

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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	:	Index No. 653594/2018
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IN RE RENREN, INC.	:	Hon. Andrew Borrok
	:	
DERIVATIVE LITIGATION	:	Mot. Seq. No. 028
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**EXHIBIT SD3 TO THE THIRD AFFIRMATION OF
SAMUEL MARTIN PIERCE DAWSON**

This is the exhibit to the Third Affirmation of Samuel Martin Pierce Dawson

CAYMAN ISLANDS



COMPANIES ACT

(2022 Revision)

Supplement No. 5 published with Legislation Gazette No. 2 of 14th January, 2022.

name within six weeks of the date of such direction or within such longer period as the Registrar may think fit.

- (4) A company which defaults in complying with a direction under subsection (3) is liable to a fine of ten dollars for every day during which the default continues.

Company with power to issue bearer shares not to hold land in the Islands

- 32.** (1) A company which is empowered by any law or by its articles of association to issue bearer shares, certificates or coupons, has no power to hold land in the Islands:

Provided that the Minister charged with responsibility for Financial Services may, at that person's discretion, in the case of an exempt company so empowered that has never issued bearer shares, certificates or coupons, exempt that company in writing from subsection (1) for as long as it does not issue bearer shares, certificates or coupons.

- (2) If a company is in breach of subsection (1), section 185(2), (3) and (4) shall apply, *mutatis mutandis*, to the company as if it were a foreign company which had failed to comply with Part IX.
- (3) In this section —

“**hold land**” means to be the proprietor of a legal or beneficial interest in or claim to, or over immovable property whether freehold or leasehold and includes being the proprietor of a legal or beneficial interest in the equity capital of a company which holds land; and

“**equity capital**” with respect to a company includes shares, stock and scrip whether registered, inscribed or bearer which (other than by way of a fixed and predetermined right to interest and repayment of subscribed capital at par) entitles the owner to any variable right of participation in the profits of the company whether by way of dividend, bonus or conversion, or to share in the distribution of the assets of the company upon a winding up.

PART III - Distribution of Capital and Liability of Members of Companies and Associations

Distribution of Capital

Share or interest in company to be personalty

- 33.** (1) A share or other interest of a member in a company —
- (a) is personal estate and not of the nature of real estate; and
- (b) is capable of being transferred if —



- (i) a transfer is expressly or impliedly permitted by the regulations of the company; and
 - (ii) any restriction or condition on the transfer of the shares or interest set out in the regulations of the company is observed.
- (2) The shares in a company having a capital divided into shares must each be distinguished by an appropriate number except that if, at any time —
- (a) all the issued shares in the company; or
 - (b) all the issued shares in the company of a particular class,
- are fully paid up and rank *pari passu* for all purposes, none of those shares need thereafter have a distinguishing number so long as it remains fully paid up and ranks *pari passu* for all purposes with all the shares in the company or all the shares of the particular class of shares, as the case may be, for the time being issued and fully paid up.
- (3) A company limited by shares, or a company limited by guarantee and having a share capital, if so authorised by its articles, may issue fractions of a share and, unless and to the extent otherwise provided in its articles, a fraction of a share shall be subject to and carry the corresponding fraction of liabilities (whether with respect to nominal or par value, premium, contribution, calls or otherwise howsoever), limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share of the same class of shares; and in this Act the expression “**share**” includes a fraction of a share and no issue or purported issue of a fraction of a share shall be invalid by reason only of the fact that it was issued or purportedly issued prior to the 30th September, 1985.
- (4) The nominal or par value of a share may be expressed in an amount which is a fraction or a percentage of the lowest available unit of legal tender of the currency in which the capital of the company is expressed.

Share premium account

34. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the value of the premiums on those shares shall be transferred to an account called “the share premium account”. Where a company issues shares without nominal or par value, the consideration received shall be paid up share capital of the company.
- (2) The share premium account may be applied by the company subject to the provisions, if any, of its memorandum or articles of association in such manner as the company may, from time to time, determine including, but without limitation —
- (a) paying distributions or dividends to members;
 - (b) paying up unissued shares of the company to be issued to members as fully paid bonus shares;



- (c) any manner provided in section 37;
- (d) writing off the preliminary expenses of the company; and
- (e) writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company.

Provided that no distribution or dividend may be paid to members out of the share premium account unless, immediately following the date on which the distribution or dividend is proposed to be paid, the company shall be able to pay its debts as they fall due in the ordinary course of business; and the company and any director or manager thereof who knowingly and wilfully authorises or permits any distribution or dividend to be paid in contravention of the foregoing provision commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.

- (3) Where a company had, before the 18th day of January, 1988, issued any shares at a premium, this section shall apply as if the shares had been issued after such date.
- (4) At the option of the company, subsection (1) shall not apply to premiums on shares of a company allotted in pursuance of any arrangement in consideration for the acquisition or cancellation of shares in any other company, whether a company within the meaning of this Act or not, and issued at a premium.
- (5) At the option of the company, an amount corresponding to any amount representing the premiums or part of the premiums on shares issued by a company which, by virtue of subsection (4), is not included in such company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in such company's balance sheet.
- (6) For the purposes of subsection (4) —

“**arrangement**” means any agreement, scheme or arrangement, whether of reconstruction, merger, consolidation, take-over, acquisition, purchase or otherwise whereby the allotting company acquires a controlling interest in the company whose shares it acquires or cancels.
- (7) The relief allowed by subsections (4) and (5) shall apply even if the issue of shares took place prior to the 18th day of January, 1988.

Power to issue shares at a discount

35. (1) Subject as provided in this section, it shall be lawful for a company to issue, at a discount, shares in the company of a class already issued:

Provided that —

- (a) the issue of the shares at a discount has been authorised by resolution of the company, and has been sanctioned by the Court;



- (b) the resolution specify the maximum rate of discount at which the shares are to be issued;
 - (c) not less than one year, at the date of the issue, has elapsed since the date on which the company was entitled to commence business; and
 - (d) the shares to be issued at a discount are issued within one month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.
- (2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.
- (3) Every prospectus relating to the issue of the shares must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as had not been written off at the date of the issue of the prospectus and if default is made in complying with this subsection, the company and every officer of the company who is in default is liable to a default fine.
- (4) This section does not apply to shares issued, or proposed to be issued, without nominal or par value.

Power of company to pay commissions

- 36.** (1) A company has the power, and shall be deemed always to have had the power, to pay a commission to any person in consideration of that person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares in the company, if the payment of the commission is authorised by the articles of association of the company.
- (2) Nothing in subsection (1) affects the power of a company to pay such brokerage as has previously been lawful.
- (3) A vendor to, or promoter of, or other person who receives payment in money or shares from a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been lawful under subsection (1).

Redemption and purchase of shares

- 37.** (1) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder and, for the avoidance of doubt, it shall be lawful for the rights attaching to any shares to be varied, subject to the



provisions of the company’s articles of association, so as to provide that such shares are to be or are liable to be so redeemed.

- (2) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, purchase its own shares, including any redeemable shares.
- (3) (a) No share may be redeemed or purchased unless it is fully paid.
- (b) A company may not redeem or purchase any of its shares if, as a result of the redemption or purchase, there would no longer be any issued shares of the company other than shares held as treasury shares.
- (c) Redemption or purchase of shares may be effected in such manner and upon such terms as may be authorised by or pursuant to the company’s articles of association.
- (d) If the articles of association do not authorise the manner and terms of the purchase, a company shall not purchase any of its own shares unless the manner and terms of purchase have first been authorised by a resolution of the company.
- (da) For the avoidance of doubt —
 - (i) a company’s articles of association; or
 - (ii) a resolution of the company,
 may authorise the company’s directors to determine the manner or any of the terms of, any such redemption or purchase not being inconsistent with such articles of association or resolution and subject to such restrictions (if any) as may be provided therein.
- (e) The premium, if any, payable on redemption or purchase must have been provided for —
 - (i) out of either or both of the profits of the company or the company’s share premium account, before or at the time the shares are redeemed or purchased; or
 - (ii) in the manner provided for in subsection (5).
- (f) Shares may be redeemed or purchased out of profits of the company, out of the share premium account or out of the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase or in the manner provided for in subsection (5).
- (g) Subject to section 37A, shares redeemed or purchased under this section shall be treated as cancelled on redemption or purchase, and the amount of the company’s issued share capital shall be diminished by the nominal value of those shares accordingly; but the redemption or purchase of shares by a company is not to be taken as reducing the amount of the company’s authorised share capital.



(h) Without prejudice to paragraph (g), where a company is about to redeem or purchase shares, it has power to issue shares up to the nominal value of the shares to be redeemed or purchased as if those shares had never been issued:

Provided that where new shares are issued before the redemption or purchase of the old shares the new shares shall not, so far as relates to fees payable on or accompanying the filing of any return or list, be deemed to have been issued in pursuance of this subsection if the old shares are redeemed or purchased within one month after the issue of the new shares.

- (4) (a) Where, under this section, shares of a company are redeemed or purchased wholly out of either or both of the company’s profits or share premium account, the amount by which the company’s issued share capital is diminished in accordance with paragraph (g) of subsection (3) on cancellation of the shares redeemed or purchased shall be transferred to a reserve called the “capital redemption reserve” and the share premium account or company’s profits, as the case may be, shall be adjusted accordingly.
- (b) If the shares are redeemed or purchased wholly or partly out of the proceeds of a fresh issue and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed or purchased, the amount of the difference shall be transferred to the capital redemption reserve.
- (c) Paragraph (b) does not apply if the proceeds of the fresh issue are applied by the company in making a redemption or purchase of its own shares in addition to a payment out of capital under subsection (5).
- (d) The provisions of this Act relating to the reduction of a company’s share capital apply as if the capital redemption reserve were paid-up share capital of the company, except that the reserve may be applied by the company in paying up its unissued shares to be allotted to members of the company as fully paid bonus shares.
- (5) (a) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if so authorised by its articles of association, make a payment in respect of the redemption or purchase of its own shares otherwise than out of its profits, share premium account, or the proceeds of a fresh issue of shares.
- (b) References in subsections (6) to (9) to payment out of capital are, subject to paragraph (f), references to any payment so made, whether or not it would be regarded apart from this subsection as a payment out of capital.
- (c) The amount of any payment which may be made by a company out of capital in respect of the redemption or purchase of its own shares is such an amount as, taken together with —



- (i) any profits and share premium of the company being applied for purposes of the redemption or purchase; and
- (ii) the proceeds of any fresh issue of shares made for the purpose of the redemption or purchase, is equal to the price of redemption or purchase, and the payment out of capital permitted under this paragraph is referred to in subsections (6) to (9) as the capital payment for the shares.

Nothing in this paragraph shall be taken to imply that a company shall be obliged to exhaust any profits and share premium before making any capital payment.

- (d) Subject to paragraph (f), if the capital payment for shares redeemed or purchased and cancelled is less than their nominal amount, the amount of the difference shall be transferred to the company's capital redemption reserve.
- (e) Subject to paragraph (f), if the capital payment is greater than the nominal amount of the shares redeemed or purchased the amount of any capital redemption reserve or fully paid share capital of the company may be reduced by a sum not exceeding, or by sums not in the aggregate exceeding, the amount by which the capital payment exceeds the nominal amount of the shares.
- (f) Where the proceeds of a fresh issue are applied by a company in making any redemption or purchase of its own shares in addition to a payment out of capital under this subsection, the references in paragraphs (d) and (e) to the capital payment are to be read as referring to the aggregate of that payment and those proceeds.
- (6) (a) A payment out of capital by a company for the redemption or purchase of its own shares is not lawful unless immediately following the date on which the payment out of capital is proposed to be made the company shall be able to pay its debts as they fall due in the ordinary course of business.
- (b) The company and any director or manager thereof who knowingly and wilfully authorises or permits any payment out of capital to effect any redemption or purchase of any share in contravention of paragraph (a) commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years.
- (7) (a) Where a company is being wound up and, at the commencement of the winding up, any of its shares which are or are liable to be redeemed have not been redeemed or which the company has agreed to purchase have not been purchased, the terms of redemption or purchase may be enforced against the company, and when shares are redeemed or purchased under this subsection they shall be treated as cancelled.



Provided that this paragraph shall not apply if —

- (i) the terms of redemption or purchase provided for the redemption or purchase to take place at a date later than the date of the commencement of the winding up; or
 - (ii) during the period beginning with the date on which the redemption or purchase was to have taken place and ending with the commencement of the winding up the company could not, at any time, have lawfully made a distribution equal in value to the price at which the shares were to have been redeemed or purchased.
- (b) There shall be paid in priority to any amount which the company is liable by virtue of paragraph (a) to pay in respect of any shares —
- (i) all other debts and liabilities of the company (other than any due to members in their character as such); and
 - (ii) if other shares carry rights whether as to capital or as to income which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but subject to that, any such amount shall be paid in priority to any amounts due to members in satisfaction of their rights (whether as to capital or income) as members.

- (8) (a) Any redeemable preference shares issued by a company before the 18th day of January, 1988, are subject to redemption in accordance with this section.
 - (b) Any capital redemption reserve fund established by a company before the 18th day of January, 1988, is to be known as the company’s capital redemption reserve and to be treated as if it had been established for the purposes of subsection (4), and accordingly, a reference in any law, the articles of association of any company or any other instrument to a company’s capital redemption reserve fund is to be construed as a reference to the company’s capital redemption reserve.
- (9) This section shall apply to shares without nominal or par value, and shall, in relation to such shares, be read and construed as if —
- (a) in subsection (3) —
 - (i) for the words “the nominal value of” appearing in paragraph (g), there were substituted the words “an amount equal to the consideration received for”; and
 - (ii) for the words “nominal value” appearing in paragraph (h), there was substituted the word “number”;
 - (b) in subsection (4) for the words “aggregate nominal value of” appearing in paragraph (b), there were substituted the words “aggregate consideration received for”; and



- (c) in subsection (5) —
 - (i) for the words “their nominal amount” appearing in paragraph (d), there were substituted the words “the consideration received for such shares”; and
 - (ii) for the words “nominal amount of” appearing in paragraph (e), there were substituted the words “consideration received for”.

Treasury shares

- 37A.**(1) Shares that have been purchased or redeemed by a company or surrendered to the company pursuant to sections 37 or 37B shall not be treated as cancelled pursuant to sections 37(3)(g) or 37B(2) but shall be classified as treasury shares and sections 37(4), 37(5)(d) and 37B(2) shall not apply to such shares at the time of such purchase, redemption or surrender, if —
- (a) the memorandum and articles of association of the company do not prohibit it from holding treasury shares;
 - (b) the relevant provisions of the memorandum and articles of association (if any) are complied with; and
 - (c) the company is authorised in accordance with the company’s articles of association or by a resolution of the directors to hold such shares in the name of the company as treasury shares prior to the purchase, redemption or surrender of such shares.
- (2) Shares held by a company pursuant to subsection (1) shall continue to be classified as treasury shares until such shares are either cancelled or transferred pursuant to subsection (3).
- (3) A company that holds treasury shares may at any time —
- (a) cancel the shares in accordance with the provisions of the company’s articles of association or (in the absence of any applicable provisions in the company’s articles of association) by a resolution of the directors, and if so cancelled the amount of the company’s issued share capital shall be diminished by the nominal or par value of those shares accordingly but the company’s authorised share capital shall not be reduced and sections 37(4), 37(5)(d) and 37B(2) shall apply as if the shares had been purchased, redeemed or surrendered as at the date of cancellation; or
 - (b) transfer the shares to any person, whether or not for valuable consideration (including at a discount to the nominal or par value of such shares).
- (4) A sum equal to the consideration (if any) received by the company pursuant to the transfer of a treasury share made in accordance with subsection (3)(b) (such consideration referred to as the “transfer consideration”) shall be applied in the following manner —



- (a) to the extent that any payment out of capital was made with respect to the purchase or redemption of the share being transferred, there shall be credited to the company’s share capital an amount equal to the lesser of —
 - (i) the amount of such payment out of capital; and
 - (ii) the transfer consideration received in respect of such share;
 - (b) subject to subsection (5), to the extent that any payment out of share premium was made with respect to the purchase or redemption of the share being transferred, there shall be credited to the company’s share premium an amount equal to the lesser of —
 - (i) the amount of such payment out of share premium; and
 - (ii) the balance of the transfer consideration received in respect of such share after applying subsection (4)(a); and
 - (c) subject to subsection (5), the balance of the transfer consideration received in respect of such share after applying subsection (4)(a) and (b) shall be credited to the company’s profit and loss account.
- (5) Notwithstanding the provisions of subsection (4)(b) and (c) but subject to subsection (4)(a), so long as the company shall be able to pay its debts as they fall due in the ordinary course of business immediately following the transfer of a treasury share in accordance with subsection (3)(b), the directors may by resolution determine that all or any part of the transfer consideration received shall be transferred to the company’s profit and loss account, share premium account or share capital (or any combination of the foregoing) in such proportions as the directors may (in their sole and absolute discretion but subject to any express contrary provision in the articles of association of the company) determine.
- (6) Notwithstanding subsection (7)(b), a treasury share may be transferred by the company and the provisions of this Act and (subject to any specific provisions with respect to the transfer of treasury shares) the memorandum and articles that apply to the transfer of shares shall apply to the transfer of treasury shares.
- (7) For so long as a company holds treasury shares —
- (a) the company shall be entered in the register of members as holding those shares;
 - (b) notwithstanding paragraph (a) —
 - (i) the company shall not be treated as a member for any purpose and shall not exercise any right in respect of the treasury shares, and any purported exercise of such a right shall be void; and
 - (ii) a treasury share shall not be voted, directly or indirectly, at any meeting of the company and shall not be counted issued shares at any given time, whether for the purposes of the company’s articles of association or this Act; and



- (c) no dividend may be declared or paid, and no other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up) may be made to the company, in respect of a treasury share.
- (8) Nothing in subsection (7) prevents an allotment of shares as fully paid bonus shares in respect of a treasury share and shares allotted as fully paid bonus shares in respect of a treasury share shall be treated as treasury shares.

Surrender of shares

- 37B.**(1) Subject to any express provisions of the company’s memorandum or articles of association to the contrary, a company may accept the surrender for no consideration of any fully paid share (including a redeemable share) unless, as a result of the surrender, there would no longer be any issued shares of the company other than shares held as treasury shares.
- (2) Subject to section 37A, any shares surrendered under subsection (1) shall be treated as cancelled on surrender, and the amount of the company’s issued share capital shall be diminished by the nominal value of those shares accordingly; but the surrender of shares by a member is not to be taken as reducing the amount of the company’s authorised share capital.
- (3) This section is without prejudice to any right or power of a company arising under this Act or otherwise to accept the surrender of a share (not being a fully paid share) in lieu of forfeiture.

Definition of member

- 38.** The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of a company and whose name is entered on the register of members, shall be deemed to be a member of the company.

Transfer by personal representative

- 39.** Any transfer of the share or other interest of a deceased member of a company made by that person’s personal representative, shall, notwithstanding that such personal representative may not themselves be a member, be of the same validity as if that person had been a member at the time of the execution of the instrument of transfer.

Register of members

- 40.** (1) Every company shall cause to be kept in writing, a register of its members and there shall be entered therein —



- (a) the names and addresses of the members of the company, with the addition of, in the case of a company having a capital divided into shares, a statement of the shares held by each member, and the statement shall —
 - (i) distinguish each share by its number (so long as the share has a number);
 - (ii) confirm the amount paid, or agreed to be considered as paid on the shares of each member;
 - (iii) confirm the number and category of shares held by each member; and
 - (iv) confirm whether each relevant category of shares held by a member carries voting rights under the articles of association of the company, and if so, whether such voting rights are conditional;
- (b) the date on which the name of any person was entered on the register as a member; and
- (c) the date on which any person ceased to be a member.
- (2) Any company making default in complying with this section shall incur a penalty of five thousand dollars; and every director or manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.
- (3) For the purpose of subsection (1), “**voting rights**” means, —
 - (a) rights conferred on shareholders, including the right to appoint or remove directors, in respect of their shares or, in the case of an entity not having a share capital, on members, to vote at general meetings of the entity on all or substantially all matters; and
 - (b) in relation to a legal entity that does not have general meetings at which matters are decided by the exercise of voting rights, the rights conferred upon shareholders or members, as applicable, that are equivalent to those of a person entitled to exercise voting rights in a company.
- (4) A voting right is conditional where the voting right arises only in certain circumstances.

Branch registers of members

- 40A.**(1) An exempted company may cause to be kept in any country or territory one or more branch registers of such category or categories of members as the exempted company may determine from time to time.
- (2) A branch register is deemed to be part of the exempted company’s register of members.
- (3) Subject to subsection (6), a branch register shall be kept in the same manner in which a principal register is by this Act required or permitted to be kept.



- (4) The exempted company shall cause to be kept at the place where the exempted company’s principal register is kept a duplicate of any branch register duly entered up from time to time.
- (5) If default is made in complying with subsection (4) within twenty-one days after —
 - (a) establishing a branch register; or
 - (b) making changes to the details recorded in a branch register,
 the exempted company and every officer of the exempted company who is in default is liable to a penalty of five thousand dollars; and every director or manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.
- (6) Subject to subsection (4) with respect to a duplicate of any branch register —
 - (a) the shares registered in a branch register shall be distinguished from those registered in the principal register; and
 - (b) no transaction with respect to any shares registered in a branch register shall, during the continuance of that registration, be registered in any other register.
- (7) An exempted company may discontinue keeping any branch register, and thereupon all entries in that branch register shall be transferred to some other branch register kept by the exempted company or to the principal register.
- (8) For the avoidance of doubt a listed share register maintained under section 40B(3) shall not constitute a branch register for the purposes of this section.
- (9) In this section —
 - “**branch register**” means a branch register referred to in subsection (1); and
 - “**principal register**” means a company’s register of members.

Transfer and registration of shares in respect of a company with listed shares

- 40B.**(1) Title to listed shares of a company may, if so authorised by such company’s articles of association, or (in the absence of any applicable provisions in the company’s articles of association) by a special resolution of such company, be evidenced and transferred in accordance with the laws applicable to and the rules and regulations of the relevant approved stock exchange that are or shall be applicable to such listed shares as referred to or specified in such articles of association or special resolution.
- (2) For the purposes of subsection (1), the laws applicable to an approved stock exchange include, without limitation, the laws of the jurisdiction under which such approved stock exchange is established in so far as they would apply to an



entity established under such laws which has listed shares on such approved stock exchange.

- (3) Any register of members maintained by a company in respect of its listed shares may be kept by recording the particulars required by section 40 in a form otherwise than legible if such recording otherwise complies with the laws applicable to and the rules and regulations of the relevant approved stock exchange referred to in subsection (1).
- (4) To the extent the listed shares register is kept in a form otherwise than legible it must be capable of being reproduced in a legible form.
- (5) A company which maintains a listed shares register must also maintain, in respect of any shares which are not listed shares, a separate register of members in accordance with section 40.
- (6) References in any enactment or instrument to a company’s register of members shall, unless the context otherwise requires, be construed in relation to a company which maintains any listed shares register as referring to each of such company’s listed shares register and, if any, its non-listed shares register.
- (7) For the purposes of this section —
 - “**approved stock exchange**” means a stock exchange listed in Schedule 4;
 - “**listed shares**” means shares which are traded or listed on an approved stock exchange;
 - “**listed shares register**” means the register of members required to be maintained by a company in respect of its listed shares pursuant to subsection (3); and
 - “**non-listed shares register**” means the register of members maintained by a company pursuant to subsection (5).
- (8) For the purpose of this section —
 - (a) references to title to shares include any legal or equitable interest in shares; and
 - (b) references to a transfer of title include a transfer by way of security.

Annual list of members and return of capital, shares, calls, etc.

41. (1) Every company, other than an exempted company that does not hold a licence to carry on business in the Islands to which section 174 refers, having a capital divided into shares shall make a list of all persons who, on the fourteenth day following the date on which the ordinary general meeting, or if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the company; and such lists shall state the names and addresses of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the —



- (a) amount of the capital of the company and the number of shares into which it is divided;
- (b) number of shares taken from the commencement of the company up to the date of the summary;
- (c) amount of calls made on each share;
- (d) total amount of calls received;
- (e) total amount of calls unpaid;
- (f) total number of shares forfeited;
- (g) names and addresses of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them;
- (h) names and addresses of directors and officers of the company and the position or office that they hold; and
- (i) nature of the business,

and this list and summary shall be contained in a separate part of the register of the company and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall be forwarded to the Registrar in January of each year after the year of its incorporation.

- (2) Every company, other than an exempted company, shall, in January of each year after the year of its registration, pay to the Registrar the annual fee specified in Part 2 of Schedule 5.
- (3) Each such annual fee shall be tendered with the list and summary required under subsection (1). A company which has failed to forward to the Registrar any copy required to be forwarded in any January shall be deemed not to have made any default in complying with this section relating to the time within which such copy is required to be forwarded if the company forwards the copy either —
 - (a) within such further period, if any, as the Registrar, acting in that person’s discretion may, by notice, addressed to the company specify; or
 - (b) within the period of twelve months next following such month of January, whichever is the shorter, together with the fee payable under subsection (2) and the penalty specified in section 42.

Penalty on company not making return

- 42.** Any company, not being an exempted company, which defaults in forwarding to the Registrar such lists of members or summary or the payment of any fee specified in section 41(1) and (2) shall incur a penalty of —
 - (a) 33.33% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1st April and the 30th June;



- (b) 66.67% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1st July and the 30th September; and
- (c) 100% of the annual fee specified in section 41 if the documents are submitted or the fee and penalty are paid between the 1st October and the 31st December,

and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.

Certificate of shares or stock

43. A certificate —

- (a) specifying the shares or stock held by a member of a company; and
- (b) purportedly signed by a person (including by facsimile or other mechanically affixed signature) with the express or implied authority of that company,

is admissible in evidence as proof of the title of that member to those shares or that stock.

Inspection of register

- 44.** (1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company or, in the case of an exempted company, at any other place within or outside the Islands except that, in the case of an exempted company that holds a licence to carry on business in the Islands under any applicable law, the register of members shall be kept at its registered office within the Islands.
- (2) Except in the case of an exempted company that does not hold a licence to carry on business in the Islands under any applicable law and when closed as hereinafter provided the register of members shall, during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that no less than two hours in each day be appointed for inspection, be open to the inspection of any member *gratis* and to the inspection of any other person on payment of ten dollars or such less sum as the company may specify for each inspection; and every such member or other person may receive a copy of such register or any part thereof, or of such list or summary of members, on payment of one dollar for every page required to be copied.
- (3) If such inspection or copy is refused, the company shall incur for each refusal a penalty of five hundred dollars; and every director and manager of the company who knowingly authorises or permits such refusal shall incur the like penalty; and in addition to the above penalty, a Judge sitting in chambers may, by order, compel an immediate inspection of the register.



- (4) A company, including an exempted company, shall make available at the registered office, in electronic form or any other medium, such register, including any branch register in the case of an exempted company, as may be required of it upon service of an order or notice by the Tax Information Authority pursuant to the *Tax Information Authority Act (2021 Revision)*; and if the company fails to comply with the order or notice without reasonable excuse, the company shall incur a penalty of five hundred dollars and a further penalty of one hundred dollars for every day during which such non-compliance continues.

Notice of increase of capital and of members to be given to Registrar

- 45. (1) Where a company has a capital divided into shares, whether such shares have or have not been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number shall be given to the Registrar, in the case of an increase of capital, within thirty days from the date of the passing of the resolution by which such increase has been authorised; and, in the case of an increase of members, within thirty days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.
- (2) The fees payable on an increase of capital shall be as specified in Part 3 of Schedule 5.
- (3) If such notice is not given within the period aforesaid the company in default shall incur a penalty of ten dollars for every day during which such neglect to give notice continues, and every director and officer of the company who knowingly and wilfully authorises or permits such default shall incur a like penalty.

Remedy for improper entry or omission of entry in register

- 46. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved or any member of the company or the company itself may, by motion to the Court, apply for an order that the register be rectified; and the Court may either refuse such application with or without costs to be paid by the applicant or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application or petition, and any damages the party aggrieved may have sustained. The Court may, in any proceeding under this section, decide any question relating to the title of any person who is a party to such proceeding to have that person's name entered in or omitted from the register, whether such question arises



between two or more members or alleged members, or between any members or alleged members and the company, and generally, the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register:

Provided that the Court may direct an issue to be tried, on which any question of law may be raised.

Notice to Registrar of rectification of register

47. Whenever any order has been made rectifying the register, in the case of a company required by this Act to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence

48. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Liability of Members

Liability of present and past members of company

49. In the event of a company being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges and expenses of the winding up and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves:

Provided that —

- (a) a past member shall not be liable to contribute to the assets of the company if that person has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up;
- (b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after the time at which that person ceased to be a member;
- (c) a past member shall not be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them under this Act;
- (d) in case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which that person is liable as a present or past member except where such member or past member holds or held shares of a class which are expressly stated in the memorandum of association to carry unlimited liability, as provided in section 8(2);



- (e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on that person’s behalf by the memorandum of association, except where the amount of the undertaking of such member is unlimited, as provided in section 9(2);
- (f) nothing in this Act shall invalidate any provisions contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; and
- (g) no sum due to any member of a company in that person’s character of a member by way of dividends, profits or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between that person and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributions amongst themselves.

PART IV - Management and Administration of Companies and Associations - Provisions for Protection of Creditors

Registered office of company

- 50.** (1) Every company shall have a registered office in the Islands to which all communications and notices may be addressed and any company which carries on business without having such an office, shall incur a penalty of ten dollars for every day during which business is so carried on.
- (2) In the case of an exempted company or a non-resident company, the address of the registered office referred to in subsection (1) shall be the same as the address of the person licensed by the Authority who provides company management services for the exempted company or non-resident company except where the registered office was located at a different address in the Islands immediately prior to the 10th January, 2013, the date of commencement of this provision by the *Companies (Amendment) Act, 2012 [Law 6 of 2012]*, and remains at such address on or after the date of commencement of this provision.

Notice of situation of registered office

- 51.** (1) Notice of the situation of such registered office shall be given to the Registrar and recorded by that person and shall be published by Public Notice. Until such notice is given and published, the company shall not be deemed to have complied with this Act with respect to having a registered office.
- (2) Any member of the public shall be entitled to be informed by the Registrar, on request, of the location of the registered office of any company or exempted company registered under this Act.

