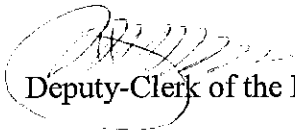


Examined and certified by:


Deputy-Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to
this Act this 30th day of November, 2017




Queen's Representative

ANALYSIS

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Consequential amendments to other Acts

An Act to modernise and reform the law relating to companies.

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Companies Act 2017.

2 Commencement

This Act comes into force on a date to be appointed by the Queen's Representative by Order in Executive Council.

Part 1

Preliminary matters

3 Purpose

This Act has the following purposes—

- (a) to provide for the efficient registration and incorporation of companies in the Cook Islands; and
- (b) to provide for flexible and adaptable company structures in the Cook Islands that are economically efficient and economically enhancing; and
- (c) to provide for proper but not excessive regulation and administration of companies in the Cook Islands; and
- (d) to provide a modern and clear statement of the rules that apply to companies in the Cook Islands; and
- (e) to provide for a procedure for the creditors of an insolvent company to enter into a compromise with the company; and
- (f) to provide for the efficient and orderly liquidation of insolvent companies; and
- (g) to clarify and modernise the law relating to company receiverships.

4 Interpretation

This Act must be interpreted in accordance with the definitions and other interpretative provisions set out in Schedule 1.

5 Act binds the Crown

This Act binds the Crown.

Part 2

Incorporation

6 Essential requirements

A company must have—

- (a) a name; and
- (b) a constitution; and
- (c) 1 or more shares; and
- (d) 1 or more shareholders, having limited or unlimited liability for the obligations of the company; and
- (e) 1 or more directors, of whom at least 1 must—
 - (i) live in the Cook Islands; or
 - (ii) live in New Zealand and be a director of a company that is registered (except as the equivalent of an overseas company) in New Zealand.

7 Application for registration

- (1) Any person may, either alone or together with another person, apply for the registration of a company under this Act.
- (2) An application for the registration of a company must be—
 - (a) in the prescribed form; and

- (b) signed by the person or persons making the application; and
 - (c) filed with the Registrar.
- (3) The application must specify—
 - (a) the name of the company, which must comply with section 11; and
 - (b) whether the constitution of the company differs from the default constitution prescribed for the company under Schedule 2, 3, or 4; and
 - (c) the full name, residential address, and postal address of every proposed director of the company; and
 - (d) whether each person named as a director of the company has consented to act as a director of the company; and
 - (e) the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
 - (f) the registered office of the proposed company; and
 - (g) the postal address of the company, which may be the registered office or any other postal address.
- (4) The application for registration must be accompanied by—
 - (a) a copy of the constitution to the extent that the company elects not to use, or elects to modify, the default constitution prescribed for the company under Schedule 2, 3, or 4; and
 - (b) the prescribed fee.

8 Certificate of incorporation

As soon as the Registrar receives an application for registration that complies with section 7, the Registrar must—

- (a) enter the company on the Cook Islands register; and
- (b) issue a certificate of incorporation of the company.

9 Incorporation

A certificate of incorporation of a company is conclusive evidence that—

- (a) all the requirements of this Act as to incorporation have been complied with; and
- (b) on and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

10 Separate legal personality with full capacity

- (1) A company is a legal entity in its own right separate from its shareholders and continues in existence until it is removed from the Cook Islands register.
- (2) A company—
 - (a) has full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
 - (b) may do anything authorised by this Act or the company's constitution; and
 - (c) may do anything that a natural person of full age and capacity may do.
- (3) Subsection (2) is subject to this Act, any other enactment, and the general law.

Part 3

Company name

11 Name of company

- (1) The name of a company must end with the word “Limited” or “Ltd”.
- (2) The Registrar must not register a company with a name if—
 - (a) use of the name would contravene any enactment; or
 - (b) the name is identical or almost identical to the name of another company; or
 - (c) in the opinion of the Registrar, the name is offensive; or
 - (d) the name gives the impression that it is either endorsed by or represents a public or other prestigious entity with which it has no such connection.

12 Change of name

- (1) An application to change the name of a company must be—
 - (a) in the prescribed form; and
 - (b) signed by a director of the company; and
 - (c) filed with the Registrar; and
 - (d) accompanied by the prescribed fee (if any).
- (2) An application to change the name of a company is not an amendment of the constitution of the company for the purposes of this Act.
- (3) As soon as the Registrar receives an application that complies with subsection (1) and the requirements of section 11, the Registrar must—
 - (a) enter the new name of the company on the Cook Islands register; and
 - (b) issue a fresh certificate of incorporation for the company recording the new name of the company.
- (4) A change of name of a company—
 - (a) takes effect from the date specified in the certificate issued under subsection (3)(b); and
 - (b) does not affect rights or obligations of the company, or legal proceedings by or against the company.

13 Direction to change name

- (1) This section applies if the Registrar believes on reasonable grounds that a company has been registered under a name that contravened section 11 at the time of registration.
- (2) The Registrar may—
 - (a) serve a written notice on the company requiring it to change its name within a date specified in the notice that is not less than 20 working days after service of the notice; and
 - (b) if the company does not comply with the notice, enter a new name for the company on the Cook Islands register in the form of “Number x Company Limited” with “x” being a unique number assigned to the company by the Registrar.
- (3) On a change of name under subsection (2)(b),—

- (a) the Registrar must issue an amended certificate of incorporation for the company recording the new name of the company; and
- (b) section 12(4) applies to the registration of the new name as if the name of the company had been changed under section 12.

14 Use of company name

- (1) A company must ensure that its name is clearly stated in—
 - (a) every written communication sent by, or on behalf of, the company; and
 - (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.
- (2) If a document referred to in subsection (1)(b) does not correctly state the name of the company, every person who issued or signed the document (the **issuer or signatory**) is liable to the same extent as the company if the company fails to discharge the obligation.
- (3) However, the issuer or signatory is not liable under subsection (2) if—
 - (a) that person proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or
 - (b) it would not be just or equitable for the issuer or signatory to be liable.
- (4) If a company gives public notice of any matter and the name of the company has been changed within the previous 12 months, the company must ensure that the notice states—
 - (a) that the name of the company has changed in that period; and
 - (b) the former name or names of the company.

Part 4 Company constitution

15 Company must have constitution

- (1) Every company must have a constitution.
- (2) Subject to subsection (3), the constitution may be 1 of the following—
 - (a) the appropriate default constitution; or
 - (b) that default constitution as altered or modified; or
 - (c) a constitution in substitution for that default constitution.
- (3) A company's appropriate default constitution is the constitution prescribed for the company under Schedule 2, 3, or 4 as determined by its number of shareholders, that is,—
 - (a) if a single shareholder, Schedule 2 applies;
 - (b) if 2 to 9 shareholders, Schedule 3 applies;
 - (c) if 10 or more shareholders, Schedule 4 applies.
- (4) The constitution of the company must be its default constitution as determined by its number of shareholders except to the extent that, whether on registration, re-registration, or at any subsequent time, —
 - (a) there is substituted another constitution for it; or
 - (b) it is altered or modified.

- (5) A company that substitutes a constitution for its default constitution, or alters or modifies its default constitution, must hold at its registered office and make available for inspection the following, as applicable—

- (a) the substituted constitution; or
- (b) the modifications and alterations to its default constitution.

16 Substitution, adoption, or amendment of constitution after incorporation

- (1) Subject to any restrictions in its constitution, a company may by special resolution, substitute or adopt a new constitution or amend its existing constitution or default constitution.
- (2) Within 10 working days after a change in constitution under subsection (1), the company must file a notice in the prescribed form with the Registrar for registration.

17 Content and effect of constitution

- (1) The constitution of a company may contain—
- (a) matters contemplated by this Act for inclusion in the constitution of a company; and
 - (b) any other matters that the company wishes to include in its constitution.
- (2) The constitution is of no effect to the extent that it contravenes, or is inconsistent with, this Act.
- (3) Subject to subsection (2),—
- (a) the constitution has effect and may be enforced as if it constituted a contract—
 - (i) between the company and its shareholders; and
 - (ii) between the company and each director; and
 - (b) the shareholders and directors of a company have the rights, powers, duties, and obligations set out in the constitution of the company.

Part 5 Shares

Subpart 1—General

18 Legal nature of shares

A share in a company is personal property.

19 No nominal value or bearer share

- (1) A share must not have a nominal or par value.
- (2) Nothing in subsection (1) prevents the issue by a company of a redeemable share.
- (3) A company must not issue a share that is a bearer share and a share that is issued in contravention of this subsection is a nullity.

20 Minimum number of shares

A company must have at least 1 issued share.

21 Rights and powers attached to shares

- (1) Subject to subsection (2), a share in a company confers on the holder—
- (a) the right to vote on a poll at a meeting of the company on any resolution, including any resolution to—
 - (i) appoint or remove a director or auditor:
 - (ii) adopt a constitution:
 - (iii) amend the company's constitution:
 - (iv) approve a major transaction:
 - (v) approve an amalgamation:
 - (vi) appoint a liquidator:
 - (b) the right to an equal share in dividends paid by the company:
 - (c) the right to an equal share in the distribution of the surplus assets of the company.
- (2) The rights specified in subsection (1) may be negated, limited, modified, or added to—
- (a) by the constitution of the company; or
 - (b) in accordance with the terms on which the share is issued.
- (3) Subject to the constitution, a company may issue different classes of shares.
- (4) Without limiting subsection (2), shares in a company may—
- (a) be redeemable:
 - (b) confer preferential rights to distribution of capital or income:
 - (c) confer special, limited, or conditional voting rights:
 - (d) not confer voting rights.

22 Shares must not impose liabilities on holder

- (1) A share must not—
- (a) be partly paid; or
 - (b) otherwise impose any liability on its holder to make a payment to the company.
- (2) A company must not issue a share that contravenes subsection (1).
- (3) Nothing in subsection (1) or (2)—
- (a) prevents a company from attaching conditions, limits, or restrictions to the rights and powers attached to the share; or
 - (b) prevents a company from issuing a share on credit terms that provide for a liability to make future payments to the company on the part of the person to whom it is first issued.

Subpart 2—Issue of shares**23 Issue of initial shares**

A company must, immediately after the registration of the company, issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

24 Issue of other shares

- (1) A company may issue shares—
 - (a) in accordance with its constitution; or
 - (b) with the approval of all shareholders under section 62.
- (2) A company must, within 10 working days after the issue of any shares, file with the Registrar for registration a notice in the prescribed form of the issue of the shares by the company.
- (3) If the rights attached to the shares are not set out in full in the constitution, the notice must be accompanied by a document setting out the terms of the issue of the shares.
- (4) If a company fails to comply with subsection (2), every director of the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

25 Time of issue of shares

A share is issued when the name of the holder is entered on the share register.

26 Pre-emptive rights

- (1) Shares issued or proposed to be issued by a company that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the company must be offered for acquisition to the holders of the shares already issued in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those holders.
- (2) An offer under subsection (1) must remain open for acceptance for a reasonable time.
- (3) The constitution of a company may negate, limit, modify, or add to the requirements of this section.

27 Consideration for issue of shares

- (1) The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other financial products of the company (for example, a debt security).
- (2) Before a company issues shares under section 24, the directors must—
 - (a) decide the consideration for which the shares will be issued; and
 - (b) if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
 - (c) resolve that, in their opinion, the consideration for, and the terms of, the issue are fair and reasonable to the company and all existing shareholders.

28 Consent to issue of shares

- (1) A company must not issue a share to a person that increases that person's liability to the company or imposes a new liability on that person to the company unless the person or the person's agent has first consented in writing.
- (2) The issue of a share in breach of subsection (1) is void.

Subpart 3—Distributions to shareholders

29 Distributions prohibited unless solvency test satisfied

- (1) A company must not make, and the directors must not authorise, a distribution to shareholders unless there are reasonable grounds for believing that, after the distribution is made, the company will satisfy the solvency test.
- (2) For the purposes of this Act, a company satisfies the solvency test if—
 - (a) the company is able to pay its debts as they become due in the normal course of business; and
 - (b) the value of its assets is greater than the value of its liabilities, including its contingent liabilities.

30 Meaning of distribution

For the purposes of this Part, a company makes a distribution to a shareholder if—

- (a) the company—
 - (i) directly or indirectly transfers money or property (other than the company's own shares) to or for the benefit of the shareholder; or
 - (ii) incurs a debt to or for the benefit of the shareholder; and
- (b) the company does so in relation to the shares held by that shareholder, whether by means of—
 - (i) a dividend; or
 - (ii) the purchase, redemption, or other acquisition of shares; or
 - (iii) a distribution of indebtedness; or
 - (iv) some other means.

31 Recovery of improper distributions

- (1) A company that has made a distribution to a shareholder in breach of section 29, 32, or 33 may recover the distribution from the shareholder unless subsection (2) applies.
- (2) The company may not recover the distribution if—
 - (a) the shareholder received the distribution in good faith and without knowledge of the company's breach of section 29, 32, or 33, as the case may be; and
 - (b) the shareholder has altered the shareholder's position in reliance on the validity of the distribution; and
 - (c) it would be unfair to require payment in full or in part.
- (3) A person who authorised a distribution that has been made in breach of section 29 and who at the time of authorising knew or ought to have known that the distribution did not comply with section 29 is liable to pay to the company so much of that distribution as is not reasonably recoverable from the person or persons to whom it was made.

- (4) In a proceeding under this section to recover an improper distribution, the Court may, if satisfied that distribution of a lesser amount could have complied with section 29, permit a shareholder to retain, or excuse a person who authorised the distribution from liability in respect of, any amount equal to the value of any distribution that could properly have been made.

Subpart 4—Dividends

32 Dividends

- (1) A company may pay a dividend to shareholders if—
- (a) the company complies with section 29; and
 - (b) the dividend is authorised by—
 - (i) all the shareholders under section 62; or
 - (ii) the directors, if the constitution so provides.
- (2) A dividend authorised by the directors must comply with any conditions or restrictions set out in the constitution.
- (3) Subject to the constitution and to the terms of issue of any share, a company must not pay a dividend—
- (a) in respect of some but not all the shares; or
 - (b) that is of greater value per share in respect of some shares than of others.
- (4) In this section, **dividend** means any distribution other than—
- (a) a distribution by way of the repurchase or redemption of shares; or
 - (b) a distribution of the surplus assets of the company in liquidation.

Subpart 5—Company may acquire its own shares

33 Company may acquire its own shares

- (1) A company may acquire its own shares if—
- (a) the company complies with section 29; and
 - (b) the acquisition is an approved acquisition.
- (2) An approved acquisition is—
- (a) an acquisition made by agreement with a shareholder in accordance with the constitution or with the approval of all shareholders under section 62; or
 - (b) the acquisition of a dissenter's shares under section 65.

34 Notice of company's acquisition of its own shares

- (1) A company that acquires its own shares must, within 10 working days of the acquisition, file with the Registrar for registration a notice in the prescribed form of the acquisition.
- (2) The company must also send the notice required under subsection (1) to each shareholder within 20 working days after the acquisition unless the acquisition results from an offer made to all shareholders that—
- (a) would, if accepted, leave unaffected relative voting and distribution rights; and
 - (b) affords a reasonable time for acceptance of the offer.

- (3) If a company fails to comply with subsection (1) or (2), every director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

35 Cancellation of shares acquired by company

- (1) If a company acquires its own shares, the shares must be treated as immediately cancelled on acquisition unless section 37 applies.
- (2) For the purposes of this section, a company acquires a share at the time when it would, apart from this section, become entitled to—
- (a) exercise the rights attached to that share; or
 - (b) give directions to the shareholder as to the manner in which any of those rights should be exercised.

36 Enforceability of contract to repurchase shares

- (1) A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that performance would breach section 29.
- (2) The company has the onus of proving that performance of the contract would breach section 29.
- (3) Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled—
- (a) to be paid as soon as the company is lawfully able to do so; or
 - (b) before removal of the company from the Cook Islands register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

Subpart 6—Treasury stock

37 Company may hold its own shares

- (1) Shares that are acquired by a company under section 33 are not treated as immediately cancelled on acquisition if—
- (a) the constitution of the company expressly permits the company to hold its own shares; and
 - (b) the directors resolve that the shares in question not be cancelled.
- (2) Shares referred to in subsection (1) (**treasury stock**) are held by the company itself.

38 Rights and obligations of treasury stock suspended

- (1) The rights and obligations attaching to a share that a company holds in itself must not be exercised by or against the company while it holds the share.
- (2) Without limiting subsection (1), while a company holds a share in itself, the company must not—
- (a) exercise any voting rights attaching to the share; and
 - (b) make or receive any distribution in respect of the share.

39 Company may transfer treasury stock

- (1) A company may transfer a share that it holds in itself as if the transfer were the issue of the share.

- (2) However, the transfer of a share by a company in itself is not subject to any provision in this Act or the company's constitution relating to the issue of shares, except to the extent that the company's constitution expressly applies that provision.

Subpart 7—Redeemable shares

40 Meaning of redeemable

For the purposes of this Act, a share is redeemable if the constitution makes provision for the issue of redeemable shares and under the constitution or the terms of issue—

- (a) the share is redeemable—
 - (i) at the option of the company; or
 - (ii) at the option of the holder of the share; or
 - (iii) on a date specified in the constitution or the terms of issue; and
- (b) the share is redeemable for a consideration that is—
 - (i) specified; or
 - (ii) to be calculated by reference to a formula; or
 - (iii) required to be fixed by a suitably qualified person who is not associated with or interested in the company.

41 Redemption of redeemable shares

- (1) A company may redeem a redeemable share if the company complies with section 29.
- (2) The company has the onus of proving that redemption of the share would breach section 29.
- (3) Until the company has fully redeemed a share in accordance with the constitution or the terms of issue, the former holder of the share retains the status of a claimant entitled—
 - (a) to be paid as soon as the company is lawfully able to do so; or
 - (b) before removal of the company from the Cook Islands register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

42 Cancellation of redeemed shares

- (1) Shares that are redeemed must be treated as cancelled immediately on redemption, unless the constitution or the terms of issue provide otherwise.
- (2) On the cancellation of a redeemed share under subsection (1),—
 - (a) the rights attached to that share expire; but
 - (b) the company may re-issue the share.

43 Notice of redemption of redeemable shares

- (1) A company that redeems redeemable shares must, within 10 working days after the redemption, file with the Registrar for registration a notice of redemption in the prescribed form.
- (2) If a company fails to comply with this subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

Subpart 8—Assistance by company for purchase of its own shares

44 Financial assistance

- (1) A company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company if—
 - (a) the assistance meets the requirements set out in subsection (3); and
 - (b) the company has made the disclosure required by subsection (4).
- (2) The assistance may be direct or indirect.
- (3) The requirements for financial assistance are the following—
 - (a) the company gives the assistance in the normal course of business and on usual terms and conditions; and
 - (b) the assistance is authorised by the directors or by all the shareholders under section 62; and
 - (c) there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test; and
 - (d) the company complies with any conditions or restrictions on giving assistance contained in the constitution.
- (4) Before making an offer of financial assistance, the company must send to each shareholder a disclosure document that contains the following information—
 - (a) the nature and terms of the financial assistance;
 - (b) the name of the person to whom it will be offered;
 - (c) the nature and extent of any relevant interest of a director of the company in the financial assistance;
 - (d) if the directors authorise the financial assistance, the text of that resolution;
 - (e) such further information and explanation as is necessary for a reasonable shareholder to understand the nature of the financial assistance and its implications for the company and the shareholders.
- (5) A disclosure document is not required if the assistance is authorised by all the shareholders under section 62.

Subpart 9—Cross-holdings

45 Subsidiary may not hold shares in holding company

- (1) Subject to this section, a subsidiary must not hold shares in its holding company.
- (2) An issue of shares by a holding company to its subsidiary is void and of no effect.
- (3) A transfer of shares in a holding company to its subsidiary is void and of no effect.
- (4) Nothing in this section or section 46 prevents a subsidiary from holding shares in its holding company in its capacity as a personal representative or a trustee unless the holding company or another company has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.

- (5) This section and section 46 apply to a nominee for a subsidiary in the same way as they apply to the subsidiary.
- 46 Exception for company that subsequently becomes subsidiary**
If a company that holds shares in another company becomes a subsidiary of that other company, the subsidiary—
- (a) may, despite section 45(1), continue to hold those shares; but
 - (b) may not exercise any voting rights attaching to those shares.

Subpart 10—Transfer of shares

47 Transfer of shares

- (1) A share in a company is transferable subject to any limitation or restriction on the transfer of shares in the constitution.
- (2) A share is transferred by entry in the share register in accordance with section 49.
- (3) For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or the shareholder's personal representative must be delivered to—
 - (a) the company; or
 - (b) an agent of the company who maintains the register of the company.
- (4) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

48 Transfer of shares by operation of law

Shares in a company may pass by operation of law despite anything in the constitution.

Subpart 11—Share register

49 Company to maintain share register

- (1) A company must maintain a share register that records the shares issued by the company and states the following—
 - (a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder;
 - (b) the number of shares of each class held by each shareholder within the last 7 years;
 - (c) the date of each of the following transactions within the last 7 years—
 - (i) the issue of shares to a shareholder;
 - (ii) the repurchase or redemption of shares from a shareholder;
 - (iii) the transfer of shares by or to a shareholder;
 - (d) in relation to the transfer of shares by or to a shareholder, the name of the person to or from whom the shares were transferred.
- (2) The share register must be kept—
 - (a) in written form or in a form that is readily accessible and convertible into written form; and
 - (b) at the registered office of the company.

- (3) The share register may be maintained by an agent on behalf of the company.
- (4) If a company fails to comply with the requirements of this section, the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

50 Share register as evidence of legal title

- (1) Subject to section 51, the entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person.
- (2) A company must treat the registered holder of a share as the only person entitled to—
 - (a) exercise the right to vote attaching to the share; and
 - (b) receive notices; and
 - (c) receive a distribution in respect of the share; and
 - (d) exercise the other rights and powers attaching to the share.

51 Power of Court to rectify share register

- (1) If the name of a person is wrongly entered in, or omitted from, the share register of a company, the Court may, on the application of the person aggrieved or a shareholder, order—
 - (a) rectification of the share register; or
 - (b) payment of compensation by the company for any loss sustained; or
 - (c) both rectification and payment of compensation.
- (2) On an application under subsection (1), the Court may decide—
 - (a) a question relating to the entitlement of a person who is a party to the application to have that person's name entered in, or omitted from, the register; and
 - (b) a question necessary or expedient to be decided for rectification of the register.

52 Beneficial ownership of shares

- (1) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.
- (2) However, a company must—
 - (a) obtain and maintain sufficient information to identify the beneficial owner of a share issued by the company; and
 - (b) disclose that information in a written notice to the Registrar on the written request of the Registrar without the necessity for a Court order requiring disclosure.
- (3) For the purposes of subsection (2), **beneficial owner** means the person who ultimately owns or controls the share.
- (4) If a company fails to comply with subsection (2)(b),—
 - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$10,000; and
 - (b) every director commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months, or both.

53 Personal representative of deceased shareholder or assignee of bankrupt may be registered

- (1) Despite section 52, a personal representative of a deceased person whose name is registered in the share register as the holder of a share in a company is entitled to be registered as holder of that share as personal representative.
- (2) Despite section 52, the assignee of the property of a bankrupt whose name is registered in the share register as the holder of a share in a company is entitled to be registered as holder of that share as the assignee of the property of the bankrupt.
- (3) The registration under this section of a trustee, an executor or administrator, or an assignee in bankruptcy does not constitute notice of a trust.

Subpart 12—Share certificates**54 Share certificates**

- (1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- (2) On receipt of an application under subsection (1), the company must, within 20 working days after receiving the application,—
 - (a) if the application relates to all of the shares, send to the shareholder a certificate stating—
 - (i) the name of the company; and
 - (ii) the class of shares held by the shareholder; and
 - (iii) the number of shares held by the shareholder to which the certificate relates; or
 - (b) if the application relates to some but not all of the shares,—
 - (i) separate the shares entered in the register in the name of the applicant into separate parcels (one being the shares to which the application relates, and the other parcel being the remaining shares); and
 - (ii) send to the shareholder a certificate that complies with paragraph (a) in respect of each parcel.
- (3) On the application of a shareholder whose share certificate is lost or destroyed, the company must, on payment of a reasonable fee, issue a replacement certificate.
- (4) A shareholder's application for a replacement certificate must be accompanied by—
 - (a) a statutory declaration by the shareholder that—
 - (i) the share certificate has been lost or destroyed; and
 - (ii) if lost, a proper search has been made for it; and
 - (iii) the share certificate has not been sold, pledged, or otherwise disposed of; and
 - (b) an undertaking by the shareholder to return the share certificate to the company if it is found or recovered.

55 Registration of share transfer

- (1) A company must not register a transfer of shares to which a share certificate relates unless the form of transfer required by section 47(3) is accompanied by—
 - (a) the share certificate; or
 - (b) evidence as to its loss or destruction and, if required, an appropriate indemnity.
- (2) A company—
 - (a) must cancel a share certificate sent to the company to enable registration of the transfer of the shares to which it relates; and
 - (b) must not issue a further share certificate in relation to those shares except at the request of the transferee.
- (3) A company must, within 10 working days after registering a transfer of its shares, file with the Registrar for registration a notice of transfer of shares in the prescribed form.
- (4) If a company fails to comply with subsection (2), the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

Part 6 Shareholders

Subpart 1—General

56 Company must have at least 1 shareholder

A company must, at all times, have at least 1 shareholder.

57 Liability of shareholders

- (1) A shareholder is not liable for an obligation of the company by reason only of being a shareholder.
- (2) The liability of a shareholder to the company is limited to—
 - (a) any liability to repay a distribution that is recoverable under section 30; and
 - (b) any liability under section 96.

Subpart 2—Powers of shareholders

58 Decisions reserved for shareholders only

- (1) The following powers may be exercised by the shareholders only and may not be delegated under the constitution or otherwise—
 - (a) the power to substitute or adopt a new constitution, or to amend the company's existing constitution or default constitution, under section 16;
 - (b) the power to approve a major transaction under section 61;
 - (c) the power to appoint a liquidator (but this is subject to section 204(1) which allows the directors to appoint a liquidator on the occurrence of an event specified in the constitution).

- (2) The following powers may be exercised by the shareholders only unless the constitution provides otherwise—
 - (a) the power to appoint or remove a director;
 - (b) the power to appoint an auditor.
- (3) The constitution may provide for other matters to be decided by shareholders or approved by shareholders.

59 How shareholder power may be exercised

- (1) A power referred to in section 58(1)(a) or (c) must be exercised by special resolution.
- (2) A power referred to in section 58(1)(b) must be exercised—
 - (a) by special resolution; or
 - (b) in accordance with section 62.
- (3) A power referred to in section 58(2) and (3) may, unless the constitution provides otherwise, be exercised—
 - (a) by ordinary resolution; or
 - (b) in accordance with section 62.

60 Types of shareholder resolution

- (1) An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.
- (2) A special resolution is a resolution approved by a majority of 75% (or, if a higher majority is required by the constitution, that higher majority) of the votes of those shareholders entitled to vote and voting on the question.

61 Shareholder approval of major transaction

- (1) A company must not enter into a major transaction unless the transaction is—
 - (a) approved by the shareholders by special resolution; or
 - (b) approved by unanimous shareholder approval under section 62; or
 - (c) conditional on approval under paragraph (a) or (b).
- (2) In this section, —
 - assets** includes property of any kind, whether tangible or intangible
 - major transaction**, in relation to a company, means—
 - (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half of the company's assets before the acquisition; or
 - (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
 - (c) a transaction that has, or is likely to have, the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction.

- (3) Nothing in paragraph (b) or (c) of the definition of major transaction in subsection (2) applies by reason only of the company granting, or agreeing to grant, a security interest in assets of the company, the value of which is more than half the value of the company's assets, for the purpose of securing the repayment of money or the performance of an obligation.
- (4) Nothing in this section applies to a major transaction entered into by a receiver appointed under a document granting a security interest in property of a company.

62 Unanimous assent to certain types of action

- (1) If all the shareholders of a company consent to, or concur in, any action taken by the company or a director, the taking of that action must be treated as validly authorised by the company despite—
 - (a) anything to the contrary in the constitution; or
 - (b) the absence of express authority to take that action in the constitution.
- (2) The matters that may be authorised in accordance with subsection (1) include, but are not limited to, the following—
 - (a) the issue of shares;
 - (b) the making of a distribution (but *see* subsection (3));
 - (c) the repurchase of shares;
 - (d) giving financial assistance for the purpose of, or in connection with, the purchase of shares in the company;
 - (e) the payment of remuneration to a director, or the making of a loan to a director, or the conferral of any other benefit on a director;
 - (f) the making of a contract between the company and a director, or of any other contract in which a director has an interest;
 - (g) entry into a major transaction;
 - (h) the ratification after the event of any action that could have been authorised under this section.
- (3) A company must not authorise a distribution under this section unless there are reasonable grounds for believing that, after the distribution is made, the company will satisfy the solvency test.
- (4) Section 32 applies to a distribution made in breach of subsection (3) as if—
 - (a) the distribution had been made in breach of section 29; and
 - (b) the distribution was authorised by all the shareholders.

Subpart 3—Alteration of shareholder rights

63 Alteration of shareholder rights

- (1) A company must not take action that affects the rights attached to shares unless that action has been approved by—
 - (a) a special resolution of each interest group; or
 - (b) unanimous shareholder approval under section 62.
- (2) For the purposes of subsection (1), the rights attached to a share include—

- (a) the rights, privileges, limitations, and conditions attached to the share by this Act or the constitution, including voting rights and rights to distributions; and
- (b) the right that the company comply with any provisions of the constitution in relation to the issue of further shares; and
- (c) the right that the company comply with subsection (1) and any further procedure required by the constitution for the amendment or alteration of rights; and
- (d) the right that a procedure required by the constitution for the amendment or alteration of rights not be amended or altered.

64 Meaning of class and interest group

- (1) For the purposes of section 63,—

class means a class of shares having attached to them identical rights, privileges, limitations, and conditions

interest group, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders—

- (a) whose affected rights are identical; and
 - (b) whose rights are affected by the action or the proposal in the same way; and
 - (c) subject to subsection (2)(b), who comprise the holders of 1 or more classes of shares in the company.
- (2) For the purposes of section 63 and the definition in subsection (1) of interest group,—
- (a) 1 or more interest groups may exist in relation to any action or proposal; and
 - (b) holders of shares in the same class may fall into 2 or more interest groups if—
 - (i) action is taken in relation to some holders of shares in a class and not others; or
 - (ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class.

65 Dissenting shareholder may require company to purchase shares

- (1) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if the shareholder is a dissenting shareholder under subsection (2) or (3).
- (2) A shareholder (S) is a dissenting shareholder for the purposes of subsection (1) if—
- (a) S was entitled to vote on the exercise of 1 or more of the following powers—
 - (i) the power to substitute or adopt a new constitution, or to amend the existing constitution or default constitution, and the change imposes or removes a restriction on the activities of the company; or
 - (ii) the power to approve a major transaction; or
 - (b) the shareholders resolved to exercise the power; and

- (c) S dissented.
- (3) A shareholder (S) is also a dissenting shareholder for the purposes of subsection (1) if—
 - (a) S was a member of an interest group that has, under section 63(1)(a), by special resolution approved an action that affects the rights attached to S's shares; and
 - (b) the company becomes entitled to take the action; and
 - (c) S dissented.

66 Meaning of dissent

For the purposes of section 65(2)(c) and (3)(c), a shareholder dissents if—

- (a) the shareholder casts all the votes attached to the shares registered in the shareholder's name and having the same beneficial owner against the resolution in question; or
- (b) in the case of a written resolution in lieu of a meeting (*see* section 70), the shareholder does not sign or assent to the resolution.

Subpart 4—Meetings of shareholders

67 Shareholder meetings

Meetings of the shareholders of a company must be held in accordance with the constitution, and the constitution must include provisions for—

- (a) holding those meetings; and
- (b) the procedure governing those meetings.

68 Annual meeting of shareholders

- (1) A company must hold an annual meeting of shareholders—

- (a) not later than 6 months after the balance date of the company; and
- (b) not later than 15 months after the previous annual meeting.

- (2) However,—

- (a) a company does not have to hold its first annual meeting in the calendar year of its registration must hold that meeting within 18 months after its registration; and
- (b) subsection (1) does not apply if any of clause 11(2) of Schedule 2, clause 40(3) of Schedule 3, or clause 47(3) of Schedule 4, or their equivalent, applies.

69 Special meeting of shareholders

A special meeting of shareholders entitled to vote on an issue—

- (a) may be called at any time by a director; and
- (b) must be called by the directors on the written request of the shareholders carrying together not less than 10% of the votes that may be cast on the issue.

70 Written resolution in lieu of meeting

- (1) Subject to subsection (3), a resolution in writing signed or assented to by or on behalf of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of those shareholders.
- (2) A resolution in writing is made in accordance with this Act or the constitution of the company, as the case may be, if the resolution—
 - (a) relates to a matter that is required by this Act or the constitution to be decided at a meeting of the shareholders of a company; and
 - (b) the resolution is signed or assented to by or on behalf of the shareholders referred to in subsection (1).
- (3) If, in respect of any matter, the constitution of a company requires approval by a greater majority than 75% of the votes entitled to be cast, the reference in subsection (1) to 75% is taken to be that greater majority.

71 Procedure for written resolution in lieu of meeting

- (1) Any resolution made under section 70 may consist of 1 or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of 1 or more of the shareholders specified in section 70(1).
- (2) A resolution made under section 70 may be made without any prior notice being given to shareholders.
- (3) Within 5 working days after a resolution is made under section 70, the company must send a copy of the resolution to every shareholder who did not sign or assent to the resolution.
- (4) If a company fails to comply with subsection (3), the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

72 Court may call meeting of shareholders

- (1) On the application of a director, shareholder, or creditor of a company, the Court may order a meeting of the shareholders of the company to be held or conducted in such manner as the Court directs.
- (2) The grounds on which the Court may make the order include the following—
 - (a) it is impracticable to call or conduct a meeting of shareholders in the manner required by this Act or the constitution; or
 - (b) it is in the interests of a company that a meeting of the shareholders be held.

Part 7

Directors

Subpart 1—Appointment and removal of directors

73 Meaning of director

In this Act, **director**, in relation to a company,—

- (a) includes a person occupying the position of director of the company by whatever name called; and
- (b) for purposes of liability, has the extended meaning set out in section 96; but
- (c) does not include a receiver.

74 Number of directors

A company must have 1 or more directors.

75 Qualification of directors

- (1) A natural person who is not disqualified by subsection (2) may be appointed as a director of a company.
- (2) The following persons are disqualified from being appointed or holding office as a director of a company—
 - (a) a person who is under 18 years of age;
 - (b) a person who is an undischarged bankrupt in any jurisdiction;
 - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 104 or 106;
 - (d) a person in respect of whom an order is in force under the Cook Islands mental health legislation;
 - (e) in relation to any particular company, a person who does not comply with any qualifications for directors contained in the constitution of the company.
- (3) A person that is not a natural person cannot be a director of a company.
- (4) A person who is disqualified from being a director but who acts as a director is taken to be a director for the purposes of a provision of this Act that imposes a duty or an obligation on a director of a company.

76 Director's consent required

- (1) A person must not be appointed a director of a company unless he or she has consented in writing to be a director.
- (2) The company must, if required to do so by the Registrar, produce any consent specified in subsection (1).

77 Appointment of first and subsequent directors

- (1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.
- (2) All subsequent directors of a company must, unless the constitution of the company provides otherwise, be appointed by ordinary resolution.

78 Removal of directors

Subject to the constitution of a company, a director may be removed by ordinary resolution.

79 Director ceasing to hold office

- (1) A director ceases to hold office if he or she—
 - (a) resigns; or
 - (b) is removed from office in accordance with this Act or the constitution of the company; or
 - (c) becomes disqualified from being a director under section 75(2); or
 - (d) dies; or
 - (e) otherwise vacates office in accordance with the constitution of the company.
- (2) Despite ceasing to hold office, a former director remains liable under the director liability provisions of this Act for his or her conduct while a director.

80 Resignation by director

- (1) A director resigns if he or she signs a written notice of resignation and delivers it to the registered office of the company.
- (2) Subject to section 81, the notice is effective when it is received at that address or at a later time specified in the notice.

81 Restrictions on resignation by sole director

- (1) The sole director of a company may not resign—
 - (a) unless the director has called a meeting of shareholders to appoint a new director; or
 - (b) if the company has only 1 shareholder, unless the director has—
 - (i) given the shareholder notice of the director's resignation; and
 - (ii) given that notice at least 10 working days before resigning.
- (2) The resignation of the sole director of a company does not take effect until the earlier of the appointment of another director or—
 - (a) the time and date when the shareholders meet to appoint a new director; or
 - (b) if the company has only 1 shareholder, 10 working days after notice of the director's resignation has been given to that shareholder.

82 Notice of change of directors or details of directors

- (1) A company must ensure that the following notices in the prescribed form are filed with the Registrar for registration—
 - (a) notice of a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
 - (b) notice of a change in the name of a director;
 - (c) notice of a change in the residential address or postal address of a director.
- (2) A notice under subsection (1) must—
 - (a) specify the date of the change; and
 - (b) include the full name, residential address, and postal address of every person who is a director of the company from the date of the notice (including continuing directors); and
 - (c) be filed with the Registrar within 20 working days after—

- (i) the change occurring, in the case of the appointment or resignation of a director; or
 - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or postal address of a director.
- (3) If a company fails to comply with this section,—
 - (a) the company must pay a late filing fee to the Registrar; and
 - (b) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

83 Remuneration of directors

Directors may receive remuneration and other benefits from the company—

- (a) in accordance with its constitution; or
- (b) with unanimous shareholder approval under section 62.

84 Proceedings of directors

The constitution of a company must include provisions—

- (a) for holding meetings of directors of the company; and
- (b) that govern proceedings at those meetings.

Subpart 2—Management of company

85 Management of company

- (1) The business and affairs of a company must be managed by, or under the direction or supervision of, the directors of the company.
- (2) The directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.
- (3) Subject to any restrictions in the constitution of the company, the directors may delegate to a committee of directors, a director or employee of the company, or any other person, any 1 or more of their powers other than a power relating to any of the following—
 - (a) approval of the issue of shares:
 - (b) determination of the consideration for the issue of shares:
 - (c) authorisation of distributions:
 - (d) authorisation of financial assistance for the purchase of the company's shares:
 - (e) appointment of a liquidator.
- (4) The directors are responsible for the exercise of a power by a delegate as if the power had been exercised by the directors, unless the directors—
 - (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors of the company by this Act and the company's constitution; and
 - (b) have monitored, by means of reasonable methods properly used, the delegate's exercise of the power.

- (5) Subsections (1) and (2) apply except to the extent that this Act or the constitution provides otherwise.

Subpart 3—Directors' duties

86 Director must act in good faith and in best interests of company

A director of a company must, when exercising powers or preforming duties as a director, act—

- (a) in good faith; and
- (b) in what the director believes to be the best interests of the company.

87 Director must comply with Act and constitution

A director of a company must not act, or agree to the company acting, in a manner that contravenes this Act or the constitution of the company.

88 Reckless trading

A director of a company must not—

- (a) agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or
- (b) cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

89 Duty in relation to obligations

A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so.

90 Duty in relation to self-interest

- (1) A director must not exercise any power as a director if he or she is materially interested, whether directly or indirectly, in the exercise of the power.
- (2) However, subsection (1) does not apply if, before the exercise of the power,—
 - (a) the director makes full disclosure of the interest; and
 - (b) there are reasonable grounds for believing that the company will satisfy the solvency test after the power is exercised; and
 - (c) either—
 - (i) the constitution expressly permits the exercise of the power despite the interest of a director in its exercise; or
 - (ii) the exercise of the power is approved by unanimous shareholder approval under section 62.
- (3) For the purposes of subsection (2)(a), a director makes full disclosure of the interest if he or she discloses the nature and extent of the interest in writing to—
 - (a) all the shareholders, in the case of unanimous shareholder approval; or
 - (b) the other directors or directors, provided that they are not also interested in the exercise of the power.

91 Duty in relation to company information

- (1) A director must not disclose, use, or act upon company information except—

- (a) in the interests of the company; or
 - (b) as required by law; or
 - (c) in accordance with subsection (2).
- (2) A director may disclose, use, or act upon company information if—
 - (a) the disclosure or other use of the information is authorised by the constitution or approved by unanimous shareholder approval under section 62; and
 - (b) there are reasonable grounds for believing that the company will satisfy the solvency test after the disclosure or other use of the information.
- (3) In this section, **company information** means information that—
 - (a) the director has in his or her capacity as director or employee of the company; and
 - (b) would not otherwise be available to him or her.

92 Director's duty of care

A director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,—

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the responsibilities undertaken by him or her.

93 Reliance on information and advice

- (1) A director of a company may rely on information (reports, statements, and financial data and other information) prepared or supplied, and on professional or expert advice given, by a third party if the director—

- (a) acts in good faith; and
 - (b) believes on reasonable grounds that the information or advice is within the competence of the third party to prepare, supply, or give; and
 - (c) makes proper inquiry where the need for inquiry is indicated by the circumstances.

- (2) In subsection (1), **third party** means an employee of the company, a professional adviser or expert, or another director.

94 Offence of serious breach of duty to act in good faith and in company's best interests

- (1) A director of a company commits an offence if he or she exercises powers or performs duties as a director of the company—
 - (a) in bad faith towards the company and believing that the conduct is not in the best interests of the company; and
 - (b) knowing that the conduct will cause serious loss to the company.
- (2) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

95 Effect of unanimous shareholder approval on certain duties of directors

- (1) This section applies if a director of a company exercises any power or takes any other action in his or her capacity as a director of the company with the unanimous shareholder approval under section 62.
- (2) In any case to which this section applies,—
 - (a) the director is taken to comply with the constitution of the company; and
 - (b) if, at the time the director acts, there are reasonable grounds for believing that the company is able to meet its debts as they fall due, the director is taken to act—
 - (i) in good faith and in the best interests of the company; and
 - (ii) in accordance with his or her duty of care as a director.

Subpart 4—Liability of directors**96 Extended meaning of director for purposes of liability**

- (1) A person who is not otherwise a director of a company may be liable as a director of the company if the person is 1 of the following—
 - (a) a shadow director;
 - (b) a controller of director powers;
 - (c) a delegate of director powers.
- (2) A person does not fall into any of the categories set out in subsection (1) to the extent that the person acts only in a professional category.

97 Liability of shadow director

- (1) A shadow director is a person in accordance with whose directions or instructions a director (the **director**) is required or is accustomed to act.
- (2) Subject to subsection (3), a shadow director is liable under subpart 3 of this Part to the same extent as the director.
- (3) It is a defence to liability on the part of a shadow director if the shadow director shows that the director was not in fact acting in accordance with the shadow director's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the director.

98 Liability of controller of director powers

- (1) A controller of director powers is a person who exercises, or who is entitled to exercise, or who controls or is entitled to control the exercise, of powers that, apart from the constitution of the company, would be powers exercised by the directors.
- (2) A controller of director powers is liable under subpart 3 of this Part in connection with the exercise of those powers as if that person were a director.
- (3) Without limiting subsections (1) and (2), if the constitution of a company confers a power on shareholders that would otherwise be exercised by directors under this Act, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is liable under subpart 3 of this Part in connection with the exercise of that power as if that person were a director.

99 Liability of delegate of director power

- (1) A delegate of a director power is a person—
- (a) to whom the directors of a company have directly delegated a power or duty of the directors with the delegate's consent or acquiescence; or
 - (b) who exercises a power or duty of the directors with their consent or acquiescence.
- (2) A delegate of a director power is liable under subpart 3 of this Part in connection with the exercise of the power or duty in question as if that person were a director.

100 Exclusion of shareholder liability

To avoid doubt, if any action is approved by unanimous shareholder approval under section 62,—

- (a) no shareholder is liable under section 87 as a deemed director in respect of that action; and
- (b) if there are reasonable grounds for believing that the company is able to meet its debts as they fall due, no shareholder is liable under section 86, 90, 91, or 92 as a deemed director in respect of that action.

101 Certain indemnities prohibited

- (1) A company must not indemnify a director of the company or of any related company in respect of any criminal liability.
- (2) Unless section 102 applies, a company must not indemnify a director of the company or of any related company in respect of—
- (a) any liability to the company or a related company for any act or omission in his or her capacity as a director of the company or of the related company, as the case may be; or
 - (b) any liability to any person arising out of a breach of duty to the company or related company, as the case may be, under any of subpart 3 of this Part.
- (3) An indemnity given in breach of this section is void.
- (4) In this section,—
- director** includes—
- (a) a person specified in section 96 who is liable under any of subpart 3 of this Part; and
 - (b) a former director

indemnify includes relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning.

102 Company may indemnify or insure directors in accordance with constitution or with unanimous shareholder approval

Subject to section 101(1), a company may provide an indemnity or purchase insurance for a director of the company or of a related company—

- (a) in accordance with the constitution; or
- (b) with the unanimous approval of shareholders under section 62.

103 Defences to criminal liability

- (1) It is a defence for a director (**D**) charged with an offence in relation to a duty imposed on the directors of a company if D proves that—
 - (a) the directors took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
 - (b) D took all reasonable and proper steps to ensure that the directors complied with the requirements of this Act; or
 - (c) in the circumstances D could not reasonably have been expected to take steps to ensure that the directors complied with the requirements of the Act.
- (2) It is a defence for a director (**D**) charged with an offence in relation to a duty imposed on the company if D proves that—
 - (a) the company took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
 - (b) D took all reasonable and proper steps to ensure that the company complied with the requirements of this Act; or
 - (c) in the circumstances D could not reasonably have been expected to take steps to ensure that the company complied with the requirements of the Act.

Subpart 5—Prohibition and disqualification of directors**104 Persons prohibited from managing companies**

- (1) This section applies if a person has been convicted of an offence specified in subsection (3) (a **relevant offence**).
- (2) A person who has been convicted of a relevant offence must not, during the period of 3 years after the conviction, be or do any of the following—
 - (a) be a director of a company;
 - (b) be a promoter of a company;
 - (c) in any way, whether directly or indirectly, be concerned in or take part in the management of a company.
- (3) For the purposes of this section and section 106(2), a **relevant offence** is—
 - (a) an offence in connection with the promotion, formation, or management of a company punishable by a term of imprisonment of not less than 3 months, whether or not a sentence of imprisonment was imposed; or
 - (b) an offence under any of sections 391 to 396; or
 - (c) any crime involving dishonesty as defined in section 2(1) of the Crimes Act 1969; or
 - (d) an offence of a kind that is referred to in Article 5 or 6 of the United Nations Convention against Transnational Organized Crime.
- (4) In this section, **company** includes an overseas company that carries on business in the Cook Islands.
- (5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

105 Prohibited person may apply for leave to be director, etc

- (1) The prohibition in section 104(2) does not apply if a person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.
- (2) Any person that the Court thinks fit may attend and be heard at the hearing of an application for leave under this section.
- (3) A person who contravenes an order granting leave under this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

106 Court may disqualify directors

- (1) The Court may order that a person must not, without the leave of the Court, be or do any of the following for the period specified by the Court (which must not be more than 5 years)—
 - (a) be a director of a company;
 - (b) be a promoter of a company;
 - (c) in any way, whether directly or indirectly, be concerned in or take part in the management of a company.
- (2) The Court may make the order if the person has—
 - (a) been convicted of a relevant offence (*see* section 104(3)); or
 - (b) been convicted of an offence under this Part; or
 - (c) been convicted of fraud committed in relation to a company while a director of the company; or
 - (d) found liable for a breach of duty to a company or a shareholder while a director of the company; or
 - (e) been convicted of an offence in any other jurisdiction that corresponds to any of the offences referred to in paragraphs (a) to (c); or
 - (f) been prohibited under the law of any other jurisdiction from acting as a director of a company or being concerned or taking part in the management of a company; or
 - (g) become of unsound mind.
- (3) An order may be made under this section even though the person concerned may be liable in respect of the matters that are the grounds for making the order.
- (4) The Registrar of the Court must, as soon as practicable after an order has been made under this section, give notice of the order to the Registrar of Companies.
- (5) A person who fails to comply with an order under this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.
- (6) In this section and in section 107, **company** includes an overseas company.

107 Who may apply for disqualification order

- (1) Any of the following persons may apply for a disqualification order under section 106—
 - (a) the liquidator of the company;
 - (b) a shareholder or former shareholder of the company;
 - (c) a creditor or former creditor of the company.

- (2) If the liquidator applies for a disqualification order, or a person applies for leave under section 106(1) in respect of a disqualification order that was made on the liquidator's application, the liquidator—
- (a) must attend the hearing; and
 - (b) must bring to the Court's attention any matters that seem to the liquidator to be relevant; and
 - (c) may give evidence or call witnesses.

108 Notice of application for disqualification order

- (1) An applicant for a disqualification order under section 106 must give not less than 10 working days' notice of the intention to apply to the person against whom the order is sought.
- (2) The person against whom the order is sought may attend the hearing and give evidence or call witnesses.

Part 8
Enforcement

Subpart 1—Injunctions

109 Injunction restraining contravention of Act or constitution

- (1) The Court may injunct a company or a director of a company from conduct that would contravene this Act or the constitution of the company.
- (2) The application for an injunction under subsection (1) may be made by—
- (a) the company; or
 - (b) a director or shareholder of the company; or
 - (c) an entitled person; or
 - (d) the Registrar.
- (3) In granting an injunction the Court may also grant consequential relief.
- (4) The Court may not make an order under this section in relation to conduct or a course of conduct that has been completed.
- (5) The Court may, before finally determining an application for an injunction, make as an interim order an order that could be made under subsection (1).

Subpart 2—Derivative proceeding

110 Meaning of derivative proceeding

A derivative proceeding is a proceeding brought with the leave of the Court under section 111 by a director or shareholder of a company in the name and on behalf of the company or any subsidiary of the company, and includes a proceeding in which a director or shareholder intervenes.

111 Leave of Court required for derivative proceeding

- (1) On the application of a person specified in section 112, the Court may grant leave to the applicant to—
- (a) bring a derivative proceeding; or

- (b) intervene in a proceeding to which the company or subsidiary company is a party for the purpose of continuing, defending, or discontinuing the proceeding on behalf of the company or subsidiary company, as the case may be.
- (2) Except as provided in this subpart, a shareholder is not entitled to bring or intervene in any proceeding in the name of, or on behalf of, a company or subsidiary company.

112 Who may apply for leave to bring proceeding

The following persons may apply for leave under section 111—

- (a) a director of the company;
- (b) a shareholder or shareholders representing not less than 10% of the voting rights of all shareholders entitled to vote on a resolution to amend the constitution of the company.

113 Matters that Court must consider on application for leave

Without limiting section 111, the Court, in determining whether to grant leave under that section, must consider the following—

- (a) the likelihood of the proceeding succeeding; and
- (b) the costs of the proceeding in relation to the relief likely to be obtained; and
- (c) any action already taken by the company or subsidiary to obtain relief; and
- (d) the interests of the company or subsidiary in the proceeding being brought, continued, defended, or discontinued, as the case may be.

114 Requirements for grant of leave

The Court may grant leave under section 111 only if the Court is satisfied that—

- (a) the company or subsidiary does not intend to bring, diligently defend or continue, or discontinue the proceeding, as the case may be; or
- (b) it is in the interests of the company or subsidiary that the conduct of the proceeding should not be left to directors or to the determination of the shareholders as a whole.

115 Procedure for application for leave

- (1) Notice of an application for leave under section 111 must be served on the company or subsidiary company.
- (2) The company or subsidiary company—
 - (a) may attend the hearing and be heard; and
 - (b) must inform the Court whether it intends to bring, continue, defend, or discontinue the proceeding, as the case may be.

116 Powers of Court in relation to derivative proceeding

The Court may at any time make any order it thinks fit in relation to a derivative proceeding, and without limitation may—

- (a) authorise the person to whom leave was granted or any other person to control the conduct of the proceeding; and

- (b) give directions for the conduct of the proceeding; and
- (c) order the company or the directors to provide information or assistance in relation to the proceeding; and
- (d) direct that any amount ordered to be paid by a defendant in the proceeding must be paid, in whole or part, to former and present shareholders of the company or subsidiary instead of to the company or subsidiary company.

117 Costs of derivative proceeding

- (1) On the application of the person to whom leave under section 111 was granted, the Court must order that the company pay some or all of the reasonable costs of bringing or intervening in the proceeding (including any costs relating to any settlement, compromise, or discontinuance approved by the Court).
- (2) Subsection (2) does not apply to the extent that it would be unjust or inequitable for the company to bear those costs, or to bear the whole of those costs.

Subpart 3—Personal proceedings by shareholder**118 Shareholder proceeding against director for breach of duty**

A shareholder or former shareholder may sue a director or former director for breach of a director duty owed to the shareholder in that capacity.

119 Shareholder proceeding to enforce director compliance

On the application of a shareholder, and if it is just and equitable, the Court may—

- (a) order the director to take any action that is required to be taken by the directors under the constitution of the company or under this Act; and
- (b) on making the order, also order any consequential relief that it thinks fit.

120 Shareholder proceeding against company for breach of duty

A shareholder may sue the company for breach of a company duty owed to the shareholder in that capacity.

121 Shareholder proceeding to enforce company compliance

On the application of a shareholder, and if it is just and equitable, the Court may—

- (a) order the company to take any action that is required to be taken by the company under the constitution of the company or under this Act; and
- (b) on making the order, also order any consequential relief that it thinks fit.

122 Representative proceeding

- (1) This section applies if—
 - (a) a shareholder (S) brings a proceeding against the company or a director; and
 - (b) other shareholders have the same, or substantially the same, interest in relation to the subject matter of the proceeding.
- (2) The Court may appoint S to represent all or some of those other shareholders, and for that purpose may also make any other order that it thinks fit, including an order for any of the following—

- (a) the control and conduct of the proceeding;
- (b) the costs of the proceeding;
- (c) the distribution of any amount ordered to be paid by a defendant in the proceeding among the shareholders represented.

Subpart 4—Prejudiced shareholders

123 Prejudiced shareholders

- (1) A shareholder (including a former shareholder) of a company may apply to the Court for an order under subsection (2) if the shareholder complains that the affairs of the company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to the complainant whether in the capacity of shareholder or any other capacity.
- (2) The Court may, if it considers that it is just and equitable to do so, make any order that it thinks fit, including an order—
 - (a) requiring the company or any other person to purchase the complainant's shares; or
 - (b) requiring the company or any other person to pay compensation to a person; or
 - (c) regulating the future conduct of the company's affairs; or
 - (d) altering or adding to the company's constitution; or
 - (e) appointing a receiver of the company; or
 - (f) directing the rectification of the records of the company; or
 - (g) appointing a liquidator; or
 - (h) setting aside action taken by the company or the directors in breach of this Act or the constitution of the company.
- (3) The Court must not make an order against the company or any other person under subsection (2) unless the company or that person is a party to the proceeding in which the application is made.

124 Conduct taken to be prejudicial

Failure to comply with any of the following sections of this Act is conduct that is unfairly prejudicial for the purposes of section 123—

- (a) section 24 (which relates to the issue of shares);
- (b) section 26 (which relates to pre-emptive rights on the issue of shares);
- (c) section 32 (which relates to dividends);
- (d) section 33 (which relates to a company's acquisition of its own shares)
- (e) section 44 (which relates to the provision of financial assistance by a company for the purchase of its own shares);
- (f) section 61 (which relates to major transactions);
- (g) section 63 (which relates to the alteration of shareholder rights).

125 Alteration to constitution

- (1) Despite anything in this Act, but subject to the order, if the Court makes an order under section 123 altering or adding to the constitution of a company, the constitution must not, to the extent that it has been altered or added to by the Court, again be altered or added to without the leave of the Court.
- (2) Any alteration or addition to the constitution of a company by the Court under section 123 has the same effect as if it has been made by the shareholders under section 16 and this Act applies to the constitution as altered or added to.
- (3) Within 10 working days after the Court makes an order under section 123 altering or adding to the constitution of a company, the company must ensure that a copy of the order and a copy of the constitution as altered or added to are filed with the Registrar for registration.
- (4) If the company fails to comply with subsection (3),—
 - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000; and
 - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

Subpart 5—Investigation**126 Investigation initiated by shareholder**

- (1) On the application of a shareholder, creditor, or entitled person of a company, the Court may make—
 - (a) an order authorising a person named in the order, at a time specified in the order, to inspect and make copies of, or to take extracts from, the company records and other documents of the company, or of the company records and documents that are specified in the order; and
 - (b) any ancillary order that the Court thinks fit, including an order that the accounts of the company be audited by the named person.
- (2) The Court must not make an order under subsection (1) unless it is satisfied that—
 - (a) the applicant is acting in good faith; and
 - (b) the inspection is for a proper purpose; and
 - (c) the person appointed is a proper person for the task.
- (3) The reasonable costs of the investigation must be paid by the company unless the Court orders otherwise.

127 Report to Court following investigation

- (1) The person appointed by an order under section 126(1)(a) must diligently carry out the inspection and then make a report to the Court.
- (2) On the basis of the report, the Court may—
 - (a) make any order it thinks fit for disclosure and use of the records and documents obtained in the inspection; and
 - (b) vary that order from time to time.
- (3) A person may not disclose or use records or documents obtained in the inspection except in accordance with an order under subsection (2).

- (4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

Part 9

Administration of companies

Subpart 1—Company transactions

128 Requirements for company obligation

- (1) For a company to enter into an obligation that, if it were a natural person obligation, must by law be in a deed, the obligation must be—
- (a) in writing; and
 - (b) signed in writing under the name of the company by—
 - (i) 2 or more directors of the company; or
 - (ii) if the company has only 1 director, that director; or
 - (iii) if the constitution so provides, a director or other person or class of persons; or
 - (iv) 1 or more attorneys appointed by the company in accordance with section 129.
- (2) For a company to enter into an obligation that, if it were a natural person obligation, must by law be in writing, the obligation must be—
- (a) in writing; and
 - (b) entered into on the company's behalf by a person acting under the company's express or implied authority.
- (3) For a company to enter into an obligation that, if it were a natural person obligation, is not required by law to be in writing, the obligation must be entered into on the company's behalf by a person acting under the company's express or implied authority.
- (4) A company may affix its common seal, if it has one, to an obligation in writing, but, even though the constitution may require it, the absence of the seal does not affect the enforceability of the obligation.
- (5) This section applies to a contract or other obligation whether or not—
- (a) that contract or obligation was entered into in the Cook Islands; and
 - (b) the law governing the contract or obligation is the law of the Cook Islands.

129 Attorneys

- (1) Subject to its constitution, a company may appoint a person as an attorney, either generally or in relation to a specified matter.
- (2) The appointment must be in writing and signed in accordance with section 128(1)(b).
- (3) An act of the attorney in accordance with the written appointment binds the company.

130 Validity of company transaction

- (1) Subject to sections 131 and 132, the validity of a transaction entered into by a company is not affected by—

- (a) a failure to comply with this Act (except if the failure is a breach of section 128); or
 - (b) a failure to comply with the company's constitution; or
 - (c) the absence of express authority in the company's constitution to enter into the transaction; or
 - (d) a failure by the company or its directors to take any steps required by the constitution to authorise entry into the transaction; or
 - (e) that fact that the transaction is not in the best interests of the company; or
 - (f) a breach of a duty by a director in connection with entry of the company into the transaction.
- (2) Subsection (1) does not limit—
- (a) section 109 (which relates to injunctions to restrain conduct by a company that would contravene this Act or its constitution); or
 - (b) sections 110 to 117 (which relate to derivative proceedings); or
 - (c) sections 118 and 119 (which relate to shareholder proceedings against directors); or
 - (d) sections 120 and 121 (which relate to shareholder proceedings against a company); or
 - (e) the obligations and liabilities of directors of a company in respect of any contract or other obligation, or transfer of property to or by the company.
- (3) In this section and sections 134 to 136, **transaction**—
- (a) includes any contract or other obligation entered into by a company, or any transfer of property to or by a company; but
 - (b) does not include—
 - (i) a distribution to shareholders; or
 - (ii) an indemnity provided to a director under section 101; or
 - (iii) remuneration or other benefits given to a director under section 83.

131 Person dealing with company may make certain assumptions

- (1) A person who deals with a company (**the company**) may assume that—
- (a) the company has complied with this Act and its constitution; and
 - (b) a person named as a director of the company in the most recent notice filed with the Registrar under section 82 or in the most recent annual return filed with the Registrar—
 - (i) is a director of the company; and
 - (ii) has been properly appointed; and
 - (iii) has the usual authority of a director of a company carrying on the same kind of business as the company; and
 - (c) a person held out by the company as a director, employee, or agent of the company—
 - (i) has been properly appointed; and
 - (ii) has the usual authority of a director, employee, or agent of a company carrying on the same kind of business as the company; and

- (d) a person held out by the company as a director, employee, or agent having unusual authority (that is, authority that a director, employee, or agent of a company carrying on the same kind of business as the company does not usually have) does have that authority; and
 - (e) a document issued on behalf of a company by a director, employee, or agent of the company with actual or usual authority to issue the document is valid and genuine.
- (2) However, a person who deals with a company may not make an assumption specified in subsection (1) if that person—
 - (a) knows the contrary; or
 - (b) ought to know the contrary through the person's position with, or relationship to, the company.
- (3) Subsection (1) applies even though a person referred to in subsection (1)(b) to (e) acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company has actual knowledge of the fraud or forgery.
- (4) In this section and section 132, a person dealing with a company includes a person who acquires property, rights, or interests from a company.

132 Effect of assumptions by person dealing with company

A company, a person claiming through a company, or a guarantor of a company's obligation may not assert against a person dealing with the company that an assumption specified in section 132(1) is incorrect, unless—

- (a) section 131(2) applies; or
- (b) in the case of fraud or forgery, the person has actual knowledge of it (*see* section 131(3)).

133 No constructive notice

A person is not affected by, and is not taken to have notice or knowledge of the contents of, the constitution of the company or of other documents relating to the company merely because the constitution or documents are—

- (a) registered on the Cook Islands register; or
- (b) available for inspection at an office of the company.

134 Company may cancel transaction in which director interested

- (1) If a director of a company is interested in a company transaction, the company may cancel the transaction at any time within 3 months after the transaction is disclosed to the shareholders, whether by means of the company's annual report or otherwise.
- (2) A transaction cannot be cancelled where the company receives fair value under it.
- (3) For the purposes of subsection (2), the question whether a company receives fair value must be determined on the basis of the information known to the company and to the interested director at the time when the transaction is entered into.

- (4) A company is presumed to receive fair value under a transaction in which a director is interested if the company in good faith enters into the transaction in the ordinary course of the company's business and on usual terms and conditions.
- (5) For the purposes of this Act—
 - (a) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time when the transaction was entered into has the onus of establishing fair value; and
 - (b) in any other case the company has the onus of establishing that it did not receive fair value.
- (6) A transaction in which a director is interested can only be cancelled on the ground of the director's interest in accordance with this section or the company's constitution.

135 Company may cancel transaction for breach of director duty

- (1) A company may cancel a transaction that it entered into as the result of the action of a director in breach of section 86 (Director must act in good faith and in best interests of company) or section 87 (Director must comply with Act and constitution) if—
 - (a) the director or a person associated with him or her is the other party to the transaction; or
 - (b) the other party to the transaction knew of the circumstances giving rise to the breach of duty and the company did not receive fair value under the transaction.
- (2) A company is presumed to receive fair value under the transaction in which a director is interested if the company in good faith enters into the transaction in the ordinary course of the company's business and on usual terms and conditions.
- (3) In this section, a person is associated with a director if the director—
 - (a) is the spouse, parent, or child of that person; or
 - (b) is a director, employee, or trustee, of that person; or
 - (c) has a material financial interest in that person.

136 Effect of cancellation on third parties

The cancellation of a transaction under section 134 or 135 does not affect the title or interest of a person in or to property that that person has acquired if the property was acquired—

- (a) from a person other than the company; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances that entitled the company to cancel the transaction under which the property was acquired from the company.

Subpart 2—Pre-incorporation contracts

137 Meaning of pre-incorporation contract

In sections 138 to 141 **pre-incorporation contract** means—

- (a) a contract purporting to be made by a company before its incorporation; or
- (b) a contract made by a person on behalf of a company before, and in contemplation, of its incorporation.

138 Company may ratify pre-incorporation contract

- (1) A company may ratify a pre-incorporation contract and the contract once ratified is as valid and enforceable as if the company had been a party to the contract when it was made.
- (2) The contract may be ratified—
 - (a) within the period specified in the contract or, if no period is specified, within a reasonable time after the company's incorporation; and
 - (b) in accordance with the requirements for a company obligation (*see* section 128).
- (3) Despite any other enactment, a company may not enforce a pre-incorporation contract or take the benefit of it unless the company has ratified it or the Court has validated it under section 141.

139 Warranties implied in pre-incorporation contract

- (1) There are implied in a pre-incorporation contract the following warranties by the person who purports to make the contract in the name of the company or on its behalf—
 - (a) a warranty that the company will be incorporated within the period specified in the contract or, if no period is specified, within a reasonable time after the contract is made; and
 - (b) a warranty that the company will ratify the contract within the period specified in the contract or, if no period is specified, within a reasonable time after the company's incorporation.
- (2) A person's liability under subsection (1) is discharged if, after incorporation, the company enters into a contract in the same terms as, or in substitution for, the pre-incorporation contract.
- (3) Subsections (1) and (2) apply unless and to the extent that a contrary intention is expressed in the pre-incorporation contract.

140 Damages for breach of implied warranty

Breach of an implied warranty under section 139 entitles a plaintiff to the same amount of damages that the plaintiff could have obtained from the company for any unperformed obligation under the contract, had the contract been ratified.

141 Failure to ratify

- (1) If a company does not ratify a pre-incorporation contract after its incorporation, a party to the contract may apply to the Court for an order—
 - (a) directing the company to return to the applicant any property that the company has acquired from the applicant under the contract; or
 - (b) for any other relief in favour of the applicant relating to that property; or
 - (c) validating the contract whether in whole or in part.

- (2) The Court may, if it is just and equitable to do so, make any order or grant any relief it thinks fit, and may do so whether or not an order has been made for damages for breach of an implied warranty under section 139.

Subpart 3—Registered office

142 Registered office and postal address

- (1) A company must always have a registered office and postal address in the Cook Islands.
- (2) Subject to section 143,—
- (a) the registered office of a company at a particular time is the place entered as its registered office on the Cook Islands register at that time; and
 - (b) the postal address of a company at a particular time is the address entered as its postal address on the Cook Islands register at that time.

143 Change of registered office or postal address

- (1) Subject to the company's constitution and subsection (3), a company may change its registered office or postal address at any time.
- (2) The company must file a notice of the change in the prescribed form with the Registrar for registration.
- (3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than 5 working days after the notice is registered.

Subpart 4—Company records

144 Company records

- (1) A company must keep the following records (the **company records**)—
- (a) category A records, which are—
 - (i) the company's certificate of incorporation;
 - (ii) if the company has been re-registered, its certificate of re-registration;
 - (iii) the constitution of the company;
 - (iv) the share register;
 - (v) the full names and residential and postal addresses of the current directors;
 - (vi) details of the company's registered office and postal address; and
 - (b) category B records, which are—
 - (i) the minutes of all meetings and resolutions of shareholders within the last 7 years;
 - (ii) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;
 - (iii) copies of all financial statements required to be prepared under section 161 for the last 7 completed accounting periods of the company; and
 - (c) category C records, which are—

- (i) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
 - (ii) a consent in the prescribed form by each past and current director within the last 7 years to act as a director of the company;
 - (iii) the accounting records required by section 158 for the current accounting period and for the last 7 completed accounting periods of the company.
- (2) The Registrar may approve by notice in writing to the company a shorter period than 7 years or 7 completed accounting periods for the purposes of category B or category C records.
- (3) If the company fails to comply with subsection (1), it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

145 Place where company records must be kept

- (1) A company must keep the company records at—
 - (a) its registered office; or
 - (b) another place in the Cook Islands that is not its registered office, provided the company has given the Registrar notice under subsection (2).
- (2) If a company keeps the company records at a place that is not its registered office, it must file with the Registrar for registration a notice of the location of the records within 10 working days after the records are first kept there.
- (3) If the company changes the place where it keeps the company records, it must file with the Registrar for registration a notice of the new location of the records within 10 working days after their relocation.
- (4) If the company fails to comply with subsection (2) or (3), it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

146 Form of company records

- (1) A company must keep the company records—
 - (a) in written form in English; or
 - (b) in a form or in a manner in which they are easily accessible and convertible into written form in English.
- (2) The company must ensure that adequate measures exist to—
 - (a) prevent the company records being falsified; and
 - (b) detect any falsification of them.

147 Inspection of company records

- (1) Any person may inspect category A records under section 148.
- (2) Any shareholder or authorised person may inspect category A, B, and C records under section 149.
- (3) A director may inspect the documents of the company generally (which include but are not limited to category A, B, and C records) unless an order is made under section 152 refusing or limiting inspection by a director.

148 Inspection of company records by public

- (1) Any person may inspect the category A records of a company if the person gives written notice to the company of intention to inspect.

- (2) The company must keep those records available for inspection in accordance with section 150.
- (3) If a company fails to comply with this section, it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

149 Inspection of company records by shareholder

- (1) Subject to subsection (3), any shareholder of a company, or any person authorised by a shareholder for the purpose of inspection, may inspect the category A, B, and C records of a company if the shareholder or authorised person gives written notice to the company of intention to inspect.
- (2) The company must keep those records available for inspection in accordance with section 150.
- (3) If a company considers that category C records are confidential or contain confidential information, the company may refuse inspection of those records or, if appropriate, allow inspection of redacted records only.
- (4) On the application of the company or a shareholder, the Court may give directions for the inspection or redaction of records to which subsection (3) applies.
- (5) If a company fails to comply with this section, it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

150 Manner of inspection

- (1) Records that may be inspected under section 148 or 149 must be available for inspection at the place where the company's records are kept between the hours of 9 am and 5 pm on each working day during the inspection period.
- (2) In this section, **inspection period** means the period of 5 working days beginning on the third working day after notice of intention to inspect is served on the company.

151 Copies of records

- (1) A person may give a company written notice requiring the company to provide a copy of, or extract from, a record of the company that is available for inspection by that person under section 148 or 149.
- (2) The company—
 - (a) may specify a reasonable copying and administration fee for providing the copy or extract; and
 - (b) if the fee has been paid, must provide the copy or extract within 5 working days after it receives the notice.
- (3) If a company fails to comply with subsection (2)(b), it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

152 Inspection of company documents by directors

- (1) A director of a company is entitled to inspect the documents of the company—
 - (a) in written form; and
 - (b) without charge; and
 - (c) at a reasonable time specified by the director.

- (2) On the application of the company, the Court may authorise the company to refuse or limit inspection of the company records by a director as the Court thinks fit if the Court is satisfied that the inspection—
 - (a) would not be in the company's interests; or
 - (b) is intended for a purpose unconnected with the director's duties.

Subpart 5—Annual return

153 Annual return

- (1) Each year in its allocated month, a company must file with the Registrar for registration an annual return that—
 - (a) is in the prescribed form; and
 - (b) contains the prescribed information; and
 - (c) is signed by a director of the company or by a legal practitioner or chartered accountant who is authorised to sign it; and
 - (d) is accompanied by the prescribed fee.
- (2) The annual return must be dated as at a date within the allocated month and the information contained in it must be compiled as at that date.
- (3) Despite subsection (1),—
 - (a) a company need not file an annual return in the calendar year of its incorporation; and
 - (b) a subsidiary may, with the written approval of the Registrar, file an annual return its holding company's allocated month rather than its own.
- (4) In this section and sections 154 and 155, **allocated month** means the month allocated to the company under section 154.

154 Time for filing annual return

- (1) A company must file its annual return in the month allocated to the company for that purpose.
- (2) On registration or re-registration of a company, the Registrar must allocate a month to a company for filing its annual return.
- (3) The Registrar may, by written notice to a company, alter its allocated month and a company may, by written request to the Registrar, apply for allocation of a different month.

155 Annual return pre-filled by Registrar

- (1) The Registrar may send or otherwise provide to a company an annual return form pre-filled with the prescribed information as it appears on the Cooks Islands register.
- (2) The form complies with section 153(1)(a) and (b) if the pre-filled form, as amended as necessary by the company, is current as at a date in the company's allocated month.

156 Registrar may alter Cook Islands register to correct company's address

The Registrar may amend the Cook Islands register to correspond with the information given in a company's annual return as to the address of its registered office or its postal address if the address given differs from the address entered in the register.

157 Other updating notices for information events

- (1) A company or overseas company must file with the Registrar for registration the notices required under the provisions relating to the information events listed in subsection (2).
- (2) The information events requiring a notice to be filed with the Registrar are the following—
 - (a) the substitution, adoption, or amendment of the constitution (*see* section 16(2));
 - (b) the issue of shares by the company (*see* section 24(2));
 - (c) the acquisition by the company of its own shares (*see* section 34(1));
 - (d) the redemption of a share by the company (*see* section 43(1));
 - (e) the registration of a transfer of shares (*see* section 55(3));
 - (f) a change in the directors of the company, or a change in the name, residential address, or other details of a director (*see* section 82(1));
 - (g) the making of an order under section 124 altering or adding to the constitution (*see* section 125(2));
 - (h) a change in the company's registered office or postal address (*see* section 143(2));
 - (i) location of company records away from registered office (*see* section 145(2));
 - (j) a change in the location of company records (*see* section 145(3));
 - (k) the resignation or removal of the auditor (*see* section 165(2));
 - (l) a change in the name of an overseas company (*see* section 356(3));
 - (m) a change in the directors of an overseas company, or a change in the name, residential address, or other details of a director (*see* section 364(1));
 - (n) a overseas company ceasing to carry on business in the Cook Islands (*see* section 365(1)(b)).

Part 10**Accounting records and financial reporting****Subpart 1—Accounting records****158 Company must keep accounting records**

- (1) The directors of a company must ensure that accounting records are kept that comply with section 159.
- (2) If the directors of a company fail to comply with subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 3 months, or both.

159 Form and content of accounting records

- (1) The accounting records must—
 - (a) correctly record the company's transactions; and
 - (b) at any time enable the company's financial position to be determined with reasonable accuracy; and
 - (c) enable the directors to ensure that the company's financial statements comply with section 161 and with any regulations made under this Act; and
 - (d) enable the company's financial statements to be readily and properly audited.
- (2) Without limiting subsection (1), the accounting records must contain—
 - (a) entries of money received and spent each day and the matters to which the money relates; and
 - (b) a record of the company's assets and liabilities; and
 - (c) if the company's business involves dealing in goods,—
 - (i) a record of goods bought and sold; and
 - (ii) invoices for goods bought and sold; and
 - (iii) a record of stock held at the end of the financial year together with records of any stocktaking during the year; and
 - (d) if the company's business involves providing services,—
 - (i) a record of services provided; and
 - (ii) invoices for those services.
- (3) However, if a company sells goods or provides services for cash in the ordinary course of carrying on a retail business,—
 - (a) the company need not keep invoices for each retail transaction; and
 - (b) in respect of those retail transactions, a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient compliance with subsection (2).
- (4) The accounting records must be kept—
 - (a) in written form in English; or
 - (b) in a form or manner in which they are easily accessible and convertible into written form in English.

Subpart 2—Financial statements**160 Companies that must prepare financial statements**

- (1) A company with 10 or more shareholders must ensure that financial statements are prepared in accordance with section 161.
- (2) However, subsection (1) does not apply if the company has opted out under section 163.
- (3) If a company fails to comply with subsection (1),—
 - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000; and

- (b) every director commits an offence and is liable on conviction to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 3 months, or both.

161 Financial statements

- (1) A company to which this section applies must ensure that, within 4 months after the company's balance date, financial statements that comply with subsection (2) are prepared in relation to the company and that balance date.
- (2) The financial statements must—
 - (a) give a true and fair view of the matters to which the statements relate; and
 - (b) comply with any applicable regulations made under this Act; and
 - (c) be dated and signed on behalf of the company by the directors of the company or, if the company has only 1 director, by that director.
- (3) The following periods must not exceed 15 months—
 - (a) the period between the date of incorporation of a company and its first balance date;
 - (b) the period between any 2 balance dates of a company.

162 Financial statements must be audited

- (1) A company that is required to prepare financial statements must ensure that the financial statements are audited by a qualified auditor.
- (2) If a company fails to comply with subsection (1),—
 - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000; and
 - (b) every director commits an offence and is liable on conviction to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 3 months, or both.

163 Company may opt out of preparing financial statements

A company may opt out of preparing financial statements for an accounting period if—

- (a) the constitution provides for opting out; and
- (b) opting out is approved by all the shareholders entitled to vote and voting at the annual meeting of the company held in the accounting period.

Subpart 3—Auditor's appointment and role**164 Requirement that auditor be appointed**

- (1) This section applies to a company in relation to an accounting period if the company is required to prepare financial statements for that period.
- (2) At the annual meeting of the company held in the accounting period, the company must appoint a qualified auditor to—
 - (a) hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
 - (b) audit the company's financial statements.

165 Registrar may appoint auditor

- (1) The Registrar may appoint an auditor if—
 - (a) at an annual meeting of a company, no auditor is appointed as required by section 164; or
 - (b) a casual vacancy in the office of auditor is not filled within 1 month of the vacancy occurring.
- (2) A company must give notice to the Registrar of the resignation or removal of the auditor.
- (3) The notice must be—
 - (a) in the prescribed form; and
 - (b) given within 10 working days after the auditor's resignation or removal.

166 Resignation and casual vacancy

- (1) An auditor may resign at any time by giving written notice to the company, and the company, must as soon as practicable, notify the shareholders of the auditor's resignation.
- (2) The directors may fill any casual vacancy in the office of auditor.

167 Replacement of auditor

- (1) A company may at a meeting of shareholders remove an auditor and if necessary replace the auditor by appointing a new auditor.
- (2) However, a company must not remove an auditor unless the company has given the auditor—
 - (a) at least 20 working days' written notice of removal; and
 - (b) a reasonable opportunity at the company's expense to make representations to the shareholders (whether in writing or in person) on the appointment of another person.

168 Statement by auditor on resignation

If an auditor of a company resigns from office, on the request of the auditor the company must—

- (a) as soon as practicable distribute to all shareholders at the company's expense a written statement of the auditor's reasons for resigning; and
- (b) allow the auditor or the auditor's representative to explain at a shareholder meeting the reasons for resigning.

169 Qualifications of auditor

- (1) A person is a qualified auditor if—
 - (a) the person is—
 - (i) entitled to practise, and is certified by an association of accountants constituted in the Cook Islands, as an accountant in the Cook Islands; and
 - (ii) meets any further requirements for practice as an auditor in the Cook Islands that may be prescribed by regulations made under this Act; or

- (b) if the audit is to be carried out outside the Cook Islands, the person is eligible to act as an auditor in the country, state, or territory in which the audit is to be carried out.
- (2) The following persons must not be appointed or act as auditor of a company—
 - (a) a director or employee of the company or any other person responsible for keeping the company's accounting records;
 - (b) a person who is a business partner or employee of a person referred to in paragraph (a);
 - (c) a liquidator or a person who is a receiver in respect of the property of the company;
 - (d) a corporation;
 - (e) a person who, by virtue of paragraph (a) or (b), may not be appointed or act as auditor of a related company.
- (3) For the purposes of this Act, the Auditor-General is taken to be a qualified auditor of a company.

170 Auditor must avoid conflict of interest

An auditor of a company must ensure, in carrying out the duties of auditor under this Part, that the auditor's judgment is not impaired through any relationship with, or interest in, the company or any related company.

171 Auditor must report to shareholders

- (1) The auditor of a company must make a report to the shareholders on the financial statements audited by the auditor.
- (2) The report must state—
 - (a) the work done by the auditor; and
 - (b) the scope and limitations of the audit; and
 - (c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the company or any related company; and
 - (d) whether the auditor has obtained all information and explanations that the auditor has required; and
 - (e) whether, in the auditor's opinion, as far as appears from an examination of them, the company has kept proper accounting records; and
 - (f) whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the company, the financial statements—
 - (i) give a true and fair view of the matters to which they relate; and
 - (ii) comply with any applicable regulations made under this Act; and
 - (g) if applicable, the respects in which the financial statements do not meet the criteria in paragraph (f)(i) and (ii); and
 - (h) any other matter prescribed for the purposes of this section by regulations made under this Act.

172 Auditor's attendance at shareholder meetings

- (1) The directors of a company must ensure that the auditor of the company—

- (a) is permitted to attend a meeting of shareholders of the company; and
 - (b) receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and
 - (c) may be heard at a meeting of shareholders that the auditor attends on any part of the business of the meeting that concerns the auditor as auditor.
- (2) If the directors of the company fail to comply with subsection (1), each director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

173 Auditor's access to information

The auditor of a company may require—

- (a) access at all reasonable times to the company records, accounting records, and other company documents; and
- (b) from a director or employee of the company the information and explanations that the auditor reasonably considers necessary for the audit of the company.

Part 11

Disclosure to shareholders

Subpart 1—Annual report

174 Annual report to shareholders

- (1) This section applies if a company must prepare financial statements in accordance with section 161.
- (2) Subject to subsection (3), the directors of a company must, within 20 working days after the date on which the company is required to complete its financial statements under section 161(1),—
 - (a) prepare an annual report on the affairs of the company for the accounting period ending on the balance date; and
 - (b) send the report to each shareholder.
- (3) The constitution of a company may provide that the directors are not required to provide an annual report for an accounting period unless—
 - (a) a shareholder has given written notice to the company requiring an annual report; and
 - (b) the company has received the notice before the end of the accounting period.
- (4) If the directors of a company fail to comply with subsection (2), each director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

175 Contents of annual report

- (1) A company's annual report must—
 - (a) be in writing and dated; and
 - (b) include financial statements for the accounting period that comply with section 161; and
 - (c) include the auditor's report, if an auditor's report is required for the financial statements included in the report; and

- (d) state—
 - (i) the names of the directors in office at the end of the accounting period; and
 - (ii) the name of any person who ceased to be a director during the accounting period; and
- (e) contain any other information that may be required by—
 - (i) regulations made under this Act; and
 - (ii) the constitution; and
- (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

Subpart 2—Miscellaneous documents

176 Other documents that company must send to shareholders

A company must send the following documents to shareholders—

- (a) any document that is required by the constitution to be sent to shareholders;
- (b) a notice of acquisition of the company's own shares (*see* section 34(2));
- (c) a disclosure document for the purposes of an offer of financial assistance for the purchase of the company's own shares (*see* section 44(4));
- (d) a copy of a written resolution approved under section 70 (*see* section 71(3));
- (e) an auditor's written statement of reasons for resigning (*see* section 168(a)).

Subpart 3—Shareholder request for information

177 Shareholder may request information held by company

- (1) A shareholder of a company may at any time request the company to provide information held by it.
- (2) The request must—
 - (a) be in writing; and
 - (b) specify the information sought in sufficient detail for the company to identify it.

178 Company must respond to request

- (1) A company must, within 10 working days after receiving a request under section 174,—
 - (a) provide the information; or
 - (b) undertake to provide the information within a specified period; or
 - (c) refuse to provide the information and specify the reason for the refusal.
- (2) An undertaking to provide the information within a specified period may be subject to payment of a reasonable fee, as specified and explained by the company, to meet the cost of providing the information.

179 Reasons for refusing information

Without limiting the reasons for which a company may refuse to provide information under section 178, the company may refuse to provide information if—

- (a) the disclosure of the information would or would be likely to prejudice the commercial position of the company; or
- (b) the disclosure of the information would or would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or
- (c) the request for the information is frivolous or vexatious.

180 Withdrawal of request

- (1) A shareholder is taken to have withdrawn a request for information under section 177 if, after notification of the fee that may be required, the shareholder has not paid the fee within 10 working days after receiving the notification.
- (2) Subsection (1) does not apply if the shareholder—
 - (a) undertakes to pay the fee; or
 - (b) disputes that the fee is reasonable.

181 Court may order company to provide requested information

- (1) A shareholder of a company who has requested information under section 177 may apply to the Court for an order requiring the company to provide the information requested.
- (2) The Court may order the company to provide the information within the time and on payment of the fee that the Court thinks fit if it is satisfied that—
 - (a) the company does not have sufficient reason to refuse the information; or
 - (b) the period specified for providing the information is unreasonable; or
 - (c) the fee required by the company is unreasonable.
- (3) An order under subsection (2) may specify the use that may be made of the information and the persons to whom it may be disclosed.

Part 12**Company reorganisations****Subpart 1—Amalgamations****182 Amalgamations**

Any 2 or more companies may amalgamate, and continue as 1 company, in accordance with Schedule 6.

Subpart 2—Court approved reorganisations**183 Meaning of arrangement and company**

In this subpart,—

arrangement includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods

company includes an overseas company that is registered on the Cook Islands register.

184 Application to Court for order approving amalgamation, arrangement, or compromise

- (1) A company or any shareholder or creditor of a company may apply to the Court for an order under section 185 approving an amalgamation, arrangement, or compromise.
- (2) Before making an order under section 185, the Court may make any 1 or more of the following interim orders—
 - (a) an order that notice of the application, together with any information relating to it that the Court thinks fit, must be in the form and manner and given to any persons or classes of persons that the Court thinks fit:
 - (b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or class of creditors of a company to consider and, if thought fit, approve, in the manner specified by the Court, the proposed amalgamation, arrangement, or compromise:
 - (c) for the purposes of an order under paragraph (b), an order determining the shareholders or creditors that constitute a class of shareholders or creditors:
 - (d) an order requiring that a report on the proposed amalgamation, arrangement, or compromise be prepared for the Court by a person specified by the Court:
 - (e) an order that the report referred to in paragraph (d) be provided to the shareholders, class of shareholders, creditors, or class of creditors of a company, or to any other person that the Court considers has an interest:
 - (f) an order as to the payment of the costs incurred in preparing the report:
 - (g) an order specifying the persons who are entitled to appear and be heard on the application to approve the amalgamation, arrangement, or compromise.
- (3) In making an order under subsection (2), the Court must have regard to the procedures for amalgamations under Schedule 6 and for arrangements and compromises under Part 13.

185 Court may approve amalgamation, arrangement, or compromise

- (1) On an application under section 184(1), the Court may order that an amalgamation, arrangement, or compromise is binding on the company and on any other person or classes of person specified by the Court.
- (2) The Court must not make an order under this section in relation to an amalgamation or compromise unless it is impracticable to effect an amalgamation under Schedule 6 or a compromise under Part 13 or both.
- (3) To avoid doubt, it is not impracticable to effect an amalgamation under Schedule 6 or a compromise under Part 13 by reason only that the amalgamation or compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in Schedule 6 or Part 13, as the case may be.

- (4) The Court may make an order under subsection (1) on any conditions that the Court thinks fit, and the order has effect in and from the date specified in the order.
- (5) Section 198 applies, with all necessary modifications, to a compromise approved under this section.

186 Additional orders

Without limiting section 185(1), the Court may, for the purpose of giving effect to any amalgamation, arrangement, or compromise approved under that section, provide for, and prescribe terms and conditions relating to, the following—

- (a) the transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements:
- (b) the issue of shares, securities, or policies of any kind:
- (c) the liquidation of any company:
- (d) the provision to be made for persons who voted against the amalgamation, arrangement, or compromise at a meeting ordered to be held under section 184(2)(b), or who appeared before the Court in opposition to the application for approval:
- (e) any other matter that is necessary or desirable to give effect to the amalgamation, arrangement, or compromise.

187 Copies of orders must be filed with Registrar

- (1) A company that is the subject to an order under this subpart must ensure that, within 10 working days after the order is made, a copy of the order is filed (using the prescribed form) with the Registrar for registration.
- (2) If a company fails to comply with subsection (1), each director of the company commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

Part 13

Compromises with creditors

Subpart 1—General

188 Meaning of compromise

In this Part, unless the context otherwise requires, **compromise** means a compromise between a company and its creditors, including a compromise—

- (a) cancelling all or part of a debt of the company; or
- (b) varying the rights of its creditors or the terms of a debt; or
- (c) relating to an alteration of the company's constitution that affects the likelihood of the company being able to pay a debt.

189 Who may make compromise proposal

- (1) Any of the following persons with reason to believe that a company is or will be insolvent may propose a compromise under this Part—
 - (a) the directors of the company:

- (b) a receiver appointed to the whole or substantially the whole of the company's assets and undertaking;
 - (c) a liquidator of the company;
 - (d) with the leave of the Court, any creditor or shareholder of the company.
- (2) Where the Court grants leave to a creditor or shareholder under subsection (1)(d), the Court may make an order directing the company to provide the creditor or shareholder, within a specified time, with—
- (a) a list of the names and addresses of the company's creditors showing the amounts owed to each of them; and
 - (b) such other specified information that will enable the creditor or shareholder to propose a compromise.

Subpart 2—Compromise procedure

190 Proponent must compile list of affected creditors

- (1) A person who proposes a compromise (the **proponent**) must compile, in relation to each class of creditors of the company, a list of the creditors known to the proponent who would be affected by the compromise.
- (2) The list of creditors must set out—
- (a) the amount owing or estimated to be owing to each of them; and
 - (b) the number of votes that each of them is entitled to cast on a resolution approving the compromise.

191 Proponent must give notice of proposed compromise

The proponent must give notice in accordance with Schedule 7 of the intention to hold a meeting of creditors (or any 2 or more classes of creditors) to vote on a resolution approving the proposed compromise.

192 Requirements for notice of proposed compromise

- (1) The notice of the meeting must—
- (a) comply with Schedule 7; and
 - (b) be accompanied by—
 - (i) a statement that sets out the matters in subsection (2); and
 - (ii) the list of creditors compiled under section 190; and
 - (c) be given to—
 - (i) each known creditor; and
 - (ii) the company; and
 - (iii) any receiver or liquidator; and
 - (d) be filed with the accompanying documents with the Registrar in the prescribed form for registration.
- (2) The statement accompanying the notice of meeting must—
- (a) state the proponent's name and address and the capacity in which the proponent is acting; and
 - (b) contain contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours; and

- (c) set out the terms of the proposed compromise and the reasons for it; and
- (d) set out the reasonably foreseeable consequences for creditors of the company if the compromise is approved; and
- (e) set out the extent of the interest of any director in the proposed compromise; and
- (f) explain that the compromise will be binding on creditors (whether all creditors or a class of creditors) if approved; and
- (g) contain details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval.

193 Approval of compromise

- (1) A compromise, including any amendment proposed at the meeting, is approved by the creditors, or a class of creditors if, adopted by the creditors or class of creditors at a meeting conducted in accordance with Schedule 7.
- (2) Approval of a compromise by a class of creditors is presumed, if there is more than 1 class voting, to be conditional on approval by every other class voting, unless the resolution expressly provides to the contrary.
- (3) The proponent must give written notice in the prescribed form of the result of the voting to—
 - (a) each known creditor, the company, and any receiver or liquidator; and
 - (b) the Registrar for registration.

Subpart 3—Effect of compromise

194 Compromise is binding on company and creditors

A compromise, including any amendment, that is approved by creditors or a class of creditors in accordance with this Part is binding on the company and on all the creditors, or, if there is more than 1 class of creditors, on all creditors of that class, to whom notice of the proposal was given.

195 Variation of compromise

- (1) A compromise approved under section 193 may be varied either—
 - (a) in accordance with any procedure for variation incorporated in the compromise as approved; or
 - (b) by the approval of a variation as if the proposed variation were a proposed compromise to which this Part applies but subject to all necessary modifications.
- (2) This Part applies to any compromise that is varied in accordance with this section.

196 Court may make orders in relation to procedure or moratorium

- (1) On the application of the proponent or the company, the Court may—
 - (a) give directions in relation to a procedural requirement imposed by this Part, or waive or vary that requirement, if it considers that it would be just to do so; or
 - (b) order that during a specified moratorium period—

- (i) proceedings in relation to a debt owing by the company be stayed; or
 - (ii) a creditor not take any other measures to enforce payment of a debt owing by the company.
- (2) For the purposes of an order under subsection (1)(b), a moratorium period—
 - (a) must not begin earlier than the date on which notice was given of the proposed compromise; and
 - (b) must end not later than 10 working days after the date on which notice was given of the result of voting on it.
- (3) Nothing in subsection (1)(b) affects the right of a secured creditor during the specified moratorium period to take possession of, realise, or otherwise deal with, property of the company in which that creditor has a security interest.

197 Court may order that creditor not bound by compromise

- (1) A creditor who was entitled to vote on a compromise may apply, on 1 or more of the grounds set out in subsection (3), to the Court for an order that the creditor is not bound by the compromise or for such other order that the Court thinks fit.
- (2) An application under subsection (1) must be made not later than 10 working days after the date on which notice of the result of the voting on the compromise was given to the creditor.
- (3) The Court may make the order if it is satisfied that—
 - (a) the creditor was not given sufficient notice of the meeting or the matters required to be notified to creditors under section 192(1)(b); or
 - (b) there was some other material irregularity in obtaining approval of the compromise; or
 - (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs.

198 Effect of compromise on liquidation of company

- (1) If a compromise is approved, the Court may make an order as it thinks fit with respect to the extent (if any) to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator.
- (2) The Court may make an order under subsection (1) on the application of—
 - (a) the company; or
 - (b) a receiver appointed in relation to the property of the company; or
 - (c) with the leave of the Court, any creditor or shareholder of the company.
- (3) If a compromise is approved and the company is later put into liquidation, the Court may make an order as it thinks fit with respect to the extent, if any, to which the compromise continues in effect and is binding on the liquidator.
- (4) The Court may make an order under subsection (3) on the application of—
 - (a) the liquidator; or
 - (b) a person described in subsection (2)(b) or (c).

199 Costs of compromise

Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise—

- (a) must be met by the company; or
- (b) if incurred by a receiver or a liquidator, are a cost of the receivership or liquidation; or
- (c) if incurred by any other person, are a debt due to that person by the company.

Part 14 Liquidations

Subpart 1—General

200 What this Part does

This Part sets out the procedure for, and the effect of, the liquidation of a company.

201 Meaning of insolvency in this Part

For the purposes of this Part, unless the context otherwise requires, a company is insolvent if it is unable to pay its debts as they become due in the normal course of business.

Subpart 2—Appointment of liquidator

202 Liquidation begins with appointment of liquidator

- (1) The liquidation of a company begins on the date on which, and the time when, the liquidator is appointed.
- (2) The date and time of appointment must be recorded in the order or resolution appointing the liquidator.
- (3) For the purposes of a liquidation, an act done, or a transaction entered into or effected, on the date on which a liquidator is appointed, must be treated as done or entered into or effected after the time of the appointment on that date, unless the contrary is shown.

203 Who may be appointed liquidator

- (1) The liquidator must—
 - (a) be a named person; and
 - (b) consent in writing to the appointment.
- (2) Subject to subsection (5), none of the following persons may be appointed or act as the liquidator of a company—
 - (a) a corporation;
 - (b) a person who is under 21 years of age;
 - (c) a creditor of the company;

- (d) a person who has, within the 2 years immediately preceding the commencement of the liquidation, been a shareholder, director, auditor, or receiver of the company or of a related company;
 - (e) an undischarged bankrupt in any jurisdiction;
 - (f) a person in respect of whom an order is in force under the Cook Islands mental health legislation;
 - (g) a person who is prohibited by an order under section 276 from being or continuing as a liquidator;
 - (h) a person who is prohibited from being a director or promoter, or being concerned in or taking part in the management, of a company under this Act,
- (3) The appointment of a person as liquidator without the written consent of that person is of no effect.
 - (4) On the application of a person who is or becomes disqualified to become or remain a liquidator under subsection (2)(b) to (h), the Court may order that the person may be appointed and act, or may continue to act, as liquidator, despite being disqualified.
 - (5) A person who acts in contravention of subsection (2) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

204 Who appoints liquidator

- (1) A liquidator of a company may be appointed by—
 - (a) the directors, on the occurrence of an event specified in the constitution of the company;
 - (b) the shareholders, by special resolution;
 - (c) the Court, on the application of—
 - (i) the company; or
 - (ii) a director; or
 - (iii) a shareholder; or
 - (iv) a creditor (including any contingent or prospective creditor); or
 - (v) the Registrar.
- (2) At any time after the making of an application under subsection (1)(c) and before a liquidator is appointed, the Court may, on the application of the company or any creditor or shareholder of the company, stay any application or proceeding against the company that is pending in the Court, the Court of Appeal, or any other tribunal.

Subpart 3—Court appointment of liquidator

Role of Court

205 When Court may appoint liquidator

The Court may appoint a liquidator if it is satisfied that—

- (a) the company is insolvent; or

- (b) the company or its directors have persistently or seriously failed to comply with this Act; or
- (c) the company does not comply with section 6; or
- (d) it is just and equitable that a liquidator be appointed.

Proof of insolvency

206 Appointment of liquidator on ground that company is insolvent

- (1) For the purpose of the appointment of a liquidator by the Court, a company's insolvency may be—
 - (a) presumed under section 207; or
 - (b) proved by other means.
- (2) Information or records obtained under section 177 or, if the Court so orders, under section 181 may be received as evidence that a company is insolvent.
- (3) In determining whether a company is insolvent, the Court may take into account contingent or prospective liabilities.
- (4) However, in the case of a prospective or contingent creditor,—
 - (a) the creditor may apply to the Court for the appointment of a liquidator only with the leave of the Court; and
 - (b) the Court may give leave, with or without conditions, only if it is satisfied that a *prima facie* case has been made out that the company is insolvent.

207 Presumption of insolvency

Unless the contrary is proved, a company is presumed to be insolvent if—

- (a) the company has failed to comply with a statutory demand (*see* section 208); or
- (b) execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (c) a person with a security over all or substantially all of the property has appointed a receiver under the document creating the security; or
- (d) a compromise between a company and its creditors has been put to a vote in accordance with Part 13.

208 Statutory demand

- (1) A statutory demand is a demand by a creditor in respect of a debt owing or due by a company that is made in accordance with subsection (2).
- (2) A statutory demand must—
 - (a) be in respect of a debt that is not less than the prescribed amount; and
 - (b) be in writing; and
 - (c) be served on the company; and
 - (d) require the company to do any of the following things to the reasonable satisfaction of the creditor, within 30 working days after the date of service (or any longer period that the Court may order under section 210(3))—
 - (i) pay the debt;
 - (ii) enter into a compromise under Part 13:

- (iii) otherwise compound with the creditor;
 - (iv) give a security over its property to secure payment of the debt.
- (3) For failure by a company to comply with a statutory demand to be admissible as evidence of insolvency in an application to appoint a liquidator, the application must be made within 30 working days after the last date for compliance with the demand.

209 Court may set aside statutory demand

- (1) On the application of the company, the Court may set aside a statutory demand if it is satisfied that—
 - (a) there is a substantial dispute whether or not the debt is owing or due; or
 - (b) the company appears to have a counterclaim, set-off, or cross-demand for an amount that, when deducted from the amount of the demand, leaves an amount owing or due by the company that is less than the prescribed amount; or
 - (c) the demand ought to be set aside on other grounds.
- (2) The Court must not set aside a statutory demand by reason only of a defect or irregularity unless the Court considers that substantial injustice would result if it were not set aside.
- (3) In subsection (2), **defect** includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the statutory demand.
- (4) An order setting aside a demand may be made subject to conditions.

210 Procedure for application to set aside statutory demand

- (1) A company must make its application to set aside a statutory demand, and serve it on the creditor, within 20 working days after the date of service of the statutory demand.
- (2) The Court must not extend the time for making or serving the application.
- (3) When hearing an application to set aside a statutory demand, the Court may extend the time for compliance with the demand.

211 Court's options if satisfied that debt is due by company

- (1) This section applies if, on hearing an application to set aside a statutory demand, the Court is satisfied that there is a debt owing or due by the company to the creditor that is not the subject of a substantial dispute nor subject to a counterclaim, set-off, or cross-demand.
- (2) On the ground that the company is unable to pay its debts, the Court may—
 - (a) order the company to pay the debt within a specified period and further order that, in default of payment, the creditor may apply for the appointment of a liquidator; or
 - (b) dismiss the application to set aside the demand and immediately make an order appointing a liquidator.
- (3) A company is presumed to be insolvent if it defaults in making payment with the period specified by an order under subsection (2)(a).

*Interim liquidator***212 Appointment of interim liquidator**

- (1) The Court may appoint a named person as interim liquidator if—
 - (a) an application has been made to the Court for the appointment of a liquidator; and
 - (b) the Court is satisfied that the appointment of an interim liquidator is necessary or expedient for maintaining the value of assets owned or managed by the company.
- (2) The appointment takes effect on the date on which, and the time when, the order appointing the interim liquidator is made.
- (3) The Court must record in the order the date and time of the appointment.
- (4) For the purposes of a liquidation, an act done, or a transaction entered into or effected, on the date on which an interim liquidator is appointed, must be treated as done or entered into or effected after the time of the appointment on that date, unless the contrary is shown.

213 Role of interim liquidator

- (1) An interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company.
- (2) However, the Court may limit the rights and powers of an interim liquidator as it thinks fit.

Subpart 4—Process of liquidation*Commencement of liquidation***214 Liquidator must give public notice of appointment**

- (1) A liquidator must, without delay after being appointed or being notified of his or her appointment, give public notice of—
 - (a) the liquidator's appointment; and
 - (b) the date and time of the commencement of the liquidation; and
 - (c) the address and contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours by a creditor or shareholder.
- (2) A liquidator must, within 10 working days after being appointed or being notified of his or her appointment, file with the Registrar for registration a notice in the prescribed form of his or her appointment as liquidator.

215 Documents must state that company is in liquidation

Any document or negotiable instrument entered into, made, or issued by a liquidator of a company must state, in a prominent position, that the company is in liquidation.

216 Effect of commencement of liquidation

- (1) With effect from the commencement of liquidation of a company,—
 - (a) the liquidator has custody and control of the company's assets:

- (b) the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Part:
 - (c) unless the liquidator agrees or the Court orders otherwise, a person must not—
 - (i) commence or continue legal proceedings against the company or in relation to its property; or
 - (ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company:
 - (d) unless the Court orders otherwise, a share in the company must not be transferred:
 - (e) there must be no alteration in the rights and liabilities of a shareholder of the company:
 - (f) a shareholder must not exercise a power under the constitution of the company or this Act except for the purposes of this Part:
 - (g) there must be no alteration in the constitution of the company.
- (2) A creditor is subject to the restrictions relating to prior execution process set out in Schedule 8.
- (3) Subsection (1) does not affect the right of a secured creditor, subject to Part 3 of Schedule 9, to take possession of, and realise or otherwise deal with, property of the company that is subject to the creditor's security interest.

217 **Obligations of suppliers of essential services**

- (1) Despite any other enactment or contract, a supplier of an essential service must not—
- (a) refuse to supply the service to the liquidator, or to a company in liquidation, on the ground that the company has defaulted in paying charges due for the service for a period before commencement of the liquidation; or
 - (b) make it a condition of the supply of the service to the liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service for a period before commencement of the liquidation.
- (2) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of clause 19(a) of Schedule 9.
- (3) In this section, an **essential service** means—
- (a) the retail supply of gas; or
 - (b) the retail supply of electricity; or
 - (c) the supply of water; or
 - (d) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
 - (e) telecommunications services.

Taking control of company property

218 **Directors and others must deliver company property to liquidator**

- (1) A present or former director or employee of a company in liquidation must—

- (a) without delay after the appointment of the liquidator, give the liquidator details of company property in that person's possession or under his or her control; and
 - (b) on being required to do so by the liquidator, without delay or within any time specified by the liquidator,—
 - (i) deliver the property to the liquidator or any other person as the liquidator directs; or
 - (ii) dispose of the property as the liquidator directs.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or both.

First steps in liquidation process

219 First report to creditors

- (1) The liquidator must, within the applicable period,—
- (a) prepare a list of every known creditor of the company; and
 - (b) prepare and send to every known creditor and shareholder, and (using the prescribed form) file with the Registrar for registration,—
 - (i) a report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and
 - (ii) a notice explaining the right of a creditor or shareholder to request a meeting of creditors or shareholders (as the case may be) under section 226.
- (2) For the purposes of subsection (1), the **applicable period** is—
- (a) in the case of a liquidator appointed by the directors or the shareholders, within 5 working days after appointment;
 - (b) in the case of a liquidator appointed by the Court, within 25 working days after appointment;
 - (c) in either case, within any longer period as the Court may direct.
- (3) The requirement to prepare a first report to creditors may be—
- (a) dispensed with or modified by an order of the Court under section 225(1); or
 - (b) dispensed with by the liquidator under section 225(2).

220 First meeting of creditors

- (1) Unless the liquidator has dispensed with creditors' meetings, the liquidator must call a meeting of the creditors of the company,—
- (a) in the case of a liquidator appointed by the directors or the shareholders, within 10 working days after appointment;
 - (b) in the case of a liquidator appointed by the Court, within 30 working days after appointment;
 - (c) in either case, within any longer period as the Court may direct.

- (2) If the liquidator has dispensed with creditors' meetings but receives a notice under section 223(1)(c) requesting a meeting, the first meeting of creditors must be held within 15 working days after the liquidator receives the notice.
- (3) The liquidator must—
 - (a) give every known creditor notice of the meeting; and
 - (b) include with the notice the section 219 report; and
 - (c) not less than 5 working days before the meeting, give public notice of the meeting.
- (4) In subsection (3)(b), **section 219 report** means the report and notice required under section 219(1)(b).

221 Purpose of first meeting of creditors

- (1) The purpose of the first meeting of creditors is—
 - (a) in the case of a liquidator appointed by the directors or the shareholders, to resolve whether to confirm the appointment or to appoint a replacement liquidator;
 - (b) in the case of a liquidator appointed by the Court, to resolve whether to confirm that appointment or to apply to the Court for the appointment of a replacement liquidator;
 - (c) in either case, to determine whether to pass a resolution expressing the views of the creditors.
- (2) If the meeting resolves to appoint a replacement for the liquidator appointed by the directors or the shareholders, the person named as the replacement by the resolution is, subject to section 203 (Who may be appointed liquidator), appointed liquidator.
- (3) If the meeting resolves to appoint a replacement for the liquidator appointed by the Court,—
 - (a) the liquidator must without delay apply to the Court for the appointment of the person named as the replacement by the resolution; and
 - (b) the Court may appoint that person as liquidator.

222 First report and first meeting of creditors not required for solvent company

- (1) Sections 219 to 221 do not apply if—
 - (a) the liquidator has been appointed by the shareholders or the directors; and
 - (b) within 20 working days before the appointment, the directors resolved that the company would, on the appointment of a liquidator by the shareholders or the directors, be able to pay its debts; and
 - (c) a copy of the resolution is (using the prescribed form) filed with the Registrar for registration.
- (2) However, if the liquidator once appointed is not satisfied as to the solvency of the company, the liquidator must without delay call a first meeting of the creditors and sections 219 to 221 apply with all necessary modifications.
- (3) For the purposes of subsection (2), the liquidator is not satisfied as to the solvency of the company if the liquidator considers that—

- (a) the directors who voted in favour of a resolution referred to in subsection (1)(b) did not have reasonable grounds to believe that the company would be able to pay its debts; or
 - (b) the company is insolvent.
- (4) Subsection (2) is subject to section 223 (Liquidator may dispense with first meeting of creditors).

223 Liquidator may dispense with first meeting of creditors

- (1) A liquidator is not required to call a meeting under section 220 (first meeting of creditors) or 222(2) (liquidator not satisfied as to solvency), as the case may be, if—
 - (a) the liquidator considers that a meeting is unnecessary, having regard to—
 - (i) the assets and liabilities of the company; and
 - (ii) the likely result of the liquidation; and
 - (iii) any other relevant matters; and
 - (b) the liquidator gives a notice in writing to the creditors that complies with subsection (2); and
 - (c) no creditor has requested a meeting or, if a creditor has requested a meeting, the Court has directed that a meeting is not necessary.
- (2) The liquidator's notice must state—
 - (a) that the liquidator considers that a meeting is unnecessary; and
 - (b) the reasons for the liquidator's view; and
 - (c) that a meeting will not be called unless a creditor gives the liquidator written notice, within 10 working days after receiving the liquidator's notice, requesting a meeting and giving reasons why it is necessary.
- (3) The liquidator's notice must be given to every known creditor together with the report referred to in section 219(1)(b) (the **section 219 report**).

Reports

224 Six-monthly report

The liquidator must, within 2 months after the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and shareholder, and (using the prescribed form) file with the Registrar for registration, a report on—

- (a) the conduct and progress of the liquidation during the preceding 6 months; and
- (b) any further proposals that the liquidator has for completing the liquidation.

225 Dispensing with reporting

- (1) On the application of a liquidator, the Court may, on any conditions that the Court thinks fit,—
 - (a) dispense with the requirement to prepare a first report to creditors or a 6-monthly report; or
 - (b) modify 1 or both of those requirements.

- (2) The liquidator may dispense with the requirement to prepare a first report to creditors or a 6-monthly report if the liquidator considers that the value of the assets of the company available for distribution to unsecured creditors who are not preferential creditors is not likely to exceed \$0.20, or any other prescribed sum, in every dollar owed to those creditors.
- (3) If subsection (2) applies, and the liquidator intends not to prepare a first report to creditors or a 6-monthly report, the liquidator must (using the prescribed form) file a notice of that intention with the Registrar.

Meetings

226 Meeting of creditors or shareholders to appoint liquidation committee

- (1) At any time in the liquidation, the liquidator may, on the request of any creditor or shareholder or on the liquidator's own initiative, call a meeting of creditors or shareholders—
 - (a) to vote on a proposal that a liquidation committee be appointed to act with the liquidator; and
 - (b) if it is so decided, to choose the members of the committee.
- (2) The liquidator may decline the request on the ground that—
 - (a) the request is frivolous or vexatious; or
 - (b) the request was not made in good faith; or
 - (c) except if a creditor or a shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company's assets.
- (3) The liquidator's decision to decline the request may be reviewed by the Court on the application of any creditor or shareholder.
- (4) The sole shareholder of a company may present to the liquidator a view on any matter that could have been decided at a meeting of shareholders called under this section, and that view must, for all purposes, be treated as a decision taken at a meeting of shareholders.

227 Other meetings of creditors or shareholders

The liquidator —

- (a) must call meetings of shareholders at the times specified by a resolution of shareholders passed at a meeting to appoint a liquidator;
- (b) must call meetings of creditors at the times specified by a resolution of creditors passed at the first meeting of creditors;
- (c) must call a meeting of shareholders without delay when required to do so by a notice in writing given by shareholders who hold not less than 10% of all the shares issued by the company;
- (d) must call a meeting of creditors without delay when required to do so by notice in writing given by creditors to whom is owed not less than 10% of the total amount owed to all creditors of the company;
- (e) may, at his or her discretion, call a meeting of creditors or shareholders.

228 Procedure for meeting of creditors or shareholders

A liquidator who calls a meeting of creditors or shareholders must call the meeting in accordance with—

- (a) Schedule 7; or
- (b) in the case of a meeting of shareholders, the constitution of the company, except that the liquidator has the power to give notice of the meeting and to act as, or appoint, the chairperson of the meeting.

*Liquidation committees***229 Liquidation committees**

(1) A liquidation committee must consist of not less than 3 persons who are—

- (a) creditors or shareholders; or
- (b) persons holding general powers of attorney from creditors or shareholders; or
- (c) authorised directors or representatives of companies that are creditors or shareholders of the company in liquidation.

(2) A liquidation committee has the power to—

- (a) call for reports from the liquidator on the progress of the liquidation;
- (b) call a meeting of creditors or shareholders (which must be held in accordance with Schedule 7);
- (c) apply to the Court under sections 273, 275, or 276;
- (d) assist the liquidator as appropriate in the conduct of the liquidation.

(3) If meetings of shareholders and creditors differ on the issue of whether to appoint a liquidation committee or on the membership of the committee, the liquidator must refer the matter to the Court which may determine the issue as it sees fit.

(4) The provisions set out in Schedule 10 govern meetings of a liquidation committee.

(5) If a liquidation committee is unable to act because of vacancies in membership, the liquidator must call attention to that situation in the liquidator's next 6-monthly report.

230 Restrictions on members of liquidation committee

(1) Except with the leave of the Court, a member of a liquidation committee (a **member**) must not receive any remuneration for services as member.

(2) Except with the leave of the Court,—

- (a) a member must not, directly or indirectly, become a purchaser of any asset of the company in liquidation;
- (b) must not receive out of the assets of the company in liquidation any payment for services by the member in connection with the administration of the assets of the company;
- (c) must not receive out of the assets of the company in liquidation any payment for goods supplied by the member to the liquidator for, or on account of, the company.

- (3) The Court may set aside a transaction in breach of subsection (1) and may make other orders in relation to the breach as it sees fit, including orders for the recovery of assets and the repayment of any benefit or payment received by the member.
- (4) The Court may grant leave under this section on any conditions that it thinks fit.
- (5) The Court must not grant leave for the payment for services by a member unless the services are of a special nature and the Court must specify in its order the nature of the services for which payment may be made.

Creditors' claims

231 Claims process

- (1) A claim by a creditor in the liquidation of a company is—
 - (a) preferential claim; or
 - (b) a non-preferential claim.
- (2) A claim is made according to the procedure set out in Schedule 9.

232 Order in which claims are paid

- (1) The liquidator must pay the preferential claims before non-preferential claims, that is, the liquidator must—
 - (a) first pay out of the assets of the company the expenses, fees, and claims set out in Part 4 of Schedule 9; and
 - (b) pay them to the extent and in the order of priority specified in Part 4 of Schedule 9.
- (2) The assets of the company that remain after paying the preferential claims must be applied in payment of all other claims, that is, the non-preferential claims.
- (3) The non-preferential claims rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment abates rateably among them.

233 Other rules relating to claims

The other rules relating to claims are set out in Schedule 9.

Final report

234 Final report and accounts

- (1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator must—
 - (a) prepare and send the documents set out in subsection (2) to every creditor whose claim has been admitted and to every shareholder; and
 - (b) (using the prescribed form) file those documents with the Registrar for registration.
- (2) The documents are—
 - (a) the final report and statement of realisation and distribution in respect of the liquidation; and
 - (b) a statement that—

- (i) all known assets have been disclaimed, or realised, or distributed without realisation; and
 - (ii) all proceeds of realisation have been distributed; and
 - (iii) the company is ready to be removed from the Cook Islands register; and
- (c) a summary of the applicable grounds on which a creditor or shareholder may object to the removal of the company from the Cook Islands register under section 341.

235 Dispensing with final report and accounts

- (1) On the application of the liquidator, the Court may make an order—
- (a) exempting the liquidator from compliance with section 234 (Final report and accounts); or
 - (b) modifying the application of all or part of section 234 in relation to the liquidation.
- (2) The Court may make the order on any conditions that it thinks fit.

Termination of liquidation

236 Termination of liquidation

- (1) At any time after the appointment of a liquidator, the Court may make an order terminating the liquidation of the company if the Court considers that it is just and equitable to do so.
- (2) The following persons may apply for an order under subsection (1)—
- (a) the liquidator;
 - (b) a director;
 - (c) a shareholder;
 - (d) a creditor;
 - (e) the Registrar.
- (3) The Court may require the liquidator to provide a report to the Court on any facts or matters relevant to the application.
- (4) If the Court makes an order, the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or any other date specified in the order.
- (5) The Court may, on making the order or at any later time, make any other order that it thinks fit in relation to the termination of the liquidation.

237 Notice of termination of liquidation

- (1) The applicant for an order terminating the liquidation of a company must, within 10 working days after the order was made, file (using the prescribed form) a notice of the order with the Registrar for registration.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

*Completion of liquidation***238 Completion of liquidation**

The liquidation of a company is completed when the liquidator,—

- (a) complies with section 234(1)(b); or
- (b) files with the Registrar for registration—
 - (i) a copy of any order made under section 235(1)(a); or
 - (ii) a copy of any order made under section 235(1)(b) together with any documents required to comply with the order.

239 Liquidation Surplus Account

(1) After completion of the liquidation,—

- (a) the liquidator must pay to the Registrar any money representing unclaimed assets of the company standing to the credit of the liquidator; and
- (b) the Registrar must hold the money on trust and deal with it in accordance with this section.

(2) Twelve months after the date on which the money is paid, the Registrar must—

- (a) deduct any amount required to meet the claim of any person that is established in the 12-month period; and
- (b) pay the balance into an account entitled the “Liquidation Surplus Account” for distribution in accordance with this section.

(3) Money held in the Liquidation Surplus Account—

- (a) may be invested only in a bank that is licensed as a banking business under the Banking Act 2011, and the interest earned may be distributed in accordance with this section;
- (b) is not subject to the Unclaimed Moneys Act 1970.

(4) The Registrar may, from the Liquidation Surplus Account,—

- (a) pay or distribute money to any person entitled to payment or distribution in the liquidation of a company of any money representing the surplus assets of the company that has been paid into the Liquidation Surplus Account; or
- (b) subject to any conditions that the Registrar may impose, pay costs incurred in the course of the liquidation of a company for the purpose of proceedings brought by the company (including the costs of legal or other expert advice, or the costs of any expert witness), if the Registrar is satisfied that it is fair and reasonable for those costs to be met out of the Liquidation Surplus Account.

(5) In making a payment under this section, the Registrar is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

*Liquidation of assets of overseas company***240 Court may order liquidation of assets of overseas company**

- (1) An application may be made to the Court for an order for the liquidation of the assets in the Cook Islands of an overseas company in accordance with this Part subject to the modifications and exclusions set out in Schedule 13.
- (2) The Court may make the order whether or not the overseas company—
 - (a) is registered under section 361; or
 - (b) has given public notice of an intention to cease to carry on business in the Cook Islands in accordance with section 365(1)(a); or
 - (c) has given notice to the Registrar of the date on which it will cease to carry on business in the Cook Islands in accordance with section 365(1)(b); or
 - (d) has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

*Pooling of assets and joint liquidation***241 Pooling of assets of related companies**

- (1) On the application of a person listed in subsection (2), the Court may, if it considers that it is just and equitable, order that—
 - (a) a company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation;
 - (b) if 2 or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were 1 company to the extent that the Court orders and subject to any terms and conditions that the Court imposes.
- (2) The persons who may make the application are the liquidator, a creditor, or a shareholder of the company in liquidation or of 1 or more of the related companies in liquidation.
- (3) The Court may make any other order or give any directions to facilitate giving effect to an order under subsection (1) that it thinks fit.

242 Guidelines for orders

- (1) In deciding whether it is just and equitable to make an order under section 241(1)(a), the Court must consider the following—
 - (a) the extent to which the related company took part in the management of the company in liquidation;
 - (b) the conduct of the related company towards the creditors of the company in liquidation;
 - (c) the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company;
 - (d) any other matters that the Court considers relevant.
- (2) In deciding whether it is just and equitable to make an order under section 241(1)(b), the Court must consider the following—
 - (a) the extent to which any of the companies took part in the management of any of the other companies;

- (b) the conduct of any of the companies towards the creditors of any of the other companies:
 - (c) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies:
 - (d) the extent to which the businesses of the companies have been combined:
 - (e) any other matters that the Court considers relevant.
- (3) Reliance by the creditors of a company in liquidation on the fact that another company was, or is, related to it is not a ground for making an order under section 241(1).

Subpart 5—Office of liquidator

Vacancy

243 Vacancy

- (1) The office of liquidator becomes vacant if the liquidator—
- (a) resigns in accordance with section 244; or
 - (b) dies; or
 - (c) is removed by the Court; or
 - (d) is or becomes disqualified to act as liquidator.
- (2) Except in the case of resignation, the person vacating office or his or her personal representative must without delay file a notice (using the prescribed form) of the vacancy with the Registrar.
- (3) If, as a result of vacancy, no person is acting as liquidator, the Registrar may appoint a person to act as liquidator until a successor is appointed by the Court.

244 Resignation

A liquidator may resign by—

- (a) appointing another person as his or her successor; and
- (b) filing a notice (using the prescribed form) of that appointment with the Registrar for registration.

245 Court may review appointment of successor

- (1) On the application of a person listed in subsection (2), the Court may review the appointment of a successor to a liquidator and instead appoint as liquidator any person qualified for appointment.
- (2) The persons who may make the application are—
- (a) the company;
 - (b) a shareholder or other entitled person;
 - (c) a director or creditor.

246 Appointment of successor by Court

- (1) On the application of a person listed in subsection (3), the Court may appoint a liquidator if a vacancy has occurred and—
- (a) has not been filled; or
 - (b) has been filled by an appointment by the Registrar.

- (2) The Court may appoint as liquidator any person qualified for appointment.
- (3) The following persons may apply—
 - (a) the company;
 - (b) a shareholder or other entitled person;
 - (c) a director or creditor.
- (4) A liquidator appointed under this section must, within 10 working days after being appointed or being notified of the appointment, file a notice (using the prescribed form) of the appointment with the Registrar for registration.

247 Duty to assist successor

- (1) A person vacating the office of liquidator must, where practicable, provide the information and give the assistance to his or her successor as the successor reasonably requires in taking over the duties of liquidator.
- (2) A person vacating the office of liquidator must without delay, or within any reasonable time specified by his or her successor, deliver to the successor the following items that are in his or her possession or under his or her control—
 - (a) any company records or documents;
 - (b) any other property of the company;
 - (c) all claims;
 - (d) the liquidation accounts, records, and documents.

Remuneration

248 Remuneration

- (1) A liquidator appointed by a resolution or directors or shareholders is entitled to charge reasonable remuneration for carrying out his or duties and exercising his or her powers as liquidator.
- (2) Unless the Court orders otherwise, a liquidator appointed by the Court is entitled to charge remuneration—
 - (a) of an amount fixed by regulations made under this Act; or
 - (b) at the rate or rates prescribed by regulations made under this Act.
- (3) A liquidator's remuneration and expenses are payable out of the assets of the company but the Court may approve payment of remuneration and expenses from another specific source.

Subpart 6—Duties of liquidator

249 Principal duty of liquidator

The principal duty of a liquidator of a company is, properly and efficiently,—

- (a) to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and
- (b) if there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets,—
 - (i) in accordance with the company's constitution; or

- (ii) if the constitution makes no provision for the distribution of surplus assets, in accordance with section 21(2)(c).

250 Other duties

Without limiting section 249, a liquidator has the other duties and functions specified in this Act.

251 Liquidator not required to act in relation to property subject to charge or security interest

- (1) Despite anything in this Act, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge or security interest.
- (2) However, subsection (1) does not apply if the charge or security interest is surrendered or taken to be surrendered or redeemed.

252 Duty to consider views of creditors and shareholders

- (1) The liquidator must consider—
 - (a) the views of the shareholders expressed in a resolution at the meeting held to appoint a liquidator;
 - (b) the views of creditors set out in a resolution passed at the first meeting of creditors;
 - (c) the views of creditors or shareholders set out at a meeting of creditors or shareholders called by the liquidator;
 - (d) the views of any liquidation committee given in writing to the liquidator.
- (2) Nothing in this section limits or prevents a liquidator from exercising his or her discretion in carrying out his or her functions and duties under this Act.

253 Duty in relation to accounts

- (1) The liquidator must keep accounts and records of the liquidation (the **liquidation accounts and records**).
- (2) The liquidator must permit inspection of the liquidation accounts and records, and of the company accounts and records (the **company accounts and records**), by—
 - (a) a liquidation committee, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
 - (b) if the Court so orders, a creditor or shareholder.
- (3) The liquidator must retain the liquidation accounts and records and the company accounts and records for not less than 1 year after completion of the liquidation.
- (4) However, the Registrar may, whether before or after the completion of the liquidation,—
 - (a) authorise the disposal of any accounts and records; and
 - (b) require any accounts or records to be retained for longer than 1 year after the completion of the liquidation.

254 Duties in relation to funds

- (1) A liquidator must deposit any funds received on behalf of a company in liquidation in a bank account in the name of the company or in a trust account with a bank to be held on trust for the benefit of the company.

- (2) A liquidator may invest funds held on behalf of or to the credit of the company and not required for the time being to meet creditors' claims only in the form of—
- (a) bank deposits; or
 - (b) securities issued by the Government of the Cook Islands; or
 - (c) any other investment approved by the Court.

255 Duties in relation to company transactions

- (1) Except with the leave of the Court, —
- (a) a liquidator must not, directly or indirectly, become a purchaser of any asset of the company in liquidation;
 - (b) must not purchase goods or services for the purposes of the liquidation from any person whose connection with the liquidator would result in a direct or indirect benefit to the liquidator as a result of the purchase.
- (2) The Court may set aside a transaction in breach of subsection (1) and may make other orders in relation to the breach as it sees fit, including orders for the recovery of assets and the repayment of any benefit by the liquidator.
- (3) The Court may grant leave under subsection (1) on any conditions that it sees fit.

Subpart 7—Powers of liquidator

General powers

256 Powers of liquidator

A liquidator has the powers—

- (a) necessary to carry out the functions and duties of a liquidator under this Act; and
- (b) conferred on a liquidator by this Act.

257 Liquidators must act jointly unless otherwise stated

If 2 or more persons are appointed as liquidators of a company, they must act jointly unless the resolution of shareholders or directors or the order of the Court appointing them states that they may exercise their powers individually.

Specific powers

258 Liquidator has specific powers set out in Schedule 11

Without limiting section 256, a liquidator has the specific powers set out in Schedule 11.

Production of documents and other information

259 Liquidator may require production of company documents or records

A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator any documents or records of the company in that person's possession or under that person's control, as the liquidator requires.

260 Liquidator may require provision of information

- (1) A liquidator may, from time to time, by notice in writing (the **liquidator's notice**), require any of the person listed in subsection (2) to—
 - (a) attend on the liquidator at any reasonable time or times, and at the place, specified in the liquidator's notice (and this may include attendance at a meeting of creditors);
 - (b) provide the liquidator with information requested by the liquidator about the business, accounts, or affairs of the company;
 - (c) be questioned on oath or affirmation by the liquidator or a lawyer acting for the liquidator about any matter relating to the business, accounts, or affairs of the company;
 - (d) assist in the liquidation to the best of the person's ability.
- (2) The persons referred to in subsection (1) are—
 - (a) a director or former director of the company;
 - (b) a shareholder of the company;
 - (c) a person who was involved in the promotion or formation of the company;
 - (d) a current employee of the company;
 - (e) a past employee of the company;
 - (f) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company;
 - (g) a person who is acting, or who has at any time acted, as a lawyer for the company.
- (3) The liquidator may pay the reasonable travel and other expenses incurred by a person listed in subsection (2)(e), (f), or (g) in complying with the liquidator's notice.
- (4) On the application of a person listed in subsection (2)(e), (f), or (g), the Court may order the liquidator to pay that person reasonable remuneration and travel and other expenses incurred in complying with the liquidator's notice.
- (5) A person listed in subsection (2)(e), (f), or (g) may not refuse to comply with the liquidator's notice by reason only that—
 - (a) an application under subsection (4) has yet to be made or determined; or
 - (b) the person has not been paid in advance the remuneration or expenses to which he or she is entitled; or
 - (c) the liquidator has not paid that person travel or other expenses previously incurred.

261 Examination by liquidator

- (1) A liquidator, or a lawyer acting for a liquidator, may administer an oath to, or take the affirmation of, a person required to be questioned under section 260(1)(c).
- (2) A person required to be questioned under section 260(1)(c) is entitled to be represented by a lawyer.
- (3) A liquidator or lawyer acting for a liquidator who questions a person under section 260(1)(c) must ensure that the questions and answers are recorded in writing or by means of a sound recording, video and sound recording, or other similar means.

262 Court may order person to comply with requirement under section 259 or 260

On the application of the liquidator, the Court may order a person who has failed to comply with a requirement of a liquidator under section 259 or 260 to comply with that requirement.

263 Court process for examination and production of documents

(1) On the application of the liquidator, the Court may order a person (P) to whom section 260 applies to—

- (a) attend the Court and be questioned on oath or affirmation by the Court or the liquidator on any matter relating to the business, accounts, or affairs of the company;
- (b) produce any documents relating to the business, accounts, or affairs of the company in P's possession or under P's control.

(2) If P is questioned by the Court or the liquidator under subsection (1)(a),—

- (a) the questions and answers must be recorded in writing; and
- (b) the person questioned must sign the record.

(3) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under this Part or under section 106.

264 Restriction on enforcement of lien over company

(1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over the documents of the company.

(2) If the lien arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company under Part 4 of Schedule 9 to the extent of \$500 or such greater amount as may be prescribed at the commencement of the liquidation.

(3) Nothing in this section applies to a company if—

- (a) the liquidator was appointed by the directors or shareholders under section 204(1); and
- (b) the directors passed a resolution of the kind referred to in section 222(1)(b); and
- (c) section 222(2) does not apply in relation to the company.

265 Documents held by receiver

(1) A receiver is not required to deliver to a liquidator under section 259 any document that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to the property of a company in liquidation.

(2) The liquidator may, from time to time, by notice in writing, require the receiver to—

- (a) make any documents available for inspection by the liquidator at any reasonable time or times; and
- (b) provide the liquidator with copies of any documents or extracts from them.

(3) The liquidator may take copies of any documents made available or extracts from them.

- (4) The liquidator must pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

266 Document held by secured creditor

- (1) A person must deliver a document to a liquidator under section 259 even though possession of the document creates a security interest in property of a company.
- (2) Production of the document to the liquidator does not prejudice the existence or priority of the security interest, and the liquidator must make the document available to the person entitled to it for the purpose of dealing with, or realising, the security interest.

267 Self-incrimination

- (1) A person is not excused from answering a question in the course of being questioned under section 261 (Examination by liquidator) or 263 (Court process for examination and production of documents) on the ground that the answer may incriminate or tend to incriminate that person.
- (2) The testimony of the person questioned is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

Enforcement of shareholder liability

268 Power to enforce liability of shareholders and former shareholders

A liquidator may enforce the liability of a shareholder or former shareholder in respect of any shares issued to the shareholder or former shareholder.

Disclaimer of onerous property

269 Meaning of onerous property

For the purposes of sections 270 to 272, **onerous property** means—

- (a) an unprofitable contract; or
- (b) property of a company that—
- (i) is unsaleable; or
 - (ii) is not readily saleable; or
 - (iii) may give rise to a liability to pay money or perform an onerous act.

270 Power to disclaim onerous property

- (1) A liquidator may disclaim onerous property even though the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) A liquidator who disclaims onerous property must, within 10 working days after the disclaimer, give notice in writing of the disclaimer to any person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

271 Effect of disclaimer

- (1) A disclaimer—
- (a) brings to an end, on and from the date of the disclaimer, the rights, interests, and liabilities of the company in relation to the property disclaimed:

- (b) does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.
- (2) A person who suffers loss or damage as a result of a disclaimer under section 270 may—
 - (a) claim as a creditor of the company for the amount of the loss or damage, taking account of any order made by the Court under paragraph (b):
 - (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (3) The Court may make an order under subsection (2)(b) if it is satisfied that it is just and equitable that the property should be vested in the applicant.

272 Liquidator may be required to elect whether to disclaim

- (1) A person whose rights would be affected by the disclaimer of onerous property may give the liquidator notice in writing requiring the liquidator to elect whether to disclaim the property before the close of a date specified in the notice (the **specified date**).
- (2) The specified date must be at least 20 working days after the date on which the notice is received by the liquidator.
- (3) The liquidator is not entitled to disclaim the property after the close of the specified date.

Subpart 8—Court supervision

273 Court may make orders and give directions in relation to liquidation

- (1) On the application of a person listed in subsection (2), the Court may do any of the following—
 - (a) give directions in relation to any matter arising in the liquidation:
 - (b) confirm, reverse, or modify an act or decision of the liquidator:
 - (c) order an audit of the liquidator's accounts:
 - (d) order the liquidator to produce the liquidation accounts and records for audit and to provide the auditor with the information about the conduct of the liquidation that the auditor requests:
 - (e) for any period, review or fix the remuneration of the liquidator at a level that is reasonable in the circumstances:
 - (f) order the liquidator to repay remuneration to the extent that the Court finds that it is unreasonable in the circumstances:
 - (g) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property:
 - (h) make an order concerning the retention or the disposition of the liquidation accounts and records or the company accounts and records.
- (2) The persons who may make the application are—
 - (a) the liquidator:
 - (b) a liquidation committee:
 - (c) with the leave of the Court, a creditor, shareholder, or director of the company in liquidation.
- (3) The powers of the Court under subsection (1)—

- (a) are in addition to any other powers the Court may exercise in its jurisdiction in relation to liquidators under this Act; and
- (b) may be exercised—
 - (i) in relation to a matter occurring either before or after the liquidation commenced or the removal of the company from the Cook Islands register; and
 - (ii) whether or not the liquidator has ceased to act as liquidator when the application or order is made.

274 Liquidator's defence of acting in accordance with Court direction

- (1) A liquidator who acts in accordance with a direction of the Court has a defence in relation to anything done or not done in accordance with that direction.
- (2) However, on the application of any person, the Court may order that, because of the circumstances in which the direction was obtained, the liquidator does not have the defence given by subsection (1).

275 Compliance order

- (1) On the application of a person listed in section 277(1), the Court may, if satisfied that there is a failure of liquidator compliance,—
 - (a) relieve the liquidator of the duty to comply wholly or in part; or
 - (b) order the liquidator to comply to the extent specified in the order (which may extend the time for compliance).
- (2) An order to comply is made without prejudice to any other remedy that may be available in relation to the failure to comply.
- (3) If a liquidator fails to comply with an order made under subsection (1)(b), the Court may make an order removing the liquidator from office.
- (4) In this section and in sections 276 and 277, **failure of liquidator compliance** means that a liquidator has failed, or is failing, to comply with a relevant duty arising—
 - (a) under this Act or any other enactment or law; or
 - (b) any order or direction of the Court (other than an order made under subsection (1)(b)).

276 Prohibition order

- (1) This section applies if the Court is satisfied that a person (**P**) is unfit to act as liquidator because of—
 - (a) his or her persistent failures of liquidator compliance; or
 - (b) the seriousness of his or her failure of liquidator compliance.
- (2) On the application of a person listed in section 277(1), the Court must prohibit **P**, for a period not exceeding 5 years, from—
 - (a) acting as a liquidator in a current or other liquidation; and
 - (b) acting as a receiver in a current or other receivership.
- (3) For the purposes of subsection (1)(a), evidence of **P**'s persistent failures of liquidator compliance includes, in the absence of special reasons to the contrary,—

- (a) evidence that, on 2 or more occasions within the preceding 5 years, the Court has made a compliance order under section 275(1)(b) in respect of P;
 - (b) evidence that, on 2 or more occasions within the preceding 5 years, an application for a compliance order under section 275(1)(b) has been made in respect of P and that in each case P complied after the application was made and before the hearing.
- (4) The applicant for an order made under this section must file a copy of the order with the Registrar within 10 working days after the order is made.

277 Person who may apply for compliance or prohibition orders

- (1) The persons who may make an application under section 275(1) or (3) or 276(2) are—
- (a) the liquidator;
 - (b) a liquidation committee;
 - (c) a receiver appointed in relation to the property of the company in liquidation;
 - (d) a creditor, shareholder, or director of the company in liquidation;
 - (e) the Registrar.
- (2) A person other than the liquidator must not apply for an order under section 275(1)(b) unless—
- (a) notice of the failure of liquidator compliance has been served on the liquidator not less than 5 working days before the date of the application; and
 - (b) as at the date of the application, there is a continuing failure of liquidator compliance.

Subpart 9—Voidable transactions

278 Definition of time periods

In this subpart,—

2-year period means—

- (a) the period of 2 years counted back from the close of the day on which liquidation commences; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 2 years counted back from the close of the day on which the application was filed in the Court plus the period counted forward from that day until the time and date of the order; and
- (c) in the case of the appointment of a liquidator by a resolution of the shareholders or the directors subsequent to an application to the Court, the period of 2 years counted back from the close of the day on which the application was filed in the Court plus the period counted forward from that day until the date and time of the appointment

1-year period has the same meaning as 2-year period except that “1 year” must be substituted for “2 years”

3-year period has the same meaning as 2-year period except that “3 years” must be substituted for “2 years”

6-month period has the same meaning as 2-year period except that “6 months” must be substituted for “2 years”.

Insolvent transaction

279 Insolvent transaction voidable

- (1) A transaction by a company is voidable by a liquidator if it is—
 - (a) an insolvent transaction; and
 - (b) entered into otherwise than in the ordinary course of business; and
 - (c) entered into within the 2-year period.
- (2) An insolvent transaction is a transaction by a company that—
 - (a) is entered into at a time when the company is unable to pay its due debts; and
 - (b) enables another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company’s liquidation.
- (3) In this section, **transaction** means any of the following steps by the company—
 - (a) conveying or transferring the company’s property:
 - (b) giving a security in the property of the company:
 - (c) incurring an obligation:
 - (d) undergoing an execution process:
 - (e) paying money (including paying money in accordance with a judgment or an order of a court):
 - (f) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.
- (4) A transaction that is entered into within the 6-month period is presumed, unless the contrary is proved, to be entered into—
 - (a) at a time when the company is unable to pay its due debts; and
 - (b) otherwise than in the ordinary course of business.

280 Intent or purpose of company must be disregarded

- (1) In determining whether a transaction took place in the ordinary course of business, no account is to be taken of any intent or purpose of the company to—
 - (a) enable another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company’s liquidation; or
 - (b) reduce or cancel the liability, whether in whole or in part, of another person in respect of a debt incurred by the company; or
 - (c) contribute towards the satisfaction of the liability, whether in whole or in part, of another person in respect of a debt incurred by the company.
- (2) However, subsection (1) does not apply if the other person knew that it was the intent or purpose of the company to do any of the things listed in subsection (1)(a), (b), or (c).

281 Procedure for setting aside insolvent transaction

The procedure for setting aside an insolvent transaction is the procedure set out in Schedule 12.

*Voidable security***282 Voidable security**

(1) A security in any property or undertaking of a company is voidable by the liquidator if—

- (a) the security was given within the 1-year period; and
- (b) immediately after the security was given, the company was unable to pay its due debts.

(2) Unless the contrary is proved, a company giving a security within the 6-month period is presumed to have been unable to pay its due debts immediately after giving the security.

283 Exception for money actually advanced, etc

Section 282 does not apply if the security secures any of the following things done at the time of, or immediately after, the giving of the security—

- (a) money actually advanced or paid to the company;
- (b) the actual price or value of property sold or supplied to the company;
- (c) valuable consideration given in good faith by the security holder.

284 Exception for substituted security

(1) Section 282 does not apply if the security is in substitution for a security given before the 1-year period.

(2) However, the exception in subsection (1) does not apply to the extent that—

- (a) the amount secured by the substituted security exceeds the amount secured by the existing security; or
- (b) the value of the property subject to the substituted security at the date of the substitution exceeds the value of the property subject to the existing security at that date.

285 Exception for security securing unpaid purchase price

(1) Section 282 does not apply if the security secures the unpaid purchase price of property (whether or not the security is given over that property) if the instrument creating the security is executed—

- (a) not later than 30 days after the sale of the property; or
- (b) in the case of the sale of an estate or interest in land, not later than 30 days after the final settlement of the sale.

286 Payments received by secured party

(1) For the purposes of sections 283 and 285, if a security was given by the company within the 1-year period, all payments received by the security holder after it was given are taken to have been appropriated so far as may be necessary towards—

- (a) repayment of money actually advanced or paid by the security holder to the company; or

- (b) payment of the actual price or value of property sold by the security holder to the company on or after the giving of the security; or
- (c) payment of any other liability of the company to the security holder in respect of any other valuable consideration given in good faith on or after the giving of the security.

287 Procedure for setting aside voidable security

The procedure for setting aside a voidable security is the procedure set out in Schedule 12.

Transactions under or over value

288 Recovery of profit in transaction at undervalue

- (1) Under subsection (2) the liquidator of a company may recover from a person (X) the amount C in the formula $A - B = C$ where—
 - (a) A is the value that X received from the company under a transaction to which the company was or is a party; and
 - (b) B is the value (if any) that the company received from X under the transaction.
- (2) The liquidator may recover the difference in value (that is, C in the formula in subsection (1)) from X if—
 - (a) the company entered into the transaction within the 2-year period; and
 - (b) either—
 - (i) the company was unable to pay its due debts when it entered into the transaction; or
 - (ii) the company became unable to pay its due debts as a result of entering into the transaction.
- (3) For the purposes of this section, **transaction** has the same meaning as in section 279(3).

289 Acquisition for excessive consideration

- (1) This section applies if—
 - (a) a company has acquired a business, property, or services (the **acquisition**) within the 3-year period; and
 - (b) the acquisition was acquired from a person listed in subsection (2); and
 - (c) the consideration given by the company for the acquisition exceeded its value at the time it was made.
- (2) The liquidator may recover the difference between the consideration given for the acquisition and the value at the time it was made from the person from whom it was acquired if that person was, at the time of the acquisition, any of the following—
 - (a) a director of the company;
 - (b) a nominee or relative of a director;
 - (c) a trustee for a director or for a relative of a director;
 - (d) a person, or a relative of a person, who controlled the company;
 - (e) a company controlled by a person listed in paragraph (a), (b), or (c):

- (f) a related company.
- (3) For the purposes of this section and sections 290 and 291,—
 - (a) the value of a business or property includes the value of any goodwill attaching to the business or property;
 - (b) without limiting the circumstances in which a company may be taken to be controlled by a person, a person controls a company if that person may, by exercise of a power exercisable by that person (with or without the consent or concurrence of any other person), appoint or remove all the directors of the company, or any number of directors as together hold a majority of voting rights at a meeting of directors.

290 Disposal for inadequate consideration

- (1) This section applies if—
 - (a) a company has disposed of a business, property, or services (the **disposition**) within the 3-year period; and
 - (b) the disposition was made to a person listed in subsection (2); and
 - (c) the value of the business, property, or services exceeded the consideration received by the company for the disposal.
- (2) The liquidator may recover the difference between the consideration received for the disposal and the value at the time it was made from the person to whom it was disposed if that person was, at the time of the disposition,—
 - (a) a director of the company;
 - (b) a nominee or relative of a director;
 - (c) a trustee for a director or for a relative of a director;
 - (d) a person, or a relative of a person, who controlled the company;
 - (e) a company controlled by a person listed in paragraph (a), (b), or (c);
 - (f) a related company.

Court may set aside security

291 Court may set aside security over company property

- (1) On the application of the liquidator, the Court may, as against the liquidator, set aside a security given by the company over any of its property or undertaking if—
 - (a) the company is unable to meet all its debts; and
 - (b) the security holder is a person listed in subsection (2); and
 - (c) the Court considers that it is just and equitable to set the security aside having regard to the considerations set out in subsection (3).
- (2) A person referred to in subsection (1)(b) is any of the following at the time when the security was given—
 - (a) a director of the company;
 - (b) a nominee or relative of a director;
 - (c) a trustee for a director or for a relative of a director;
 - (d) a person, or a relative of a person, who controlled the company;
 - (e) a company controlled by a person listed in paragraph (a), (b), or (c):

- (f) a related company.
- (3) The considerations referred to in subsection (1)(c) are—
 - (a) the circumstances in which the security was given; and
 - (b) the conduct of the security holder in relation to the affairs of the company; and
 - (c) any other relevant circumstances.
- (4) The Court may make any other orders that it thinks proper for giving effect to an order under this section.
- (5) Nothing in any enactment relating to the registration of an interest or estate in land restricts the operation of this section.

292 Section 291 does not apply to certain securities

Section 291 does not apply to a security that has been transferred by the person (A) who was the original security holder and has been purchased by another person (whether or not from A) if—

- (a) at the time of purchase, the purchaser was not a person listed in section 291(2); and
- (b) the purchase was made in good faith and for valuable consideration.

Subpart 10—Liability of directors and others

293 Liability if proper accounting records not kept

- (1) This section applies if—
 - (a) a company in liquidation is unable to pay all its debts; and
 - (b) the company has failed to comply with—
 - (i) section 158 (which relates to the keeping of accounting records); or
 - (ii) section 160 (which relates to the preparation of financial statements); and
 - (c) the Court considers that—
 - (i) the failure to comply has—
 - (A) contributed to the company's inability to pay all its debts; or
 - (B) resulted in substantial uncertainty as to the company's assets and liabilities; or
 - (C) substantially impeded the orderly liquidation; or
 - (ii) for any other reason it is proper to make a declaration under subsection (2).
- (2) On the application of the liquidator, the Court may declare that any 1 or more of the directors or former directors of the company are personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company.
- (3) The Court may give any direction it thinks fit for giving effect to the declaration.
- (4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence.

294 Defence to liability under section 293

The Court must not make a declaration under section 293 in relation to a person if the Court considers that the person—

- (a) took all reasonable steps to secure compliance by the company with the applicable provision referred to in section 293(1)(b); or
- (b) had reasonable grounds to believe, and did believe, that a competent and reliable person was responsible for ensuring compliance with that provision and was in a position to discharge that responsibility.

295 Court may require repayment of money or return of property

(1) This section applies if it appears to the Court that a person (P) listed in subsection (3) has—

- (a) misapplied, or retained, or become liable or accountable for, money or property of a company; or
- (b) been guilty of negligence, default, or breach of duty or trust in relation to a company.

(2) On the application of the liquidator or a creditor or shareholder, the Court may—

- (a) inquire into the conduct of P; and
- (b) order P to—
 - (i) repay or restore the money or property or any part of it with interest at a rate that the Court thinks just; or
 - (ii) contribute such sum to the assets of the company by way of compensation as the Court thinks just; or
- (c) if the application is made by a creditor, order that person to pay or transfer to the creditor the money or property or any part of it with interest at a rate that the Court thinks just.

(3) The persons referred to in subsection (1) are—

- (a) a past or present director of the company;
- (b) a manager or officer of the company;
- (c) a liquidator or receiver of the company.

(4) This section has effect even though the conduct may constitute an offence.

Part 15

Company receiverships

Subpart 1—General

296 What this Part does

This Part sets out the law relating to the conduct of company receiverships.

297 Outline of company receivership

(1) A receiver is appointed by a secured creditor of a company to take control of the property of the company that is subject to the creditor's security.

(2) In this Part, unless the context otherwise requires,—

company means the company in respect of whose property a receiver is appointed

property in receivership means the property of the company in respect of which a receiver is appointed.

Subpart 2—Appointment of receiver

298 Who may be appointed receiver

- (1) Subject to subsection (3), none of the following persons may be appointed or act as the receiver of a company—
- (a) a corporation:
 - (b) a person who is under 21 years of age:
 - (c) a creditor of the company:
 - (d) a person who is, or who has within the 2 years immediately before the commencement of the receivership, been—
 - (i) a director or employee of the company:
 - (ii) a director or employee of a mortgagee of the property in receivership:
 - (e) an undischarged bankrupt in any jurisdiction:
 - (f) a person in respect of whom an order is in force under the Cooks Islands mental health legislation:
 - (g) a person who is prohibited by an order under section 276 from being or continuing as a liquidator:
 - (h) a person who is prohibited by an order under section 332 from being or continuing as a receiver:
 - (i) a person who is prohibited from being a director or promoter, or being concerned in or taking part in the management, of a company under section 104:
 - (j) a person who is disqualified from acting as a receiver by the document that confers the power to appoint a receiver.
- (2) A person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.
- (3) The appointment of a person as a receiver without the written consent of that person is of no effect.
- (4) On the application of a person who is or becomes disqualified to become or remain a receiver under subsection (1)(b) to (j), the Court may order that the person may be appointed and act, or may continue to act, as a receiver, despite being disqualified.

299 Appointment of receiver under document

- (1) A receiver may be appointed in respect of the property of a company by, or in the exercise of a power conferred by, a document to which the company is a party.
- (2) The appointment of a receiver in the exercise of a power conferred by a document must be in writing.
- (3) A receiver appointed under subsection (1) is the agent of the company unless the terms of appointment expressly provide otherwise.

- (4) Appointment under subsection (1) is in addition to appointment by the Court.
- 300 Extent of power to appoint receiver**
- (1) A power conferred by a document to appoint a receiver includes, unless the document expressly provides otherwise, the power to appoint—
- (a) 2 or more receivers;
 - (b) an additional receiver;
 - (c) a receiver to succeed a receiver who has vacated office.
- (2) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the terms of appointment expressly provide otherwise.
- 301 Notice of appointment**
- (1) A receiver must, within 5 working days after appointment,—
- (a) give written notice of appointment to the company; and
 - (b) give public notice of appointment, including—
 - (i) the receiver's full name; and
 - (ii) the date of appointment; and
 - (iii) the receiver's address and contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours; and
 - (iv) a description of the property in receivership; and
 - (c) file a copy of the public notice (using the prescribed form) with the Registrar.
- (2) If applicable, a notice under this section must also state that the receiver is—
- (a) appointed as an additional receiver;
 - (b) appointed as a replacement receiver.
- (3) A receiver who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.
- 302 Notice of receivership**
- (1) A company or receiver who, in the course of a receivership, issues a document on which the name of the company appears must ensure that the document clearly states that a receiver has been appointed.
- (2) A failure to comply with subsection (1) does not affect the validity of the document.
- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

Subpart 3—Vacancy

303 Vacancy

The office of receiver becomes vacant if the receiver—

- (a) resigns; or
- (b) dies; or
- (c) is removed by the Court; or

- (d) is or becomes disqualified to act as receiver.

304 Resignation

- (1) A receiver resigns by giving written notice of not less than 5 working days to the person who appointed him or her.
- (2) A receiver appointed by the Court resigns by giving written notice of not less than 5 working days to the Registrar of the Court.

305 Notice of resignation or disqualification

- (1) If a receiver is disqualified, he or she must without delay give written notice of the resulting vacancy to the person who appointed him or her.
- (2) If a receiver resigns or is disqualified, he or she—
- (a) must without delay give public notice of the resulting vacancy; and
 - (b) must, within 5 working days after the vacancy occurred, file a notice (using the prescribed form) of the vacancy with the Registrar.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

306 Duty to assist successor

- (1) A person vacating the office of receiver must, where practicable, provide the information and give assistance in the conduct of the receivership to his or her successor as that person reasonably requires.
- (2) On the application of a replacement receiver, the Court may make any order that the Court considers necessary or desirable to facilitate the performance of the receiver's duties.

Subpart 4—Duties of receiver**307 General duties**

- (1) A receiver must exercise his or her powers in good faith and for a proper purpose.
- (2) A receiver must exercise his or her powers in a manner that he or she believes on reasonable grounds to be in the best interests of the person in whose interests he or she was appointed.
- (3) To the extent consistent with subsections (1) and (2), a receiver must exercise his or her powers with reasonable regard to the interests of—
- (a) the company; and
 - (b) persons claiming, through the company, interests in the property in receivership; and
 - (c) unsecured creditors of the company; and
 - (d) sureties who may be called upon to fulfil obligations of the company.
- (4) If a receiver appointed under a document acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver—
- (a) is not in breach of the duty referred to in subsection (2); but
 - (b) is still liable for breach of the duty referred to in subsection (1) or (3).

- (5) Nothing in this section limits section 308 (Duty of receiver disposing of property in receivership).

308 Duty of receiver disposing of property in receivership

- (1) In disposing of the property in receivership, a receiver owes a duty to the persons listed in subsection (2) to act in a commercially reasonable manner.
- (2) The duty is owed to—
- (a) the company; and
 - (b) persons claiming, through the company, interests in the property in receivership; and
 - (c) unsecured creditors of the company; and
 - (d) sureties who may be called upon to fulfil obligations of the company.
- (3) A disposition is not commercially unreasonable merely because a better price could have been obtained by disposition at a different time or by a different method from the time and method adopted by the receiver.
- (4) In the case of personal property, a disposition of the property is commercially reasonable if the receiver disposes of the property—
- (a) in conformity with commercial practice among dealers in that type of property; or
 - (b) at a public auction held after public notice of not less than 5 working days.
- (5) If the Court has given directions for the disposition of the property in receivership, disposition in accordance with those directions is commercially reasonable, but nothing in this section requires that the directions of the Court be obtained.

309 No defence or indemnity

Despite any enactment or rule of law or anything contained in the document under which a receiver is appointed,—

- (a) it is not a defence to a breach of the duty in section 308 that the receiver was acting as the company's agent or under a power of attorney from the company;
- (b) a receiver is not entitled to compensation or indemnity from the property in receivership or the company for any liability for breach of the duty in section 308.

310 Duty in relation to money

A receiver must keep money relating to the property in receivership separate from—

- (a) the other money received in the course of, but not relating to, the receivership; and
- (b) other money held by or under the control of the receiver.

311 Duty in relation to accounting records

- (1) A receiver must at all times keep accounting records that correctly record and explain the receipts, expenditure, and other transactions relating to the property in receivership.

- (2) The receiver must retain the accounting records for not less than 7 years after the receivership ends.

312 Duty to notify suspected offences, etc

- (1) A receiver of a company must notify the Registrar in writing if the receiver considers that—
 - (a) the company or any director or officer of the company has committed an offence under this Act; or
 - (b) any director or officer of the company has been guilty of any default, breach of duty, or breach of trust in relation to the company.
- (2) A report made under subsection (1), and any communication between the receiver and the Registrar relating to that report, are protected by absolute privilege.
- (3) Nothing in subsection (1) imposes a duty on a receiver to investigate whether an offence has been committed.
- (4) A receiver who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

313 Duty to prepare reports

- (1) A receiver must prepare the following reports—
 - (a) an initial report that complies with clause 1 of Schedule 14:
 - (b) interim reports that comply with clause 2 of Schedule 14 for each 6-month period after appointment:
 - (c) a final report that complies with clause 3 of Schedule 14 at the end the receivership.
- (2) The receiver must prepare—
 - (a) the initial report within 2 months after appointment:
 - (b) an interim report within 2 months after the end of the period to which it relates:
 - (c) the final report within 2 months after the end of the receivership.
- (3) On the application of the receiver, the time for preparing a report may be extended by—
 - (a) the Court, in the case of a receiver appointed by the Court:
 - (b) the Registrar, in all other cases.
- (4) In this section and section 314, **receiver** includes the person who was receiver at the end of the receivership.
- (5) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

314 Persons entitled to receive and inspect receiver's reports

- (1) A receiver must send a copy of each report required under section 313,—
 - (a) within 5 working days after preparing it, to each of the following—
 - (i) the company:
 - (ii) the person in whose interests the receiver was appointed:
 - (iii) the Registrar (using the prescribed form):

- (iv) the Registrar of the Court, if the receiver was appointed by the Court:
- (b) to any of the following, within 15 working days of a written request for a copy and on payment of the reasonable cost of making and sending the copy—
 - (i) a creditor, director, or surety of the company:
 - (ii) any other person with an interest in the receivership:
 - (iii) the authorised agent of a person referred to in subparagraph (i) or (ii).
- (2) A person entitled to receive a receiver's report is entitled to inspect it at the office of the receiver during normal business hours.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

Subpart 5—Powers of receiver

315 General powers

A receiver has the powers expressly or impliedly conferred by the terms of appointment.

316 Specific powers

Subject to the terms of appointment, a receiver may do any of the following—

- (a) demand and recover income of the property in receivership:
- (b) issue receipts for income recovered:
- (c) manage the property in receivership:
- (d) insure the property in receivership:
- (e) repair and maintain the property in receivership:
- (f) inspect at any reasonable time documents that relate to the property in receivership and are in the possession or under the control of the company:
- (g) exercise, on behalf of the company, a right to inspect documents that relate to the property in receivership and that are in the possession or under the control of a person other than the company:
- (h) buy and sell the property in receivership in the ordinary course of business.

317 Power to execute documents

- (1) A receiver may execute in the name and on behalf of the company all documents necessary or incidental to the exercise of the receiver's powers.
- (2) A document signed by a receiver on behalf of the company must be taken to have been properly executed.

318 Power to sell real property in absence of mortgagee's consent

- (1) This section applies if a receiver is unable to obtain the requisite consent of a mortgagee to the sale of real property in the receivership.
- (2) On an application by the receiver, the Court may make any order that it thinks fit authorising the receiver to sell the property (alone or together with other assets) if the Court is satisfied that—

- (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
- (b) the sale—
 - (i) is in the interests of the company and the company's creditors; and
 - (ii) will not substantially prejudice the interests of the mortgagee.
- (3) An order under subsection (2) may be made on the terms and conditions that the Court thinks fit.

319 Power of receiver on liquidation

- (1) Subject to subsection (2), a receiver may, unless the Court orders otherwise, be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company in liquidation.
- (2) A receiver in respect of property of a company in liquidation may act as the agent of the company only—
 - (a) with the approval of the Court; or
 - (b) with the written consent of the liquidator.
- (3) A person who is excluded by subsection (2) from acting as the agent of the company does not on that account become the agent of a person by whom or in whose interests the receiver was appointed.
- (4) A debt or liability incurred by a company through the acts of a receiver acting as the agent of the company is not a cost, charge, or expense of the liquidation.

320 Validity of receiver's acts

- (1) The act of a receiver is not invalid merely because of any of the following defects—
 - (a) the receiver was not validly appointed;
 - (b) the receiver is disqualified as a receiver;
 - (c) the receiver is not authorised to do the act.
- (2) However, subsection (1) does not apply to a transaction entered into by a receiver if the person dealing with the receiver—
 - (a) knows of a defect listed in subsection (1); or
 - (b) ought to know of that defect by reason of the person's relationship with the receiver or the receiver's appointor.

Subpart 6—Liability of receiver**321 Contractual liability**

- (1) A receiver is personally liable on a contract entered into in the exercise of any of the receiver's powers.
- (2) However, the contract may exclude or limit the personal liability of a receiver who is not appointed by the Court.

322 Liability for wages or salary under existing contract of employment

- (1) A receiver is personally liable for payment of wages or salary that accrue under a contract of employment entered into before the receiver's appointment if—
 - (a) the wages or salary accrue during the receivership; and

- (b) the contract of employment relates to the property in receivership.
- (2) However, subsection (1) does not apply if, within 10 working days after his or her appointment, the receiver gives notice lawfully terminating the contract of employment.
- (3) On the application of the receiver and on any conditions that the Court thinks fit, the Court may extend the period for terminating the contract after appointment.
- (4) The application must be made before the expiry of the 10-working day period.

323 Liability for director's remuneration

A receiver is personally liable for the payment of remuneration under a contract with a director of the company if the receiver has expressly confirmed the contract.

324 Liability for rent and other payments

- (1) This section applies if—
 - (a) rent and any other payments become due under an agreement in force at the date of appointment of a receiver; and
 - (b) the rent and payments relate to the use, possession, or occupation by the company of property in receivership.
- (2) The receiver is personally liable for that portion of the rent or other payments that accrues in the period beginning 10 working days after the date of appointment and ending on the earlier of—
 - (a) the date on which the receivership ends; or
 - (b) the date on which the company ceases to use, possess, or occupy the property.
- (3) The Court may, on the application of a receiver,—
 - (a) excuse the receiver from liability under this section; or
 - (b) limit the liability of the receiver to a greater extent than specified in this section.
- (4) Nothing in this section—
 - (a) must be taken as giving rise to an adoption by a receiver of an agreement referred to in subsection (1)(a); or
 - (b) renders a receiver liable to perform any other obligation under the agreement.

325 Liability on contract entered into without authority

Nothing in sections 321 to 324—

- (a) limits the liability of a receiver on a contract entered into without authority; or
- (b) confers on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

*Relief from liability***326 Receiver is entitled to indemnity**

A receiver is entitled to an indemnity out of the property in receivership in respect of the receiver's liability under sections 321 to 324.

327 Court may relieve receiver from liability

- (1) The Court may make an order relieving a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership if the Court is satisfied that—
 - (a) the liability was incurred solely by reason of a defect in the receiver's appointment or in the document or order of Court under which the receiver was appointed; and
 - (b) the receiver acted honestly and reasonably; and
 - (c) the receiver ought, in the circumstances, to be excused.
- (2) The Court may make the order on any terms and conditions that it thinks fit.
- (3) A person in whose interests a receiver was appointed is liable, subject to any terms and conditions that the Court thinks fit, to the extent that the receiver is relieved from liability under subsection (1).

Subpart 7—Court supervision**328 Court may give directions in relation to receivership**

On the application of a receiver, the Court may—

- (a) give directions in relation to any matter arising in the receivership;
- (b) revoke or vary those directions.

329 Court may make orders in relation to remuneration and validity of appointment

- (1) On the application of a person listed in subsection (2), the Court may—
 - (a) for any period, review or fix a receiver's remuneration at a level that is reasonable in the circumstances; or
 - (b) order a receiver to refund remuneration in excess of what the Court finds is reasonable remuneration in the circumstances; or
 - (c) declare whether or not a receiver was validly appointed in respect of any property; or
 - (d) declare whether or not a receiver validly entered into possession or assumed control of any property; or
 - (e) revoke or vary an order made under this subsection.
- (2) The persons who may make an application under subsection (1) are any of the following—
 - (a) the receiver;
 - (b) the company;
 - (c) a creditor of the company;
 - (d) a person claiming, through the company, an interest in the property in receivership;

- (e) the directors of the company or, if the company is in liquidation, the directors of the company at the time the liquidator was appointed:
 - (f) if the company is in liquidation, the liquidator.
- (3) The powers of the Court under this section or section 328 may be exercised whether or not the receiver has ceased to act as receiver when the application is made.

330 Receiver's defence of acting in accordance with Court direction

- (1) A receiver who acts in accordance with a direction of the Court has a defence in relation to anything done or not done in accordance with that direction.
- (2) However, on the application of any person, the Court may order that, because of the circumstances in which the direction was obtained, the receiver does not have the defence given by subsection (1).

331 Compliance order

- (1) On the application of a person listed in section 333(1), the Court may, if satisfied that there is a failure of compliance,—
 - (a) relieve the receiver of the duty to comply wholly or in part; or
 - (b) order the receiver to comply to the extent specified in the order (which may extend the time for compliance).
- (2) An order to comply is made without prejudice to any other remedy that may be available in relation to the failure to comply.
- (3) If a receiver fails to comply with an order made under subsection (1)(b), the Court may make an order removing the receiver from office.
- (4) In this section, **failure of compliance** means that a receiver has failed, or is failing, to comply with a relevant duty arising—
 - (a) under this Act or any other enactment or law; or
 - (b) any order or direction of the Court (other than an order made under subsection (1)(b)).

332 Prohibition order

- (1) This section applies if the Court is satisfied that a person (**P**) is unfit to act as receiver because of—
 - (a) the seriousness of his or her failure of compliance; or
 - (b) his or her persistent failures of compliance.
- (2) On the application of a person listed in section 333(1), the Court must prohibit P, for a period not exceeding 5 years, from—
 - (a) acting as a receiver in a current or other receivership;
 - (b) acting as a liquidator in a current or other liquidation.
- (3) For the purposes of subsection (1)(b), evidence of P's persistent failures of compliance includes, in the absence of special reasons to the contrary,—
 - (a) evidence that, on 2 or more occasions within the preceding 5 years, the Court has made a compliance order under section 275(1)(b) or 331(1)(b) in respect of P:

- (b) evidence that, within the preceding 5 years and in respect of P, the Court has made 1 or more orders under section 275(1)(b) and 1 or more orders under section 331(1)(b):
 - (c) evidence that, on 2 or more occasions within the preceding 5 years, an application for a compliance order under section 275(1)(b) or 331(1)(b) has been made in respect of P and that in each case P complied after the application was made and before the hearing:
 - (d) evidence that, within the preceding 5 years and in respect of P, there have been 1 or more applications for an order under section 275(1)(b) and 1 or more applications for an order under section 331(1)(b) and that in each case P complied after the application was made and before the hearing.
- (4) The applicant for an order made under this section must file a copy of the order with the Registrar within 10 working days after the order is made and the Registrar must file the order by reference to the name of the person subject to the order.

333 Person who may apply for compliance or prohibition orders

- (1) The persons who may make an application for an order under section 331(1) or (3) or 332(2) are any of the following—
- (a) the Registrar:
 - (b) a receiver:
 - (c) a person seeking appointment as a receiver:
 - (d) the company:
 - (e) a creditor of the company:
 - (f) a person claiming, through the company, an interest in the property in receivership:
 - (g) a guarantor of an obligation of the company:
 - (h) if the company is in liquidation, the liquidator.
- (2) A person must not apply for an order under section 333(1) unless—
- (a) notice of the failure of compliance has been served on the receiver not less than 5 working days before the date of the application; and
 - (b) as at the date of the application, there is a continuing failure of compliance.

334 Order protecting property in receivership

The Court may, on making an order that removes or has the effect of removing a receiver from office, make the orders that it thinks fit—

- (a) for preserving the property in receivership:
- (b) requiring the receiver for that purpose to make available to any person specified in the order any information and documents in or under the receiver's possession or control.

335 Court may terminate or limit receivership

- (1) On the application of a person listed in subsection (2), the Court may make an order—
- (a) terminating the receivership, including prohibiting the appointment of another receiver; or

- (b) limiting the receivership to specified assets.
- (2) The persons who may make an application under subsection (1) are—
 - (a) the company; or
 - (b) if the company is in liquidation, the liquidator.
- (3) An order under this section—
 - (a) may be made only if the Court is satisfied that the purpose of the receivership has as far as possible been met or that its continuation is not justified;
 - (b) may include an order prohibiting a person in whose interests the receiver was appointed from taking possession or assuming control of the property in receivership;
 - (c) may be made on the terms and conditions that the Court thinks fit;
 - (d) may be rescinded or amended on the application of any person who applied for the order or who is affected by it;
 - (e) except for an order under paragraph (b), does not affect a security or charge over the property to which the order relates.
- (4) Unless the Court orders otherwise,—
 - (a) a copy of an application under this section must be served on the receiver not less than 5 working days before the hearing of the application; and
 - (b) the receiver may appear and make submissions at the hearing.

Subpart 8—Supply of essential services

336 Obligations of suppliers of essential services

- (1) Despite any other enactment or contract, a supplier of an essential service must not—
 - (a) refuse to supply the service to a receiver or to the company on the ground that the company has defaulted in paying charges due for the service for a period before the date of the appointment of the receiver; or
 - (b) make it a condition of the supply of the service to a receiver or to the company that payment be made of outstanding charges due for the service for a period before the appointment of the receiver.
- (2) In this section, an **essential service** means—
 - (a) the retail supply of gas; or
 - (b) the retail supply of electricity; or
 - (c) the supply of water; or
 - (d) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
 - (e) telecommunications services.

Part 16

Removal from Cook Islands register

Subpart 1—Removal from register

337 Removal from register

A company is removed from the Cook Islands register when the Registrar registers a notice stating the company is removed from the Cook Islands register.

338 Grounds for removal

Subject to section 340, the Registrar must remove a company from the Cook Islands register if—

- (a) the company fails to file its annual return within the period of 6 months after the month allocated for filing the return; or
- (b) the company does not comply with section 6 (Essential requirements); or
- (c) the company is in liquidation and—
 - (i) 6 months have elapsed after the completion of liquidation; and
 - (ii) the Registrar has not received the prescribed documents confirming completion of liquidation; or
- (d) the company is in liquidation and the Registrar receives the prescribed documents confirming completion of liquidation; or
- (e) there is filed with the Registrar a request under section 339 for the company's removal.

339 Request for removal

- (1) Any of the following persons may request the removal of a company from the Cook Islands register—
 - (a) a shareholder;
 - (b) a person authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question;
 - (c) a director or any other person, if the constitution so provides.
- (2) A request for removal may be made on the grounds that the company—
 - (a) has ceased to carry on business, has discharged in full its liabilities to all known creditors, and has distributed its surplus assets in accordance with its constitution and this Act; or
 - (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.
- (3) The request must be—
 - (a) in the prescribed form (if any); and
 - (b) accompanied by prescribed third party consents (if any); and
 - (c) filed with the Registrar.

Subpart 2—Procedure for removal from register

340 When notice of removal required

- (1) The Registrar must not remove a company from the Cook Islands register unless—
 - (a) public notice of the removal has first been given,—
 - (i) for removal under section 338(b) or (c), by the Registrar;
 - (ii) for removal under section 338(d), by the liquidator;
 - (iii) for removal under section 338(e), by the person requesting removal; and
 - (b) the deadline date has passed without an application for an order under section 343.
- (2) Public notice is not required for removal under section 338(a).
- (3) The notice of removal must specify a date that is the deadline for a person who objects to the removal to apply for an order under section 343.

341 Objection to removal

- (1) No person may object to the removal of a company from the Cook Islands register under section 338(a).
- (2) Any person may object to the removal of a company from the Cook Islands register under any of section 338(b) to (e).
- (3) A person may object to removal on any 1 or more of the following grounds—
 - (a) the company is still carrying on business or there is other reason for it to continue in existence;
 - (b) the company is a party to a legal proceeding;
 - (c) the company is in receivership or liquidation;
 - (d) the person objecting is a creditor, shareholder, or other person having an undischarged claim against the company;
 - (e) the person objecting believes that there exists, and intends to pursue, a right of action on the part of the company under Part 8;
 - (f) for any other reason, removal would not be just and equitable.

342 Meaning of undischarged claim

- (1) For the purposes of section 341(3)(d), a claim by a creditor against the company is not an undischarged claim if—
 - (a) the claim has been paid in full; or
 - (b) the claim has been paid in part under a compromise entered into under Part 13 or by being otherwise compounded to the reasonable satisfaction of the creditor; or
 - (c) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or
 - (d) a receiver or liquidator has notified the creditor that the assets of the company are not sufficient for any payment to be made to the creditor.
- (2) For the purposes of section 341(3)(d), a claim by a shareholder or other person against the company is not an undischarged claim if—

- (a) the shareholder or other person has been paid in accordance with a right under the constitution to receive or share in the company's surplus assets; or
- (b) a receiver or liquidator has notified the shareholder or other person that the company has no surplus assets.

343 Procedure for objection

- (1) A person objects to the removal of a company from the Cook Islands register by applying to the Court for an order that the company not be removed.
- (2) The application must be made on or before the date specified in the public notice of the removal.
- (3) The Court may order that the company not be removed if the Court is satisfied, on 1 or more of the grounds specified in section 341(3), that the company should not be removed.

Subpart 3—Effect of removal from register**344 Property of company vests in Crown**

- (1) Property of a company that, immediately before the company's removal from the Cook Islands register, had not been distributed or disclaimed vests in the Crown on removal from the register.
- (2) For the purposes of this section, property of the former company—
 - (a) includes leasehold property and all other rights vested in or held on trust for the former company; but
 - (b) does not include property held by the former company on trust for any other person.
- (3) The Minister must without delay give public notice that the property has vested in the Crown, and the notice must state the name of the former company and describe the property.

345 Person claiming property may apply to Court

- (1) This section applies if a person (P) would have been entitled to receive all or part of the property of a company removed from the register, or payment from the proceeds of its realization, if the property had been in the hands of the former company immediately before its removal from the register.
- (2) On an application by P, or a person claiming through P, the Court may—
 - (a) order that all or part of the property vest in the applicant; or
 - (b) order the Crown to pay the applicant compensation which must not be greater than the value of the property.
- (3) The Court may also—
 - (a) determine issues of value, entitlement, and apportionment; and
 - (b) consolidate the hearing of applications; and
 - (c) treat an application as made on behalf of all the persons, or all of a class of persons, with an interest in the property; and
 - (d) make any ancillary order.
- (4) Compensation ordered to be paid under subsection (2)(b) must be paid out of the Consolidated Fund without further appropriation than this section.

346 Liability of directors, shareholders, and others continues

The liability of any person (including a former director or shareholder) in respect of any act or omission occurring before the company was removed from the register—

- (a) is not affected by the removal; and
- (b) continues and may be enforced as if the company had not been removed.

Subpart 4—Crown's disclaimer of property vesting on removal from register

347 Crown may disclaim onerous property

- (1) The Minister may, by notice in writing, disclaim onerous property vesting in the Crown under section 344 and the property is then treated as not having vested in the Crown.
- (2) The Minister must without delay give public notice of the disclaimer
- (3) In this section, **onerous property** means—
 - (a) an unprofitable contract; or
 - (b) company property that—
 - (i) is unsaleable; or
 - (ii) is not readily saleable; or
 - (iii) may give rise to a liability on the part of the Crown.

348 Restrictions on Crown's disclaimer

- (1) Subject to any order of the Court, the Minister may not disclaim under section 347—
 - (a) after a date specified in a notice in writing to the Minister to elect whether to disclaim, provided that date is not less than 60 working days after the Minister receives the notice;
 - (b) in any event, after 12 months from the date when the Minister first became aware of the vesting of the property.
- (2) A statement in the Minister's notice of disclaimer that the Minister first became aware of the vesting of the property on a specified date is evidence of that fact in the absence of proof to the contrary.

349 Effect of Crown's disclaimer

- (1) The Crown's disclaimer under section 347—
 - (a) terminates, on and from the date of the disclaimer, the Crown's rights, interest, and liabilities in relation to the property; and
 - (b) does not affect the rights and liabilities of any other person (except to the extent necessary to release the Crown from a liability).
- (2) A person who suffers loss or damage as the result of disclaimer by the Crown under section 347 may—
 - (a) claim as a creditor of the company for the amount of the loss or damage, taking account of an order under paragraph (b); or
 - (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

Subpart 5—Restoration of company to register

350 When Registrar must restore company to Cook Islands register

- (1) Subject to subsection (2), the Registrar must, on the application of a person specified in subsection (3), restore to the register a company that has been removed from the Cook Islands register under section 338(a) for failing to file an annual return.
- (2) The application must be—
 - (a) filed with the Registrar within 2 years after removal from the register; and
 - (b) in the prescribed form (if any); and
 - (c) accompanied by—
 - (i) all outstanding annual returns; and
 - (ii) the associated filing fees; and
 - (iii) a late filing fee for each outstanding annual return.
- (3) A person may apply if the person was any of the following at the time the company was removed from the register—
 - (a) a shareholder, director, creditor, or entitled person of the company;
 - (b) a party to any legal proceedings against the company;
 - (c) a person with an undischarged claim against the company;
 - (d) the liquidator;
 - (e) a receiver of property of the company.
- (4) The Registrar may waive the requirement in subsection (2)(c)(i) of all outstanding annual returns, or accept 1 or more partially completed annual returns, if the Registrar is satisfied that it is not practical for the applicant to fulfil the requirement.

351 Court may order restoration

- (1) The Court may, on the application of a person specified in subsection (2), order restoration to the register of a company that has been removed from the Cook Islands register under section 338 if the Court is satisfied that,—
 - (a) at the time of removal,—
 - (i) the company was still carrying on business or there was other reason for it to continue in existence; or
 - (ii) the company was a party to a legal proceeding; or
 - (iii) the company was in receivership or liquidation; or
 - (iv) the applicant was a creditor, shareholder, entitled person, or other person having an undischarged claim against the company; or
 - (v) the applicant believed that there existed, and intended to pursue, a right of action on the part of the company under Part 8; or
 - (b) for any other reason it is just and equitable to restore the company to the register.
- (2) Any of the following persons may apply—
 - (a) the Registrar;
 - (b) a person specified in section 350(3):

- (c) any other person who has the leave of the Court to apply.
- (3) The Court may make restoration conditional on compliance with any provisions of this Act or of regulations made under this Act if the company had failed to comply with those provisions before it was removed from the register.
- (4) The Court may give any directions or make any order that may be necessary or desirable for the purpose of restoration to the register.

352 Restoration to register

- (1) A company is restored to the Cook Islands register when the Registrar registers a notice stating that the company is restored to the Cook Islands register.
- (2) A company that is restored to the register is treated as having continued in existence as if it has not been removed from the register.

353 Property re-vests in company on restoration to register

- (1) Property of a company that has vested in the Crown under section 344(1) re-vests in the company on its restoration to the register as if the company had not been removed from the register.
- (2) However, subsection (1) does not apply to—
 - (a) property for which the Court has ordered the Crown to pay compensation under section 354(1)(b); or
 - (b) land or any estate or interest in land that has vested in the Crown under section 354(1) if transmission of the land or estate or interest in land to the Crown has been registered under any enactment relating to the registration of an estate or interest in land.

354 Court may order re-transfer of land or compensation on restoration of company to register

- (1) On the application of a company that has been restored to the Cook Islands register, the Court may make an order for—
 - (a) the re-transfer to the company of property referred to in section 353(2)(b); or
 - (b) payment of compensation by the Crown to the company.
- (2) Compensation by the Crown under subsection (1)(b) must be an amount—
 - (a) that does not exceed the value of the property as at the date of registration of the transmission to the Crown; or
 - (b) if the property has been sold or contracted to be sold, that is equal to the proceeds of the sale
- (3) On an application under this section, the Court may decide any issue of the value of the property.
- (4) Compensation by the Crown under subsection (1)(b) must be paid out of the Consolidated Fund without further authorisation than this section.

Part 17

Overseas companies

Subpart 1—Preliminary

355 Meaning of carrying on business

- (1) For the purposes of this Part, a reference to an overseas company carrying on business in the Cook Islands includes a reference to the overseas company—
- (a) subject to subsection (3), establishing or using a share transfer office or a share registration office in the Cook Islands; or
 - (b) administering, managing, or dealing with property in the Cook Islands as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner.
- (2) For the purposes of this Part, an overseas company does not carry on business in the Cook Islands merely because in the Cook Islands it—
- (a) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
 - (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
 - (c) maintains a bank account; or
 - (d) effects a sale of property through an independent contractor; or
 - (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside the Cook Islands; or
 - (f) creates evidence of a debt or creates a charge over property or gives a security interest in property; or
 - (g) secures or collects any of its debtor or enforces its rights in relation to securities relating to those debts; or
 - (h) conducts an isolated transaction that is completed with a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or
 - (i) invests in funds or holds property.
- (3) An overseas company does not carry on business in the Cook Islands by reason only of transactions effected through an offshore register that is authorised, required, or established by or for the purposes of an offshore Act.

356 Name of overseas company must comply with section 11

- (1) An overseas company must not carry on business in the Cook Islands unless its name could be registered under section 11 if it were incorporated under this Act.
- (2) An overseas company that changes its name must file with the Registrar for registration a notice in the prescribed form of the change of name within 10 working days of the change of name.
- (3) On receiving the notice, the Registrar must register the change of name on the Cook Islands register.
- (4) An overseas company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

357 Use of name by overseas company

An overseas company that carries on business in the Cook Islands must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in—

- (a) written communications sent by or on behalf of the company; and
- (b) documents issued or signed by or on behalf of the company that evidence or create a legal obligation of the company.

Subpart 2—Registration**358 Overseas company must register under this Act**

- (1) An overseas company that, on or after the commencement of this Act, commences to carry on business in the Cook Islands, must apply for registration under this Part in accordance with section 360 within 20 working days of commencing to carry on business.
- (2) An overseas company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

359 Validity of transactions not affected

A contravention by an overseas company of section 356 or 358 does not affect the validity or enforceability of any transaction entered into by the overseas company.

360 Application for registration

- (1) An application by an overseas company for registration under this Part must—
 - (a) be filed with the Registrar; and
 - (b) be in the prescribed form; and
 - (c) contain the prescribed information; and
 - (d) be signed by or on behalf of the overseas company; and
 - (e) be accompanied by the prescribed fee.
- (2) The application must also have attached—
 - (a) evidence of the company's overseas incorporation; and
 - (b) if the evidence of its overseas incorporation is not in English, a certified translation of it; and
 - (c) evidence of the company's compliance with Part V of the Development Investment Act 1995-96.
- (3) The Registrar must, on receiving a properly completed application for registration of an overseas company, without delay register the company on the Cook Islands register.

Subpart 3—Administration of overseas company**361 Annual return by overseas company**

- (1) Each year in its allocated month, an overseas company that carries on business in the Cook Islands must file with the Registrar for registration an annual return that—
 - (a) is in the prescribed form; and

- (b) confirms that the information on the Cook islands register in respect of the company is correct at the date of the return; and
 - (c) is signed by or on behalf of the company; and
 - (d) is accompanied by the prescribed annual return fee.
- (2) The return must be dated as at a date within the allocated month.
- (3) Despite subsection (1), an overseas company need not file an annual return in the calendar year of its registration under this Act.
- (4) In this section, **allocated month** means the month allocated to the company under section 362.

362 Allocated month

- (1) On registration or re-registration of an overseas company, the Registrar must allocate a month to the company for filing its annual return.
- (2) The Registrar may, by written notice to the overseas company, alter its allocated month.

363 Registrar must remove overseas company for failure to make annual return after 6 months

- (1) If an overseas company fails to comply with section 361, and 6 months have elapsed without the company filing a late return that otherwise complies, the Registrar must remove the company from the Cook Islands register.
- (2) However, on the application of a director or shareholder that complies with subsection (3), the Registrar must restore to the register a company that has been removed under subsection (1).
- (3) The application must be—
 - (a) filed with the Registrar within 2 years after removal; and
 - (b) in the prescribed form; and
 - (c) accompanied by—
 - (i) all outstanding annual returns and associated filing fees; and
 - (ii) a late filing fee for each outstanding annual return.

364 Notice of change of directors, etc, of overseas company

- (1) An overseas company must ensure that the following notices in the prescribed form are filed with the Registrar for registration—
 - (a) notice of a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
 - (b) notice of a change in the name of a director;
 - (c) notice of a change in the residential address or postal address of a director.
- (2) A notice under subsection (1) must—
 - (a) specify the date of the change; and
 - (b) include the full name, residential address, and postal address of every person who is a director of the company from the date of the notice (including continuing directors); and
 - (c) be filed with the Registrar within 20 working days after—

- (i) the change occurring, in the case of the appointment or resignation of a director; or
 - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or postal address of a director.
- (3) If an overseas company fails to comply with this section,—
 - (a) the company must pay a late filing fee to the Registrar; and
 - (b) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

365 Overseas company ceasing to carry on business in Cook Islands

- (1) An overseas company registered under this Part that intends to cease to carry on business in the Cook Islands must—
 - (a) give public notice of that intention; and
 - (b) file with the Registrar a notice in the prescribed form stating the date on which it will cease to carry on business in the Cook Islands.
- (2) The Registrar must remove an overseas company from the Cook Islands register as soon as practicable after—
 - (a) the date specified in the notice given under subsection (1)(b); or
 - (b) receipt of a written notice given by a liquidator that the liquidation of the assets in the Cook Islands of the overseas company has been completed.

366 Attorneys of overseas companies

- (1) Sections 134 to 139 of the Property Law Act 1952 (New Zealand) in force in the Cook Islands by virtue of the Property Law Act 1952 apply, with the necessary modifications, to a power of attorney executed by an overseas company registered under this Part to the same extent as if the company were a person and as if the commencement of the liquidation of the company was an event revoking the power of attorney within the meaning of those sections.
- (2) A declaration endorsed on or annexed to a document (the **document**) appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made in the country concerned by 1 of the directors before an authorised person, to the effect of the matters set out in paragraphs (a) to (d) is conclusive evidence of those matters—
 - (a) that the company is incorporated under the name stated in the document; and
 - (b) that the company is incorporated under that name in accordance with the law of the country in which it is incorporated (the name of country must be stated in the declaration); and
 - (c) that the document has been executed, and conferral of the powers conferred on the attorney by the document is authorised by,—
 - (i) the constitution of the company; or
 - (ii) the Act or instrument under which the company is incorporated; or
 - (iii) any other instrument constituting or defining the constitution of the company; and
 - (d) that the person making the declaration is a director of the company.

- (3) In subsection (2), **authorised person** means a person authorised to take a declaration outside the Cook Islands for use in the Cook Islands.

367 Exemption from requirements of this Part

Regulations may be made exempting any class or classes of overseas company from any or all of the requirements of this Part, or modifying the application of this Part to those overseas companies on the terms and conditions prescribed by those regulations.

Part 18

Registrar of Companies

Subpart 1—Registrar

368 Registrar

There must be a Registrar of Companies appointed under the Public Service Act 1995-96.

369 Deputy Registrars

- (1) There must be as many Deputy Registrars of Companies appointed under the Public Service Act 1995-96 as may be necessary for the purposes of this Act.
- (2) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties, and functions of the Registrar under this Act.
- (3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of his or her authority to do so.

370 First appointment of Registrar under this Act

The person holding office as Registrar of Companies under the Companies Act 1970-71 immediately before the commencement of this Act continues in office and is the first person appointed under section 368.

Subpart 2—Cook Islands register

371 Register

- (1) The Registrar must ensure that a register of companies (the **register**) is kept and maintained.
- (2) The register may be kept in the manner that the Registrar thinks fit including, either wholly or in part, by means of a digital register.

372 Registration of documents

On receiving a document for registration under this Act, the Registrar must without delay—

- (a) register the document in the register (unless the Registrar rejects the document under section 374); and
- (b) in the case of a document that is not an annual return, in writing notify the registration to the person from whom the document was received.

373 When document registered

For the purposes of this Act, a document is registered when—