement of the liquidation, the claim shall be reduced by a percentage calculated as follows—

$$\frac{I \times M}{12}$$

12

where—

- (a) $I = 5\%$; and
- (b) M is the number of months expressed, if need be, as or as including, fractions of a month, between the commencement of the liquidation and the date when the liability would otherwise have been due for payment.

Statutory demands

38 Statutory demand

- (1) The minimum sum for which a statutory demand may be issued is \$1,000.

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- (2) If the amount claimed in a statutory demand made against a company includes—
 - (a) a charge by way of interest not previously notified to the person as included in his liability; or
 - (b) any other charge accruing from time to time;the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.
- (3) If subregulation (2) applies, the amount claimed shall be limited to that amount that has accrued due at the date of the demand.
- (4) A statutory demand shall include the name, address and the contact details, if any, of an individual or individuals with whom the company may communicate with a view to securing or compounding for the debt to the satisfaction of the creditor.

39 Service of statutory demand

A statutory demand shall be served on a company as a document in legal proceedings in accordance with regulation 159(1)(a).

40 Setting aside of statutory demand

- (1) An application to set aside a statutory demand shall be supported by an affidavit—
 - (a) specifying the date upon which the company was served with the statutory demand; and
 - (b) stating the grounds upon which it claims that the statutory demand should be set aside.
- (2) A copy of the statutory demand shall be exhibited to the affidavit in support.

Appointment of liquidator by members

41 Appointment of liquidator by members

- (1) The chair of a meeting of members that, by a special resolution, appoints a liquidator under section 258(1) of the Act shall, as soon as practicable, provide the liquidator with—
 - (a) a copy of the resolution by which he was appointed; and

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- (b) a certificate of the liquidator's appointment, signed by the chair.
- (2) The provision to the liquidator of the documents specified in subregulation (1) is deemed notice to the liquidator for the purposes of section 260(1) of the Act.
- (3) This regulation does not apply to an unregistered company.

Appointment of liquidator by the Court

42 Application to Court for appointment of liquidator

- (1) A person may file an application for the appointment of a liquidator by the Court and the application shall be in compliance with subregulation (2) and supported by an affidavit in compliance with regulation 43.
- (2) An application under subregulation (1) shall state—
 - (a) the grounds upon which the appointment is sought; and
 - (b) whether the applicant proposes an eligible insolvency practitioner as liquidator and, if he does, it shall—
 - (i) specify the name and address of the person proposed; and
 - (ii) state that, to the best of the applicant's knowledge and belief, the person specified is eligible to act as an insolvency practitioner in relation to the company.
- (3) No application for the appointment of a liquidator may be made to the Court if the company is in liquidation, whether the liquidator was appointed by the members or by the Court.

43 Affidavit in support

- (1) An application for the appointment of a liquidator shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.
- (2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.
- (3) The supporting affidavit shall be made—
 - (a) by the applicant;

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- (b)* if the applicant is a corporate body, by a director or other officer who has been concerned with the matters stated in the application;
 - (c)* by the attorney-at-law acting for the applicant; or
 - (d)* by a responsible person who is authorised to make the affidavit and who has the requisite knowledge of the matters sworn in the affidavit.
- (4) A supporting affidavit is prima facie evidence of the statements in the application to which it relates.
- (5) If an applicant is making applications to appoint a liquidator for more than one company, a separate affidavit shall be filed in respect of each application.
- (6) If the applicant proposes an eligible insolvency practitioner as liquidator of the company, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application shall be exhibited to the affidavit in support of an application for the appointment of a liquidator.

44 Service of application on company

- (1) Unless the company is the applicant, a sealed copy of the application for the appointment of a liquidator, together with the supporting affidavit, shall be served on the company not more than fourteen days after the application has been filed.
- (2) Service of the application on the company shall be verified by an affidavit of service complying with the Civil Procedure Rules.
- (3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.
- (4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

45 Copies of application to be sent to other persons

- (1) A sealed copy of an application for the appointment of a liquidator shall be sent—
- (a)* to the receiver-manager, if appointed;
 - (b)* if the company is, or at any time has been, a financial institution, to the Commission, unless the Commission is the applicant;

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within the time limits specified in subregulation (2).

- (2) The times limits specified for the purposes of subregulation (1) are—
- (a) in the case of the receiver-manager—
 - (i) no earlier than the day after service of the application on the company; and
 - (ii) no later than four days after service of the application on the company; and
 - (b) in the case of the Commission, as soon as reasonably practicable after the application has been filed but, in any event, no later than 11am on the day immediately after the date on which the application was filed.

46 Persons entitled to a copy of the application

An applicant for the appointment of a liquidator shall, on receiving—

- (a) a request from any director, member or creditor of the company for a copy of the application; and
- (b) payment of a fee of \$5.00,

provide that person with a copy of the application as soon as is reasonably practicable to do so.

47 Advertisement of application

The advertisement of an application to appoint a liquidator shall state—

- (a) the name of the company in respect of which the appointment is sought and the address of its registered office or, in the case of an unregistered company, the address at which the application was served;
- (b) the name and address of the applicant;
- (c) the date on which the application was filed;
- (d) the venue fixed for the hearing of the application;
- (e) the name and address of the attorney-at-law acting for the applicant; and
- (f) that any person intending to appear at the hearing of the application, whether to support or oppose the application,

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shall give notice of his intention in accordance with regulation 48.

48 Notice of intention to appear

- (1) A person who intends to appear on the hearing of an application to appoint a liquidator, other than the company itself, shall send a notice of intention to appear to the applicant.
- (2) A notice of intention to appear shall be in writing and shall specify—
 - (a) the name and address of the person giving notice and his contact details, if any;
 - (b) whether it is his intention to support or oppose the application; and
 - (c) if he is a creditor, the amount of his debt or if he is not a creditor the grounds upon which he supports or opposes the application.
- (3) A notice of intention to appear shall be sent so as to reach the applicant no later than 16.00 hours on the business day before the date fixed for the hearing of the application, or if the hearing has been adjourned, the adjourned hearing.
- (4) A person who fails to comply with this regulation may appear on the hearing of the application only with the leave of the Court.

49 List of appearances

- (1) An applicant for the appointment of a liquidator shall prepare a list of the persons, if any, who have sent him a notice of intention to appear in accordance with regulation 48, specifying, in respect of each person—
 - (a) the person's name and address;
 - (b) the person's attorney-at-law, if known; and
 - (c) whether the person intends to support or oppose the application.
- (2) The list shall be filed with the Court at the hearing of the application.
- (3) If the Court grants a person leave to appear on the hearing of the application under regulation 48(4), the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

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50 Affidavit in opposition

If a company intends to oppose an application for the appointment of a liquidator it shall, not less than seven days before the date fixed for the hearing of the application, file with the Court and serve on the applicant—

- (a) a notice setting out the grounds on which it opposes the application; and
- (b) an affidavit verifying the matters stated in the notice.

51 Leave to withdraw application

(1) The Court may, on the application of the person applying for the appointment of a liquidator in respect of a company, grant that person leave to withdraw the application in accordance with section 266 of the Act if it is satisfied that—

- (a) the application has not been advertised;
- (b) no notices of intention to appear have been received by the applicant under regulation 48; and
- (c) the company consents to the application being withdrawn.

(2) An application under subregulation (1) shall be made *ex parte* at least five days before the date fixed for the hearing of the application.

52 Appointment of Official Receiver as liquidator

The Court may appoint the Official Receiver as liquidator of a company despite that—

- (a) the applicant may, in his application, have proposed the appointment of an eligible insolvency practitioner as liquidator under section 262(2) of the Act;
- (b) the Official Receiver has not consented to act as liquidator; and
- (c) the Official Receiver has not been given notice of the application.

53 Notice of order

The Court shall, immediately on making an order appointing a liquidator, give notice to the liquidator of his appointment and send a sealed copy of the order to him as soon as is practicable.

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54 Application by member of company

- (1) Except as provided in this regulation or by the Court, regulations 44 to 47 do not apply to an application for the appointment of a liquidator made by a member of the company (“a member’s application”).
- (2) A member’s application shall be made in accordance with regulation 42 and shall be supported by an affidavit complying with regulation 43.
- (3) A sealed copy of the application and the affidavit in support shall be served on the company not less than fourteen days before the date fixed for the hearing of the application.
- (4) A member’s application shall not, except as directed by the Court, be advertised or served on any person other than the company.
- (5) At the first hearing of the application, the Court shall give such directions concerning the procedures for or in connection with the determination of the application as it considers appropriate.
- (6) Without limiting subregulation (5), the Court shall give directions concerning—
 - (a) service of the application on, or giving notice of the application to, persons other than the company;
 - (b) whether the application should be advertised and, if so, the manner of its advertisement;
 - (c) whether particulars of claim, defence and reply to defence are to be delivered; and
 - (d) the manner in which evidence is to be adduced at the hearing of the application including the matters to be dealt with in evidence.
- (7) Regulations 48 to 53 apply to a member’s application with such modifications as are necessary.

55 Application for appointment of provisional liquidator

- (1) An application for the appointment of a provisional liquidator of a company shall propose an eligible insolvency practitioner or the Official Receiver for appointment as provisional liquidator.
- (2) If proposed for appointment as provisional liquidator, the Official Receiver shall be given sufficient notice of the hearing to enable the Official Receiver to attend the hearing.

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- (3) An application for the appointment of a provisional liquidator shall be supported by an affidavit stating—
- (a) the grounds upon which the application is being made;
 - (b) that the proposed appointee has consented to act and, to the best of the applicant's belief is eligible to act as provisional liquidator of the company;
 - (c) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed; and
 - (d) if the Official Receiver is proposed for appointment as provisional liquidator, whether and in what manner notice of the application has been given to the Official Receiver.

56 Hearing of application

- (1) If proposed to be appointed as provisional liquidator, the Official Receiver is entitled to attend the hearing and make such representations as the Official Receiver considers appropriate.
- (2) The Court shall not appoint the Official Receiver as provisional liquidator of a company unless the Official Receiver has been given notice of the application in accordance with regulation 55(2).

57 Order appointing provisional liquidator

- (1) The order appointing a provisional liquidator shall specify the functions to be carried out by the provisional liquidator in relation to the company's affairs and assets.
- (2) The Court shall, forthwith on making an order appointing a provisional liquidator, give notice of appointment to the provisional liquidator and, as soon as is practicable—
 - (a) send two sealed copies of the order to the provisional liquidator; and
 - (b) send one copy of the sealed order to any receiver-manager who has been appointed.
- (3) The provisional liquidator shall, as soon as practicable, send one copy of the sealed order to the company.

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Procedure following appointment

58 First meeting of creditors

- (1) The notice of the first meeting of creditors required to be sent under section 281(1) of the Act shall state—
- (a) the business to be conducted at the meeting, as permitted by subregulation (2); and
 - (b) that the liquidator will, at the request of any creditor, during the period before the date of the meeting furnish the creditor with—
 - (i) a list of the creditors of the company known to the liquidator; and
 - (ii) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide;

and shall be accompanied by a claim form as required by regulation 71.

- (2) The first meeting of creditors may pass only one or more of the following resolutions—
- (a) such resolutions as are necessary to exercise the powers specified in section 281(4) of the Act;
 - (b) a resolution to adjourn the meeting for a period of not more than twenty-one days;
 - (c) if the meeting has been requisitioned in accordance with section 285(b)(iii) of the Act, a resolution that the expenses of calling and holding the meeting are to be payable out of the assets of the company;
 - (d) any other resolution that the chair allows to be put to the meeting.

59 Advertisement of appointment

- (1) This regulation applies to the advertisement by a liquidator of his appointment as required by section 280(a) of the Act.
- (2) A liquidator shall advertise his appointment—
- (a) as specified in regulation 105(1)(a);
 - (b) in a newspaper published and circulating in Montserrat; and

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- (c) in such other newspaper or newspapers, if any, that he considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company.

60 Authentication of liquidator's appointment

A copy of the certificate of the liquidator's appointment (if appointed by the members) or, as the case may be, a sealed copy of the Court's order appointing the liquidator, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's liquidation.

Removal, resignation and death of liquidator

61 Removal of liquidator

- (1) Application for the removal of a liquidator under section 289 of the Act is made by filing at Court—
- (a) an application stating the grounds upon which the removal of the liquidator is sought; and
 - (b) an affidavit setting out the evidence relied upon in support of the application.
- (2) A sealed copy of the application and the affidavit shall be served on the liquidator and the Official Receiver, unless it is his application, not less than ten days before the date fixed for the hearing.
- (3) The liquidator may file affidavit evidence in opposition to the application not less than four days before the date fixed for the hearing of the application.
- (4) The liquidator shall, not less than four days after being served with an application under subregulation (2) send to the Official Receiver a statement as to whether any of the company's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of—
- (a) the nature, value and location of the assets;
 - (b) any action taken by the liquidator to deal with the assets or his reason for not dealing with them; and
 - (c) the current position in relation to the assets.

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- (5) Unless the Court otherwise directs, an application for the removal of a liquidator shall be held in Chambers.
- (6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the liquidator on the application.
- (7) Subject to any order of the Court to the contrary, the costs of an application to remove the liquidator of a company are not payable out of the assets of the company.
- (8) If the Court removes a liquidator under section 289 of the Act, it shall send a copy of the order removing him to—
 - (a) the liquidator removed;
 - (b) any remaining liquidator; and
 - (c) the Official Receiver.
- (9) If the Court removes a liquidator under section 289 of the Act, it may appoint the Official Receiver as liquidator under section 289(3)(b) of the Act even though the company commenced liquidation on the appointment of a liquidator by the members under section 258 of the Act.

62 Resignation of liquidator no longer eligible to act

- (1) If the liquidator resigns under section 290(1)(a) of the Act, he shall send the Official Receiver with the notice of his resignation, a statement covering the matters specified in regulation 61(4).
- (2) The liquidator shall, if so directed by the Official Receiver, verify the statement by affidavit.

63 Resignation of liquidator for other reason

- (1) Unless the liquidator is a joint liquidator resigning in accordance with section 290(4) of the Act, the notice of a creditors' meeting sent to creditors in accordance with section 290(5) of the Act shall be accompanied by an account of the liquidator's administration of the liquidation, including a summary of his receipts and payments.
- (2) The liquidator shall, not less than seven days before the date fixed for the creditors' meeting—
 - (a) send a copy of the notice and account referred to in subregulation (1) and a statement covering the matters specified in regulation 61(4) to the Official Receiver; and

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- (b)* if he was appointed by the Court, file a copy of the notice and account with the Court.
- (3)** If at a creditors' meeting called under section 290(5) of the Act either of the following resolutions is passed—
 - (a)* that the liquidator's resignation be accepted;
 - (b)* that a new liquidator be appointed,the chair shall, forthwith, send the Official Receiver a copy of the resolution together with a certificate of the liquidator's appointment, signed by the chair.
- (4)** If a liquidator's resignation is accepted by the creditors, he shall forthwith—
 - (a)* send a notice of his resignation to the Official Receiver, and
 - (b)* if he was appointed by the Court, file a notice of his resignation with the Court.
- (5)** The liquidator's resignation is effective from the date that the notice of his resignation is received by the Official Receiver, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former liquidator.
- (6)** Within fourteen days of receiving a copy of the endorsed notice from the Official Receiver under subregulation (5), the former liquidator shall file a copy of the endorsed notice with the Registrar.

64 Leave to resign

- (1)** A liquidator shall, not less than seven days before the date fixed for the hearing of an application for leave to resign under section 290(7) of the Act, give notice of his application to—
 - (a)* any joint liquidator;
 - (b)* the creditors' committee, if any; and
 - (c)* the Official Receiver.
- (2)** If the Court gives the liquidator leave to resign, it may make such provision as it considers appropriate with respect to matters arising in connection with the resignation.
- (3)** If the Court gives the liquidator leave to resign, section 290(3) of the Act and regulation 61(9) apply with such modifications as are necessary.

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- (4) The Court shall send two sealed copies of the order to the liquidator, who shall forthwith send one of the copies to the Official Receiver.
- (5) Within fourteen days of his resignation, the former liquidator shall send a notice of his resignation to the Official Receiver and to the Registrar.

65 Death of liquidator

- (1) If the liquidator dies, his personal representative shall give notice of his death to the Official Receiver and the Registrar, specifying the date of his death, unless notice has already been given to the Court and the Registrar under subregulations (2) or (3).
- (2) If a liquidator who dies was a partner in a firm, notice of his death may be given to the Official Receiver and the Registrar by a partner in the firm who is an insolvency practitioner.
- (3) Notice of the death of a liquidator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.
- (4) If the Official Receiver receives a notice under subregulation (3) and the deceased liquidator was the sole liquidator of the company, the Official Receiver shall as soon as reasonably practicable apply to the Court under section 291(1) of the Act for the appointment of a replacement liquidator, unless an application has already been made by the creditors' committee.

66 Advertisement of appointment

- (1) A liquidator who is appointed to replace a liquidator who has, for whatever reason, ceased to hold office, shall within twenty-one days of the date of the appointment, advertise his appointment.
- (2) His advertisement shall state that he has been appointed in place of a liquidator who ceased office.

Claims and distributions

67 Solicitation

- (1) If the Court is satisfied that any improper solicitation has been used by or on behalf of a liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced

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remuneration, be payable to the liquidator out of the assets of the company.

- (2) An order of the Court under subregulation (1) overrides any resolution of the creditors' committee or any other provision of these Regulations.

68 List of members

- (1) The list of members settled by the liquidator under section 295(1) of the Act shall identify—
- (a) the classes of the company's shares, if more than one;
 - (b) the classes of members, if more than one.
- (2) The list shall detail, in respect of each member—
- (a) his name and address;
 - (b) the number and class of shares held by him, or the extent of any other interest to be attributed to him;
 - (c) if the shares are not fully paid up, the amounts that have been called up and paid in respect of them, and the equivalent if his interest is other than shares.

69 Procedure for settling list of members

- (1) The notice given to each person under section 295(2) of the Act shall state—
- (a) in what character and for what number of shares or what interest, he is included in the list;
 - (b) what amounts have been called up and paid up in respect of the shares or interest;
 - (c) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called; and
 - (d) the rights of a person to object under subregulations (2) and (3) of this regulation.
- (2) If a person objects to any entry in, or omission from, the list, he shall inform the liquidator of his objection in writing within twenty-one days from the date of the notice.
- (3) If the liquidator receives an objection under subregulation (2), he shall, within fourteen days, give notice to the objector either—

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- (a)* that he has amended the list, specifying the amendment; or
 - (b)* that he does not accept the objection and that he does not intend to amend the list.
- (4) A notice given under subregulation (3) shall contain a summary of the effects of section 295(3) and (4) of the Act.

70 Claims by unsecured creditors

A claim made against a company in liquidation by an unsecured creditor under section 310 of the Act shall be in the specified form and shall specify—

- (a)* the name and address of the creditor;
- (b)* the total amount of his claim as at the commencement of the liquidation;
- (c)* whether or not the claim includes uncapitalised interest;
- (d)* whether the whole or any part of the debt or liability, and if so which, is a preferential claim;
- (e)* particulars of how and when the debt or liability was incurred by the company;
- (f)* the documents, if any, by which the debt or liability can be substantiated;
- (g)* particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and
- (h)* the name and address of the person signing the claim, if not the creditor himself.

71 Claim forms

- (1) Unless the Court otherwise orders, the liquidator shall send a claim form to each creditor of whom he is aware at the same time as he sends the creditor—
- (a)* notice of the first meeting of creditors under section 281(1)(a) of the Act; or
 - (b)* notice under section 285(b) of the Act that he does not consider it necessary to call a meeting of creditors.
- (2) The liquidator shall as soon as is practicable send a claim form to any creditor that he becomes aware of subsequent to sending out a notice under section 281(1)(a) or section 285(b) of the Act.

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72 Application to Court expunge or amend an admitted claim

The applicant for an order expunging or reducing a claim under section 311(2) of the Act shall serve a copy of his claim—

- (a) in the case of an application by the liquidator, on the creditor who made the claim; and
- (b) in the case of an application by a creditor, on the liquidator and on the creditor who submitted the claim.

73 Negotiable instruments

The liquidator may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his authorised representative to be a true copy, is produced to the liquidator.

74 Inspection of claims

The liquidator shall allow claims in his custody or control to be inspected by—

- (a) a creditor who has submitted a claim in the liquidation that has not been wholly rejected by the liquidator;
- (b) a contributory of the company;
- (c) a person acting on behalf of a person referred to in paragraph (a) or (b).

75 Distribution by dividend

The liquidator shall make a distribution by distributing dividends among the creditors whose claims he has admitted.

76 Notice to submit claim

A notice issued under section 317(1) of the Act fixing a date by which claims must be submitted, shall state that the liquidator intends to distribute a dividend and that a creditor who does not submit a claim by the date specified in the notice will be excluded from the distribution.

77 Distributions

- (1) In determining the funds available for distribution to creditors by way of dividend, the liquidator shall make provision—

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- (a) for any claims which creditors may not have had sufficient time to make;
 - (b) for any claims which have not yet been determined; and
 - (c) for any disputed claims.
- (2) A creditor who has not submitted a claim by the date specified in the notice issued under section 317(1) of the Act is not entitled to disturb, by reason that he has not participated in it, the distribution of the dividend.
- (3) When a creditor referred to in subregulation (2) makes a claim that is accepted by the liquidator—
 - (a) he is entitled to be paid, out of any money for the time being available for distributing a further dividend, a payment in respect of any dividend which he has failed to receive; and
 - (b) any payment under paragraph (a) shall be paid before that money is used to distribute a further dividend to creditors.
- (4) No action lies against the liquidator for a dividend but if he refuses to pay a dividend, the Court may, if it thinks fit, order him to pay it and also to pay, out of his own money—
 - (a) interest on the dividend, at the Court rate, from the time when it was withheld; and
 - (b) the costs of the proceedings in which the order to pay is made.

78 Distribution of dividend

If the liquidator distributes a dividend, he shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

Creditors' and members' resolutions and meetings

79 Written resolutions of creditors and members

- (1) The liquidator may seek to obtain the passing of a resolution of creditors or members by sending a notice to every creditor or member who is entitled to be notified of a creditors' or members' meeting together with a blank statement of entitlement to vote.

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- (2) A notice under subregulation (1) shall specify the time and date by which votes on the resolution shall be received by him and a vote shall be counted if—
 - (a) the vote is received by the liquidator by the time and date specified in the notice; and
 - (b) the vote is accompanied by a completed statement of entitlement to vote.
- (3) If any votes are received without the statement as to entitlement to vote, or the liquidator decides that the creditor or member is not entitled to vote, then that creditor's or member's vote shall be disregarded.
- (4) The closing date for receipt of votes shall be set at the discretion of the liquidator but shall not be set less than fourteen days from the date of issue of the notice under subregulation (1).
- (5) If a liquidator sends out a notice under subregulation (1), a meeting to consider the resolution specified in the notice may be requisitioned in accordance with subregulation (6) by—
 - (a) in the case of a notice sent to creditors, by any single creditor, or a group of creditors, whose debts amount to at least 10% of the total debts of the company or debtor; or
 - (b) in the case of a notice sent to members of a company, by any single member, or a group of members, holding at least 25% of the voting rights in respect of the company.
- (6) A meeting is requisitioned under subregulation (5) by sending a notice to the liquidator within seven days after the date that the notices under subregulation (1) are sent out.
- (7) If the resolution proposed in the notice is rejected by the creditors or members, the liquidator may call a meeting of creditors or members, as the case may be.
- (8) A reference in the Act or these Regulations to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' or members' meeting, includes a reference to anything done in the course of correspondence in accordance with this regulation.

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80 Calling of creditors' meetings

- (1) A creditors' meeting is called by the convener sending, or causing to be sent, to every creditor entitled to attend the meeting a notice complying with these Regulations.
- (2) Subject to any requirement of the Act or these Regulations, or any direction of the Court, concerning the date or last date for which a creditors' meeting may be called, the date and venue of a creditors' meeting shall be fixed by the convener and stated in the notice.
- (3) In fixing the venue of a creditors' meeting, the convener shall have regard primarily to the convenience of the creditors entitled to attend the meeting and creditors' meetings may be held in or outside Montserrat.
- (4) A notice sent to a creditor under subregulation (1) shall be sent in sufficient time for it to be received, or deemed to be received, by him at least fourteen days before the date of the meeting.
- (5) Unless exceptional circumstances justify otherwise, creditors' meetings shall be called for commencement between 10 a.m. and 4 p.m. on a business day.

81 Form of notice calling creditors' meeting

- (1) In addition to any other requirements of the Act or these Regulations, a notice calling a meeting of creditors shall contain—
 - (a) a statement as to the primary purpose of, or the main business to be conducted at, the meeting; and
 - (b) an explanation as to—
 - (i) the majority required to pass a resolution at the meeting; and
 - (ii) the basis on which a person will be admitted to vote at the meeting.
- (2) The convener of a meeting of creditors shall send, or cause to be sent, together with every notice—
 - (a) a form of proxy; and
 - (b) any document required by the Act or these Regulations to be sent with the notice.
- (3) If a copy of the notice, together with any other documentation, is required by the Act or these Regulations to be sent to a person not entitled to vote at the meeting, the convener shall send, or cause to

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be sent, a copy of the notice together with any accompanying documentation in sufficient time for it to be received, or deemed to be received, by that person at least fourteen days before the date of the meeting.

- (4) Neither the proceedings at, nor any resolutions passed by, a creditors' meeting are invalid by reason only that one or more creditors have not received notice of the meeting.

82 Notice to be given to creditors

- (1) The convener of a creditors' meeting shall send a notice to every creditor—
- (a) specified in the statement of affairs or statement of assets and liabilities, if any; and
 - (b) of whom the convener is otherwise aware.
- (2) The convener of a creditors' meeting is not in breach of any requirement of the Act or these Regulations to give notice of the meeting to the creditors of a company by reason only of failing to send a notice to a person who was not known by the convener to be a creditor of the company.

83 Notice of meetings by advertisement

- (1) The Court may direct that notice of a creditors' meeting be given by public advertisement, and not, or not only, by individual notice to the persons concerned.
- (2) In considering whether to make a direction under this regulation, the Court shall have regard to—
- (a) the cost of public advertisement;
 - (b) the assets available in the liquidation; and
 - (c) the extent of the interest of creditors or any particular class of either.

84 Notice to Registrar, Commission and Official Receiver

If a convener is required by the Act or these Regulations to file a notice of a creditors' meeting with the Registrar, the Commission or the Official Receiver, he shall file the notice, together with any accompanying documentation, at least fourteen days before the date set for the meeting.

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85 Meetings requisitioned by creditors

- (1) This regulation applies if creditors are permitted by the Act or these Regulations to requisition a meeting.
- (2) A notice requisitioning a creditors' meeting shall be sent to the liquidator by a creditor accompanied by—
 - (a) a list of creditors supporting the requisition, showing the amounts of their respective claims;
 - (b) the written confirmation of each creditor on the list that he supports the requisition; and
 - (c) a statement—
 - (i) specifying the section of the Act or the regulation under which the meeting is requisitioned;
 - (ii) that the creditors on the list comprise at least the minimum number of creditors required; and
 - (iii) of the purpose of the meeting.
- (3) Subject to subregulation (7), the costs of calling and holding a requisitioned creditors' meeting shall be paid by the creditor who sent the notice to the liquidator in accordance with subregulation (2).
- (4) If the liquidator is satisfied that a requisition complies with the Act and these Regulations, he shall, within five business days of receiving the notice under subregulation (2), provide the creditor who sent the notice with an estimate of the costs of calling and holding the meeting together with a request that the creditor deposit with the liquidator sufficient security to cover those costs.
- (5) If the liquidator is not satisfied that a requisition complies with the Act and these Regulations, he shall notify the creditor in writing stating the reasons for his conclusion.
- (6) Upon receipt of the deposit referred to in subregulation (4), the liquidator shall fix a venue for the meeting not more than thirty-five days from his receipt of the deposit and shall give not less than twenty-one days' notice of the meeting to creditors.
- (7) A meeting held under this regulation may resolve that the expenses of calling and holding it are to be payable out of the assets of the company concerned.
- (8) To the extent that any deposit paid to the liquidator under this regulation is not required for the payment of the expenses of calling

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and holding the meeting, it shall be repaid to the person who paid the deposit.

86 Chair

- (1) Subject to subregulations (2) and (3), every creditors' meeting shall be chaired by the convener.
- (2) If the convener is the liquidator or the Official Receiver and he is unable to attend the meeting, he may, in writing, nominate as chair—
 - (a) in the case of the liquidator—
 - (i) an eligible insolvency practitioner; or
 - (ii) an employee of the liquidator, or of his firm, who is experienced in insolvency matters; or
 - (b) in the case of the Official Receiver, a member of his staff.
- (3) If a creditors' meeting convened by an insolvency practitioner or the Official Receiver is to be held outside Montserrat and he will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chair.

87 Suspension

Once only in the course of any meeting, the chair may, in his discretion and without an adjournment, declare that the meeting is suspended for a period of no more than one hour.

88 Adjournment of meetings

- (1) If within thirty minutes of the time fixed for the commencement of a creditors' meeting there is no person present to act as chair of the meeting, the meeting is adjourned to the same time and place in the following week or, if that is not a business day, to the same time on the next following business day.
- (2) Subject to subregulation (3), unless those persons present, in person or by proxy holder, pass a resolution to the contrary, the chair may adjourn a creditors' meeting.
- (3) The chair of a creditors' meeting may not adjourn or further adjourn a meeting under subregulation (2) to a date more than fourteen days after the date fixed for the original meeting.

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89 Chair as proxy holder

- (1) The chair shall not by virtue of any proxy he holds, vote on a resolution concerning the remuneration or expenses of the liquidator unless the proxy specifically directs him to vote in that way.
- (2) If the chair uses a proxy contrary to subregulation (1), his vote with that proxy does not count towards any majority under this regulation.
- (3) If the chair holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution—
 - (a) he shall propose it himself, unless he considers that there is good reason for not doing so; and
 - (b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why he did not propose it.

90 Quorum

- (1) The quorum for a meeting of creditors is at least one creditor entitled to vote.
- (2) A creditor shall be counted towards the quorum for the purposes of subregulation (1) if he is present or represented by a proxy holder, including the chair.
- (3) If at any meeting of creditors—
 - (a) a quorum is present by the attendance of the chair alone or by the chair together with one additional creditor; and
 - (b) the chair is aware, by virtue of claims and proxies received or otherwise, that one or more other persons would, if attending, be entitled to vote,

the meeting shall not commence until at least fifteen minutes after the time set for its commencement.

91 Entitlement to vote

- (1) A creditor is entitled to vote at a creditors' meeting only if, no later than 12 p.m. on the business day before the day fixed for the meeting—
 - (a) he has given written notice of his claim to the liquidator and the claim is admitted in accordance with regulation 94; and

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- (b) any proxy that he intends to be used on his behalf has been lodged with the liquidator.
- (2) The chair of a creditors' meeting may allow a creditor to vote, even if he has failed to comply with subregulation (1)(a), if he is satisfied that the failure was due to circumstances beyond the creditor's control.
- (3) The votes of a creditor are calculated on the value of the creditor's claim made in accordance with the provisions of the Act and these Regulations that relate to a claim in a liquidation.
- (4) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except if the chair agrees to put an estimated minimum value on the claim for the purpose of entitlement to vote and admits the claim for that purpose.

92 Resolutions and requisite majorities

- (1) Unless the Act or these Regulations provide otherwise, the majority required for the passing of a resolution at a creditors' meeting is in excess of 50% in value of the creditors present in person or by a proxy holder who vote on the resolution.
- (2) A resolution passed at an adjourned creditors' meeting is treated for all purposes as having been passed on the date of the resolution and not as having been passed on an earlier date.
- (3) If a resolution is proposed which affects a person in respect of his remuneration or conduct as a liquidator, or as a proposed or former liquidator, the vote of that person and of any partner or employee of his, shall not be counted in the majority required for passing the resolution.
- (4) Subregulation (3) applies with respect to a vote given by a person whether personally, on his behalf by a proxy holder or as a proxy holder for a creditor.

93 Secured creditors and holders of negotiable instruments

- (1) At a creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security interest as estimated by him.
- (2) A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing—

 - (a) as a security in his hands;

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(b) to estimate the value of the security interest and, for the purposes of entitlement to vote only, to deduct it from his claim,

and the chair decides to admit the reduced claim for voting purposes.

94 Admission and rejection of claims

- (1) Subject to subregulation (5), the chair of a creditors' meeting shall determine the entitlement of persons wishing to vote and shall admit or reject their claims for voting purposes accordingly.
- (2) The chair of a creditors' meeting may admit or reject a claim in whole or in part.
- (3) The chair of a creditors' meeting may require a creditor to produce any document or other evidence if he considers it necessary for the purpose of substantiating the whole or part of the creditor's claim.
- (4) If the chair of a creditors' meeting is in doubt as to whether a claim should be admitted or rejected, he shall mark the claim as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.
- (5) If a creditor's claim in a liquidation has been admitted by the liquidator, under section 310 of the Act, the chair of the creditors' meeting shall admit the claim in the same amount for the purposes of voting.

95 Appeals

- (1) A creditor may appeal to the Court against any decision of a liquidator, or the chair of a creditors' meeting, under regulation 91 or 94.
- (2) If on an appeal the chair's decision is reversed or varied, or votes are declared invalid, the Court may order another meeting to be summoned, or make such order as it thinks just.
- (3) The Court's power to make an order under this subregulation is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.
- (4) An appeal under this regulation shall be made within a period of twenty-eight days from the date of the decision in respect of which the appeal is made.

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- (5) If, in the case of an appeal against the chair of a creditors' meeting, the Court reverses or varies the chair's decision, or the vote of a creditor is declared invalid, the Court may make such order as it considers just including, if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity, an order that another meeting be summoned.
- (6) Neither a liquidator, nor any person nominated to chair a creditors' meeting on his behalf in accordance with regulation 86(2) is personally liable for the costs incurred by any person in respect of an appeal to the Court under this regulation, unless the Court makes an order to that effect.

96 Minutes

- (1) The chair of a creditors' meeting shall ensure that minutes of its proceedings are kept and that he authenticates the minutes.
- (2) Minutes kept under subregulation (1) shall include a list of the creditors who attended the meeting, whether in person or by a proxy holder, the resolutions passed at the meeting and, if a creditors' committee is established, the names and addresses of those persons elected to be members of the committee.
- (3) Minutes kept in accordance with this regulation shall be retained as a record in the liquidation.

97 Meetings of members

- (1) In fixing the venue of a members' meeting, the convener shall have regard primarily to the convenience of the members and members' meetings may be held in or outside Montserrat.
- (2) Regulations 86, 88(1), 90(2) and 90(3) apply to members' meetings with the substitution of "member" for "creditor" and with any other modifications that are necessary.
- (3) The quorum for a meeting of members is—
 - (a) if the company only has one member or only has one member entitled to vote, that member; or
 - (b) if the company has more than one member entitled to vote, at least two members of those members.
- (4) Subject to this regulation, a members' meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Act.

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Proxies and Company Representation

98 General provisions concerning proxies

- (1) Subject to subregulation (2), a person who desires to be represented at a creditors' meeting may give a proxy to an individual aged 18 or over.
- (2) Despite subregulation (1)—
 - (a) a principal may specify one or more other individuals aged 18 or over to be proxy holder in the alternative, in the order in which they are named in the proxy; and
 - (b) a proxy for a particular meeting may be given to the chair of the meeting who cannot decline to act as proxy holder in such circumstances.
- (3) A proxy requires the proxy holder, either as directed or in accordance with the proxy holder's discretion—
 - (a) to give the principal's vote on matters arising for determination at the meeting;
 - (b) to abstain; or
 - (c) to propose, in the principal's name, a resolution to be voted on by the meeting.

99 Issue and use of form of proxy

- (1) A form of proxy sent with a notice of a meeting shall not have inserted in it the name or description of any person.
- (2) A form of proxy shall not be used at a meeting unless it is the same or substantially similar to the form of proxy sent out with the notice calling the meeting.
- (3) A form of proxy shall be signed by the principal, or by some person authorised by him, either generally or with reference to a particular meeting.
- (4) If a form of proxy is signed by a person other than the principal, the nature of the person's authority shall be stated.

100 Use of proxies at meetings

- (1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

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- (2) If the Official Receiver holds proxies for use at a meeting, any of his officers or employees that he authorises in writing may act as proxy holder in his place.
- (3) If a liquidator holds proxies to be used by him as chair of a meeting, and some other person acts as chair, the other person may use the liquidator's proxies as if he were himself the proxy holder.
- (4) If a proxy directs a proxy holder to vote for or against a resolution for the nomination or appointment of a person as liquidator, the proxy holder may, unless the proxy states otherwise, vote for or against, as the proxy holder considers fit, any resolution for the nomination or appointment of that person jointly with another or others.
- (5) A proxy holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.
- (6) If a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

101 Retention of proxies

- (1) Subject to subregulation (2), proxies used for voting at any meeting shall be retained by the chair of the meeting.
- (2) If the chair is not the liquidator, he shall deliver the proxies, immediately after the meeting, to the liquidator who shall retain them.
- (3) Proxies shall be retained as records in the liquidation.

102 Right of inspection

- (1) The liquidator shall allow proxies retained by him to be inspected, at all reasonable times on any business day, by—
 - (a) any creditor, in the case of proxies used at a meeting of creditors; and
 - (b) a member, in the case of proxies used at a meeting of the company or of its members.
- (2) The reference in subregulation (1) to a creditor is to a creditor who has submitted a claim in the liquidation unless the creditor's claim

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has been wholly rejected for the purposes of voting, dividend or otherwise.

- (3) The right of inspection given by this regulation is also exercisable by a director of the company in liquidation.
- (4) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including claims sent or given, in accordance with directions contained in any notice convening the meeting, to the chair of that meeting or to any other person by a creditor or member for the purpose of that meeting.

103 Proxy holder with financial interest

- (1) A proxy holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the assets of the company in liquidation, unless the proxy specifically directs him to vote in that way.
- (2) If a proxy holder has signed the proxy as being authorised to do so by his principal and the proxy specifically directs him to vote in the way mentioned in subregulation (1), he shall nevertheless not vote in that way unless he produces to the chair of the meeting written authorisation from his principal sufficient to show that the proxy holder was entitled so to sign the proxy.
- (3) This regulation applies also to any person acting as chair of a meeting and using proxies in that capacity under regulation 100 and in its application to him, the proxy holder is deemed an associate of his.

104 Company representation

- (1) If a person is authorised to represent a company at a meeting of creditors or of the company or its members, he shall produce to the chair of the meeting a copy of the resolution from which he derives his authority.
- (2) The copy resolution shall be under the seal of the company or certified by the secretary or a director of the company to be a true copy.
- (3) This regulation does not require the authority of a person to sign a proxy on behalf of a principal, which is a company, to be in the form of a resolution of that company.

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General provisions

105 Advertisements

- (1) Without limiting any specific requirement to advertise contained in the Act or these Regulations, if a person is required by the Act or these Regulations to advertise any application, order, notice or other document or matter, he shall, within the time specified in the Act or these Regulations—
 - (a) ensure that a copy of the application, order, notice or other document or matter concerned is delivered to the Government Printer for advertisement in the *Gazette*; and
 - (b) advertise the application, order, notice or other document or matter concerned in such newspaper or newspapers that the person considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company in liquidation.
- (2) The first meeting of creditors in a liquidation shall be advertised in the same newspaper as that in which, as the case may be, the notice of the appointment of the liquidator was advertised.
- (3) If subregulation (2) applies, the liquidator may also advertise in such other newspaper as he thinks appropriate for ensuring that the notice comes to the attention of the creditors of the company.

106 Insolvency practitioner's consent to act

The written consent of an insolvency practitioner to act as liquidator shall—

- (a) if the appointment is to be made by the Court, specify the date of the hearing for which it is provided;
- (b) if the appointment is to be made by the members of a company, specify that the consent is valid only for a meeting of the members to be held on a date specified in the consent, or at any adjournment of the meeting,

and, in either case shall state the period of time for which the consent is valid which shall not exceed six weeks.

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107 Order to deliver assets and documents

- (1) If any person has in his possession or control any assets or documents to which the company appears to be entitled, the Court may, on the application of the liquidator, require that person forthwith, or within such period as the Court may direct, to pay, deliver, convey, surrender or transfer the assets or documents to the liquidator.
- (2) Subregulation (3) has effect if the liquidator—
 - (a) seizes or disposes of any asset which is not an asset of the company; and
 - (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled, whether in pursuance of an order of the Court or otherwise, to seize or dispose of that asset.
- (3) In the circumstances specified in subregulation (2), the liquidator—
 - (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the liquidator's own negligence; and
 - (b) has a lien on the asset, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

108 Company's books

If a company is in liquidation, all documents of the company and of the liquidator are, as between the members of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in them.

109 Application to Court concerning liquidator

A person aggrieved by an act, omission or decision of a liquidator may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the liquidator.

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Disclaimer

110 Notice of disclaimer

- (1) A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.
- (2) The notice shall be signed by the liquidator and filed at Court with a copy.
- (3) The original notice and the copy notice shall be sealed by the Court, endorsed with the date of filing and the copy notice shall be returned to the liquidator.
- (4) The Court shall either endorse on the copy notice or record on the Court file the method by which the sealed notice of disclaimer was returned to the liquidator.

111 Communication of notice of disclaimer

- (1) Written notice of a disclaimer notice shall be given under section 318(2) and 319(2) of the Act by sending or giving a copy of the sealed and endorsed disclaimer notice to each person entitled to receive it.
- (2) Without limiting section 318 of the Act, the following are persons whose rights are affected by a disclaimer of property—
 - (a) a person who claims an interest in the disclaimed property;
 - (b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and
 - (c) if the disclaimer is of an unprofitable contract, a person who is a party to the contract.
- (3) If it subsequently comes to the knowledge of a liquidator that a person's rights are affected by a disclaimer, the liquidator shall forthwith give written notice of the disclaimer to that person in accordance with this regulation unless—
 - (a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or
 - (b) the Court otherwise orders.
- (4) A liquidator disclaiming property may at any time, in addition to his obligations under the Act and these Regulations, give notice of the disclaimer to any person who, in his opinion, ought in the public interest or otherwise to be informed of the disclaimer.

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112 Duty to keep Court informed

The liquidator shall, as soon as reasonably practicable, notify the Court of each person to whom he has given notice of disclaimer in accordance with the Act and these Regulations, specifying the name and address of each person and his interest in the property disclaimed.

113 Notice to elect

A notice to elect shall be served on a liquidator by delivering the notice to him personally or sending it to him by registered post.

114 Notice to declare interest in onerous property

- (1) If it appears to the liquidator that a person may have an interest in onerous property, he may give notice to that person to declare, within fourteen days, whether he claims any interest in the property and, if so, the nature and extent of his interest.
- (2) If a person fails to comply with a notice given under subregulation (1), the liquidator is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

115 Application for vesting order or order for delivery

- (1) An application for a vesting order or an order for delivery under section 322 of the Act shall be made within three months of—
 - (a) the applicant first becoming aware of the disclaimer; or
 - (b) the applicant receiving a notice of the disclaimer from the liquidator,whichever is the earlier.
- (2) The application shall be filed with the Court accompanied by a copy of the application for service on the liquidator and an affidavit—
 - (a) stating whether his claim is based upon an interest in the disclaimed property or whether it is based upon an undischarged liability;
 - (b) specifying the date upon which he received a copy of the liquidator's notice of disclaimer or otherwise became aware of the disclaimer; and

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- (c) specifying the grounds upon which his application is based and the order that he desires the Court to make under section 322 of the Act.
- (3) Not less than seven days before the date fixed for the hearing of the application, the applicant shall serve on the liquidator—
 - (a) a sealed copy of the application endorsed by the Court; and
 - (b) a copy of the affidavit filed in support.
- (4) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.
- (5) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the liquidator.
- (6) Unless there is an application, or more than one application, pending under section 322 of the Act, in a case where the property disclaimed is of a leasehold nature, and section 323(2) of the Act applies to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

Investigation of affairs of a company in liquidation

116 Power to obtain information

- (1) The liquidator or the Official Receiver may, by notice in writing, require a person specified in subregulation (2)—
 - (a) to provide him with such information concerning the company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs as he reasonably requires;
 - (b) to attend on him at such reasonable time and at such place as may be specified in the notice; or
 - (c) to be examined on oath or affirmation by him, or by his attorney-at-law, on any matter referred to in paragraph (a).
- (2) A notice under subregulation (1) may be sent to—
 - (a) an officer or former officer of the company;
 - (b) a member or former member of the company;
 - (c) a person who was involved in the promotion or formation of the company;

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- (d)* a person who is, or within the relevant period has been, employed by the company, including a person employed under a contract for services;
 - (e)* a person who is or at any time has been a receiver, accountant or auditor of the company;
 - (f)* a person who is or who, at any time has been, an officer of or in the employment of a company which is an officer of the company; or
 - (g)* if the notice is sent by the Official Receiver or a liquidator or provisional liquidator, to any person who has acted as liquidator or provisional liquidator of the company.
- (3) A notice to provide information shall specify the period within which the information shall be submitted to the liquidator and shall state whether the liquidator requires the information to be verified by affidavit.
 - (4) If the liquidator requires the recipient of a notice under subregulation (1) to prepare and submit accounts of the company, regulation 130 applies with any necessary modifications.
 - (5) A liquidator shall not require accounts to be prepared and submitted to him for a period more than five years prior to the commencement of the liquidation without the leave of the Court.
 - (6) The liquidator may issue subsequent notices to a person under this regulation, even though a previous notice has been fully complied with.
 - (7) A person who receives a notice under subregulation (1) and who, without reasonable excuse, fails to comply with the notice, commits an offence and is liable on summary conviction, to one year imprisonment or to a fine of \$50,000 or to both.

117 Examination by liquidator or Official Receiver

- (1) This regulation applies to the examination of a person under regulation 116(1)(c) by the liquidator or the Official Receiver.
- (2) The liquidator or Official Receiver, or the attorney-at-law conducting the examination on his behalf, may administer an oath to, or take the affirmation of, a person to be examined.
- (3) A person required to be examined is entitled to be represented by an attorney-at-law.

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- (4) The liquidator or the Official Receiver shall ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.

118 Examination before Court

- (1) If a company is in liquidation, an application may be made to the Court, ex parte, by the liquidator or by the Official Receiver, for an order that a person specified in subregulation (3) appears before the Court for examination concerning the company, or a connected entity.
- (2) Without limiting subregulation (1), an examination before the Court may cover the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or a connected entity.
- (3) An application under subregulation (1) may be made in respect of—
- (a) a person specified in regulation 116(2);
 - (b) any other person who the applicant considers is capable of giving information concerning the company or a connected entity; or
 - (c) any other person who the applicant knows or suspects has in his possession or control any asset of the company or is indebted to the company.
- (4) An application under subregulation (1) shall state whether the applicant seeks a public or a private examination.

119 Application for examination

- (1) An application for the examination before the Court of a person under regulation 118 shall be filed with the Court, without notice to the proposed examinee, together with a supporting affidavit.
- (2) Neither the application nor the supporting affidavit is open to public inspection unless the Court otherwise orders.
- (3) The matters contained in the supporting affidavit shall include—
- (a) details of the proposed examinee and his relationship with the company concerned or a connected company;
 - (b) details of the matters upon which the applicant seeks to examine the proposed examinee and the reasons for his belief that the proposed examinee has knowledge of these matters;

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- (c) details of any books, records or other documents relating to the company or a connected company that the applicant believes are in the possession of the proposed examinee that he wishes the proposed examinee to produce at the examination;
- (d) if an order for a public examination is sought, the justification for a public examination;
- (e) a statement as to whether the matters upon which he seeks to examine the proposed examinee are matters that he could examine him on using his powers under regulation 116 and, if so, whether or not he has conducted such an examination;
- (f) if the applicant has conducted an examination under regulation 116, the reasons why a further examination before the Court is necessary;
- (g) if the applicant is entitled to examine the proposed examinee under regulation 116, but has not done so, the reasons for the application to examine him before the Court.

120 Order for examination

- (1) In this regulation, “examinee” means the person to be examined before the Court.
- (2) On hearing an application made under regulation 119, the Court may order the examinee to appear before the Court to be examined.
- (3) An order under subregulation (2)—
 - (a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;
 - (b) shall state whether the examination is to be a public or a private examination;
 - (c) may require the person concerned to produce at the examination any books, records or other documents in his possession or control that relate to the company, or a connected entity, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected entity;
 - (d) may provide for an alternative method of service of the order on the examinee;
 - (e) shall state the action that may be taken against a person if he does not appear before the Court as required by the order; and

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- (f)* if the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.
- (4)** If the Court makes an order under subregulation (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, if the liquidator is not the Official Receiver—
 - (a)* if the applicant is the liquidator of the company, send a sealed copy of the order to the Official Receiver; or
 - (b)* if the applicant is the Official Receiver, send a sealed copy of the order to the liquidator of the company.
- (5)** If an order under subregulation (2) is for the public examination of an examinee, the applicant shall give not less than fourteen days' notice of the examination to each creditor and member of the company.
- (6)** The Court may, as part of an order made under this regulation, or at any subsequent time, make one or more of the following directions—
 - (a)* a direction specifying the matters upon which the examinee may be examined; and
 - (b)* a direction specifying the procedures to be followed at the examination.

121 Adjournment of examination

- (1)** An examination held in accordance with an order made under regulation 120 may be adjourned by the Court either generally or to a fixed date.
- (2)** If an examination is adjourned generally, the Court may, on the application of the liquidator, the Official Receiver or the examinee—
 - (a)* fix a venue for the resumption of the examination; and
 - (b)* give directions as to the manner in which, and the time within which, notice is to be given to any person entitled to take part in the examination.
- (3)** If the application under subregulation (2) is made by the examinee, the Court may grant it on terms that the expenses of giving the notices required by subregulation (2) shall be paid by him and that, before a venue for the resumed examination is fixed, he shall

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deposit with the Court such sum as it considers reasonable to cover those expenses.

122 Examinee unfit for examination

- (1) If an examinee is suffering from any mental disorder or physical affliction or disability that renders him unfit to undergo or attend for an examination, the Court may, on application, either stay the order for his examination or direct that it shall be conducted in such manner and at such place as it thinks fit.
- (2) Application under this regulation shall be made—
 - (a) by a person who has been appointed by a court in Montserrat or elsewhere to manage the affairs of, or to represent, the examinee;
 - (b) by a relative or friend of the examinee whom the Court considers to be a proper person to make the application; or
 - (c) by the Official Receiver.
- (3) If the application is made by a person other than the Official Receiver—
 - (a) it shall be supported by the affidavit of a medical practitioner as to the examinee's mental and physical condition; and
 - (b) at least seven days' notice of the application shall be given to the Official Receiver and the liquidator, if not the Official Receiver.
- (4) If the application is made by the Official Receiver, it may be made ex parte, and may be supported by evidence in the form of a report by the Official Receiver to the Court.

123 Conduct of examination

- (1) This regulation applies to an examination held pursuant to an order made under regulation 120.
- (2) An examinee shall be examined on oath and he shall answer such questions as the Court may put or allow to be put to him.
- (3) Subject to subregulation (2), an examination is conducted by the applicant, or by his attorney-at-law, and the person examined is entitled to be represented by an attorney-at-law who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him.

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- (4) The examinee may also be examined—
 - (a) if the applicant is the Official Receiver, by the liquidator; or
 - (b) if the applicant is the liquidator of the company, by the Official Receiver.
- (5) At a public examination, questions may, with the leave of the Court, be put to the examinee by any creditor or member of the company present at the examination or by the attorney-at-law representing such creditor or member.
- (6) An examination shall be recorded in writing and the examinee shall sign the record.
- (7) Subject to regulation 124, the written record of an examination is admissible in evidence in any proceedings under this Act other than proceedings for a disqualification order.

124 Incriminating answers and admissibility of record

- (1) An examinee is not excused from answering a question put to him at an examination held under regulation 116 or at an examination held pursuant to an order made under regulation 120 on the ground that the answer may incriminate him or tend to incriminate him.
- (2) The record of an examination held under regulation 116 or pursuant to an order made under regulation 120 is not admissible as evidence in any criminal proceedings against the examinee except if he is charged with the offence of perjury.

125 Offence

- (1) A person who, without reasonable excuse, fails to attend an examination ordered to be held under regulation 120, commits an offence and is liable on summary conviction, to one year imprisonment or to a fine of \$25,000 or to both.
- (2) If a person without reasonable excuse fails at any time to attend an examination ordered to be held under regulation 120, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination, the Court may cause a warrant to be issued to a police officer or a prescribed officer of the Court—
 - (a) for the arrest of that person; and
 - (b) for the seizure of any books, papers, records, money or goods in that person's possession.

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- (3) In such a case the Court may authorise the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with these Regulations, until such time as the court may order.

Statement of affairs

126 Notice to be given by liquidator

- (1) If a liquidator requires a person to prepare a statement of affairs and submit it to him, he shall send a written notice to that person.
- (2) A notice requiring a person to submit a statement of affairs shall state—
- (a) the names and addresses of all other persons, if any, to whom the same notice has been sent;
 - (b) the dates within which the statement of affairs shall be made up to;
 - (c) the time within which the statement shall be delivered to the liquidator, which shall be no earlier than eighteen days after the date upon which the notice is sent to the person;
 - (d) the effect of regulation 127(3) (failure to submit statement of affairs and verifying affidavit an offence); and
 - (e) the effect of regulation 116, if appropriate (duty to provide information and attend on liquidator).
- (2) A notice under subregulation (1) shall be accompanied by the forms required for the preparation of the statement of affairs.
- (3) For the purposes of subregulation (1)(b), a statement of affairs shall be made up to a date not more than fourteen days before the date of commencement of the liquidation.

127 Statement of affairs

- (1) A statement of affairs shall be in the approved form and contain the following information and such other information as is specified in the approved form—
- (a) a list of the company's assets, divided into such categories as are appropriate for easy identification, with estimated values assigned to each category;
 - (b) a list of the liabilities of the company;

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- (c)* in the case of any property on which a claim against the company is wholly or partly secured, particulars of the claim and its amount, and of how and when the security was created;
 - (d)* the names and addresses of the company's preferential creditors with the amounts of their respective claims;
 - (e)* the names and addresses of the company's unsecured creditors, with the amounts of their respective claims;
 - (f)* particulars of any debts owed by or to the company to or by connected persons;
 - (g)* the names and addresses of the company's members, with details of their respective shareholdings.
- (2) Subject to section 328 of the Act, a person required by a liquidator to prepare and submit a statement of affairs shall verify the statement of affairs by affidavit and submit the statement of affairs to the liquidator, together with the verifying affidavit, on or before the date specified in the notice sent to him under regulation 126(1).
- (3) A person who, without reasonable excuse, contravenes subregulation (2) commits an offence and is liable on summary conviction, to six months' imprisonment or to a fine of \$25,000 or to both.

128 Affidavit of concurrence

- (1) A person required by a liquidator to prepare and submit a statement of affairs may, instead, submit an affidavit of concurrence.
- (2) Subject to subregulation (4), an affidavit of concurrence is an affidavit stating that the maker of the affidavit—
- (a)* has been provided with a statement of affairs of a company prepared and verified by another person in accordance with the Act and these Regulations following a notice sent to him by the liquidator;
 - (b)* concurs that the statement of affairs is complete and accurate and is not, in any respect, misleading; and
 - (c)* has sufficient direct knowledge of the company's affairs to make the affidavit.
- (3) A statement of affairs, with which the maker concurs, shall be exhibited to an affidavit of concurrence.

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- (4) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, if the person making the affidavit of concurrence considers the statement of affairs to be erroneous or misleading or he is without the direct knowledge necessary for concurring with it.
- (5) A person who submits an affidavit of concurrence to a liquidator on or before the date specified in the notice sent to him is not guilty of an offence under regulation 127(3).

129 Filing of statement of affairs and affidavit of concurrence

- (1) Subject to section 328 of the Act and to subregulation (2), a liquidator shall as soon as reasonably practicable after receiving a verified statement of affairs or an affidavit of concurrence, file a copy with the Registrar and with the Court.
- (2) A liquidator appointed by the members of a company is not required to file a verified statement of affairs or an affidavit of concurrence with the Court.

130 Expenses of statement of affairs

- (1) Subject to subregulation (3), a person preparing a statement of affairs and making a verifying affidavit shall be allowed and paid by the liquidator out of the assets of the company any expenses he incurs in so doing which the liquidator considers reasonable.
- (2) This regulation does not relieve a person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to, the liquidator.
- (3) No payment may be made to the liquidator or any of his associates in respect of any assistance given to a person in the preparation of his statement of affairs unless approved by the creditors' committee.

131 Order for limited disclosure

- (1) If the Court makes an order of limited disclosure under section 328 of the Act in respect of a statement of affairs, the liquidator shall, as soon as reasonably practicable, file the verified statement of affairs with the Registrar, to the extent provided by the order.
- (2) If there is a material change in circumstances rendering the limit on disclosure, or any part of it, unnecessary, the liquidator shall, as

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soon as reasonably practicable after the change, apply to the Court for the order to be varied or rescinded.

- (3) The liquidator shall, as soon as reasonably practicable after the making of an order under subregulation (2), file the verified statement of affairs with the Registrar, to the extent provided by the order.

132 Application by creditor for disclosure

- (1) If a creditor seeks disclosure of a statement of affairs or a specified part of a statement of affairs in relation to which an order for limited disclosure has been made under section 328 of the Act, he may apply to the Court for an order that the liquidator disclose it or a specified part of it.
- (2) An application under subregulation (1) shall be—
 - (a) supported by an affidavit; and
 - (b) served on the liquidator, together with the supporting affidavit, not more than three business days prior to the date fixed for the hearing.
- (3) The Court may make an order for disclosure to the creditor subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

Creditors' committee

133 Establishment of creditors' committee

- (1) The creditors of a company in liquidation may, by resolution passed at a meeting, establish a creditors' committee at any time after the appointment of the liquidator.
- (2) A resolution to establish a creditors' committee shall also appoint the first members of the committee, each of whom shall be eligible to serve on the committee in accordance with these Regulations.
- (3) A resolution to establish a creditors' committee may only be passed—
 - (a) at a meeting called under section 281 of the Act; or
 - (b) at a meeting requisitioned for the purpose by at least 10% in value of the creditors of the company.

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- (4) If a creditors' committee is established, notice shall be given in accordance with these Regulations.

134 Notice of establishment of committee

- (1) If the liquidator is satisfied that a creditors' committee has been validly established, he shall, within five business days of the passing of the resolution, file a notice to that effect—
- (a) in the case of a liquidator appointed by the Court, with the Registrar and the Court; or
 - (b) in the case of a liquidator appointed by the members of the company, with the Registrar.
- (2) The notice required to be filed under subregulation (1) shall specify the names and addresses of the persons appointed to the creditors' committee.
- (3) The creditors' committee cannot act until the relevant notice is filed by the liquidator under subregulation (1).
- (4) The appointment of a member of a creditors' committee may be in the form of the appointment of a designated representative of the member.

135 Functions and powers of creditors' committee

- (1) The functions of a creditors' committee are to—
- (a) consult with the liquidator about matters relating to the liquidation;
 - (b) receive and consider reports of the liquidator;
 - (c) assist the liquidator in discharging his functions; and
 - (d) discharge any other functions assigned to it under the Act or these Regulations.
- (2) A creditors' committee may—
- (a) call a meeting of creditors;
 - (b) on giving the liquidator reasonable notice, require him to provide the committee with such reports and information concerning the liquidation as the committee reasonably requires; and
 - (c) on giving the liquidator not less than five business days' notice, require him to attend before the committee at any

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reasonable time to provide it with such information and explanations concerning the liquidation as it reasonably requires.

- (3) If the creditors' committee requires the attendance of the liquidator at a meeting under subregulation (2)(c)—
 - (a) the notice shall be signed in writing by a majority of the members of the committee; and
 - (b) the meeting shall be fixed for a business day and shall be held at such time and place as the committee may agree with the liquidator.
- (4) The designated representative of a committee member may sign a notice under subregulation (3)(a) on the member's behalf.
- (5) Unless expressly permitted to do so by the Act or these Regulations, a creditors' committee cannot give directions to the liquidator.
- (6) A creditors' committee may, by resolution, adopt rules that are not inconsistent with the Act or these Regulations.

136 Composition of committee and eligibility to act

- (1) A creditors committee shall comprise at least three but not more than five members each of whom shall be a creditor of the company—
 - (a) who has consented in writing to serve on the committee; and
 - (b) whose claim has not been rejected for the purposes of his entitlement to vote or for distribution purposes.
- (2) A body corporate may be a member of the creditors' committee, but it cannot act as a member otherwise than by its designated representative appointed under regulation 137.

137 Committee member's designated representative

- (1) A committee member may be represented by another person authorised by him as his designated representative for that purpose.
- (2) A person acting as the designated representative of a committee member shall hold a letter of authority entitling him to act, either generally or specifically, and signed by or on behalf of the committee member.

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- (3) The chair at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority and may exclude him if it appears that his authority is deficient.
- (4) No committee member may be represented by—
 - (a) a body corporate;
 - (b) a person who is an undischarged bankrupt; or
 - (c) a person who is disqualified for appointment as a director of a company under section 140 of the Act.
- (5) No person shall, on the same committee, act at one and the same time as representative of more than one committee member.
- (6) If a member's representative signs any document on the member's behalf, the fact that he so signs shall be stated below his signature.

138 Resignation and termination of committee member

- (1) A member of a creditors' committee may resign by giving notice in writing to the liquidator.
- (2) The membership of a committee member is terminated if—
 - (a) he becomes bankrupt or compounds or arranges with his creditors;
 - (b) he is absent from three consecutive meetings of the committee without the leave of the other members;
 - (c) ceases to be, or is found never to have been, a creditor; or
 - (d) in the case of the designated representative of a member, his designation as a designated representative is terminated by the member he represents.
- (3) A member of the committee may be removed by a resolution of creditors of which he has been given at least five business days' notice, stating the object of that meeting.
- (4) If a member of the creditors' committee becomes bankrupt, his bankruptcy trustee replaces him as a member of the committee.

139 Vacancies and appointment of new members

- (1) If there is a vacancy in the membership of the committee, the continuing members of the committee, if not less than two in number, may continue to act.

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- (2) The continuing members of the committee, or if their number has fallen below two, the liquidator, may appoint a person eligible under regulation 136 as a member of the committee to fill a vacancy.
- (3) If there is any change in the membership of the committee, the liquidator shall, within five business days, file a notice specifying the members of the committee following the change—
 - (a) in the case of a liquidator appointed by the Court, with the Registrar and the Court; or
 - (b) in the case of a liquidator appointed by the members of the company, with the Registrar.
- (4) The notice required to be filed under subregulation (3) shall specify the names and addresses of the members of the creditors' committee.

140 Formal defects

The acts of a creditors' committee are valid despite any defect in the appointment, election or qualifications of any member of the committee or in the formalities of its establishment.

141 Committee may establish own procedures

- (1) A committee may, by resolution, adopt rules governing its proceedings that are not inconsistent with the Act or these Regulations.
- (2) Without limiting subregulation (1), the committee may agree procedures for—
 - (a) the participation by members in meetings by telephone or other electronic means; and
 - (b) the passing of written resolutions.

142 Meetings of a creditors' committee

- (1) Subject to subregulation (2), meetings of a creditors' committee—
 - (a) may be held at such venues as the committee may resolve; and
 - (b) may be called by a member of the committee or by the liquidator.

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- (2) If a meeting has not already been held, the liquidator shall call a first meeting to be held not less than twenty-eight days after the committee's establishment.
- (3) The person convening a meeting shall give seven days' written notice of the venue of the meeting to each member of the committee and to the liquidator.
- (4) Despite subregulation (3), a member of the committee may, before or at the meeting, waive his entitlement to notice under that subregulation.

143 Chair of meetings

- (1) Subject to subregulation (2), every meeting of the creditors' committee shall be chaired by the liquidator.
- (2) If the liquidator is unable to attend the meeting, he may nominate as chair—
 - (a) an eligible insolvency practitioner; or
 - (b) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters.
- (3) If a meeting of the creditors' committee is to be held outside Montserrat and the liquidator will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chair.
- (4) If a meeting of the creditors' committee is held pursuant to a notice issued by the committee under regulation 135(2)(a), the members of the creditors' committee may elect one of the members of the committee to be chair of the meeting in place of the liquidator or his nominee.

144 Quorum and resolutions

- (1) A meeting is quorate if notice of the meeting has been given to all members and a majority of its members are present at the meeting.
- (2) At a meeting of the committee, each member has one vote, and a resolution is passed by a simple majority of those members who are present and vote.
- (3) A resolution shall be recorded in writing, signed by the chair and retained as a record in the liquidation.

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145 Written resolutions

- (1) The liquidator may seek to obtain the agreement of members of the creditors' committee to a resolution by sending written notice of the resolution to each member by such method as may be agreed between the liquidator and the committee member.
- (2) A notice sent to a member under subregulation (1) shall be set out so as to enable the committee member to signify his dissent or agreement to each separate resolution on which the liquidator seeks agreement.
- (3) Any member of the committee may, within seven days of a notice being sent out under subregulation (1), require the liquidator to call a meeting of the creditors' committee to consider the matters raised by the resolution.
- (4) If no member requires a meeting to be called, the resolution is deemed to have been passed when the liquidator is notified in writing by a majority of the committee members that they agree with it.
- (5) A resolution passed under this regulation shall be treated as a resolution passed at a meeting of the creditors' committee.
- (6) Without limiting subregulation (1), written notice may be given by post, fax or e-mail.

146 Cooperation by liquidator with committee

Without limiting regulation 135(2)(b) and (c), a requirement of the committee under that regulation to provide it with reports or information is not reasonable if the liquidator considers that—

- (a) the requirement is frivolous or unreasonable;
- (b) the cost of complying with the requirement would be excessive having regard to the relative importance of the report or information;
- (c) the company does not have sufficient funds to enable him to comply with the requirement.

147 Termination of liquidation

The creditors' committee ceases to exist on the termination of the liquidation in which it was appointed.

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148 Expenses of members

- (1) Subject to subregulation (2), the liquidator shall, out of the assets of the company, defray, in the prescribed order of priority, any reasonable travelling expenses directly incurred by members of the creditors' committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business, as an expense of the liquidation.
- (2) Subregulation (1) does not apply to any meeting of the committee held within six weeks of a previous meeting unless the meeting in question is summoned at the instance of the liquidator.

Remuneration of liquidator

149 Remuneration of liquidator

- (1) The remuneration of a liquidator is fixed—
 - (a) by the creditors' committee, if any;
 - (b) if there is no creditors' committee, if approved in accordance with these Regulations by 75% in value of the creditors; or
 - (c) by the Court on an application made under subregulation (2).
- (2) A liquidator may apply to the Court to fix his remuneration and expenses, or to fix an interim payment under regulation 152(3), if—
 - (a) no creditors' committee is appointed and the creditors fail, for whatever reason, to fix his remuneration and expenses, or an interim payment;
 - (b) the creditors' committee fails, for whatever reason, to fix his remuneration and expenses, or an interim payment; or
 - (c) he considers that the remuneration and expenses, or an interim payment, fixed by the creditors' committee or the creditors—
 - (i) is insufficient;
 - (ii) is not in an appropriate currency; or
 - (iii) is on unacceptable terms.
- (3) Not less than fourteen days' notice of an application under subregulation (2) shall be given—

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- (a) to each member of the creditors' committee; or
 - (b) if there is no creditors' committee, to such creditors as the Court may direct.
- (4) The members of the creditors' committee or, if there is no creditors' committee, the creditors given notice of the hearing may appear and be heard at the hearing of an application made under subregulation (2).
- (5) On the hearing of an application under subregulation (2), the Court shall fix the remuneration and expenses of the liquidator at such amount as it considers appropriate.
- (6) In this regulation, "liquidator" does not include a provisional liquidator.

150 Application by creditors for reduction of remuneration

- (1) If the creditors' committee has fixed the remuneration and expenses of a liquidator, a creditor may, with the concurrence of at least 25% in value of the creditors, including himself, apply to the Court for an order reducing the remuneration and expenses fixed on the grounds that they are excessive.
- (2) On an application made under subregulation (1), the Court may—
 - (a) if it considers that the applicant has not shown sufficient cause for a reduction, dismiss the application; or
 - (b) set a venue for the application to be heard.
- (3) An application shall not be dismissed under subregulation (2)(a) unless the Court has given the applicant the opportunity to attend the Court for an ex parte hearing, of which he has been given at least seven days' notice.
- (4) An applicant for an order under subregulation (1) shall give the liquidator not less than fourteen days' notice of the date, time and place set by the Court under subregulation (2).
- (5) If it considers that the remuneration and expenses of the liquidator fixed by the creditors' committee is excessive, the Court shall fix the remuneration and expenses to such amount as it considers appropriate.

151 General principles to be applied in fixing remuneration of liquidator

- (1) This regulation applies to the fixing of the remuneration of—

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- (a) a liquidator by—

 - (i) a creditors committee under regulation 149(1)(a);
 - (ii) the creditors under regulation 149(1)(b);
 - (iii) the Court under regulation 149(1)(c); and
 - (b) a provisional liquidator by the Court under section 273 of the Act.
- (2) Subject to subregulation (3), the remuneration of a liquidator shall be fixed by reference to the time properly given by him and his staff in carrying out his duties in the liquidation.
- (3) If the liquidator so requests and the creditors' committee or the Court considers that the circumstances justify it, the remuneration of a liquidator may be fixed in whole or in part as a percentage of the value of the assets realised and the value of the assets distributed, or as a percentage of either.
- (4) When fixing the remuneration of a liquidator in the circumstances specified in subregulation (1) or sanctioning an interim payment under regulation 152, the creditors' committee or the Court—
- (a) shall take into account—
 - (i) the need for the remuneration to be fair and reasonable;
 - (ii) the time properly spent by the liquidator and his staff in carrying out his duties;
 - (iii) the complexity of the liquidation and whether the liquidator has been required to take any responsibility of an exceptional kind or degree;
 - (iv) the effectiveness with which the liquidator is carrying out, or has carried out, his duties;
 - (v) the value and nature of the assets with which the liquidator has had to deal;
 - (vi) the hourly rates charged by other liquidators, both within and outside Montserrat, in undertaking similar work; and
 - (b) may take into account—
 - (i) the commercial and personal risks accepted by the liquidator;

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- (ii) the time spent by the liquidator and his staff outside Montserrat and the amount of travelling required;
- (iii) the standards and practice used for assessing remuneration in jurisdictions other than Montserrat.

152 Time for fixing remuneration and interim payments

- (1) The remuneration of the liquidator shall be fixed by the creditors' committee or the Court after the conclusion of the liquidation.
- (2) In fixing the remuneration of the liquidator, the creditors' committee or the Court shall take account of any interim payment made under subregulation (3).
- (3) Despite subregulation (1), a creditors' committee, the creditors or the Court may at any time set an interim payment to be made to the liquidator on account of his remuneration.
- (4) An interim payment may be made under subregulation (3) subject to such conditions as the creditors' committee, the creditors or the Court considers appropriate.

Court procedures

153 Application of the Civil Procedure Rules

- (1) Despite Rule 2.2(3)(b) of the Civil Procedure Rules, except to the extent that they are inconsistent with the Act or these Regulations or a practice direction issued under regulation 156 and subject to subregulation (2), the Civil Procedure Rules apply to liquidation proceedings, with necessary modifications.
- (2) The provisions of the Civil Procedure Rules specified in Schedule 2 do not apply in the liquidation of a company.

154 Filing of documents with the Court

Every document filed with the Court shall have endorsed upon it the date and time at which it was filed and, if these Regulations so provide, shall be sealed.

155 Filing of documents with the Court in approved electronic form

- (1) If these Regulations, the Civil Procedure Rules or any other enactment permit a document to be filed with the Court in approved electronic form, the document may be filed by—

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- (a) faxing the document to the fax number designated by the Court for the purpose;
 - (b) sending it as an attachment to an e-mail to the e-mail address designated by the Court for the purpose; or
 - (c) in accordance with the enactment.
- (2) Subject to any specific provisions in these Regulations, the filing of a document in accordance with this regulation shall have the same effect for all purposes as a document filed in paper form.
- (3) A person filing a document in approved electronic form shall ensure that—
 - (a) if the document is faxed, a fax transmission report detailing the time and date of the fax transmission and the telephone number to which the notice was faxed and containing a copy of the first page (in part or in full) of the document faxed is created by the fax machine that is used to fax the document and retained; or
 - (b) if the document is sent as an e-mail attachment, a record of the time and date of the e-mail and the address to which it was sent together with a copy of the document sent as an attachment is retained.
- (4) A copy of the faxed document or of the e-mail attachment shall be sent as soon as reasonably practicable to the Court, to be placed on the Court file.
- (5) A person filing a document in approved electronic form shall take three copies of the faxed document or the hard copy required by subregulation (3)(b) and any additional supporting documents required by the Rules to the Court on the next day that the Court is open for business.

156 Practice Directions

- (1) The Chief Justice may issue a practice direction if required or permitted by the Act or these Regulations.
- (2) If there is no express provision in the Act or these Regulations, the Chief Justice may issue directions as to the practice and procedure to be followed with regard to insolvency proceedings before the Court.

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- (3) In the case of any inconsistency between a practice direction issued under this regulation and the Civil Procedure Rules, the practice direction issued under this regulation prevails.
- (4) A practice direction issued under this regulation—
 - (a) shall be published in the *Gazette*; and
 - (b) comes into effect on its publication in the *Gazette* or on such later date as may be specified in the direction.

157 Compliance with practice directions

A party shall comply with any practice direction issued under regulation 156, unless he has a valid reason for not complying.

158 Practice guides

- (1) The Court may issue practice guides to assist parties concerned with insolvency proceedings before the Court.
- (2) Parties shall have regard to any relevant practice guide.
- (3) The Court may take account of any failure of a party to comply with any relevant practice guide when considering any order for costs.

PART 4—MISCELLANEOUS

159 Service of documents on company

- (1) For the purposes of section 103(1) of the Act, the following are the prescribed methods for sending a document to the registered office or registered agent of the company—
 - (a) in the case of a document in legal proceedings—
 - (i) by serving it in accordance with the Civil Procedure Rules; or
 - (ii) by sending it in accordance with any directions as to service given by the court having jurisdiction in the proceedings;
 - (b) in the case of any other document—
 - (i) by posting the document to a postal box which the registered agent is using at the time;

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- (ii) by sending it by facsimile transmission to a telephone number used by the registered agent for the transmission of documents by facsimile; or
 - (iii) by sending it by email to an email address used by the registered agent at the time.
- (2) For the purposes of section 103(2) of the Act—
 - (a) if a document is served by leaving it at the company's registered office, service is considered to be effective if it is proved—
 - (i) that the document was handed to an individual who is a director, officer or employee of the company; or
 - (ii) if an individual referred to in subparagraph (i) refused to accept the document, that the document was brought to the attention of, and left in a place accessible to, the individual;
 - (b) if a document is served by leaving it at the office of the company's registered agent, service is considered to be effective if it is proved—
 - (i) that the document was handed to an individual who is a director, officer or employee of the registered agent; or
 - (ii) if an individual referred to in subparagraph (i) refused to accept the document, that the document was brought to the attention of, and left in a place accessible to, the individual;
 - (c) if a document is posted to a postal box, the document is deemed to be received five working days after it is posted, or such shorter period as a court having jurisdiction in proceedings any matter may determine;
 - (d) if a document is sent by facsimile transmission, the document is deemed to have been received on the working day following the day on which it was sent; and
 - (e) if a document is sent by email, the document is deemed to have been received on the working day following the day on which it was sent.
- (3) In proving service of a document by—
 - (a) post, it is sufficient to prove that—
 - (i) the document was properly addressed; and

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- (ii) all postal or delivery charges were paid; and
- (iii) the document was posted to the post box concerned;
- (b) facsimile transmission, it is sufficient to prove that the document was properly transmitted by facsimile machine to the company;
- (c) email, it is sufficient to prove that—
 - (i) the document was properly addressed; and
 - (ii) the document was properly sent to the email address.
- (4) A document is not to be deemed to have been served on a person in accordance with subregulation (2)(c), (d) or (e) if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Companies Registry

160 Information to be contained in Register of Registered Charges

The Register of Registered Charges maintained in respect of a company shall contain the following information in respect of each charge registered—

- (a) the registered name and company number of the company that has created the charge;
- (b) the date and time of registration of the charge;
- (c) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (d) a short description of the liability secured by the charge;
- (e) a short description of the property charged;
- (f) the name and address of the trustee for the security or, if there is no trustee, the name and address of the chargee;
- (g) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge;
- (h) the name and address of the person who filed the charge for registration and the person's entitlement to file the charge;

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- (i) details of any variation of the charge registered under section 171 of the Act;
- (j) the date and time of registration of any variation of the charge registered under section 171 of the Act;
- (k) the name and address of the person who filed the variation of the charge for registration and the person's entitlement to file the variation;
- (l) if a notice of satisfaction or release is registered under section 172 of the Act, details of the satisfaction of any registered charge or, if a charge has ceased to affect the property, or any part of the property of the company, details of the property that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property; and
- (m) the date and time of registration of the notice of satisfaction or release registered under section 172 of the Act.

161 Prescribed particulars of members and directors

The prescribed particulars of a member and of a director for the purposes of section 373 of the Act, are the particulars required by the Act and these Regulations to be entered in the company's own register of members or register of directors, as the case may be and, in the case of a nominee shareholder include particulars with respect to the person for whom the shareholder is a nominee.

162 Certificates of translation

- (1) This regulation applies if a translation into the English language of a name of a company or foreign company or any document required to be filed, submitted or provided to the Registrar, is required by the Act or these Regulations to be certified as accurate.
- (2) The person who made the translation shall certify, or verify, before a person authorised to act as a Notary Public or to administer oaths that—
 - (a) the translation is an accurate translation of the document concerned; and
 - (b) he has the necessary competence to translate the document into English.
- (3) If a translation is certified or verified in a country outside Montserrat, the translation shall be certified or verified before a person authorised under the law of the country concerned—

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- (a)* to act as a Notary Public, or equivalent; or
 - (b)* administer oaths, or their equivalent.
- (4)** The requirements of subregulation (2) or (3) shall be treated as satisfied without the need for any certification or verification before a Notary Public (or its equivalent) or other person qualified to administer oaths if the translation of a document is carried out by a person who is duly sworn and appointed to translate documents—
 - (a)* by a court in or outside Montserrat; or
 - (b)* by the Government of Montserrat or the government of a country or territory outside Montserrat.
- (5)** A person who translates a document by virtue of subregulation (4) shall indicate in writing the court or government by which the person is appointed.

163 Filing of documents with the Registrar of Companies

- (1)** Subject to subregulations (2), (3) and (6), a document required or permitted to be filed under the Act shall be filed by electronic means using the Electronic Registration System.
- (2)** Subregulation (1) does not apply to a document which cannot be filed using the Electronic Registration System.
- (3)** The Registrar may, by written notice exempt from subsection (1)—
 - (a)* a company or a specified category or description of companies; or
 - (b)* a document or a specified category or description of documents.
- (4)** If a document required or permitted under the Act or these Regulations to be filed cannot be filed using the Electronic Registration System or is covered by an exemption under subsection (2), the document is filed by delivering or posting it to the Registrar.
- (5)** A document is filed with the Registrar of Companies—
 - (a)* in the case of a document filed electronically, at the time and on the date that it is recorded as having been filed by the Electronic Registry System;
 - (b)* in the case of a document that is not filed electronically, on the date that it is received at the Companies Registry or, if it

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is received at a time when the Companies Registry is closed,
on the next day on which the Companies Registry is open.

164 Notices, returns and documents to be filed by companies and foreign companies

- (1) The notices, returns and documents specified in column 1 of the table in Schedule 3 shall be filed by companies or foreign companies on or before the due date, or within the period specified, in column 2 of the table in Schedule 3.
- (2) A notice, return or document specified in Schedule 3 shall, if a form has been approved, be in and contain the particulars specified in the approved form.
- (3) This regulation and Schedule 3 do not limit—
 - (a) any requirement of the Act to file a notice, document or return;
 - (b) the filing of any notice, document or return permitted to be filed by the Act.

165 Certificates of good standing

A certificate of good standing issued under section 376 of the Act shall state—

- (a) that, at the date of the certificate, the company—
 - (i) is on the Register of Companies; and
 - (ii) has paid all fees and penalties due under the Act; and
- (b) whether, at the date of the certificate—
 - (i) the company has filed articles of merger or consolidation that have not yet become effective;
 - (ii) the company has filed articles of arrangement that have not yet become effective;
 - (iii) the company is in voluntary liquidation;
 - (iv) the company is in liquidation or receivership and, if appropriate, stating that a receiver-manager has been appointed; or
 - (v) any proceedings to strike the name of the company off the Register of Companies have been instituted.

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166 Publication of approved forms

- (1) For the purposes of section 383(1) of the Act, the Commission publishes an approved form in the prescribed manner by—
 - (a) publishing the form on its website; and
 - (b) providing notice of the publication of the form to persons that the Commission considers will be substantially affected.
- (2) The Commission may comply with subregulation (1)(a) by providing notice in such manner as the Commission considers appropriate to any professional or trade associations of which persons who may be affected by the form are members.

Fees and penalties

167 Fees and late payment penalties

The fees and late payment penalties specified in Schedule 4 shall be payable to the Registrar in respect of the matters to which they relate.

168 Registrar may impose financial penalties

- (1) The Registrar may impose a financial penalty on a company or foreign company in respect of a breach of or failure to comply with the Act and the Regulations specified in Schedule 5.
- (2) Subject to regulation 169(4) and (5), in determining the financial penalty to be imposed on a company or a foreign company, the Registrar—
 - (a) shall take into account the following matters—
 - (i) the nature and seriousness of the contravention;
 - (ii) in respect of the failure of a company or foreign company to file a document specified in Schedule 3 on or before the due date, the length of the period by which the document is overdue or was filed late;
 - (iii) whether the company or foreign company has previously contravened the Act or the Regulations; and
 - (iv) whether the contravention was deliberate or reckless or caused by the negligence of the company or foreign company; and

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- (b)* may take into account such other matters as he considers appropriate.
- (3) The maximum financial penalty that the Registrar may impose is \$50,000.

169 Procedure for imposition of financial penalties

- (1) If he intends to impose a financial penalty on a company or foreign company, the Registrar shall send a notice of his intention to the company—
 - (a)* specifying—
 - (i)* the reason for the imposition of the financial penalty, and
 - (ii)* the amount of the penalty that he intends to impose; and
 - (b)* advising the company of its right to make written representations to the Registrar in accordance with subregulation (2).
- (2) A company or foreign company that receives a notice under subregulation (1) may, within twenty-eight days of the date upon which it receives the notice, send written representations to the Registrar—
 - (a)* denying that the financial penalty is payable; or
 - (b)* providing reasons that it considers justify the imposition of a lower penalty.
- (3) After the expiration of twenty-eight days from the date that he sent a notice under subregulation (1) to a company or foreign company, the Registrar may send the company a penalty notice stating—
 - (a)* the reason for the imposition of the financial penalty;
 - (b)* the date on which notice of intention to impose a financial penalty was sent to the company;
 - (c)* the amount of the penalty imposed; and
 - (d)* a date, not less than fourteen days after the date of the penalty notice, by which the penalty shall be paid to the Registrar.
- (4) The penalty imposed in a penalty notice shall not exceed the amount specified in the notice of intention sent under subregulation (1).

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- (5) Before imposing a financial penalty against a licensee under subregulation (3), the Registrar shall consider any written representations received from the company and, if the Registrar receives such representations, it must provide reasons for the action taken.
- (6) A company or foreign company that receives a penalty notice under this regulation shall pay the penalty stated to the Registrar on or before the date specified in the notice.

170. Transitional provisions

Regulation 163(1), (2) and (3) come into force six weeks after the commencement of these Regulations.

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SCHEDULE 1

(Regulation 29)

CHARACTERS PERMITTED IN A COMPANY NAME

The following characters are permitted in a company name:

1. The letters A to Z, in lower and uppercase.
2. The numerals 0 to 9.
3. Any roman numerals.
4. The following punctuation marks:
 - Full stop .
 - Comma ,
 - Dash -
 - Underscore _
 - Apostrophe ‘’
 - Brackets [], () or {}
 - Exclamation mark !
 - Question mark ?
 - Inverted commas“”
5. The following symbols:
 - @ & * / \ < > + = # %
6. The Registrar may, generally or on a case-by-case basis, permit the use of—
 - (a) accents with one or more letters; and
 - (b) symbols that indicate a particular currency.

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SCHEDULE 2
(Regulation 153)

**PROVISIONS OF CIVIL PROCEDURE RULES NOT APPLICABLE
IN LIQUIDATIONS**

PART	PROVISION NOT APPLICABLE
Part 5 (Service of Claim Form Within Jurisdiction)	Rule 5.2 (Statement of claim to be served with claim form). Rule 5.16 (Service of claim by contractually agreed method). Rule 5.17 (Service of claim form on agent of principal who is out of jurisdiction). Rule 5.19 (Deemed date of service), paragraph (3) not applicable.
Part 7 (Service of Court Process out of Jurisdiction)	Rule 7.1 (Scope of this Part), paragraph (2)(a) and (2)(c) only. Rule 7.6 (Acknowledgement of service and defence where claim served out of the jurisdiction)
Part 8 (How to Start Proceedings)	Entire Part.
Part 9 (Acknowledgement of Service and Notice of Intention to Defend)	Entire Part.

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Part 10 (Defence)	Entire Part.
Part 12 (Default Judgements)	Entire Part.
Part 13 (Setting Aside or Varying Default Judgement)	Entire Part.
Part 14 (Judgement on Admissions)	Entire Part.
Part 15 (Summary Judgement)	Entire Part.
Part 16 (Assessment of Damages);	Entire Part.
Part 17 (Interim Remedies)	Rule 17.5 (Interim payments - general procedure). Rule 17.6 (Interim payments - conditions to be satisfied and matters to be taken into account). Rule 17.7 (Powers of Court where it has made an order for an interim payment).

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Part 18 (Ancillary Claims)	Entire Part.
Part 19 (Addition and Substitution of Parties)	Entire Part.
Part 20 (Changes to Statement of Case)	Entire Part.
Part 21 (Representative Parties)	Entire Part
Part 23 (Minors and Patients)	Entire Part.
Part 26 (Case Management - The Court's Powers)	Rule 26.1 (The court's general powers of management), paragraph (2)(a) and (2)(b) not applicable.
Part 60 (Appeals to the High Court)	Entire Part.

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SCHEDULE 3
(Regulations 164 and 168)

NOTICES, DOCUMENTS AND RETURNS REQUIRED TO BE FILED

A company or foreign company is required to file the notices, returns and documents specified in the first column on or before the due date, or within the period specified, in the fourth column.

Document	Approved Form (if any)	Section of Act	Date Due or Period within which Document to be Filed (if applicable)
1. Incorporation of a Company			
Application to incorporate a company	C-IN1	5	
Consent of registered agent to act		5	With application to incorporate
Copy of articles of incorporation		7	With application to incorporate
Application to reserve name	C-NR	20	
Registration of particulars of members and directors	C-MD	373	Not more than 14 days after incorporation
Notification of appointment of secretary of public company	C-AS C-ACS	135	Not more than 30 days after appointment
2. PSC Register			
Notice of details of PSC information and verification evidence	C-PSC-1	95	Not more than 14 days after incorporation
Notice of change in PSC information	C-C-PSC-1	95	Not more than 14 days after the later of—

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			(a) the date of the change in PSC information; or (b) the date on which the company first became aware of the change in PSC information
3. Changes to Information Registered			
Notice of amendment of articles		10	
Notice of restated articles		11	
Notice of by-laws Copy of by-laws made		13	Required for public company, optional for any other company
Notice of amendment or repeal of by-laws		13	
Application for change of registered name		16	
Notice of change in number of shares company authorised to issue		39	
Notice of execution or termination of unanimous shareholder agreement, with date of execution or termination		76	Not more than 15 days after execution or termination
Notice of appointment of registered agent (company not having registered agent)		81	
Notice of change in registered office		82	
Notice of change in registered agent		82	
Notice of intention to resign as registered agent, together with list provided to company		83	

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Notice of resignation of registered agent		83	
Notice or rescission of notice of intention to resign as registered agent		83	
Notice of change of secretary of public company		136	Not more than 14 days after— (a) the change occurring; or (b) the date on which the company first became aware of the change
Notice of change in prescribed particulars of a member or director	C-IN C-AD	373	Not more than fourteen days after the change
Notice of change of directors	C-AD	149	Not more than 14 days after— (a) the change occurring; or (b) the date on which the company first became aware of the change
Notice of termination of appointment of director	C-TD	149	Not more than 14 days after— (a) the change occurring; or (b) the date on which the company first became aware of the change
Notice of change in name or address of director, or change of other details	C-CD	149	Not more than 14 days after— (a) the change occurring; or

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			(b) the date on which the company first became aware of the change
4. Financial Returns			
Annual return		106	Not later than 1 st April of each year
Annual financial statements, reports and return of reporting company		112	Not less than 21 days before each annual meeting of members or immediately after signing of resolution under section 73 In any event, not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution under section 73 signed
Interim financial statements or related documents of reporting company		112	Immediately if— (a) sends documents to its members; or (b) is required to provide to public authority or recognised exchange
Certificate of solvency (companies other than reporting companies)		113	Not less than 21 days before each annual meeting of members or immediately after signing of resolution under section 73 In any event, not later than 15 months after the last date when the last preceding annual meeting should have been held or

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			a resolution under section 73 signed
5. Registration of Charges			
Application to register charge against company		170	
Application to register variation of registered charge		171	
Notice of satisfaction or release of registered charge		172	
Statutory declaration verifying matters stated in notice of satisfaction or release		172	
Notice stating name and address of person in Montserrat authorised to accept documents relating to charges sent by Registrar		173	With application to register charge or for variation of charge
Notice of change in person in Montserrat authorised to accept documents relating to charges sent by Registrar		173	
6. Merger, Consolidation and Arrangements			
Articles of merger or consolidation together with any resolution to amend articles of surviving company and, in the case of a consolidated company, articles for the consolidated company		192	
Articles of merger with subsidiary together with any resolution to amend articles of surviving company		193	
Merger or consolidation with foreign company - documents specified in section 195(2)(b) of the Act		195	

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Articles of arrangement		198	
Copy of order of Court approving arrangement		201	
7. Continuation			
Application by foreign company to continue under Act with accompanying documents		203	
Notice of continuance in jurisdiction outside Montserrat		206	
8. Foreign Companies			
Application by foreign company for registration under Part 12 of the Act, together with documents specified in section 218	C-IN-O	218	
Notice by foreign company of change in registered particulars		220	
Notice of intention to resign as registered agent of foreign company, together with list provided to company		222	
Notice of resignation of registered agent of foreign company		222	
Notice that foreign company has ceased to carry on business in Montserrat		226	
Application by foreign company, removed from the Register, to be registered	C-RR	228	
Financial statements and returns		230	
9. Strike-off and Dissolution			
Application to restore struck-off company to the Register		237	Before the dissolution of the company (7 years after date of strike-off)

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Notice of Court order to restore dissolved company to the Register		240	
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SCHEDULE 4

(Regulation 168)

FEES AND LATE PAYMENT PENALTIES

Companies Incorporated, Registered or Continued under the Act		
No.	Description	Fee (EC\$)
1.	For an application to incorporate a company—	
	<i>(a)</i> in the case of a company other than a non-profit company	400.00
	<i>(b)</i> in the case of a non-profit company	120.00
2.	For the issuance of a certificate of incorporation—	
	<i>(a)</i> in the case of a company other than a non-profit company	400.00
	<i>(b)</i> in the case of a non-profit company	120.00
3.	For an application to register a foreign company under Part 12 of the Act	1,000.00
4.	For the issuance of registration of a foreign company	350.00
5.	For filing an annual return on or before 1 April each year under section 106(3) of the Act	200.00
6.	For filing a notice of amendment of articles or by-laws	100.00

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7.	For filing restated articles	100.00
8.	For filing a notice of setting out details of a change in the number of shares the company is authorised to issue	500.00
9.	For issuance of a notice of registration of an amendment of articles or by-laws	100.00
10.	For issuance of a notice of registration of restated articles	100.00
11.	For an application to change the registered name of a company	100.00
12.	For the issuance of a certificate of change of name	100.00
13.	For an application to reserve a name for a company or intended company	50.00
14.	For filing a notice of change of registered office	100.00
15.	For filing notice of change of registered agent	100.00
16.	For filing articles of merger or consolidation	700.00
17.	For issuance of a certificate of merger or consolidation	100.00
18.	For filing articles of arrangement	700.00
19.	For issuance of a certificate certifying that the articles of arrangement have been registered	100.00

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20.	For filing a notice of a change in directors or of a change in the name or address of a director	100.00
21.	For an application by a reporting company under section 108 for authorisation to omit specified information from its financial statements	300.00
22.	For filing an application to restore a struck-off company to the Register	500.00
23.	For issuance of a certificate of restoration to the Register	100.00
24.	For filing notice of appointment of liquidator	100.00
25.	For a Certificate of Good Standing	150.00
26.	For issuance of a certificate of re-registration under paragraph 3 of Schedule 2 of the Act	25.00
<i>Foreign Companies Registered under Part 12 of the Act</i>		
27.	For an application by a foreign company for registration under Part 12 of the Act	1,000.00
28.	For issuance of a certificate of registration as a foreign company	350.00
29.	For registration of a change in particulars under section 220 of the Act	100.00
30.	For filing notice of ceasing to carry on business in Montserrat under section 226 of the Act	100.00

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31.	For subsequent registration of foreign company under section 228 of the Act	1,500.00
32.	For an in-person search of the Register of Foreign Companies	50.00
33.	For an electronic search of the Register of Foreign Companies	50.00
34.	For a search of the Register of Foreign Companies by the Registrar on behalf of a person requesting the search	100.00
<i>All Companies and Foreign Companies</i>		
35.	For filing a document for which a fee is not specified	50.00
36.	For an in-person search of the Register of Companies, the Register of Foreign Companies or the Register of Registered Charges	50.00
37.	For an electronic search of the Register of Companies, the Register of Foreign Companies or the Register of Registered Charges	50.00
38.	For a search of the Register of Companies, the Register of Foreign Companies or the Register of Registered Charges by the Registrar on behalf of a person requesting a search	100.00
39.	For issuance of any certificate for which a fee is not specified	100.00
40.	For certifying any document	100.00
41.	For provision of an uncertified copy of a document, or part of a document—	

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	<i>(a)</i> in the case of a printed document (per page)	10.00
	<i>(b)</i> in the case of a scanned document (per scan)	10.00

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SCHEDULE 5

(Regulation 168)

FINANCIAL PENALTIES

The Registrar may impose a financial penalty on a company or foreign company under the section specified in column 1 of the table below in respect of a breach of or failure to comply with the Act, as specified in column 2 of the table.

Column 1	Column 2
Section	Breach or Failure to Comply
95	Failure to file details of PSC information and verification evidence within 14 days of incorporation
95	Failure to file notice of change in PSC information within the time period specified in section 95
106	Failure to file an annual return on or before 1 April in any year
112	Failure by reporting company to file annual financial statements, reports and return within the time period specified in section 112
135	Failure by public company to file notice of appointment of secretary
136	Failure by public company to file notice of change of secretary
149	Failure to file notice of change of directors within the time period specified in section 149
149	Failure to file notice of change of termination of appointment of director within the time period specified in section 149

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149	Failure to file notice of change in name or address of director, or change of other details within the time period specified in section 149
373	Failure to file notice setting out prescribed particulars of members and directors within 14 days of incorporation
373	Failure to file notice of change in prescribed particulars of a member or director within 14 days of the change

Made by the Governor acting on the advice of Cabinet, after consultation with the Commission, this 21st day of March, 2024.

(Sgd.) Tanisha Christopher
CLERK OF CABINET

Published by exhibition by the Clerk of Cabinet at the Office of the Legislature, Farara Plaza, Brades, Montserrat, MSR1110, this 22nd day of March, 2024.

(Sgd.) Tanisha Christopher
CLERK OF CABINET