

- (a) the document itself becomes part of the register; or
- (b) the document or details of the document including the time and date of registration are recorded or stored in the digital register.

374 When Registrar may reject document for registration

- (1) The Registrar may refuse to register a document that—
 - (a) is not in the prescribed form (if any); or
 - (b) does not comply with this Act or regulations made under this Act; or
 - (c) is not printed or typewritten; or
 - (d) if the register is a digital register, is in a format that does not enable it be registered; or
 - (e) has not been fully and properly completed; or
 - (f) contains material that is not clearly legible; or
 - (g) is not accompanied by the prescribed fee.
- (2) If subsection (1) applies, the Registrar may require that—
 - (a) the document is submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
 - (b) a fresh document is submitted in its place.

375 No presumption of validity or invalidity

The registration or refusal of registration of a document by the Registrar does not affect, or create a presumption as to,—

- (a) the validity or invalidity of the document; or
- (b) the correctness or otherwise of the information contained in the document.

376 Inspection of register

- (1) Any person may, on payment of the prescribed fee (if any), inspect—
 - (a) a document that is part of the register; or
 - (b) a document or details of a document that have been recorded or stored in the digital register.
- (2) An inspection made at the office of the Registrar must be made during the hours when the office is open to the public for business on a working day.

377 Copies and certified copies of documents

Any person may, on payment of the prescribed fee (if any), require the Registrar to give or certify—

- (a) a certificate of incorporation of a company; or
- (b) a copy of, or extract from, a registered document; or
- (c) details of a registered document that have been recorded or stored in the digital register; or
- (d) a copy of, or extract from, a registered document that has been recorded or stored in the digital register.

Subpart 3—Changes to register

378 Rectification or correction of register

- (1) The Registrar may—
 - (a) rectify the register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register; or
 - (b) correct any particulars that appear to the Registrar to have been incorrectly entered in the register.
- (2) Unless the rectification or correction relates solely to the person who provided it, the Registrar must not rectify or correct the register without first—
 - (a) giving notice of the rectification or correction to the company and to persons whom the Registrar considers will be materially affected by it; and
 - (b) allowing a person to whom notice is given a reasonable opportunity to object.
- (3) This section does not limit the Registrar's power of amendment under section 380.

379 Registrar may require information from company

- (1) The Registrar may give notice to a company requiring it to provide—
 - (a) corrected or updated details on any matter entered in the register for that company; and
 - (b) a certified copy of any document that has been or ought to have been filed with the Registrar for registration under this Act.
- (2) The company must provide the information or certified copy within the time specified by the Registrar's notice, and that time must not be less than 10 working days after the date on which the Registrar sends the notice.
- (3) A company that fails to comply with a notice under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$4,000.
- (4) In this section and in section 380, **company** includes an overseas company.

380 Registrar may amend register

If information provided to the Registrar under section 379 differs from the information shown in the register for the company, the Registrar may amend the register accordingly

Subpart 4—Inspection by Registrar

381 Registrar may require production of documents and confirmation of information

- (1) For a purpose specified in subsection (2), the Registrar or a person authorised by the Registrar may—
 - (a) require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; and
 - (b) inspect and take copies of relevant documents; and

- (c) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; and
 - (d) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of an offence; and
 - (e) require a person, in relation to information provided to the Registrar, to—
 - (i) confirm that the information is correct; or
 - (ii) correct the information.
- (2) The purposes for which the Registrar or a person authorised by the Registrar may act under subsection (1) are to—
- (a) ascertain whether a company or a director of a company is complying with this Act; or
 - (b) ascertain whether the Registrar should exercise any of his or her powers under this Act; or
 - (c) detect offences against this Act; or
 - (d) ascertain whether information provided to the Registrar is correct.
- (3) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power under subsection (2).
- (4) A person who fails to comply with a requirement under subsection (1)(a) or (e) or contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$4,000.
- (5) In this section,—
- company** includes an overseas company
- relevant document**, in relation to a company, means a document that contains information relating to—
- (a) the company; or
 - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the company.

382 Disclosure of information and reports

- (1) The Registrar may require a person authorised under section 381 to give any document or information obtained, or report prepared, by that person in acting under section 381—
- (a) as required by the Registrar or a Deputy Registrar, to the Registrar or a Deputy Registrar; or
 - (b) as required by the Registrar, to the persons specified in subsection (2).
- (2) As required by the Registrar, the person authorised must give the document, information, or report to—
- (a) the Minister or the Solicitor-General; or
 - (b) any person authorised to receive it for the purposes of, or in connection with, the exercise of a power under this Act; or
 - (c) a liquidator for the purposes of the liquidation of the company; or

- (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.
- (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

383 Restrictions on disclosing information

- (1) A person authorised under section 381 must not disclose any document or information obtained, or report prepared, by that person in acting under section 381 except—
 - (a) as required under section 382; or
 - (b) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
 - (c) in the course of criminal proceedings; or
 - (d) subject to the Registrar's approval,—
 - (i) with the consent of the person to whom the document, information, or report relates; or
 - (ii) for the purposes of, or in connection with, the exercise of powers under this Act; or
 - (iii) to a liquidator for the purposes of the liquidation of a company or the assets of an overseas company; or
 - (iv) for the purposes of detecting offences against any Act.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

384 Report admissible in liquidation proceedings

Despite any other enactment or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 381 is admissible in evidence in an application to the Court to appoint a liquidator.

Subpart 5—Appeals

385 Appeals from Registrar's decisions

- (1) A person who is aggrieved by an act or decision of the Registrar under this Act may apply to the Court within 15 working days after notification of the act or decision, or within any further time that the Court may allow.
- (2) The Court may—
 - (a) approve the Registrar's act or decision; or
 - (b) give any direction that the Court thinks fit; or
 - (c) make any determination in the matter that the Court thinks fit.

386 Exercise of inspection power not affected by appeal

Despite any other enactment or rule of law, on an appeal or application to the Court in relation to the exercise of a power under section 381, and until the appeal or application is determined,—

- (a) the Registrar or authorised person may continue to exercise the powers under that section as if no appeal or application had been made; and
- (b) the appeal or application does not excuse any person from fulfilling an obligation under that section

387 Destruction of documents on successful appeal against inspection power

- (1) This section applies if an appeal or application in relation to an act done or decision taken in the exercise of a power under section 381 is allowed or granted.
- (2) The Registrar must ensure that, without delay after the Court gives its decision, any copy of a document taken or retained by the Registrar or authorised person in the exercise of the power is destroyed.
- (3) Any information acquired under the exercise of the power is inadmissible in any proceeding unless the court hearing the proceeding is satisfied that it was not unfairly obtained.

Subpart 6—Notices by Registrar

388 Notices generally

Clause 8 (Additional provisions relating to service) of Schedule 15 applies, with the necessary modifications, to the giving of notices by the Registrar.

389 Notice to individuals

- (1) Notice that under this Act the Registrar must give to an individual must be given—
 - (a) in writing; and
 - (b) in a manner that the Registrar considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Registrar may give a notice to an individual by—
 - (a) having it delivered to that person; or
 - (b) posting it to that person at his or her last known postal address; or
 - (c) sending it by email to an electronic address used by that person; or
 - (d) having it published in a newspaper or other publication in circulation where that person lives or is believed to live.

390 Admissibility of copy of Registrar's notice

A document derived from a device or facility that records or stores information electronically or otherwise is admissible in a proceeding as a copy of a notice given by the Registrar if—

- (a) it appears to be a copy of the notice; and
- (b) is certified by the Registrar, or a person authorised by the Registrar, as having been derived from a such a device or facility.

Part 19 Offences

Subpart 1—Dishonesty offences

391 False statements in documents

- (1) A person commits an offence who, with respect to a document required by or for the purposes of this Act,—
- (a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) omits, or authorizes the omission from it, of any matter knowing that the omission makes the document false or misleading in a material particular.
- (2) A director or employee of a company commits an offence who, knowing the statement or report to be false and misleading, makes or provides, or authorises the making or providing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to any of the following—
- (a) a director, employee, auditor, shareholder, creditor, debenture holder, or trustee for debenture holders of the company;
 - (b) a liquidator, liquidation committee, or receiver of property of the company;
 - (c) if the company is a subsidiary, a director, employee, or auditor of its holding company.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.
- (4) For the purposes of this section, a person who voted in favour of the making of a statement at a meeting is taken to have authorised the making of the statement.

392 Fraudulent use or destruction of company property

- (1) A director, employee, or shareholder of a company commits an offence who—
- (a) fraudulently takes or applies property of the company—
 - (i) for that person's own use or benefit; or
 - (ii) for a use or purpose that is not a use or purpose of the company; or
 - (b) fraudulently conceals or destroys property of the company.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

393 Falsification of records

- (1) A director, employee, or shareholder of a company commits an offence who, with intent to defraud or deceive a person, —
- (a) destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of, any register, accounting records, book, paper, or other document belonging or relating to the company; or

- (b) makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company.
- (2) A person commits an offence who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act,—
 - (a) records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or
 - (b) with intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies any matter recorded or stored in the device, or fails or omits to record or store any matter in the device.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

394 Carrying on business fraudulently

- (1) A person commits an offence who is knowingly a party to a company carrying on business—
 - (a) with intent to defraud creditors of the company or any other person; or
 - (b) for a fraudulent purpose.
- (2) A director of a company commits an offence who—
 - (a) by false pretences or other fraud induces a person to give credit to the company; or
 - (b) with intent to defraud creditors of the company—
 - (i) gives, transfers, or causes a charge or security interest to be given on or in property of the company to any person; or
 - (ii) causes property to be given or transferred to any person; or
 - (iii) causes or is party to execution being levied against property of the company.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

395 Causing material loss to creditors

- (1) A director of a company commits an offence who, with intent to defraud a creditor or creditors of the company, does any thing that causes material loss to any creditor of the company.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

396 Dishonestly incurring debt

- (1) A director of a company commits an offence if—
 - (a) the company incurs a debt (the **debt**); and

- (b) the company—
 - (i) is insolvent at the time that it incurs the debt; or
 - (ii) becomes insolvent by incurring the debt; or
 - (iii) is insolvent at the time that it incurs debts that include the debt; or
 - (iv) becomes insolvent by incurring debts that include the debt; and
 - (c) the director knows, at the time when the director incurs the debt, that the company is insolvent or will become insolvent as a result of incurring the debt or other debts that include the debt; and
 - (d) the director's failure to prevent the company incurring the debt is dishonest.
- (2) In subsection (2), **insolvent** means that the company is unable to pay its due debts.
 - (3) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

Subpart 2—Offence in relation to offer of securities to public

397 **Misleading or deceptive conduct in relation to offer of securities to public**

- (1) A person must not engage in conduct that is—
 - (a) reckless conduct in relation to—
 - (i) any advertisement; or
 - (ii) the offer of debt or equity securities generally; or
 - (iii) any dealing (including trading) in debt or equity securities; and
 - (b) misleading or deceptive or likely to mislead or deceive.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or both.
- (3) A person who suffers loss as a result of contravention of this section may claim damages or other relief or both against—
 - (a) the issuer of the debt or equity security; and
 - (b) if the issuer is a company, the directors of the company at the time of contravention.
- (4) A director of an issuer who is liable under subsection (3)(b) is jointly and severally liable with the issuer and the other liable directors.

398 **Definitions for purposes of section 397**

For the purposes of section 397,—

advertisement means a form of communication—

- (a) that—
 - (i) contains or refers to an offer of debt or equity securities to the public;
- or

- (ii) is reasonably likely to induce persons to subscribe for the debt or equity securities of an issuer, being securities to which the communication relates and that have been, or are to be, offered to the public; and
- (b) that is authorised or instigated by or on behalf of the issuer of the debt or equity securities or prepared with the co-operation of, or by arrangement with, the issuer of the securities; and
- (c) that has been, or is to be, distributed to a person

allot includes, but is not limited to, sell, issue, assign, and convey; and **allotment** has a corresponding meaning

broadcasting means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting received apparatus, but does not include any such transmission of programmes—

- (a) made on the demand of a particular person for reception only by that person; or
- (b) made solely for performance or display in public

debt security—

- (a) means any interest in or right to be paid money that is, or is to be deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a security interest in any property); and
- (b) includes—
 - (i) a debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
 - (ii) an interest or right that is declared by regulations made under this Act to be a debt security for the purposes of this Act; and
 - (iii) a renewal or variation of the terms or conditions of any interest or right of a security referred to in subparagraph (i) or (ii); but
- (c) does not include any interest or right or a security referred to in paragraph (b)(i) or (iii) that is declared by regulations made under this Act not to be a debt security for the purposes of this Act

distribute includes—

- (a) make available, publish, and circulate; and
- (b) communicate by letter, email, newspaper, broadcasting, sound recording, television, cinematographic film, video, Internet site, or any form of electronic or other means of communication

equity security—

- (a) means any interest in, or a right to share in, the share capital of a company; and
- (b) includes—
 - (i) a preference share, and company stock; and
 - (ii) a security that is declared by regulations made under this Act to be an equity security for the purposes of this Act; and
 - (iii) a renewal or variation of the terms or conditions of any interest or right or a security referred to in subparagraph (i) or (ii); but

- (c) does not include any interest or right or a security referred to in paragraph (b)(i) or (iii) that is declared by regulations made under this Act not to be an equity security for the purposes of this Act

issuer, in relation to a debt security or an equity security, means the person on whose behalf any money paid in consideration of the allotment of the security is received

offer includes an invitation, and any proposal or invitation to make an offer, and to **offer** has a corresponding meaning

subscribe includes purchase or contribute to, whether by way of cash or otherwise, and **subscription** has a corresponding meaning

subscriber, in relation to an offer of securities, means a person who subscribed for the securities.

Subpart 3—Liquidation offences

399 Conduct hindering liquidation

- (1) If a company is in liquidation, or an application has been made to the Court for the appointment of a liquidator, a person must not—
 - (a) leave the Cook Islands with the intention of—
 - (i) avoiding payment of money due to the company; or
 - (ii) avoiding questioning in relation to the affairs of the company; or
 - (iii) avoiding compliance with an order of the Court or some other obligation under this Part in relation to the affairs of the company; or
 - (b) conceal or remove property of the company with the intention of preventing or delaying the liquidator from taking custody or control of it; or
 - (c) destroy, conceal, or remove company records or documents.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

400 False or misleading claim in liquidation

- (1) A person commits an offence who—
 - (a) makes, or authorises the making of, a claim under Schedule 9 (Creditors' claims) that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) omits, or authorises the omission, from a claim under Schedule 9 of any matter knowing that the omission makes the claim false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or both.

Subpart 4—Procedure

401 Proceedings for offences

- (1) Despite anything to the contrary in any enactment relating to criminal procedure, any information for an offence under this Act may be laid at any time within 3 years after the date of the offence.
- (2) Nothing in this Act affects the liability of any person under any other Act, but no person may be convicted of an offence against this Act and any other Act in respect of the same conduct.

Part 20 Miscellaneous

Subpart 1—Service and communication of documents

402 Service of documents

A document for service on any of the following may be served in accordance with the methods set out in Schedule 15—

- (a) a company;
- (b) an overseas company;
- (c) a director;
- (d) a shareholder or creditor.

403 Company communication with shareholders

Any communication by a company with a shareholder that is required by this Act (for example, the sending or giving of reports, statements, information, or other notices) may be made electronically if—

- (a) the shareholder has provided the company with the shareholder's electronic address; and
- (b) the shareholder has requested that communications by the company be made electronically.

Subpart 2—Privileged communications

404 Privileged communications

- (1) Nothing in this Act requires a legal adviser to disclose a communication or other document that is protected by legal professional privilege.
- (2) The Court may, on the application of any person, determine whether a claim of privilege is valid and may, for that purpose, require the communication or document to be produced.

Subpart 3—Regulations

405 Regulations

- (1) The Queen's Representative may, by Order in Council, make regulations to give effect to the provisions of this Act and in particular for all or any of the following purposes—

- (a) amending this Act by prescribing any amendment to, or modification or substitution of, a default constitution set out in Schedule 2, 3, or 4:
- (b) prescribing forms (including Court forms in respect of any Court proceedings under this Act); and those regulations may require—
 - (i) the inclusion in, or attachment to, forms of specified information or documents; and
 - (ii) forms to be signed by specified persons:
- (c) prescribing the information that must be provided for the proper completion of a prescribed form:
- (d) prescribing requirements with which documents delivered for registration must comply:
- (e) prescribing when a fee, penalty, or other sum is payable under this Act:
- (f) prescribing the amount of any fee, penalty, or other sum payable under this Act:
- (g) prescribing the circumstances in which the Registrar may waive, or exempt a person or class of persons from liability to pay, a fee, penalty, or other sum payable under this Act, whether in whole or in part:
- (h) prescribing requirements, in relation to the form or content of financial statements, or any other matters in respect of financial statements, including (without limitation)—
 - (i) prescribing different requirements in respect of different classes of company; and
 - (ii) requiring compliance with standards issued or published by a specified body or bodies, with or without modification:
- (i) regulating the financial reporting of a company, overseas company, or class of companies of overseas companies, including (without limitation)—
 - (i) prescribing requirements in respect of the adoption by directors of a balance date for a company; and
 - (ii) regulating changes to the balance date of a company:
- (j) exempting a class or classes of overseas companies from the requirements of Part 17, or modifying the application of Part 17 to those overseas companies:
- (k) declaring that a right, interest, or security, for the purposes of this Act—
 - (i) is a debt security or an equity security; or
 - (ii) is not a debt security or an equity security:
- (l) prescribing the minimum amount of a debt for the purposes of a statutory demand (*see* section 208):
- (m) prescribing a minimum sum under section 225(2) for the purpose of setting a threshold for dispensing with a liquidator's report:
- (n) fixing the amount or rates of remuneration of a liquidator appointed by the Court (*see* section 248(2)):
- (o) fixing the maximum amount for which a debt subject to a lien is a preferential debt (*see* section 264(2)):
- (p) fixing the maximum priority sum under clause 20(2) of Schedule 9:

- (q) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.
- (2) Without limiting subsection (1)(c), a provision of this Act requiring or contemplating prescribed information for the purposes of completing a prescribed form is satisfied if the information necessary for the proper completion of the form appears from the face of the form or from the content of the form.

406 Regulations providing for transitional matters, etc

The Queen's Representative may, by Order in Council, make regulations—

- (a) providing transitional, savings, and consequential provisions relating to the coming into force of this Act, which may be in addition to, or in place of, or which may amend, any transitional, savings, and consequential provisions in this Part;
- (b) providing provisions relating to the re-registration of companies, which may be in addition to, or in place of, or which may amend, the re-registration provisions in this Part;
- (c) to facilitate the bringing into force of any regulations under this Act;
- (d) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply;
- (e) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced by this Act to the provisions of this Act.

Subpart 4—Re-registration

407 Application for re-registration of existing company

- (1) An existing company may apply for re-registration under this Act.
- (2) An application for re-registration must be—
 - (a) in the prescribed form; and
 - (b) signed by the person completing the application; and
 - (c) filed with the Registrar within 1 year after the commencement of this Act; and
- (3) The application must specify, in respect of the company once re-registered,—
 - (a) the name of the company, which must comply with section 11; and
 - (b) whether the constitution of the company differs from the appropriate default constitution; and
 - (c) whether the constitution with which the company proposes to be re-registered adversely affects existing shareholder rights and obligations; and
 - (d) the full name, residential address, and postal address of each director of the company; and
 - (e) that each person named as a director of the company has consented to act as a director of the company; and

- (f) the full name of every shareholder of the company, and the number of shares held by each shareholder; and
 - (g) the registered office of the company; and
 - (h) the postal address of the company, which may be the registered office or any other postal address; and
 - (i) any other prescribed information.
- (4) The application for re-registration must be accompanied by—
- (a) the prescribed fee; and
 - (b) a copy of the constitution to the extent that the company elects not to use the appropriate default constitution or to modify it.
- (5) If the constitution with which the company proposes to be re-registered adversely affects shareholder rights and obligations, the application must be accompanied by the written consent of each shareholder to re-registration.

408 Failure to apply for re-registration

- (1) An existing company that has not applied for re-registration in accordance with section 407 is a nullity.
- (2) For the purposes of subsection (1), subparts 3 and 4 (but not subpart 5) of Part 16 apply as if the former company were a company that had been removed from the Cook Islands register under subpart 2 of Part 16.
- (3) On the application of a director, shareholder, or creditor of an existing company, the Court may—
- (a) direct the Registrar to make an application for re-registration on behalf of the company; and
 - (b) make any other orders necessary to effect the re-registration of the company.

409 Application for re-registration of existing overseas company

- (1) An existing overseas company may apply for re-registration under this Act.
- (2) An application for re-registration of an existing overseas company must be—
- (a) filed by the Registrar within 1 year after the commencement of this Act; and
 - (b) in the prescribed form.
- (3) The registration under the 1970-1971 Act of existing overseas company that has not applied for re-registration in accordance with subsection (2) is a nullity.

410 Re-registration

- (1) The Registrar must, without delay on receiving an application for re-registration of an existing company or existing overseas company that complies with section 407 or 409, as the case may be,—
- (a) enter the company on the Cook Islands register; and
 - (b) issue to the company a certificate in the prescribed form of its re-registration.
- (2) A certificate of re-registration issued under subsection (1) is conclusive evidence that—
- (a) all the requirements for re-registration have been complied with; and

- (b) on and from the date of re-registration stated in the certificate, the company is a company or overseas company registered under this Act.
- (3) The re-registration of an existing company or existing overseas company under this section does not—
 - (a) create a new legal entity; or
 - (b) affect the shares or share capital of the company except as provided by this Act; or
 - (c) affect the property, rights, or obligations of the company except as provided by this Act; or
 - (d) affect proceedings by or against the company.
- (4) A company is not required to make an annual return under this Act in the year in which it is re-registered.

411 **Meaning of existing company, etc**

For the purposes of this subpart, —

existing company—

- (a) means a company registered under the 1970-1971 Act that, immediately before the commencement of this Act, was entered in the register of companies maintained under the 1970-1971 Act; but
- (b) does not include a company that is in liquidation

existing overseas company means an overseas company registered under the 1970-71 Act that, immediately before the commencement of this Act, was entered in the register of companies maintained under the 1970-1971 Act

existing shareholder rights and obligations means the rights and obligations of the existing shareholders in relation to—

- (a) voting at meetings of shareholders:
- (b) the appointment and removal of directors:
- (c) preferential or fixed entitlements to dividends:
- (d) the distribution of surplus assets of the company.

Subpart 5—Transitional provisions

412 **Liquidation or other proceeding that is incomplete on commencement of this Act**

- (1) This section applies to an amalgamation, compromise, liquidation, or company receivership of or by a company (the **proceeding**) that is incomplete on the commencement of this Act.
- (2) The balance of the proceeding must be conducted in accordance with the law in force immediately after the commencement of this Act with all necessary modifications.
- (3) If necessary, the Court on the application of the company, a creditor, a liquidator, or a receiver may give directions as the Court thinks fit for the conduct of the proceeding.

Subpart 6—Repeal and revocation

413 Companies Act 1970-71 repealed

- (1) The 1970-71 Act is repealed 1 year after the commencement of this Act.
- (2) There must be no company incorporated under the 1970-71 Act after the commencement of this Act.
- (3) The Companies Amendment Act 2013 is repealed.
- (4) Any regulations made under the 1970-71 Act are revoked except to the extent that they affect Part IV of the Companies Act 1955 of New Zealand as applied by the 1970-71 Act to the Cook Islands and for so long as Part IV continues in force.

Subpart 7—Amendments to other enactments

414 Other enactments: consequential amendments and references updated

Schedule 16 effects the consequential amendment of other enactments and the updating of references in other enactments to legislation repealed by this Act.

Subpart 8—Company charges

415 Part IV Companies Act 1955 of New Zealand continues to apply

- (1) Despite the repeal of the 1970-71 Act, Part IV of the Companies Act 1955 of New Zealand as applied with modifications to the Cook Islands by the 1970-71 Act continues to apply with all necessary modifications as if the 1970-71 Act had not been repealed.
- (2) This subpart is repealed on the coming into force of the Personal Property Securities Act 2017 or equivalent legislation providing for the registration of personal property securities.

Schedule 1 Interpretation

1. Interpretation

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

1970-71 Act means the Companies Act 1970-71, No 23

accounting period, in relation to a company, means—

- (a) the period from the date on 1 balance date to the close of the following balance date; or
- (b) in the case of a company's first accounting period, the period from the date of incorporation to the close of the first balance date

annual meeting means a meeting required to be held by section 68

balance date, in relation to a company, means the close of 31 March or of any other date that the directors of the company adopt as the company's balance date in accordance with any regulations made under this Act

board and **board of directors**, in relation to a company, means—

- (a) directors of the company who constitute the required quorum acting together as a board of directors; or
- (b) if the company has only 1 director, that director

category A records means the company records specified in section 144(1)(a)

category B records means the company records specified in section 144(1)(b)

category C records means the company records specified in section 144(1)(c)

company means a company registered or re-registered under this Act

company records means the records that must be kept under section 144(1)

Cook Islands mental health legislation means Part XXI of the Cook Islands Act 1915 read with the Ministry of Health (Mental Health) Regulations 2013

Cook Islands register or **register** means the register of companies kept by the Registrar under section 371

Court means the High Court of the Cook Islands

creditor—

- (a) in Part 13, means a person who, in a liquidation would be entitled to claim that a debt is owing to that person by the company, and includes a secured creditor:
- (b) in Part 14, means a person who, in a liquidation, would be entitled to claim in accordance with clause 1 of Schedule 9 that a debt is owing to that person by the company, and includes a secured creditor only—
 - (i) for the purposes of sections 204, 208, or 236; or
 - (ii) to the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under section Part 3 of Schedule 9 as an unsecured creditor

Crown includes—

- (a) every department, instrument, servant and agent of the Crown; and

- (b) any body corporate or organisation that is wholly owned or controlled by the Crown

default constitution means a default constitution set out in Schedule 2, 3, or 4

digital format—

- (a) means a format in which information, a document, or register may be stored, accessed, and displayed by a computer or similar device; and
- (b) includes a format specified as a digital format by regulations made under this Act; and
- (c) includes any format (other than a photocopy document) produced by making a digital copy, image or reproduction of a document that is in hard copy format

digital register means a register in digital format

director has the meaning set out in section 73

distribution, in relation to a distribution by a company to a shareholder, has the meaning set out in section 30

document means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

enforcement country means a country, State, or territory outside the Cook Islands prescribed for the purposes of section 6(e)

enforcement process, in relation to property, means—

- (a) execution against that property; or
- (b) any other enforcement process in relation to that property that involves the Court

entitled person means a person upon the constitution confers any of the rights and powers of a shareholder

file means to file, give, provide, submit, deposit, apply, or otherwise make available

financial statements, in relation to a company and a balance date, means—

- (a) a statement of financial position for the company as at the balance date; and
- (b) in the case of—
 - (i) a company trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

- (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
- (c) if required by regulations made under this Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
- (d) any other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under this Act; and
- (e) any notes or documents giving information relating to the statement of financial position and other statements

hard copy format has the same meaning as in section 3 of the Digital Registers Act 2011

holding company has the meaning set out in clause 2 of this Schedule

information includes information (whether or not in its original form) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech

interest group has the meaning set out in section 64(1)

liquidation committee means the committee referred to in section 229

liquidator means the person appointed under section 202(1)

major transaction has the meaning set out in section 61(2)

Minister means the Minister responsible for the administration of this Act

offshore Act has the same meaning as in section 3 of the Digital Registers Act 2011

ordinary resolution has the meaning set out in section 60(1)

overseas company means a company that is incorporated outside the Cook Islands, whether or not it is registered under this Act

person includes a corporation sole, a company or other body corporate (whether incorporated in the Cook Islands or elsewhere), an unincorporated body of person, a public body, and a Government department

personal representative, in relation to an individual, means the executor, administrator, or trustee of the estate of the individual

photocopy document has the same meaning as in section 3 of the Digital Registers Act 2011

prescribed means prescribed by regulations made under this Act

prescribed form means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar

property includes—

- (a) real and personal property; and
- (b) an estate or interest in real or personal property; and
- (c) a debt; and
- (d) any thing in action; and
- (e) any other rights, interests, and claims of any kind in relation to property

property in receivership means property in respect of which a receiver is appointed

public notice means notice by publication in a newspaper circulating in the Cook Islands

receiver means a receiver, or manager, or a receiver and manager in respect of any property of a company appointed—

- (a) by or under a document; or
- (b) by the Court,

whether or not the person appointed is empowered to sell any of the property in receivership, but does not include—

- (c) a mortgagee who, whether personally or through an agent, exercises a power—
 - (i) to receive income from mortgaged property; or
 - (ii) to enter into possession or assume control of mortgaged property; or
 - (iii) to sell or otherwise alienate mortgaged property; or
- (d) an agent of any such mortgagee

registered office means the place referred to in section 142(2(a))

Registrar means the Registrar of Companies appointed under section 368

regulations means regulations made under this Act

related company has the meaning set out in clause 4 of this Schedule

relative, in relation to any person, means—

- (a) any parent, child, brother, or sister of that person; or
- (b) any spouse or de facto partner of that person; or
- (c) any parent, child, brother, or sister of a spouse or de facto partner of that person; or
- (d) a nominee or trustee for any of those persons

security means a charge over, or security interest in, property

shareholder means a person whose name is entered on the share register of a company as the holder of 1 or more shares in the company

share register means the share register that is required to be kept under section 49

signature means—

- (a) the name of a person affixed with his or her own hand on a document; or
- (b) in the case of a document filed with the Registrar via electronic means, the name of a person affixed to the document by a method that the Registrar considers acceptable

solvency test means the solvency test defined in clause 5 of this Schedule

special resolution has the meaning set out in section 60(2)

statutory demand has the meaning set out in section 208(1)

subsidiary has the meaning set out in clause 4 of this Schedule

working day means a day of the week that is not—

- (a) Saturday and Sunday; or
- (b) a day that is defined as, or declared to be, a public holiday under any Act

writing includes representing or reproducing words, figures, or symbols—

- (a) in a visible and tangible form by any means and in any medium:

- (b) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read.
- (2) In Part 8, unless the context otherwise requires, **entitled person, former shareholder, and shareholder include**—
 - (a) a personal representative of those persons; and
 - (b) a person to whom shares of any of those persons have passed by operation of law.

2. **Meaning of holding company**

- (1) For the purposes of this Act, a company is another company's holding company if that other company is its subsidiary.
- (2) In subclause (1), **company** includes a corporation.

3. **Meaning of related company**

- (1) For the purposes of this Act, a company is related to another company (and **related company** has a corresponding meaning) if—
 - (a) the other company is its holding company or subsidiary; or
 - (b) more than half the issued shares of the company (other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital) is held by the other company and companies related to that company (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (c) more than half the issued shares of each of them (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) is held by shareholders of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (d) the businesses of the company have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or
 - (e) there is another company to which both companies are related.
- (2) In subclause (1), **company** includes a corporation.

4. **Meaning of subsidiary**

- (1) For the purposes of this Act, a company is a subsidiary of another company only if—
 - (a) that other company—
 - (i) controls the composition of the board of the company; or
 - (ii) is in position to exercise, or control the exercise, or more than one-half the maximum number of votes that may be exercised at a meeting of the company; or
 - (iii) holds more than one-half of the issued shares of the company (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); or
 - (iv) is entitled to receive more than one-half of every dividend paid on shares issued by the company (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); or

- (b) the company is a subsidiary of a company that is that other company's subsidiary.
 - (2) In subclause (1), **company** includes a corporation.
- 5. Meaning of solvency test**
- (1) 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 the company's assets is not less than the value of its liabilities, including its contingent liabilities.
 - (2) A person required to consider whether a company satisfies the solvency test in subclause (1) may have regard to—
 - (a) financial statement prepared on the basis of accounting practices and principles that are reasonable in the circumstances; and
 - (b) the valuations of assets or liabilities; and
 - (c) such other information in relation to the financial position of the company as is reasonable in all the circumstances.
 - (3) In determining, for the purposes of this clause, the value of a contingent liability, account may be taken of—
 - (a) the likelihood of the contingency occurring; and
 - (b) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

Schedule 2

Default constitution for company registered with 1 shareholder

Part 1—General provisions

1. Constitution supplements provisions of Act

- (1) This constitution supplements certain provisions of the Act.
- (2) This is the default constitution for a company that—
 - (a) has 1 shareholder; and
 - (b) otherwise has no constitution.

2. Interpretation

- (1) This constitution must be read in conjunction with, and subject to, the Act.
- (2) In this constitution, **Act** means the Companies Act 2017.

3. Name of company

- (1) The name of the company on registration or re-registration under the Act is the name that appears on the application for registration or re-registration, as the case may be.
- (2) An application under section 12 of the Act to change the name of the company must not be made without the prior approval of the shareholder.

Part 2—Shares and share register

4. Company has single shareholder only

The company—

- (a) has 1 shareholder; and
- (b) must not offer any of its shares or securities to the public.

5. Number of shares

At the time of registration or re-registration under the Act, the company has the number of shares specified in the application for registration or re-registration, as the case may be.

6. Share register

- (1) The company may appoint an agent to maintain the share register.
- (2) No notice of a trust, whether express or implied, may be entered on the share register.

7. Form and location of share register

- (1) The share register must be kept—
 - (a) in written form; or
 - (b) in a form or in a manner that allows the contents of the register to be readily accessible so as to be usable for subsequent reference and convertible into written form.

- (2) The share register must be kept at the company's registered office.

8. Status of registered shareholder

- (1) The 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.
- (2) If the shareholder dies, the shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.
- (3) Any person who becomes entitled to a share as a consequence of the death, bankruptcy, insolvency, or incapacity of the shareholder may be registered as the holder of the shareholder's shares on making a request in writing to the company to be registered, accompanied by proof satisfactory to the directors of that entitlement.

9. Transfer of shares

- (1) The shares of the company are transferable by entry in the share register in accordance with clause 10.
- (2) However, the transferability of a share is subject to—
 - (a) the terms of issue of the share; and
 - (b) the right of the directors to refuse registration under clause 10(4).
- (3) 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.

10. Procedure for transfer of shares

- (1) For the transfer of shares a form of transfer signed by the shareholder or the shareholder's agent or attorney must be delivered to the company.
- (2) If a share certificate has been issued, the company must not register a transfer of shares unless the transfer form is accompanied by—
 - (a) the share certificate relating to the shares; or
 - (b) the evidence as to its loss of destruction and, if required, an indemnity in a form determined by the directors.
- (3) Subject to subclause (4), the company must without delay on receiving a properly executed transfer form that complies with subclause (2) enter the name of the transferee in the share register as the holder of the shares.
- (4) If any amount is due and payable by the transferring shareholder to the company, the directors may, within 30 working days after receiving the transfer, resolve to refuse to register the transfer.
- (5) If the directors resolve under subclause (4) to refuse to register a transfer, they must give the transferor notice of the refusal within 5 working days after the date of the resolution.
- (6) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

- 11. Shareholder decisions and exercise of shareholder powers**
- (1) A resolution in writing signed by the shareholder is as valid as if it had been passed at a meeting of the shareholder.
- (2) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).
- 12. Distributions**
- No dividend may be paid or other distribution made unless it is first approved by the shareholder.
- 13. Company may acquire its own shares**
- (1) Subject to section 20 of the Act, the company may agree to acquire its own shares from the shareholder.
- (2) If the company acquires its own shares, those shares are cancelled immediately on acquisition.
- 14. Annual report to shareholder**
- The directors are not required to prepare an annual report in respect of any accounting period, unless requested to do so by the shareholder.

Part 3—Directors

- 15. Number of directors**
- The shareholder may fix the number of directors by notice in writing to the company.
- 16. Appointment and removal of directors**
- A director may be appointed or removed by the shareholder by notice in writing to the company.
- 17. When director vacates office**
- A director vacates office if he or she—
- (a) is removed from office in accordance with clause 16; or
 - (b) resigns in accordance with sections 80 and 81 of the Act; or
 - (c) becomes disqualified from being a director under section 75 of the Act; or
 - (d) dies.
- 18. Powers and duties of directors**
- The business and affairs of the company must be managed by or under the direction or supervision of the directors subject to—
- (a) section 61 of the Act (which relates to shareholder approval of major transactions); and
 - (b) any directions given to the board in writing by the shareholder.
- 19. Delegation by directors**
- (1) The directors may delegate any of their powers that may be lawfully delegated to a committee of directors, or to a director or employee of the company.

- (2) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.
- (3) The provisions of this constitution relating to proceedings of directors also apply to proceedings of any committee of directors, except to the extent that the directors determine otherwise.

20. Interested directors

A director must not exercise any power as a director if the director is directly or indirectly interested in the exercise of that power unless the matter in question has been approved by the shareholder.

21. Use of company information

- (1) This clause authorises the use of company information for the purpose of section 91(2)(a) of the Act.
- (2) A director may disclose (including disclose to the shareholder), use, or act upon company information—
 - (a) if such disclosure or use is approved by the shareholder; or
 - (b) if—
 - (i) such disclosure or use is authorised by any contract of employment entered into between that director and the company; and
 - (ii) the relevant terms of the contract have been approved by the shareholder.

22. Indemnity and insurance

- (1) Subject to section 101 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or a related company with the approval of the shareholder.
- (2) In subclause (1),—

director includes—

 - (a) a person referred to in section 96(1) of the Act (Extended meaning of director for purposes of liability); and
 - (b) a former director

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

23. Remuneration of directors

The directors may receive remuneration and other benefits from the company with the approval of the shareholder.

Directors' meetings

24. Procedure at meetings of directors

- (1) Clauses 25 to 31 set out the procedure to be followed at meetings of directors.
- (2) Subject to subclause (1), a meeting of directors may determine its own procedure.

25. Chairperson

- (1) The shareholder may appoint a director as chairperson of directors and may determine the period for which the chairperson is to hold office.
- (2) If no chairperson is appointed, or if at a meeting of directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

26. Notice of meeting

- (1) A director or, on the request of a director, an employee may convene a meeting of directors by giving notice in accordance with this clause.
- (2) Not less than 24 hours' notice of a meeting of directors must be given to every director who is in the Cook Islands or who may be readily contacted outside the Cook Islands.
- (3) An irregularity in the notice of a meeting is waived if—
 - (a) all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity; or
 - (b) all directors entitled to receive notice of the meeting agree to the waiver.

27. Methods of holding meeting

A meeting of directors may be held either—

- (a) by a number of the directors who constitute a quorum being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum may simultaneously hear each other throughout the meeting.

28. Quorum

- (1) A quorum for a meeting of directors is a majority of directors.
- (2) No business may be transacted at a meeting of directors unless a quorum is present.

29. Voting

- (1) Each director has 1 vote.
- (2) The chairperson has a casting vote.
- (3) A resolution of the directors is passed if—
 - (a) it is agreed to by all directors present without dissent; or
 - (b) a majority of the votes cast are in favour.
- (4) A director present at a meeting is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

30. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of directors.

31. Unanimous resolution of directors

- (1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- (2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more directors.
- (3) A copy of any such resolution must be entered in the minute book of the directors' meetings.

*Managing director***32. Shareholder may appoint managing director**

- (1) The shareholder may, from time to time, appoint a director of the company as managing director for such period and on such terms as the shareholder thinks fit.
- (2) Subject to the terms of a managing director's appointment, the shareholder may, at any time, cancel the appointment of a director as managing director.
- (3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

33. Delegation to managing director

- (1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.
- (2) The directors may at any time withdraw or vary the delegation.
- (3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

34. Remuneration of managing director and executive directors

- (1) The remuneration of the managing director must be approved by the shareholder.
- (2) A director (other than the managing director) who is employed by the company may be paid such remuneration as approved by the shareholder.

*Company records and auditor***35. Access to company records**

The shareholder is entitled to access to the company's records as if the shareholder were a director.

36. Appointment of auditor

- (1) The shareholder may, by notice in writing to the company, appoint an auditor who is qualified to hold that office under section 169 of the Act to—
 - (a) hold office for the period specified in the notice; and
 - (b) audit the financial statements of the company.
- (2) The shareholder may remove an auditor by notice in writing to the company and to that auditor.

Part 4—Liquidations**37. Resolution to appoint liquidator**

- (1) The shareholder may resolve to appoint a liquidator by a resolution in writing signed by the shareholder.
- (2) The directors may resolve to appoint a liquidator if they consider that the company is unable to meet its debts as they become due in the normal course of business.
- (3) The directors must not resolve to appoint a liquidator without giving the shareholder 5 working days' notice of the meeting at which the resolution will be considered, and must permit the shareholder to attend and speak at that meeting.

38. Distribution of surplus assets

- (1) The surplus assets of the company available for distribution to the shareholder after all creditors of the company have been paid must be distributed to the shareholder.
- (2) The liquidator may, with the approval of the shareholder, distribute the surplus assets to the shareholder in kind.

Schedule 3

Default constitution for company registered with 2 to 9 shareholders

Part 1—General provisions

1. Constitution supplements provisions of Act

- (1) This constitution supplements certain provisions of the Act.
- (2) This is the default constitution for a company that—
 - (a) has 2 to 9 shareholders; and
 - (b) otherwise has no constitution.

2. Interpretation

- (1) This constitution must be read in conjunction with, and subject to, the Act.
- (2) In this constitution, **Act** means the Companies Act 2017.

3. Name of company

- (1) The name of the company on registration or re-registration under the Act is the name that appears on the application for registration or re-registration, as the case may be.
- (2) An application under section 12 of the Act to change the name of the company must not be made without the prior approval of all shareholders.

Part 2—Shares and share register

4. Number of shareholders

The company —

- (a) has 2 to 9 shareholders;
- (b) must not offer any of its shares or securities to the public.

5. Number and classes of shares

At the time of registration or re-registration under the Act, the company has the number and classes of shares specified in the application for registration or re-registration, as the case may be.

6. Share register

- (1) The company may appoint an agent to maintain the share register.
- (2) No notice of a trust, whether express or implied, may be entered on the share register.

7. Form and location of share register

- (1) The share register must be kept—
 - (a) in written form; or
 - (b) in a form or in a manner that allows the contents of the register to be readily accessible so as to be usable for subsequent reference and convertible into written form.
- (2) The share register must be kept at the company's registered office.

8. Status of registered shareholder

- (1) The 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.
- (2) If a joint holder of a share dies, the company must treat the remaining holders as the holders of the share.
- (3) If a sole shareholder dies, the shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.
- (4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy, insolvency, or incapacity of the shareholder may be registered as the holder of the shareholder's shares on making a request in writing to the company to be registered, accompanied by proof satisfactory to the directors of that entitlement.

*Issue of shares***9. Issue of shares**

- (1) The company may issue shares—
 - (a) in accordance with clause 10; or
 - (b) with the prior approval of all shareholders, to shareholders or any other person on any other basis.
- (2) With the prior approval of all shareholders, the company may issue more than 1 class of shares.
- (3) In particular, the company may issue shares that—
 - (a) are redeemable; or
 - (b) confer preferential rights to distributions of capital or income; or
 - (c) confer special, limited, or conditional voting rights; or
 - (d) do not confer voting rights.

10. Procedure for issue of shares

- (1) The company may issue shares in accordance with the procedure set out in subclauses (2) to (5).
- (2) The shares must first be offered to all shareholders proportionally, on such terms as the directors think fit, pursuant to an offer that, if accepted by all shareholders, would not affect the relative voting or distribution rights.
- (3) The shareholders must have a reasonable opportunity to consider and respond to the offer.
- (4) Any shares not accepted by the shareholders to whom they were offered under subclause (2) must then be offered to those shareholders who did accept the shares offered to them under subclause (2), on a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under subclause (2).

- (5) Any shares that are offered under subclause (4) but not taken up may then be offered to shareholders or any other persons as the directors think fit, on the same terms and conditions as the offer made under subclause (2).

Transfer of shares

11. Transfer of shares

- (1) The shares of the company are transferable by entry in the share register in accordance with clause 12.
- (2) However, the transferability of a share is subject to—
- (a) the terms of issue of the share; and
 - (b) the right of the directors to refuse registration under clause 12(4); and
 - (c) the pre-emptive rights of other shareholders under clauses 17 to 24.
- (3) 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.

12. Procedure for transfer of shares

- (1) For the transfer of shares, a form of transfer signed by the shareholder or the shareholder's agent or attorney must be delivered to the company.
- (2) If a share certificate has been issued, the company must not register a transfer of shares unless the transfer form is accompanied by—
- (a) the share certificate relating to the shares; or
 - (b) the evidence as to its loss or destruction and, if required, an appropriate indemnity.
- (3) Subject to subclause (4), the company must without delay on receiving a properly executed transfer form that complies with subclause (2) enter the name of the transferee in the share register as the holder of the shares.
- (4) If any amount is due and payable by the transferring shareholder to the company, the directors may, within 30 working days after receiving the transfer, resolve to refuse to register the transfer.
- (5) If the directors resolve under subclause (4) to refuse to register a transfer, they must give the transferor notice of the refusal within 5 working days after the date of the resolution.
- (6) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

Shareholders

13. Shareholders entitled to receive distributions

- (1) The shareholders who are entitled to receive distributions are—
- (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date; or
 - (b) if the directors do not fix a date, those shareholders whose names are registered in the share register on the day on which the dividend is approved.

- (2) A date fixed under subclause (1)(a) must not be more than 20 working days before the date on which it is proposed to pay the dividend.

14. Shareholders entitled to exercise pre-emptive rights

The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with clauses 17 to 24 are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under clause 18.

15. Shareholders entitled to attend shareholder meeting

- (1) The shareholders who are entitled to receive notice of a meeting of shareholders are,—

- (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the register on that date; or
- (b) if the directors do not fix a date, those shareholders are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

- (2) A date fixed under subclause (1)(a) must not be more than 30 working days before the date on which the meeting is to be held.

- (3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting that—

- (a) is arranged in alphabetical order; and
- (b) shows the number of shares held by each shareholder,—
 - (i) if a date has been fixed under subclause (1)(a), as at that date; or
 - (ii) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which notice is given.

- (4) A person (P) named in a list prepared under subsection (3) is entitled to attend the meeting and vote in respect of the shares shown opposite P's name in person or by proxy, except to the extent that—

- (a) P has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of P's shares to some other person; and
- (b) the transferee of those shares has—
 - (i) been registered as the holder of the shares; and
 - (ii) requested, before the commencement of the meeting, that the transferee's name be entered on the list prepared under subclause (3).

- (5) A shareholder may, on giving notice of not less than 2 working days, examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

16. Dividends

Subject to compliance with the solvency test and to the terms of issue of any shares, the company may pay a dividend to shareholders—

- (a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or

- (b) on any other basis, with the prior approval of all shareholders.

Pre-emptive rights

17. Restrictions on selling shares

- (1) A shareholder must not sell or otherwise dispose of the shareholder's shares in the company without first offering to sell them to the other holders of shares of the same class in accordance with the procedure set out in clauses 18 to 24, unless all the other shareholders agree otherwise.
- (2) Any share transfer delivered to the company by a shareholder who has not complied with subclause (1) is of no effect and the transfer must not be entered in the register.

18. Selling shareholder must notify company

A shareholder who wishes to dispose of some or all of the shareholder's shares (the **selling shareholder**) must give written notice to the company of—

- (a) the number of shares to be sold; and
- (b) the price at which the selling shareholder is willing to sell the shares.

19. Company must notify shareholders

The company must, within 10 working days after receiving a notice under clause 18, give to each shareholder—

- (a) a copy of the notice; and
- (b) a notice advising each holder of shares of the same class as those to be sold that—
- (i) the recipient is entitled to purchase a proportional number of the shares that the selling shareholder wishes to sell (the number appropriately rounded as determined by the directors); and
- (ii) if the recipient wishes to purchase those shares, the recipient must advise the company in writing within 10 working days after the notice is delivered to the recipient.

20. Notice given by company constitutes offer to sell

The company's notice given under clause 19(b) constitutes an offer by the selling shareholder to sell to the recipient of the notice the number of shares specified in the notice at the price specified by the selling shareholder in the selling shareholder's notice to the company given under clause 18.

21. Contract concluded on advice of acceptance

- (1) Subject to clause 24, written advice to the company by a shareholder (the **purchasing shareholder**) in accordance with clause 19(b)(ii) concludes a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares.
- (2) The company must without delay—
- (a) advise the selling shareholder of acceptance of the offer; and
- (b) give the selling shareholder a copy of the purchasing shareholder's advice of acceptance.

22. Shares offered but not accepted must be offered to other shareholders

- (1) This clause applies if a shareholder to whom notice has been given under clause 19(b) has not advised acceptance of the offer in accordance with that clause.
- (2) The relevant shares must be offered, on a fair and equitable basis determined by the directors, to those shareholders who did not accept the shares offered to them.
- (3) Clauses 20 and 21 apply to any notice given to a shareholder, and to any notice of acceptance given by a purchasing shareholder, under this clause.

23. Shares offered without any acceptance

- (1) If there has been no acceptance of shares offered under clause 19 or 22, the selling shareholder may, at any time in the 12 months following the selling shareholder's notice under clause 18, sell some or all of those shares to any other person at a price not less than the price specified in that notice.
- (2) Before registering a transfer of shares sold under subclause (1), the directors may require reasonable evidence of the terms (including price) on which the shares were sold.

24. Selling shareholder not obliged to sell

- (1) This clause applies if, after 40 working days following the selling shareholder's notice under clause 18, the selling shareholder has been notified of acceptances in respect of some but not all of the shares referred to in the notice.
- (2) The selling shareholder may, at the selling shareholder's option, give written notice to the company terminating the offer to sell the shares to the other shareholders.
- (3) If the selling shareholder gives a notice under subclause (2), clause 23 applies as if no shareholder had wished to purchase the selling shareholder's shares.

*Company acquisition of its own shares, etc***25. Approval of all shareholders required for company acquisition of own shares**

The company may agree to acquire its own shares from a shareholder only with the prior approval of all shareholders.

26. Approval of all shareholders required for financial assistance by company

The company may give financial assistance to a person for the purpose of, in connection with, the purchase of a share issued or to be issued by the company only with the prior approval of all shareholders.

*Deemed shareholder approval***27. Deemed approval by all shareholders for certain purposes**

For the purposes of clauses 9, 16, 25, or 26, a decision must be treated as approved by all shareholders if—

- (a) notice of the decision has been given to all shareholders in accordance with clause 62 (Service of documents on shareholders); and
- (b) no shareholder has responded within 10 working days objecting to that decision; and

- (c) shareholders entitled to cast not less than 75% of the votes in relation to a resolution to alter the constitution of the company have responded within 10 working days approving that decision.

Part 3—Shareholder meetings

28. Shareholder meetings

- (1) Clauses 29 to 41 set out the procedure for meetings of shareholders.
- (2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these provisions.

29. Notice of meeting

- (1) A company must give written notice of a meeting of shareholders to—
 - (a) every shareholder entitled to receive notice of the meeting; and
 - (b) every director; and
 - (c) the auditor, if any.
- (2) The notice must—
 - (a) be given not less than 10 working days before the meeting; and
 - (b) set out—
 - (i) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to make a reasoned judgment in relation to it; and
 - (ii) the text of any special resolution to be submitted to the meeting.
- (3) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that it is adjourned.

30. Irregularity in notice or accidental omission of notice

- (1) An irregularity in a notice of meeting is waived if—
 - (a) all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity; or
 - (b) all those shareholders agree to the waiver.
- (2) An accidental omission to give notice of a meeting to a shareholder, or a shareholder's failure to receive notice of a meeting, does not invalidate the proceedings at the meeting.

31. Methods of holding meetings

A meeting of shareholders may be held either—

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all shareholders participating and constituting a quorum may simultaneously hear each other throughout the meeting.

32. Quorum

- (1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

- (2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes of the votes to be cast on the business to be transacted at the meeting.
- (3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time or place, or to such other date, time, and place as the directors may appoint.
- (4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

33. Chairperson

- (1) If the directors have elected a chairperson of the directors, and that person is present at a meeting of shareholders, he or she must chair the meeting.
- (2) If there is no chairperson of directors or if the chairperson of directors is not present within 15 minutes after the time appointed for the commencement of the meeting, the shareholders present may choose 1 of themselves to chair the meeting.

34. Voting

- (1) Unless a poll is demanded, voting at a meeting of shareholders must take place by—
 - (a) voting by voice or show of hands, whichever the chairperson determines; or
 - (b) if the meeting is held by audio or audio and visual communication, by shareholders signifying their assent or dissent by voice.
- (2) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 35.
- (3) The chairperson of a shareholders' meeting does not have a casting vote.

35. Poll

- (1) At a meeting of shareholders, a poll may be demanded by—
 - (a) not fewer than 3 shareholders having the right to vote on the question at the meeting; or
 - (b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.
- (2) A poll may be demanded either before or after a vote is taken on a resolution.
- (3) If a poll is taken,—
 - (a) votes must be counted according to the votes attached to the shares of each shareholder present and voting; and
 - (b) the vote of each shareholder must be recorded in the minutes of the meeting.

36. Votes of joint shareholders

If 2 or more persons are registered as the joint holders of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

37. Proxies

- (1) A shareholder may exercise the right to vote either by being present in person or by proxy.
- (2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were a shareholder.
- (3) A proxy must be appointed by notice in writing signed by the shareholder.
- (4) The notice must state whether the appointment is for a particular meeting or for a specified term.
- (5) No proxy is effective in relation to a meeting unless a notice of appointment is given to the company at least 24 hours before the start of the meeting.

38. Corporations may act by representatives

- (1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.
- (2) The notice must state whether the appointment is for a particular meeting or for a specified term.

39. Minutes

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

40. Written resolution of shareholders

- (1) A resolution in writing signed by 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) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.
- (3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).
- (4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.
- (5) A resolution may be signed under subclause (1) without any prior notice being given to the shareholders.

41. 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 shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

Part 4—Directors

Directors

42. Number of directors

The shareholders may by ordinary resolution fix the number of directors.

43. Appointment and removal of directors

A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 40.

44. Term of office

- (1) The resolution appointing a director may specify the period for which the director is to hold office.
- (2) A director appointed by resolution specifying the term of appointment ceases to hold office on the expiry of that term unless he or she is reappointed.

45. When director vacates office

A director vacates office if he or she—

- (a) is removed from office in accordance with clause 43; or
- (b) ceases to hold office under clause 44(2); or
- (c) resigns in accordance with sections 80 and 81 of the Act; or
- (d) becomes disqualified from being a director under section 75 of the Act; or
- (e) dies.

46. Casual vacancies

The directors may appoint any person to be a director to fill a casual vacancy until the next annual meeting of the company.

47. Delegation by directors

- (1) The directors may delegate any of their powers that may be lawfully delegated to a committee of directors, or to a director or employee of the company.
- (2) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.
- (3) The provisions of this constitution relating to proceedings of directors also apply to proceedings of any committee of directors, except to the extent that the directors determine otherwise.

48. Indemnity and insurance

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

- (a) the directors, but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
 - (b) the shareholders by ordinary resolution, but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
 - (c) all shareholders under section 62.
- (2) In subclause (1),—
- director** includes—
- (a) a person referred to in section 96(1) of the Act (Extended meaning of director for purposes of liability); and
 - (b) a former director
- indemnify** includes relieve or exclude from liability, whether before or after the liability arises; and **indemnity** has a corresponding meaning.

49. **Remuneration of directors**

Directors may receive remuneration and other benefits from the company with the approval of—

- (a) the directors, but no director may vote on a resolution relating to remuneration or other benefits to be provided for him or her; or
- (b) the shareholders by ordinary resolution, but no director may vote on a resolution relating to remuneration or other benefits to be provided for him or her; or
- (c) all shareholders under section 62 of the Act.

50. **Use of company information**

- (1) This clause authorises the use of company information for the purpose of section 91(2)(a) of the Act.
- (2) A director may disclose, use, or act upon company information if—
 - (a) such disclosure or use is authorised by any contract of employment entered into between that director and the company; and
 - (b) the relevant terms of the contract have been approved by the shareholders by ordinary resolution.

Directors' meetings

51. **Procedure at meetings of directors**

- (1) Clauses 52 to 58 set out the procedure to be followed at meetings of directors.
- (2) Subject to subclause (1), a meeting of directors may determine its own procedure.

52. **Chairperson**

- (1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.
- (2) If no chairperson is elected, or if at a meeting of directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

53. Notice of meeting

- (1) A director or, on the request of a director, an employee may convene a meeting of directors by giving notice in accordance with this clause.
- (2) Not less than 24 hours' notice of a meeting of directors must be given to every director who is in the Cook Islands or who may be readily contacted outside the Cook Islands.
- (3) An irregularity in the notice of a meeting is waived if—
 - (a) all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity; or
 - (b) all directors entitled to receive notice of the meeting agree to the waiver.

54. Methods of holding meeting

A meeting of directors may be held either—

- (a) by a number of the directors who constitute a quorum being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum may simultaneously hear each other throughout the meeting.

55. Quorum

- (1) A quorum for a meeting of directors is a majority of directors.
- (2) No business may be transacted at a meeting of directors unless a quorum is present.

56. Voting

- (1) Each director has 1 vote.
- (2) The chairperson has a casting vote.
- (3) A resolution of the directors is passed if—
 - (a) it is agreed to by all directors present without dissent; or
 - (b) a majority of the votes cast are in favour.
- (4) A director present at a meeting is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

57. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of directors.

58. Unanimous resolution of directors

- (1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- (2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more directors.
- (3) A copy of any such resolution must be entered in the minute book of the directors' meetings.

*Managing director***59. Directors may appoint managing director**

- (1) The directors may, from time to time, appoint a director of the company as managing director for such period and on such terms as they think fit.
- (2) Subject to the terms of a managing director's appointment, the directors may, at any time, cancel the appointment of a director as managing director.
- (3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

60. Delegation to managing director

- (1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.
- (2) The directors may at any time withdraw or vary the delegation.
- (3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

61. Remuneration of managing director and executive directors

- (1) The managing director may be paid such remuneration as he or she may agree with the directors.
- (2) A director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors.
- (3) Remuneration payable under this clause may be paid by way of salary, commission, participation in profits, or any combination of those methods, or any other method of fixing remuneration.

Part 5—Liquidation**62. Resolution to appoint liquidator**

- (1) The shareholders may resolve to appoint a liquidator by special resolution.
- (2) The directors may resolve to appoint a liquidator if they consider that the company is unable to meet its debts as they become due in the normal course of business.

63. Distribution of surplus assets

- (1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.
- (2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind.
- (3) For the purposes of subclause (2), the liquidator may—
 - (a) set such value as he or she considers fair on the property to be distributed;
 - and

- (b) determine how the division of the property will be carried out as between shareholders or different classes of shareholders.

Part 6—Miscellaneous

64. Service of documents on shareholder

A notice, statement, report, copy of accounts, or other document to be sent or given to a shareholder may be sent or given in accordance with **Schedule 14** of the Act.

Schedule 4
Default constitution for company registered with 10 or more
shareholders

Part 1—General provisions

1. Constitution supplements provisions of Act

- (1) This constitution supplements certain provisions of the Act.
- (2) This is the default constitution for a company that—
 - (a) has 10 or more shareholders; and
 - (b) otherwise has no constitution.

2. Interpretation

- (1) This constitution must be read in conjunction with, and subject to, the Act.
- (2) In this constitution, **Act** means the Companies Act 2017.
- (3) For the purposes of this constitution,—
 - (a) **voting share** means a share that confers on its holder the right to vote on a resolution at a meeting of shareholders: and
 - (b) the percentage of voting shares held by any person is treated as equal to the percentage of votes that that person is entitled to cast on such a resolution.
- (4) For the purposes of this constitution, a person is interested in a voting share if that person—
 - (a) is a beneficial owner of the share; or
 - (b) has the power to exercise any right to vote attached to the share; or
 - (c) has the power to control the exercise of any right to vote attached to the share; or
 - (d) has the power to acquire or dispose of the share; or
 - (e) has the power to control the acquisition or disposition of the share by another person; or
 - (f) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the share (whether or not that person is a party to it, and whether or not it is legally enforceable) may, at any time, have any of the powers referred to in paragraphs (b) to (e).
- (5) A person who has, or may have, a power referred to in subclause (4)(b) to (f) is interested in a share, regardless of whether the power is—
 - (a) express or implied; or
 - (b) direct or indirect; or
 - (c) legally enforceable or not; or
 - (d) related to a particular share or not; or
 - (e) subject to restraint or restriction or is capable of being made subject to restraint or restriction; or
 - (f) exercisable presently or in the future; or

- (g) exercisable only on the fulfilment of a condition; or
- (h) exercisable alone or jointly with another person.

3. Name of the company

- (1) The name of the company at the time of registration or re-registration under the Act appears on the application for registration or for re-registration, as the case may be.
- (2) The name of the company may be changed in accordance with section 12 of the Act with the prior approval of the directors.

Part 2—Shares and share register

4. Number of shares

At the time of registration or re-registration under the Act, the company has the number of shares specified in the application for registration or re-registration, as the case may be.

5. Share register

- (1) The company may appoint an agent to maintain the share register.
- (2) No notice of a trust, whether express or implied, may be entered on the share register.

6. Form and location of share register

- (1) The share register must be kept—
 - (a) in written form; or
 - (b) in a form or in a manner that allows the contents of the register to be readily accessible so as to be usable for subsequent reference and convertible into written form.
- (2) The share register must be kept at the company's registered office.

7. Status of registered shareholder

- (1) The 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.
- (2) If the shareholder dies, the shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.
- (3) Any person who becomes entitled to a share as a consequence of the death, bankruptcy, insolvency, or incapacity of the shareholder may be registered as the holder of the shareholder's shares on making a request in writing to the company to be registered, accompanied by proof satisfactory to the directors of that entitlement.

Issue of shares

8. Issue of shares

- (1) The company may issue more than 1 class of shares.
 - (2) The company may issue shares that—
 - (a) are redeemable; or
 - (b) confer preferential rights to distribution of capital or income; or
 - (c) confer special, limited, or conditional voting rights; or
 - (d) do not confer voting rights.
- 9. Procedure for issue of shares**
- (1) The company may issue shares in accordance with the procedure set out in subclauses (2) to (4).
 - (2) The company may issue shares—
 - (a) pursuant to an offer made to all shareholders proportionally that, if accepted by all shareholders, would not affect the relative voting or distribution rights, on such terms as the directors think fit (including issuing shares without consideration or instead of dividends); or
 - (b) to shareholders or any other persons for a consideration determined by the directors.
 - (3) If an offer is made to all shareholders, the shareholders must have a reasonable opportunity to consider and respond to the offer.
 - (4) If shares are issued under subclause (2)(b), the directors must use reasonable endeavours to obtain the best price reasonably obtainable for the shares.

Transfer of shares

10. Transfer of shares

- (1) The shares of the company are transferable by entry in the share register in accordance with clause 11.
- (2) However, the transferability of a share is subject to—
 - (a) the terms of issue of the share; and
 - (b) the right of the directors to refuse registration under clause 11(4).
- (3) 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.

11. Procedure for transfer of shares

- (1) For the transfer of shares, a form of transfer signed by the shareholder or the shareholder's agent or attorney must be delivered to the company.
- (2) If a share certificate has been issued, the company must not register a transfer of shares unless the transfer form is accompanied by—
 - (a) the share certificate relating to the shares; or
 - (b) the evidence as to its loss or destruction and, if required, an appropriate indemnity.
- (3) Subject to subclause (4), the company must without delay on receiving a properly executed transfer form that complies with subclause (2) enter the name of the transferee in the share register as the holder of the shares.

- (4) If any amount is due and payable by the transferring shareholder to the company, the directors may, within 30 working days after receiving the transfer, resolve to refuse to register the transfer.
- (5) If the directors resolve under subclause (4) to refuse to register a transfer, they must give the transferor notice of the refusal within 5 working days after the date of the resolution.
- (6) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

Shareholders

12. Shareholders entitled to receive dividends

- (1) The shareholders who are entitled to receive dividends are,—
 - (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the register on that date; or
 - (b) if the directors do not fix a date, those shareholders whose names are registered in the share register on the day on which the dividend is approved.
- (2) A date fixed under subclause (1)(a) must not be more than 30 working days before the date on which it is proposed to pay the dividend.

13. Shareholders entitled to attend shareholder meeting

- (1) The shareholders who are entitled to receive notice of a meeting of shareholders are,—
 - (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the register on that date; or
 - (b) if the directors do not fix a date, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- (2) A date fixed under subclause (1)(a) must not be more than 30 working days before the date on which the meeting is to be held.
- (3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting that—
 - (a) is arranged in alphabetical order; and
 - (b) shows the number of shares held by each shareholder,—
 - (i) if a date has been fixed under subclause (1)(a), as at that date; or
 - (ii) if no such date has been fixed, as at the close of business on the day immediately preceding the day on which notice is given.
- (4) A person (P) named in a list prepared under subsection (3) is entitled to attend the meeting and vote in respect of the shares shown opposite P's name in person or by proxy, except to the extent that—
 - (a) P has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of P's shares to some other person; and

- (b) the transferee of those shares has—
 - (i) been registered as the holder of the shares; and
 - (ii) requested, before the commencement of the meeting, that the transferee's name be entered on the list prepared under subclause (3).
- (5) A shareholder may, on giving notice of not less than 2 working days, examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

14. Dividends

Subject to compliance with the solvency test and the terms of issue of any shares, the company may pay a dividend to shareholders—

- (a) of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or
- (b) on any other basis, with the prior approval of all shareholders.

15. Distributions to shareholders

- (1) No dividend or other distribution by the company bears interest unless the applicable terms of issue of a share expressly provide for interest to be paid.
- (2) A dividend or other distribution that is unclaimed for 1 year after the due date for payment may be invested or otherwise applied by the directors for the benefit of the company until claimed.
- (3) The company is entitled to mingle an unclaimed distribution with other money of the company and is not required to hold it or treat it as being impressed with a trust but, subject to compliance with the solvency test, must pay the distribution to the person producing evidence satisfactory to the directors of entitlement to receive it.

Company acquisition of its own shares, etc

16. Company may acquire its own shares

- (1) Subject to compliance with the solvency test, the company may agree to acquire its own shares from a shareholder—
 - (a) pursuant to an offer to acquire shares made to all holders of shares of the same class that would, if accepted by all persons to whom the offer is made, leave unaffected relative voting and distribution rights; or
 - (b) on any other basis, with the prior approval of shareholders by special resolution.
- (2) If the company acquires its own shares, those shares are cancelled immediately on acquisition.

17. Company may provide financial assistance for purchase of its own shares

The company may, in accordance with section 44 of the Act, provide 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.

Part 3—Compulsory acquisition of shares**18. Notice of compulsory acquisition of minority holdings**

- (1) A shareholder who holds not less than 90% of the voting shares of the company (the **majority shareholder**) may give a notice (the **purchase notice**) to the other holders of voting shares (the **minority shareholders**) that complies with clause 20, requiring the minority shareholders to sell their voting shares to the majority shareholder.
- (2) The majority shareholder must also—
 - (a) give the purchase notice to the company; and
 - (b) give public notice that the purchase notice has been given.
- (3) The majority shareholder may give a purchase notice at any time within 6 months after the majority shareholder first becomes interested in not less than 90% of the voting shares of the company.

19. Price for voting share

- (1) The majority shareholder must pay a price for each voting share that is—
 - (a) equal to the highest price paid for a voting share by that majority shareholder in an arm's length sale and purchase of those shares during the 6-month period ending on the date on which the majority shareholder first became interested in not less than 90% of the voting shares; or
 - (b) if the majority shareholder so elects, a price to be fixed by an independent arbitrator.
- (2) The majority shareholder must request the directors of the company to nominate an independent arbitrator if subclause (1)(b) applies.
- (3) If the directors fail to do so within 10 working days after receiving a request under subclause (2), the majority shareholder may nominate an arbitrator.

20. Requirements for purchase notice (price already determined)

- (1) This clause applies if the price is determined under clause 19(1)(a).
- (2) The purchase notice must—
 - (a) specify the name of the majority shareholder; and
 - (b) specify the date on which the majority shareholder first became interested in not less than 90% of the voting shares; and
 - (c) specify the price to be paid for each voting share; and
 - (d) specify a date (the **transfer date**) not less than 20 working days after the date of the purchase notice on which the price will be paid and the shares acquired by the majority shareholder; and
 - (e) advise the minority shareholder that no payment will be made to the shareholder until any share certificate issued in respect of the voting shares has been delivered to the company; and
 - (f) require the minority shareholder to specify the method of payment of the price; and
 - (g) advise the minority shareholder that payment may be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

- (3) The majority shareholder must certify that the price accords with the requirements of clause 19(1)(a).
- (4) The date for holding the arbitration must not be less than 60 working days after the date on which the purchase notice is given to the minority shareholders.

21. Requirements for purchase notice (price to be fixed by arbitrator)

- (1) This clause applies if the price is to be fixed under clause 19(1)(b) by an arbitrator.
- (2) The purchase notice must specify—
 - (a) the name of the majority shareholder; and
 - (b) the date on which the majority shareholder first became interested in not less than 90% of the voting shares; and
 - (c) the name of the arbitrator and the date and place at which the arbitration is to be held; and
 - (d) the rights of the minority shareholders under clause 22.

22. Court appointment of arbitrator

- (1) This clause and clauses 23 and 24 apply if the purchase price is to be fixed by an arbitrator.
- (2) If any minority shareholder considers that the arbitrator nominated under the purchase notice is not suitably qualified or is not independent, the minority shareholder may give notice to the company within 10 working days requiring the company to apply to the Court for the appointment of another person as arbitrator.
- (3) If the company receives a notice under subclause (2), it must without delay apply to the Court for the appointment of an arbitrator.
- (4) In this clause, **Court** means the High Court of the Cook Islands.

23. Conduct of arbitration

- (1) Each minority shareholder is entitled to attend the arbitration and to be heard, in person or by a representative (who may, but need not, be a legal practitioner or a chartered accountant).
- (2) The arbitrator must expeditiously determine a fair and reasonable price per share for the shares to be acquired.
- (3) The price must not include any discount or premium to reflect—
 - (a) the size of the parcels of shares to be acquired; or
 - (b) the circumstances of the acquisition.
- (4) The costs of the arbitration must be paid by the majority shareholder.

24. Notice of determination of price by arbitrator

Within 10 working days after the date of the arbitrator's determination of the price, the company must give a notice to each minority shareholder that—

- (a) advises the shareholder of the price determined by the arbitrator; and
- (b) specifies a date (the **transfer date**) not less than 20 working days after the date of the notice on which the price will be paid and the shares acquired by the majority shareholder; and

- (c) advises the minority shareholder that no payment will be made to the shareholder until any share certificate issued in respect of the voting shares has been delivered to the company; and
- (d) requires the minority shareholder to specify the method of payment of the price; and
- (e) advises the minority shareholder that payment may be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

25. Requirements on transfer date

- (1) On the transfer date—
 - (a) the majority shareholder must pay (in cleared funds) the full amount of the price for all voting shares held by minority shareholders to the company to be held on trust by the company for the benefit of those shareholders; and
 - (b) all voting shares held by minority shareholders are deemed to be transferred to the majority shareholder on payment to the company in accordance with paragraph (a); and
 - (c) the company must register the majority shareholder as the holder of those shares despite any outstanding share certificates in respect of those shares.
- (2) Subject to subclause (5), within 5 working days after the transfer date the company must pay each minority shareholder the price for that shareholder's voting shares, by the method specified by the shareholder.
- (3) If the shareholder has specified that a cheque will be collected from the company by that shareholder, the cheque must be held ready for collection from that date.
- (4) If the company fails to make a payment, or to make it available for collection, the company must pay interest to the shareholder from the due date to the date on which the payment is made, or is made available for collection, at the rate of 15% per annum, accruing daily and compounding monthly.
- (5) If a share certificate has been issued in respect of voting shares held by a minority shareholder, no payment may be made to that minority shareholder until the minority shareholder delivers to the company—
 - (a) the share certificate; or
 - (b) evidence as to its loss or destruction and, if required, an appropriate indemnity.

Part 4—Exit rights

26. When exit rights apply

- (1) Subject to subclause (2), clauses 27 to 32 apply to a shareholder (the **acquirer**) who—
 - (a) makes an acquisition (the **acquisition**) of an interest in the voting shares in the company (the **voting shares**); and
 - (b) before the acquisition had an interest in less than 50% of the voting shares; and

- (c) after the acquisition has an interest in 50% or more of the voting shares.
- (2) However, clauses 27 to 42 do not apply to an acquirer if the acquirer is exempted by a special resolution of holders of voting shares other than—
 - (a) voting shares in which the acquirer is interested; and
 - (b) voting shares in which any other person is interested who is interested in not less than 50% of the voting shares.

27. Acquirer must give notice to company

- (1) An acquirer must, within 10 working days of first becoming a shareholder to which this clause applies, give notice to the company that complies with subclause (2).
- (2) The notice must—
 - (a) advise the company that the acquirer is a shareholder to whom this clause applies; and
 - (b) identify the holders of all voting shares in which the acquirer is interested and the number of voting shares that each holds in which the acquirer is interested; and
 - (c) offer to purchase all voting shares in which the acquirer is not interested (the **remaining shares**); and
 - (d) contain the information set out in subclause (3); and
 - (e) specify in accordance with clause 28 the terms on which the acquirer offers to purchase the remaining shares; and
 - (f) be accompanied by an independent report that complies with clause 29; and
 - (g) be dated; and
 - (h) be signed by the acquirer or, if the acquirer is a corporate body, a director of the acquirer.
- (3) The notice must—
 - (a) specify the highest price paid for any voting shares in the company by the acquirer, or by any person holding shares in which the acquirer is interested, from the date of 6 months before the date on which the acquirer first became a person to whom this clause applies up to the date of the notice; and
 - (b) if any voting shares in which the acquirer is interested were acquired during this period for a non-cash consideration, describe that consideration and state an assessment of the cash value to which that consideration corresponds; and
 - (c) specify the rights of the remaining shareholders under clause 31.

28. Terms of purchase of remaining shares

- (1) The notice must—
 - (a) specify the consideration offered by the acquirer for each remaining share, which may, but need not, be a cash consideration; and
 - (b) specify the date (the **transfer date**) on which the acquirer will provide the consideration for any remaining shares in respect of which the offer is accepted.

- (2) The transfer date must not be less than 20 working days nor more more than 40 working days from the date on which the notice is given to the company.

29. Independent report

- (1) A notice given under clause 27 must be accompanied by a report that—
 - (a) is made by an independent, appropriately qualified person previously approved by the company; and
 - (b) complies with subclause (2).
- (2) The report must confirm that the consideration offered is a fair and reasonable consideration for a voting share in the company, without any discount or premium to reflect the size of the parcels of shares to be acquired or the circumstances of the acquisition.

30. Notice to holders of remaining shares

- (1) Within 10 working days of receiving a notice given under clause 27, the company must forward the notice to all holders of remaining shares.
- (2) The notice forwarded to holders of remaining shares may, but need not, be accompanied by—
 - (a) additional information provided by the directors in relation to the offer;
 - (b) a recommendation by the directors as whether or not the offer should be accepted.
- (3) Without delay after forwarding the notice, the company must give public notice of the notice.

31. Rights of holder of remaining shares

- (1) A shareholder to whom notice is given under clause 30—
 - (a) is not required to accept the offer;
 - (b) may accept the offer by notice in writing to the company within 20 working days after the date on which the notice was given to the shareholder.
- (2) If a shareholder gives notice accepting an offer in accordance with subclause (1)(b), there is concluded a contract between between the acquirer and the shareholder for the purchase by the acquirer of the remaining shares held by that shareholder on the specified transfer date and for the specified consideration.

32. Acquirer's failure to give notice precludes exercise of voting rights

- (1) If a shareholder to whom this clause applies fails to give the notice required under clause 27 within the time specified by that clause, no voting rights may be exercised in respect of any shares in which the acquirer is interested until the notice has been given.
- (2) If a person who is not a shareholder becomes interested in 40% or more of the voting shares of the company, no voting rights may be exercised in respect of any shares in which that person is interested unless that person—
 - (a) is exempted by a special resolution under clause 26(2); or
 - (b) undertakes to the company to make an offer as if that person were an acquirer, and complies with that undertaking.

Part 5—Shareholder meetings**33. Shareholder meetings**

- (1) Clauses 34 to 47 set out the procedure for meetings of shareholders.
- (2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these provisions.

34. Notice of meeting

- (1) A company must give written notice of a meeting of shareholders to—
 - (a) every shareholder entitled to receive notice of the meeting; and
 - (b) every director; and
 - (c) the auditor, if any.
- (2) The notice must—
 - (a) be given not less than 10 working days before the meeting; and
 - (b) set out—
 - (i) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to make a reasoned judgment in relation to it; and
 - (ii) the text of any special resolution to be submitted to the meeting.
- (3) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that it is adjourned.

35. Irregularity in notice or accidental omission of notice

- (1) An irregularity in a notice of meeting is waived if—
 - (a) all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity; or
 - (b) all those shareholders agree to the waiver.
- (2) An accidental omission to give notice of a meeting to a shareholder, or a shareholder's failure to receive notice of a meeting, does not invalidate the proceedings at the meeting.

36. Methods of holding meetings

A meeting of shareholders may be held either—

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual communication by which all shareholders participating and constituting a quorum may simultaneously hear each other throughout the meeting.

37. Quorum

- (1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.
- (2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes of the votes to be cast on the business to be transacted at the meeting.

- (3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time or place, or to such other date, time, and place as the directors may appoint.
- (4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

38. Chairperson

- (1) If the directors have elected a chairperson of the directors, and that person is present at a meeting of shareholders, he or she must chair the meeting.
- (2) If there is no chairperson of directors or if the chairperson of directors is not present within 15 minutes after the time appointed for the commencement of the meeting, the shareholders present may choose 1 of themselves to chair the meeting.

39. Voting

- (1) Unless a poll is demanded, voting at a meeting of shareholders must take place by—
 - (a) voting by voice or show of hands, whichever the chairperson determines; or
 - (b) if the meeting is held by audio or audio and visual communication, by shareholders signifying their assent or dissent by voice.
- (2) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 40.
- (3) The chairperson of a shareholders' meeting does not have a casting vote.

40. Poll

- (1) At a meeting of shareholders a poll may be demanded by—
 - (a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or
 - (b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.
- (2) A poll may be demanded either before or after a vote is taken on a resolution.
- (3) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

41. Votes of joint shareholders

If 2 or more persons are registered as the joint holders of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

42. Proxies

- (1) A shareholder may exercise the right to vote either by being present in person or by proxy.

- (2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were a shareholder.
- (3) A proxy must be appointed by notice in writing signed by the shareholder.
- (4) The notice must state whether the appointment is for a particular meeting or for a specified term.
- (5) No proxy is effective in relation to a meeting unless a notice of appointment is given to the company at least 24 hours before the start of the meeting.

43. Corporations may act by representatives

- (1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.
- (2) The notice must state whether the appointment is for a particular meeting or for a specified term.

44. Postal votes

- (1) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this clause.
- (2) The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.
- (3) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholder's shares are to be voted to a person authorised to receive and count postal votes at that meeting.
- (4) A notice under subclause (3) must reach the person authorised to receive it not later than 48 hours before the start of the meeting.
- (5) A shareholder who has submitted a postal vote on any resolution—
 - (a) may attend and speak at the meeting; but
 - (b) must not vote on that resolution in person at the meeting.

45. Duty of person authorised to receive and count postal votes

- (1) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of meeting, every director is authorised to do so.
- (2) The person authorised to receive and and count postal votes at a meeting must—
 - (a) collect together all postal votes received by him or her or the company; and
 - (b) in relation to each resolution to be voted on at the meeting, count—
 - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - (ii) the number of shareholders voting against the resolution and the number of votes cast by each shareholder against the resolution; and
 - (c) sign a certificate that—
 - (i) certifies that he or she has carried out the duties set out in paragraphs (a) and (b); and

- (ii) sets out the results of the counts required by paragraph (b); and
- (d) ensure that the certificate is given to the chairperson of the meeting.

46. Duty of chairperson in relation to postal votes

- (1) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must—
 - (a) on a vote by a show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and
 - (b) on a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- (2) The chairperson must call for a poll on a resolution on which postal votes have been cast if the chairperson believes that on a poll the result may be different from that obtained on a show of hands.
- (3) The chairperson must ensure that any certificate of postal votes is annexed to the minutes of the meeting.

47. Written resolution of shareholders

- (1) A resolution in writing signed by 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) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.
- (3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).
- (4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.
- (5) A resolution may be signed under subclause (1) without any prior notice being given to the shareholders.

48. Minutes

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

Part 6—Directors

49. Number of directors

- (1) The minimum number of directors is 2.
- (2) The maximum number of directors is 10.
- (3) The shareholders may by ordinary resolution vary the minimum or maximum numbers of the directors.

50. Appointment and removal of directors

A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 47.

51. Term of office

- (1) The resolution appointing a director may specify the period for which the director is to hold office.
- (2) A director appointed by resolution specifying the term of appointment ceases to hold office on the expiry of that term unless he or she is reappointed.

52. When director vacates office

A director vacates office if he or she—

- (a) is removed from office in accordance with clause 50; or
- (b) ceases to hold office under clause 51(2); or
- (c) resigns in accordance with sections 81 and 82 of the Act; or
- (d) becomes disqualified from being a director under section 75 of the Act; or
- (e) dies; or
- (f) is absent from 3 consecutive meetings of the directors without leave being granted by a resolution of directors, and the directors resolve that the director has vacated office.

53. Casual vacancies

The directors may appoint any person to be a director to fill a casual vacancy until the next annual meeting of the company.

54. Delegation by directors

- (1) The directors may delegate any of their powers that may be lawfully delegated to a committee of directors, or to a director or employee of the company.
- (2) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.
- (3) The provisions of this constitution relating to proceedings of directors also apply to proceedings of any committee of directors, except to the extent that the directors determine otherwise.

55. Indemnity and insurance

- (1) Subject to section 101 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or a related company with the approval of—
 - (a) the directors, but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
 - (b) the shareholders by ordinary resolution, but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
 - (c) all shareholders under section 62.
- (2) In subclause (1),—

director includes—

- (a) a person referred to in section 96(1) of the Act (Extended meaning of director for purposes of liability); and
- (b) a former director

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

56. Remuneration of directors

Directors may receive remuneration and other benefits from the company with the approval of—

- (a) the directors, but no director may vote on a resolution relating to remuneration or other benefits to be provided for him or her; or
- (b) the shareholders by ordinary resolution, but no director may vote on a resolution relating to remuneration or other benefits to be provided for him or her; or
- (c) all shareholders under section 62.

57. Use of company information

- (1) This clause authorises the use of company information for the purposes of section 91(2)(a) of the Act.
- (2) A director may disclose, use, or act upon company information if—
 - (a) such disclosure or use is authorised by any contract of employment entered into between that director and the company; and
 - (b) the relevant terms of the contract have been approved by the shareholders by ordinary resolution.

Disclosure of interests

58. Directors' interests register

- (1) The company must—
 - (a) maintain an interests register; and
 - (b) permit any director or shareholder to inspect the interests register as if it were a company record which directors and shareholders are entitled to inspect under section 147 of the Act.
- (2) The annual report of the company must contain all entries made in the interests register in the course of the accounting period to which the report relates.

59. Contents of interests register

The directors must enter in the interests register details of any—

- (a) indemnity or insurance provided for a director under clause 55; and
- (b) details of any remuneration or other benefits provided to a director under clause 56; and
- (c) contract of employment to which clause 57(2)(a) relates; and
- (d) disclosure by a director under clause 60.

60. Disclosure of interest in company transaction

- (1) A director who is in any way, directly or indirectly, materially interested in a transaction or proposed transaction with the company, must within 10 working days after becoming aware of that interest—
 - (a) disclose that interest in writing to the directors; and
 - (b) ensure that the details of that disclosure are entered in the interests register.
- (2) A director may disclose to the other directors, and enter in the interests register, a general disclosure that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person.
- (3) Disclosure under subclause (2) is disclosure of the director's interest in any transaction entered into with that other company or person for the purpose of subclause (1).

*Directors' meetings***61. Procedure at meetings of directors**

- (1) Clauses 62 to 68 set out the procedure to be followed at meetings of directors.
- (2) Subject to subclause (1), a meeting of directors may determine its own procedure.

62. Chairperson

- (1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.
- (2) If no chairperson is elected, or if at a meeting of directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

63. Notice of meeting

- (1) A director or, on the request of a director, an employee may convene a meeting of directors by giving notice in accordance with this clause.
- (2) Not less than 24 hours' notice of a meeting of directors must be given to every director who is in the Cook Islands or who may be readily contacted outside the Cook Islands.
- (3) An irregularity in the notice of a meeting is waived if—
 - (a) all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity; or
 - (b) all directors entitled to receive notice of the meeting agree to the waiver.

64. Methods of holding meeting

A meeting of directors may be held either—

- (a) by a number of the directors who constitute a quorum being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all directors participating and constituting a quorum may simultaneously hear each other throughout the meeting.

65. Quorum

- (1) A quorum for a meeting of directors is,—
 - (a) if there are 2 directors, both directors;
 - (b) if there are more than 2 directors, a majority of the directors.
- (2) No business may be transacted at a meeting of directors unless a quorum is present.

66. Voting

- (1) Each director has 1 vote.
- (2) The chairperson has a casting vote.
- (3) A resolution of the directors is passed if—
 - (a) it is agreed to by all directors present without dissent; or
 - (b) a majority of the votes cast are in favour.
- (4) A director present at a meeting is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

67. Minutes

The directors must ensure that minutes are kept of all proceedings at meetings of directors.

68. Unanimous resolution

- (1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.
- (2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more directors.
- (3) A copy of any such resolution must be entered in the minute book of the directors' meetings.

Managing director

69. Directors may appoint managing director

- (1) The directors may, from time to time, appoint a director of the company as managing director for such period and on such terms as they think fit.
- (2) Subject to the terms of a managing director's appointment, the directors may, at any time, cancel the appointment of a director as managing director.
- (3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

70. Delegation to managing director

- (1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.
- (2) The directors may at any time withdraw or vary the delegation.

- (3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

71. Remuneration of managing director and executive directors

- (1) The managing director may be paid such remuneration as he or she may agree with the directors.
- (2) A director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors.
- (3) Remuneration payable under this clause may be paid by way of salary, commission, participation in profits, or any combination of those methods, or any other method of fixing remuneration.

Part 7—Liquidation

72. Resolution to appoint liquidator

- (1) The shareholders may resolve to appoint a liquidator by special resolution.
- (2) The directors may resolve to appoint a liquidator if they consider that the company is unable to meet its debts as they become due in the normal course of business.

73. Distribution of surplus assets

- (1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.
- (2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind.
- (3) For the purposes of subclause (2), the liquidator may—
- (a) set such value as he or she considers fair on the property to be distributed; and
 - (b) determine how the division of the property will be carried out as between shareholders or different classes of shareholders.

Schedule 5

Procedure for minority buy-out

1. Buy-out notice

A shareholder (S) who is entitled to require the company to buy S's shares under section 65 may give the company a buy-out notice (the **buy-out notice**) requiring it to do so.

2. Time for giving buy-out notice

S must give the buy-out notice,—

- (a) if the resolution triggering the buy-out right was passed at a meeting of shareholders, within 10 working days after the meeting; or
- (b) if the resolution was passed in lieu of a meeting, within 10 working days of the date on which the company gave notice of the resolution to S.

3. How company must respond to buy-out notice

Within 20 working days after receiving the buy-out notice, the company must—

- (a) do 1 of the following—
 - (i) agree to buy the shares; or
 - (ii) arrange for some other person to buy them; or
 - (iii) arrange for the shareholders' resolution triggering the buy-out to be rescinded; or
 - (iv) decide not to take the action concerned; and
- (b) give S written notice of the decision (the **decision notice**).

4. Decision notice must nominate buy-out date and price

- (1) If the company agrees to buy the shares, the decision notice must nominate—

- (a) the buy-out date; and
- (b) the buy-out price.

- (2) The buy-out date must not be earlier than 10 working days, nor later than 20 working days, after the company gives S the decision notice.

- (3) The buy-out price must be fair and reasonable, that is, a fair and reasonable price for a share in the company as at the buy-out date, disregarding—

- (a) any premium or discount in respect of the number of shares to be bought; and
- (b) the fact that the shares are being bought under section 65; and
- (c) the effect or likely effect on the company and the value of its shares of the resolution triggering the buy-out right.

5. Transfer of shares on buy-out date if no objection

Unless S objects to the nominated buy-out price, on the buy-out date—

- (a) the shares are transferred to the company; and
- (b) subject to compliance with the solvency test, the company must pay the nominated buy-out price.

6. Objection to nominated buy-out price

- (1) S may object that the nominated buy-out price is not fair and reasonable by giving the company a notice of objection (the **objection notice**).
- (2) S must give the objection notice to the company within 10 working days after the company gives S the decision notice.
- (3) The company must—
 - (a) on the nominated buy-out date, pay S a provisional price for each share that is the nominated buy-out price; and
 - (b) refer the question of what is a fair and reasonable price for determination by an expert in accordance with clause 7.

7. Company must nominate expert to determine buy-out price

- (1) Within 10 working days after receiving the objection notice, the company must give S a notice (the **nomination notice**) nominating an independent expert to determine the buy-out price.
- (2) If S does not object to the expert nominated, that person must as expeditiously as possible determine a fair and reasonable price for the shares.

8. Objection to nominated expert

- (1) S may object to the nominated expert on the grounds that he or she—
 - (a) is not independent; or
 - (b) does not have the appropriate expertise.
- (2) To object to the nominated expert, S must give the company a notice within 10 working days after receiving the nomination notice.

9. Court must appoint expert in case of objection

- (1) If S objects to the nominated expert, the company must without delay apply to the Court for an order appointing an expert.
- (2) The Court may appoint—
 - (a) the nominated expert; or
 - (b) an expert nominated by S; or
 - (c) any other independent person with the appropriate expertise as the Court thinks fit.
- (3) On appointment by the Court, the person appointed must as expeditiously as possible determine a fair and reasonable price for the shares.

10. Expert's determination of buy-out price is final

The expert's determination is final and is made by the expert as an expert, not as an arbitrator.

11. Adjustment for provisional buy-out price

- (1) If the price determined by the expert—
 - (a) exceeds the provisional buy-out price already paid, the company must, subject to satisfying the solvency test, without delay pay the balance owing to S;
 - (a) is less than the provisional buy-out price already paid, the company may recover the excess paid from the shareholder.

- (2) The expert may award interest on any balance payable or excess to be repaid at the rate that he or she thinks fit.

12. Purchase of shares by third party

- (1) Clauses 4 to 11 apply, with all necessary modifications, to a buy-out by a third party arranged by the company as if references in those clauses were references to the third party.
- (2) The company indemnifies a shareholder whose shares are bought by a third party arranged by the company in respect of any loss suffered because of the third party's failure to buy the shares or to buy them at the nominated price or the price determined by an expert, as the case may be.

13. Inability of company to pay buy-out price

Section 33 applies to the purchase of shares under this Schedule as if there were a contract between the shareholder and the company for the purchase of the shares in accordance with this Schedule.

Schedule 6

Amalgamations

- 1. Companies may amalgamate**
Two or more companies may amalgamate, and continue as 1 company, in accordance with this Schedule.
- 2. Notice of proposed amalgamation**
 - (1) Each amalgamating company must—
 - (a) send a copy of the amalgamation proposal to every secured creditor of the company; and
 - (b) give public notice of the proposed amalgamation that complies with clause 3.
 - (2) The steps set out in subclause (1) must be taken not less than 20 working days before the amalgamation is proposed to take effect.
- 3. Content of public notice**
The public notice required under clause 2(1)(b) must—
 - (a) state that any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation—
 - (i) may inspect the amalgamation proposal; and
 - (ii) is entitled to be supplied on request with a free copy of the amalgamation proposal; and
 - (b) state that inspection of the amalgamation proposal is available at the registered offices of the amalgamating companies and any other specified places, during normal business hours.
- 4. Registration of amalgamation proposal**
For amalgamation, the following documents must be delivered to the Registrar for registration—
 - (a) the amalgamation proposal;
 - (b) in respect of each amalgamating company, a certificate signed by the directors certifying that the amalgamation proposal has been approved in accordance with this Act and the company's constitution;
 - (c) a consent to be a director of the amalgamated company that is—
 - (i) in the prescribed form; and
 - (ii) signed by each person named in the amalgamation proposal as a director of the amalgamated company.
- 5. Certificate of amalgamation**
 - (1) Without delay after receiving the documents specified in clause 4, the Registrar must issue a certificate of amalgamation in the prescribed form.
 - (2) If the amalgamation proposal specifies a date on which the amalgamation is intended to become effective, the certificate of amalgamation must be expressed to have effect on the specified date, and it does not matter that the Registrar has received the documents on or before that date.

6. Effect of certificate of amalgamation

On the date shown in a certificate of amalgamation,—

- (a) the amalgamation is effective; and
- (b) subject to section 11 (Name of company), the amalgamated company has the name specified in the amalgamation proposal; and
- (c) the amalgamated company is entitled to all of the property, rights, powers, and privileges of each of the amalgamating companies; and
- (d) the amalgamated company is subject to all the liabilities and obligations of each of the amalgamating companies; and
- (e) any proceeding already commenced by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and
- (f) a conviction, ruling, order or judgment in favour of, or against, an amalgamating company may be enforced by or against the amalgamated company; and
- (g) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect as proposed.

7. Registers

- (1) The Registrar of Land Titles or any other person with the function of maintaining books or records, is not obliged, solely because an amalgamation becomes effective, to change the name of an amalgamating company to that of an amalgamated company in those books or register or in any documents.
- (2) An instrument (whether or not it is an instrument of transfer) is, in the absence of evidence to the contrary, sufficient evidence that the property to which it relates (**the property**) has become the property of an amalgamated company if the instrument—
 - (a) is executed or purports to be executed by the amalgamated company; and
 - (b) relates to property that was held immediately before the amalgamation by an amalgamating company; and
 - (c) states that the property has become the property of the amalgamated company by virtue of this Schedule.

8. Certificate by amalgamated company as to property

- (1) Without limiting clause 7, this clause applies if—
 - (a) any security issued by a person (an **issuer**) or any rights or interests in property of any person (an **owner**) become, by virtue of this Schedule, the property of an amalgamated company; and
 - (b) there is presented to the issuer or owner a certificate signed on behalf of the amalgamated company stating that the security or the rights or interests have, by virtue of this Schedule, become the property of the amalgamated company.
- (2) On presentation of the certificate referred to in subclause (1)(b), the issuer or the owner, as the case may be, must register the amalgamated company as the holder of the security or as the person entitled to the rights or interests in the property.

- (3) Subclause (2) has effect despite any other enactment or rule of law or the provisions of any instrument.
- 9. **No derogation from provisions of enactment relating to transfer of estate or interest in land**
Except as expressly provided, nothing in this Schedule derogates from the provisions of any enactment relating to the transfer of an estate or interest in land.
- 10. **Power of Court in relation to amalgamations**
 - (1) A shareholder or creditor of an amalgamating company, or a person to whom an amalgamating company is under an obligation, may apply to the Court for an order under subclause (2) on the ground that giving effect to the amalgamation proposal would unfairly prejudice the applicant.
 - (2) On an application under subclause (1), the Court may make an order—
 - (a) directing that effect must not be given to the proposal; or
 - (b) modifying the proposal in the manner specified in the order; or
 - (c) directing the company or its directors to reconsider the proposal or any part of it.
 - (3) An order under subclause (2) may be made on any conditions that the Court thinks fit.

Schedule 7

Meetings of creditors

Part 1—Provisions that apply to meeting of creditors generally

1. Methods of holding meetings

A meeting of creditors may be held—

- (a) by assembling together those creditors entitled to take part who choose to attend at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting; or
- (c) by conducting a postal ballot in accordance with clause 7 of those creditors entitled to take part.

2. Notice of meeting

At least 5 working days before a creditors meeting, written notice must be sent to every creditor entitled to attend and to any liquidator of—

- (a) the time and place of the meeting if it is to be held under clause 1(a); or
- (b) the time and method of communication for the meeting if it is to be held under clause 1(b); or
- (c) the time and address for the return of voting papers if it is to be held under clause 1(c).

3. Contents of notice

The notice of meeting must—

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and
- (b) set out the text of any resolution to be submitted to the meeting; and
- (c) include a voting paper in respect of each resolution and voting and mailing instructions; and
- (d) state that, if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—
 - (i) the creditor's postal vote is invalid in respect of that different resolution; but
 - (ii) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy; and
- (e) state the name of the person authorised to receive and count postal votes in relation to the meeting.

4. Effect of irregularity, etc, in notice

An irregularity in the notice of a meeting of creditors, or failure to receive the notice, does not invalidate anything done by the meeting if—

- (a) the irregularity or failure is not material; or
- (b) all the creditors entitled to attend and vote at the meeting attend without protest to the irregularity or failure; or
- (c) all those creditors agree to waive the irregularity or failure.

5. Adjournment of meeting

- (1) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.
- (2) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.
- (3) If a meeting of creditors held under clause 1(a) or (b) is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that it is adjourned.

6. Chairperson

- (1) The chairperson of a meeting held under clause 1(a) or (b) is—
 - (a) the liquidator, if appointed and present; or
 - (b) the liquidator's nominee, if appointed and present.
- (2) If the liquidator or his or her nominee is not present, or there is no liquidator acting, the creditors participating must choose 1 of their number to be chairperson.
- (3) For a meeting held under clause 1(c), the person convening the meeting must do everything necessary that would otherwise be done by the person chairing a meeting.

7. Quorum

- (1) A quorum for a meeting of creditors is present when—
 - (a) 3 creditors who are entitled to vote or their proxies are present or have cast postal votes; or
 - (b) if the number of creditors entitled to vote is 3 or less, the creditors who are entitled to vote or their proxies are present or have cast postal votes.
- (2) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairperson may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

8. Voting

- (1) At any meeting of creditors or a class of creditors, other than a meeting to approve a compromise under section 193, a resolution is adopted if a majority in number and value of the creditors or class of creditors vote in favour of the resolution.
- (2) At any meeting of creditors or a class of creditors for the purpose of approving a compromise under section 193, a resolution is adopted if a majority in number representing 75% of the value of the creditors or class of creditors vote in favour of the resolution.
- (3) A creditor chairing the meeting does not have a casting vote.

9. Proxies

- (1) A creditor may vote either by being present in person or by proxy.
- (2) A proxy for a creditor is entitled to attend and speak at a meeting of creditors as if the proxy were the creditor.
- (3) A creditor may may appoint any person, including the liquidator, to act as the creditor's proxy.
- (4) A proxy must be appointed by notice in writing signed by the creditor and the notice must state whether the appointment is for a particular meeting or a specified term (which must not exceed 12 months).
- (5) No proxy is effective in relation to a meeting unless, not less than 2 working days before the meeting, a copy of the notice of appointment is delivered to the liquidator or, if there is no liquidator acting, to the person who gave the notice convening the meeting.

10. Postal votes

- (1) A creditor entitled to vote at a meeting of creditors held under clause 1(a), (b), or (c) may vote by casting a postal vote in relation to a matter to be decided at the meeting.
- (2) If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—
 - (a) the creditor's postal vote is invalid in respect of that different resolution; but
 - (b) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.
- (3) A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under clause 1(c), not later than the date named for the return of the voting paper.
- (4) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being so authorised in the notice of the meeting, every director or, if the company is in liquidation, the liquidator, is deemed to be so authorised.
- (5) If a vote is taken at a meeting held under clause 1(a) or (b) on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.

11. Duty of person authorised to receive and count postal votes

- (1) A person authorised to receive and count postal votes in relation to a meeting must—
 - (a) collect together all postal votes received by him or her; and
 - (b) in relation to each resolution to be voted on—
 - (i) count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and

determine the total amount of the debts owed by the company to those creditors; and

- (ii) count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and
- (c) sign a certificate—
 - (i) certifying that he or she has carried out the duties set out in paragraphs (a) and (b); and
 - (ii) stating results of the counts and determinations required by paragraph (b); and
- (d) ensure that the certificate required by paragraph (c) is presented to the person chairing or convening the meeting.
- (2) A certificate given under subclause (1)(c) must be annexed to the minutes of the meeting.

12. Record of attendance and minutes

- (1) The chairperson of a meeting of creditors or, if the meeting is held under clause 1(c), the person convening the meeting must—
 - (a) ensure that an accurate record is kept of all creditors present or represented at the meeting, including—
 - (i) the name of each creditor present or represented; and
 - (ii) whether the creditor has made a claim, and the amount of the claim; and
 - (iii) whether the creditor has filed a proxy or is present in person; and
 - (iv) the total number of creditors present or represented; and
 - (b) ensure that minutes are kept of all proceedings.
- (2) Records of attendance or minutes that have been signed as correct by the chairperson or the person convening the meeting are prima facie evidence of the details recorded and the proceedings of the meeting.

13. Body corporate may act by representative

A body corporate that is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

14. Procedure generally

Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

15. Effect of irregularity or defect

- (1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by the meeting, unless the Court orders otherwise.
- (2) The Court may, on the application of a liquidator or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

Part 2—Provisions that apply to meeting of creditors of company in liquidation**16. Creditors entitled to vote**

A person is not entitled to vote as a creditor unless, by the time the vote is taken, the creditor has made a claim under Schedule 9 and either—

- (a) the liquidator has admitted the claim wholly or in part either for payment or for voting purposes; or
- (b) the chairperson of the meeting of creditors allows the person to vote in accordance with clause 17.

17. Chairperson has power to admit or reject claim for purposes of voting

- (1) The chairperson of a meeting of creditors has the power to admit or reject a claim for the purposes of voting at that meeting but his or her decision is subject to appeal to the Court.
- (2) If the chairperson is uncertain as to whether a person is a creditor of the company or as to the value of the person's claim against the company, the company must allow the person to vote subject to the vote being declared invalid in the event of rejection of the claim for purposes of voting.

18. Liquidator must not solicit for proxies

- (1) Subject to a direction of a meeting of creditors, a liquidator must not solicit for proxies.
- (2) Without limiting the orders that the Court may make, if a liquidator has not complied with subclause (1), the Court may—
 - (a) order that the liquidator is not entitled to his or her remuneration:
 - (b) remove the liquidator from office:
 - (c) declare any transaction entered into by the liquidator to be void or overturn any vote, and grant any consequential relief that the Court thinks fit.

19. Irregularity in notice of proxy

If a notice of proxy is irregular but the irregularity is not material, the liquidator or chairperson of a meeting, as the case may be, may accept the proxy as being valid for voting purposes, if he or she is satisfied that the proxy holder represents the creditor.

20. Disqualification from voting

- (1) Subject to subclause (2), no person acting under a proxy may vote in favour of or against any resolution that would place that person, either directly or indirectly, in a position to receive any benefit out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.
- (2) Any person who holds a proxy to vote for the appointment of a liquidator may use the proxy to vote in favour of the appointment of himself or herself as liquidator if it is not inconsistent with the terms of the proxy to do so.

21. Use of proxy by liquidator's nominee

- (1) If a liquidator who holds a proxy cannot attend a meeting of creditors, he or she may, in writing, nominate his or her business or professional partner (if the liquidator is a member of a partnership) or a person in his or her employment to use the proxy on his or her behalf and in such manner that the liquidator may direct.
- (2) Nothing in subclause (1) authorises the person nominated to vote in a manner that would be a contravention of clause 20 if the liquidator had acted under the proxy personally.

Schedule 8

Restrictions on prior execution process

- 1. Restriction on creditor's right to complete execution process**
 - (1) Subject to subclause (2) and section 216(2), a creditor is not entitled to retain the benefit of any execution process, distraint, or attachment over or against the property of a company unless the execution process, distraint, or attachment is completed before,—
 - (a) in the case of a liquidator appointed by a resolution of shareholders, the passing of the resolution or the date on which the creditor had notice of the meeting at which the resolution was proposed, whichever occurred earlier;
 - (b) in the case of a liquidator appointed by a resolution of directors, the passing of the resolution or the date on which the creditor had notice of the meeting at which the resolution was proposed, whichever occurred first;
 - (c) in the case of a liquidator appointed by the Court, the making of the application for the appointment.
 - (2) The Court may set aside the application of subclause (1) to the extent and on the terms and conditions that the Court thinks fit.
- 2. When execution process is completed**

For the purposes of clause 1,—

 - (a) an execution or distraint against personal property is completed by seizure and sale;
 - (b) an attachment of a debt is completed by receipt of the debt;
 - (c) an execution against land is completed by sale, and, in the case of an equitable interest, by the appointment of a receiver.
- 3. Good faith purchaser protected**

Despite clause 1,—

 - (a) a person who, in good faith, purchases property of a company from a court officer responsible for an execution process acquires a good title as against the liquidator of the company;
 - (b) a person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.
- 4. Section 279 not limited or affected**

Nothing in clauses 1 to 3 limits or affects section 279.

5. Liquidator may require transfer of company property if court officer had notice of appointment

- (1) The court officer responsible for an execution process in which company property has been taken must deliver or transfer to the liquidator that property (including any money received in satisfaction or partial satisfaction of an execution or paid to avoid a sale of the property) if—
- (a) before completion of the execution process, the court officer received notice that the liquidator had been appointed; and
 - (b) the liquidator requires the delivery or transfer of the property.
- (2) The costs of the execution process are a first charge on any property or money delivered or transferred to the liquidator under subclause (1) and the liquidator may sell all or some of the property to satisfy that charge.

6. Court officer must retain proceeds of sale, etc for 10 working days

- (1) This clause applies where—
- (a) property of a company is sold in an execution process in respect of a judgment for a sum exceeding \$500 (or such sum as may be prescribed); or
 - (b) money is paid to the court officer responsible for the execution process to avoid a sale.
- (2) The court officer must—
- (a) retain the proceeds of sale or the money paid for 10 working days; and
 - (b) if, within that period, the court officer has notice of the liquidation, pay the proceeds or money to the liquidator after deducting the costs of the execution.
- (3) For the purposes of subclause (2), the court officer has notice of the liquidation if he or she has notice,—
- (a) in the case of a liquidator appointed by a resolution of shareholders, of the meeting at which the resolution was proposed;
 - (b) in the case of a liquidator appointed by a resolution of directors, of the meeting at which the resolution was proposed;
 - (c) in the case of a liquidator appointed by the Court, of the making of the application for the appointment.
- (4) The liquidator who is paid money under subclause (2)(b) is entitled to retain it as against the execution creditor.

7. Court may set aside application of clause 5 or 6

The Court may set aside the application of clause 5 or 6 to the extent and on the terms and conditions that the Court thinks fit.

Schedule 9

Creditors' claims

Part 1—Preliminary provisions

1. Admissible claims

- (1) Subject to subclause (2), a debt or liability may be admitted as a claim against a company in liquidation, whether the debt or liability is—
 - (a) present or future; or
 - (b) certain or contingent; or
 - (c) an ascertained debt or a liability for damages.
- (2) Fines, monetary penalties, and costs to which clause 4 applies are not claims that may be admitted against a company in liquidation.

2. Ascertainment of amount of claim

- (1) The amount of a claim must be ascertained as at the date and time of commencement of the liquidation.
- (2) The amount of claim based on a debt or liability denominated in a currency other than the currency of the Cook Islands must be converted into the currency of the Cook Islands at the rate of exchange on the date of commencement of the liquidation.

3. Claim for unascertained amount

- (1) This clause applies if—
 - (a) a claim is subject to a contingency; or
 - (b) a claim is a claim for damages; or
 - (c) for some other reason, the amount of the claim is not certain.
- (2) The liquidator may—
 - (a) make an estimate of the amount of the claim; or
 - (b) refer the matter to the Court for a decision on the amount of the claim.
- (3) On the application of the liquidator, or of a claimant who is aggrieved by an estimate made by the liquidator, the Court may determine the amount of the claim as it thinks fit.

4. Fines and penalties

Nothing in this Act limits or affects the recovery of—

- (a) a fine imposed on a company, whether before or after the commencement of its liquidation, for the commission of an offence; or
- (b) a monetary penalty payable to the Crown imposed on the company by the Court, whether before or after the commencement of its liquidation, for breach of any enactment; or
- (c) costs ordered to be paid by the company in relation to proceedings for the offence or the breach.

5. Claims relating to debts payable after commencement of liquidation

- (1) A claim in respect of a debt that, but for the liquidation, would not be payable until a date that is 6 months or more after the date of commencement of the liquidation must be treated as a claim for the present value of the debt.
- (2) The present value of a debt must be determined by deducting from the amount of the debt interest at the appropriate rate for the period from the date of commencement of the liquidation to the date when the debt is due.

Part 2—Procedure for claims**6. Claims by unsecured creditors**

- (1) A claim by an unsecured creditor against a company in liquidation must be made in the prescribed form and must—
 - (a) contain full details of the claim; and
 - (b) identify any documents that evidence or substantiate the claim.
- (2) If the claimant identifies a document as evidencing or substantiating the claim, the liquidator may require the claimant to produce it.
- (3) The liquidator—
 - (a) must, as soon as practicable, either admit or reject a claim in whole or in part; and
 - (b) may revoke a decision to admit or reject a claim in whole or in part, if the liquidator considers that the decision was wrong; and
 - (c) must record in writing any decision made under this subclause.
- (4) If a liquidator rejects a claim, whether in whole or in part, he or she must without delay give the creditor written notice of the rejection.
- (5) The costs of making a claim under subclause (1) or producing a document under subclause (2) must be met by the claimant.

7. Claim on behalf of employees

- (1) A person may make a claim on behalf of all or a number of employees of the company.
- (2) A list setting out the names of the employees, and the amounts due to each of them, must be attached to the claim.
- (3) A claim made in compliance with this clause has the same effect as if a separate claim had been made by each employee.

8. Notice to creditors to claim

- (1) Subject to the provisions of this Act, and unless otherwise ordered by the Court, the liquidator may fix a certain time and date, which must not be less than 10 working days from the date of the notice, as the deadline for creditors of the company to—
 - (a) make their claims; and
 - (b) establish any priority their claims may have under Part 4 of this Schedule.
- (2) The liquidator must give public notice of the deadline for claims.

9. Late claims

- (1) Subject to subclause (2), a creditor who fails to make a claim within the deadline for claims must be excluded from the benefit of any distribution made before the creditor's claim is received.
- (2) A creditor whose late claim is admitted is entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain or, in the liquidator's opinion, are likely to remain, available for distribution.

10. Failure to establish priority within deadline for claims

- (1) Subject to subclause (2), a creditor who fails to establish priority for a claim within the deadline for claims may not object to any distribution made before the priority of the claim is established.
- (2) The liquidator may, in making any distribution after the claim is admitted, make an assumption as to the priority that the claim may have and accord the creditor the benefit of the distribution accordingly.
- (3) A creditor who established the priority of a claim after the deadline for claims is entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain or, in the liquidator's opinion, are likely to remain, available for distribution.

11. Dividends in respect of rejected claims

- (1) If a creditor applies for an order under section 273(1)(b) reversing or modifying the decision of the liquidator to reject the creditor's claim, the liquidator may make provision for the dividend on the claim, and the probable cost of the application in the event of the claim being admitted.
- (2) If notice of an application under section 273(1)(b) has not been given within the time specified in the rules of court for appeals to the Court from a decision of the liquidator, the liquidator must exclude all claims that have been rejected from participation in the dividend.

12. Costs of proceedings relating to liquidator's decision on claim

On an application by a creditor for an order under section 273(1)(b) reversing or modifying the decision of the liquidator to reject the creditor's claim, the Court may, if it thinks fit,—

- (a) allow any costs of the creditor to be added to the claim;
- (b) allow any costs of any party to the proceedings to be paid out of the assets of the company as expenses of the liquidator;
- (c) order any costs to be paid by any party to the proceedings other than the liquidator.

Part 3—Secured creditors**13. Secured creditor's options**

- (1) A secured creditor has the option to —
 - (a) realise property subject to a charge or security interest, if entitled to do so (**option 1**); or

- (b) value the property subject to the charge or security interest and claim in the liquidation as an unsecured creditor for the balance due, if any (**option 2**); or
 - (c) surrender the charge or security interest to the liquidator for the general benefit of the creditors and claim in the liquidation as an unsecured creditor for the whole debt (**option 3**).
- (2) A secured creditor may exercise option 1 whether or not the creditor has exercised option 2.

14. Realisation of property subject to charge or security interest

A secured creditor who realises property subject to a charge or security interest—

- (a) may, unless the liquidator has accepted a valuation and claim by the creditor under clause 16, claim as an unsecured creditor for any balance due after deducting the net amount realised:
- (b) must account to the liquidator for any surplus remaining from the net amount realised after satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction, and after making proper payments to the holder of any other charge over, or security interest in, the property.

15. Valuation of security

- (1) This clause applies if a secured creditor values the security and claims as an unsecured creditor for the balance due, if any.
- (2) The valuation and any claim must be made in the prescribed form and—
 - (a) contain full details of the valuation and any claim; and
 - (b) contain full details of the charge or security interest, including the date on which it was created; and
 - (c) identify any documents that evidence or substantiate the claim and the charge or security interest.
- (3) If the claimant identifies a document as evidencing or substantiating the claim and the charge or security interest, the liquidator may require the claimant to produce it.

16. Procedure on claim by secured creditor after valuation of security

- (1) If a secured creditor makes a claim under clause 15, the liquidator must—
 - (a) accept the valuation and claim; or
 - (b) reject the valuation and claim, in whole or in part.
- (2) If the valuation and claim are rejected, in whole or in part, the creditor may make a revised valuation and claim within 10 working days after receiving notice of the rejection.
- (3) The liquidator may re-consider the rejection of a valuation and claim, in whole or in part, and revoke or amend that decision.
- (4) If the liquidator ultimately accepts a valuation and claim, the liquidator may, unless the secured creditor has realised the property, at any time redeem the security on payment of the assessed value.

- (5) The liquidator must record in writing any decision that the liquidator makes under this clause.
- 17. Liquidator may require secured creditor to elect option**
- (1) The liquidator may at any time, by written notice, require a secured creditor, within 20 working days after receipt of the notice, to—
- (a) elect an option under clause 13(1); and
 - (b) if the creditor elects option 2 or 3, to exercise that option within the 20-working day period.
- (2) If the creditor fails to comply with the notice, the creditor must be taken to exercise option 3.
- (3) Subject to subclause (4), a creditor who exercises, or is taken to exercise, option 3 may—
- (a) withdraw the surrender and rely on the charge or security interest; or
 - (b) submit a new claim.
- (4) A creditor may exercise the right to withdraw a surrender or submit a new claim only if—
- (a) the creditor has obtained the leave of the Court; and
 - (b) complies with any conditions that the Court or the liquidator impose; and
 - (c) exercise the right before the liquidator has realised the property subject to the charge or security interest.

Part 4—Preferential claims

18. Interpretation

- (1) In this Part, **holiday pay**, in relation to a person (P), means all sums payable to P by the company that under any enactment, award, agreement, or contract of service are payable to P by the company as holiday pay.
- (2) For the purposes of this Part, remuneration, in respect of a period of holiday or absence from work through sickness or other good cause must be treated as wages for services rendered to the company during that period.

19. First priority claims

The liquidator must first pay the following, in the order of priority in which they are listed—

- (a) the fees and expenses properly incurred by the liquidator in the process of the liquidation and the liquidator's remuneration;
- (b) the reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs incurred between lawyer and client in obtaining the order;
- (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.

20. Second priority claims

- (1) After paying the claims listed in clause 19, the liquidator must next pay the following claims (to the extent that they remain unpaid)—

- (a) subject to subclause (2), all wages or salary of any employee for services provided to the company during the 4 months before the commencement of the liquidation:
 - (b) subject to subclause (2), any holiday pay payable to an employee on the termination of his or her employment before, or because of, the commencement of the liquidation:
 - (c) subject to subclause (2), any compensation for redundancy owed to an employee that accrues before, or because of, the commencement of the liquidation:
 - (d) subject to subclause (2), amounts deducted by the company from the wages of an employee in order to satisfy obligations of the employee:
 - (e) contributions payable by the company to a superannuation scheme or provident fund of an employee:
 - (f) amounts due in respect of any compensation or liability for compensation payable to an employee or his or her dependants that accrued before the commencement of the liquidation:
 - (g) amounts that are preferential claims under section 264(2):
 - (h) all sums that by any other enactment must be paid in accordance with the priority established by this clause.
- (2) The total sum to which priority is to be given under subclause (1)(a)-(e) must not, in the case of any 1 employee, exceed the greater of—
- (a) the equivalent of the employee's wages for the 3 month period before the commencement of liquidation; or
 - (b) \$5,000 (or any greater amount that is prescribed at the commencement of the liquidation).

21. Third priority claims

After paying the claims listed in clause 20, the liquidator must next pay the following claims (to the extent that they remain unpaid)—

- (a) income and other tax payable by the company:
- (b) deductions made by the company in respect of the earnings of employees of the company:
- (c) customs and excise duty payable by the company.

22. Ranking of claims in clauses 20 and 21

- (1) The claims listed in each of clauses 20 and 21 rank equally among themselves and must be paid in full, unless there are insufficient assets to pay them, in which case they abate in equal proportions.
- (2) The claims listed in each of clauses 20 and 21—
 - (a) have priority over the claims of any person under a security interest to the extent that the security interest is not a security interest that has been perfected under the Personal Property Securities Act 2017 at the commencement of the liquidation; and
 - (b) if necessary, must be paid out of the assets subject to that security interest (or their proceeds).
- (3) For the purposes of subclause (2), **security interest** has the same meaning as in the Personal Property Securities Act 2017.

- (4) To the extent that the claims listed in clauses 20 and 21 are paid out of assets referred to in subclause (2)(b), the amount so paid is an unsecured debt due by the company to the secured party.
- 23. Subrogation following payment of preferential claim**
If a payment has been made to a person (A) on account of any preferential claim set out in this Schedule out of money advanced by another person (B) for that purpose, then B has, in a liquidation, the same right of priority in respect of the money so advanced as A would have if the payment had not been made.
- 24. Priority given to person who distrains on goods**
(1) If a person has distrained on goods or effects of the company during the 20 working days before the commencement of the liquidation, the preferential claims set out in this Schedule are a first charge on the goods or effects so distrained, of the proceeds from their sale.
(2) However, if any money is paid to a claimant under that charge, the person has the same rights of priority as that claimant.

Part 5—Mutual credit and set off

- 25. Mutual credit and set off**
(1) This clause applies if there have been mutual credits, mutual debts, or other mutual dealings between a company and a person claiming to have a claim admitted in the liquidation of the company.
(2) In a case to which this clause applies,—
(a) an account must be taken of what is due from 1 party to the other in respect of their mutual credits, debts, or dealings; and
(b) an amount due from 1 party must set off against an amount due from the other party; and
(c) only the balance of the account may be claimed in the liquidation, or is payable to the company, as the case may be.
- 26. Restrictions on claiming set off**
A person is not entitled to claim a set off under clause 25 if—
(a) the set off arises from—
(i) a transaction (the **transaction**) in which P gave credit to the company or the company gave credit to P; or
(ii) the assignment (the **assignment**) to P of a debt owed by the company to another person; and
(b) the transaction or assignment occurred—
(i) within the 2-year period, if P is a related person; or
(ii) within the 6-month period, if P is not a related person; and
(c) P fails to prove that, at the time of the transaction or the assignment, P did not have reason to suspect that the company was unable to pay its debts as they became due.
- 27. Definitions for this Part**

In this Part,—

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 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

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

related person includes—

- (d) a related company;
- (e) a director of the company in liquidation.

28. Exception for amount paid or payable by shareholder

Clauses 25 to 27 do not apply to an amount paid or payable by a shareholder or former shareholder—

- (a) as the consideration, or part of the consideration, for the issue of a share; or
- (b) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the directors or the liquidator.

Part 6—Miscellaneous

29. Interest on claims

- (1) The amount of a claim may include interest up to the date of commencement of the liquidation—
 - (a) at the rate specified or contained in any contract that makes provision for the payment of interest on that amount; or
 - (b) in the case of a judgment debt, at the rate payable on the judgment debt.
- (2) If any surplus assets remain after the payment of all admitted claims,—
 - (a) interest must be paid at the prescribed rate on those claims from the date of commencement of the liquidation to the date on which each claim is paid; but
 - (b) payment of interest must abate rateably among all claims in the event that that the surplus assets are insufficient to pay interest in full.
- (3) If any surplus assets remain after the payment of interest under subclause (2),—
 - (a) interest must be paid on all admitted claims referred to in subclause (1) from the date of commencement of the liquidation to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subclause (1)(a); but

- (b) payment of interest must abate rateably among all claims in the event that that the surplus assets are insufficient to pay interest in full.
 - (4) For the purposes of this clause, **prescribed rate** means the rate prescribed in regulations made under this Act or, if no such rate is prescribed, the rate at which interest is payable on money due under a judgment of the Court.
- 30. Trade discounts**
A creditor making a claim must deduct all trade discounts that the creditor would otherwise have given if the company had not gone into liquidation.
- 31. Periodical payments**
- (1) When liquidation commences between periodical payment dates, for example, between dates for payment of rent, the person entitled to payment may claim up to the date of commencement of liquidation as if the payment accrued on a daily basis.
 - (2) Nothing in subclause (1) affects the right of the lessor of property to claim rent that accrues on or after the commencement of liquidation.

Schedule 10

Meetings of liquidation committees

- 1. Frequency of meetings**
The committee must meet at such times as it decides, and the liquidator or a member of the committee may also call a meeting of the committee as and when necessary.
- 2. Majorities**
The committee may act by a majority of the members present at a meeting, but may not act unless a majority of the committee are present.
- 3. Resignation**
A member of the committee may resign by notice in writing signed by him or her and delivered to the liquidator.
- 4. Office becoming vacant**
The office of a member of the committee becomes vacant if the member—
 - (a) becomes bankrupt in any jurisdiction; or
 - (b) compounds or arranges with his or her creditors; or
 - (c) is absent from 3 consecutive meetings of the committee without leave of the committee.
- 5. Removal of member**
 - (1) A member of the committee may be removed by a resolution—
 - (a) passed at a meeting of creditors, if the member represents creditors; or
 - (b) passed at a meeting of shareholders, if the member represents shareholders.
 - (2) Notice of the meeting, stating the object of the meeting, must be given at least 5 working days before the meeting.
- 6. Vacancy filled**
A vacancy in the committee may be filled by the appointment by the committee of—
 - (a) a creditor or shareholder, as the case may be; or
 - (b) a person who holds a general power of attorney from, or who is an authorised representative of, a company that is a creditor or shareholder, as the case may be.
- 7. Committee with vacancy may act**
The committee may act despite vacancies in membership, provided there are not less than 2 continuing members.

Schedule 11

Powers of liquidator

A liquidator of a company has power to—

- (a) commence, continue, discontinue, and defend legal proceedings:
- (b) to the extent necessary for the liquidation, carry on the business of the company:
- (c) appoint a lawyer:
- (d) pay any class of creditors in full:
- (e) make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not:
- (f) compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts, and claims, present or future, actual or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to, or affecting the assets or the liquidation of, the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge:
- (g) sell or otherwise dispose of the property of the company:
- (h) act in the name and on behalf of the company and enter into deeds, contracts, and arrangements in the name and on behalf of the company:
- (i) prove, rank, and claim in the bankruptcy or insolvency of a debtor or shareholder for any balance against that person's estate, and to receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent and rateably with other creditors:
- (j) draw, accept, make, and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business:
- (k) borrow money on the security of the company's assets:
- (l) take out, in his or her name as liquidator, letters of administration to a deceased shareholder, and to do in that name any other act necessary for obtaining payment of money due from a debtor or shareholder or his or her estate, that cannot be conveniently done in the name of the company. In all such cases, the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator:
- (m) call a meeting of creditors or shareholders for—
 - (i) the purpose of informing creditors or shareholders of progress in the liquidation:
 - (ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation:

- (iii) such other purpose connected with the liquidation as the liquidator thinks fit; and
- (n) appoint an agent to do anything that the liquidator is unable to do:
- (o) change the registered office or address for service of the company.

Schedule 12**Procedure for setting aside voidable transactions and securities****1. Liquidator's notice for setting aside transaction or security**

A liquidator who wishes to set aside a transaction or security that is voidable under section 279 or 282 must—

- (a) file in the Court a notice specifying—
 - (i) the transaction or security to be set aside; and
 - (ii) the property or value that the liquidator wishes to recover; and
 - (iii) the effect of clauses 2, 3, and 4; and
- (b) serve a copy of the notice on—
 - (i) the other party to the transaction or the security holder; and
 - (ii) any other person from whom the liquidator wishes to recover.

2. Person affected may object

- (1) A person affected may, within 20 working days after service of the liquidator's notice,—

- (a) file in the Court a notice objecting to the transaction or security being set aside; and
- (b) serve a copy of the notice on the liquidator.

- (2) The notice of objection must—

- (a) contain full particulars of the reasons for objecting; and
- (b) identify documents that evidence or substantiate those reasons.

- (3) In subclause (1), **person affected** means a person who would be affected by the transaction or security specified in the liquidator's notice being set aside and who considers that the transaction or the security is not voidable.

3. Transaction or security set aside if no objection

The transaction or security is automatically set aside, as against a person on whom the liquidator's notice has been served, at the close of the 20th working day after service of the liquidator's notice unless that person has objected under clause 2.

4. Liquidator may apply to Court if objection made

- (1) If 1 or more persons have objected under clause 2, the liquidator may apply to the Court for an order that the transaction or security be set aside.
- (2) The application must be served on every person referred to in clause 1(b), whether or not that person has objected under clause 2.

5. Other orders Court may make

If a transaction or security is set aside, the Court may make 1 or more of the following orders—

- (a) an order that a person pay to the company an amount equal to some or all of the money that the company has paid under the transaction;

- (b) an order that a person transfer to the company property that the company has transferred under the transaction:
- (c) an order that a person pay to the company an amount that, in the Court's opinion, fairly represents some or all of the benefits that the person has received because of the transaction:
- (d) an order that a person transfer to the company property that, in the Court's opinion, fairly represent the application of either or both of the following—
 - (i) money that the company has paid under the transaction:
 - (ii) proceeds of property that the company has transferred under the transaction:
- (e) an order releasing, in whole or in part, a security given by a company:
- (f) an order requiring security to be given for the discharge of an order under this clause:
- (g) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this clause is entitled to claim as a creditor in the liquidation.

6. Additional provisions relating to setting aside transactions and securities

- (1) The setting aside of a transaction under section 279, or the making of an order under clause 5, does not affect the title or interest of a person in property that the person has acquired—
 - (a) from a person other than the company; and
 - (b) for valuable consideration; and
 - (c) without knowledge of the circumstances under which the property was acquired from the company.
- (2) The setting aside of a security under section 282 or the making of an order under clause 5 does not affect the title or interest of a person in property that the person has acquired—
 - (a) as the result of the exercise of a power of sale by the security holder; and
 - (b) for valuable consideration; and
 - (c) without knowledge of the circumstances relating to the giving of the security.
- (3) The Court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act or any other enactment, or in law or equity, if the person from whom recovery is sought (A) proves that when A received the property—
 - (a) A acted in good faith; and
 - (b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that the company was or would become insolvent; and
 - (c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.
- (4) Nothing in any enactment relating to the registration of an estate or interest in land restricts the operation of—

- (a) sections 279 and 282:
- (b) clause 5:
- (c) this clause.

Schedule 13

Liquidation of assets of overseas companies

1. Modified application of Part 14

Part 14 applies to the liquidation of the assets of an overseas company, with the following modifications and exclusions—

- (a) references to a company must be taken as references to an overseas company:
- (b) references to removal from the Cook Islands register must be taken as references to ceasing to carry on business in the Cook Islands:
- (c) the following provisions of Part 14 do not apply to the liquidation of an overseas company—
 - (i) section 216(1)(d) to (g):
 - (ii) section 268:
- (d) section 234 applies to the liquidation of an overseas company, but instead of making the statement required by section 234(2)(b)(iii), the liquidator must state that the company has ceased to carry on business in the Cook Islands and is ready to be removed from the Cook Islands register.

2. Rights of action not affected

Nothing in this Act excludes the right of a creditor of an overseas company in relation to which a liquidator has been appointed—

- (a) to bring proceedings outside the Cook Islands against the overseas company in relation to a debt not claimed in the liquidation or the balance of a debt remaining unpaid after the completion of a liquidation; or
- (b) to bring an action in the Cook Islands in relation to the balance of a debt remaining unpaid after the completion of a liquidation.

Schedule 14

Requirements for receiver's reports

1. Requirements for initial report

- (1) A receiver's initial report must report on the state of affairs with respect to the property in receivership, including the following—
 - (a) particulars of the assets comprising the property in receivership:
 - (b) particulars of the debts and liabilities to be satisfied from the property in receivership:
 - (c) the names and addresses of the creditors with an interest in the property in receivership:
 - (d) particulars of any security over the property in receivership held by any creditor, including the date on which it was created:
 - (e) particulars of any default by the company in making information available:
 - (f) any other prescribed information.
- (2) The initial report must also include details of the following—
 - (a) the events leading up to the receiver's appointment, so far as the receiver is aware of them:
 - (b) property disposed of and any proposal for the disposal of property in receivership:
 - (c) amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed:
 - (d) amounts owing, as at the date of appointment, to creditors of the company having preferential claims:
 - (e) amounts likely to be available for payment to creditors other than those referred to in paragraph (c) or (d).
- (3) A receiver may omit from the report details of any proposals for disposal of the property in receivership if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.

2. Requirements for interim report

- (1) A receiver's interim report must summarise—
 - (a) the state of affairs with respect to the property in receivership as at the end of the relevant 6-month period; and
 - (b) the conduct of the receivership, including all amounts received and paid, during the relevant 6-month period.
- (2) The interim report must also include details of the following—
 - (a) property disposed of since the date of any previous report and any proposal for the disposal of property in receivership:
 - (b) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed:
 - (c) amounts owing, as at the date of the report, to creditors of the company having preferential claims:

- (d) amounts likely to be available as at the date of the report for payment to creditors other than those referred to in paragraph (b) or (c).
- (3) A receiver may omit from the report details of any proposals for disposal of the property in receivership if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.

3. Requirements for final report

- (1) A receiver's final report must summarise—
 - (a) the state of affairs with respect to the property in receivership as at the end of the receivership; and
 - (b) the conduct of the receivership, including all amounts received and paid, since the date of any previous report.
- (2) The final report must also include details of the following—
 - (a) property disposed of since the date of any previous report;
 - (b) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed;
 - (c) amounts owing, as at the date of the report, to creditors of the company having preferential claims;
 - (d) amounts available as at the date of the report for payment to creditors other than those referred to in paragraph (b) or (c).

Schedule 15

Service of documents

1. Service on company of documents in legal proceeding

A document in any legal proceeding may be served on a company as follows—

- (a) by delivery to a person named as a director of the company on the Cook Islands register; or
- (b) by delivery to an employee of the company at the company's head office or principal place of business; or
- (c) by leaving the document at the company's registered office or address for service; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the company; or
- (f) by serving the document at an address for service given in accordance with the rules of the court having jurisdiction in the proceeding or by such means as a legal practitioner has, in accordance with those rules, stated that the legal practitioner will accept service.

2. Service of other documents on companies

A document that is not a document in a legal proceeding may be served on a company as follows—

- (a) by any of the methods set out in clause 1(a), (b), (c), or (e); or
- (b) by posting it to the company's postal address or address for service; or
- (c) by emailing it to an electronic address used by the company; or
- (d) by faxing it to a fax number used by the company.

3. Service on overseas company of documents in legal proceeding

A document in any legal proceeding may be served on an overseas company as follows—

- (a) by delivery to a person named as a director of the overseas company on the Cook Islands register and who is resident in the Cook Islands; or
- (b) by delivery to a person named on the Cook Islands register as being authorised to accept service in the Cook Islands of documents on behalf of the overseas company; or
- (c) by delivery to an employee of the overseas company at the overseas company's place of business (or principal place of business if more than 1) in the Cook Islands; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the overseas company.

4. Service of other documents on overseas company

A document that is not a document in a legal proceeding may be served on an overseas company as follows:

- (a) by any of the methods set out in clause 3(a), (b), (c) (e); or
- (b) by posting it to the overseas company's address for service or postal address in the Cook Islands; or
- (c) by posting it to a person named on the Cook Islands register as being authorised to accept service in the Cook Islands of documents on behalf of the overseas company; or
- (d) by emailing it to an electronic address used by the overseas company.

5. Service of documents on directors in legal proceeding

A document in any legal proceeding involving a director in his or her capacity as director may be served on the director as follows—

- (a) by delivery to the director; or
- (b) by leaving the document at the director's residential address (as that address is shown in the register); or
- (c) by leaving the document at the company's registered office or address for service; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the director; or
- (f) by serving the document at an address for service given in accordance with the rules of the court having jurisdiction in the proceeding or by such means as a legal practitioner has, in accordance with those rules, stated that the legal practitioner will accept service.

6. Service of other documents on directors

A document that is not a document in a legal proceeding may be served on a director as follows—

- (a) by any of the methods set out in clause 5(a), (b), (c), or (e); or
- (b) by posting it to the director at the director's residential address (as that address is shown in the register); or
- (c) by posting it to the company's postal address or address for service; or
- (d) by emailing it to an electronic address used by the director; or
- (e) by emailing it to an electronic address used by the company.

7. Service of documents on shareholders and creditors

- (1) A notice, statement, report, accounts or other document to be sent or given to a shareholder or a creditor who is a natural person may be—

- (a) delivered to that person; or
- (b) posted to that person's postal address; or
- (c) subject to section 252, emailed to an electronic address used by that person.

- (2) A notice, statement, report, accounts or other document to be sent or given to a shareholder or a creditor that is a company or an overseas company may be sent or given by any of the methods of serving documents referred to in clause 2 or 4.

- (3) A notice, statement, report, accounts or other document to be sent or given to a shareholder or a creditor that is a body corporate but not a company or an overseas company may be—
- (a) delivered to a person who is a principal officer of the body corporate; or
 - (b) delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
 - (c) delivered in the manner that the Court directs; or
 - (d) delivered in accordance with an agreement made with the body corporate; or
 - (e) posted to the postal address of the body corporate; or
 - (f) emailed to an electronic address used by the body corporate.

8. Additional provisions relating to service

- (1) Subject to subclause (2), for the purposes of clauses 1 to 7,—
- (a) service of a document by delivery to a natural person is made—
 - (i) by handing the document to the person; or
 - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;
 - (b) a document that is posted is treated as received 5 working days after it is posted;
 - (c) for proving service of a document by post, it is sufficient to prove that—
 - (i) the document was properly addressed; and
 - (ii) all postal or delivery charges were paid; and
 - (iii) the document was posted.
- (2) A document is not treated as having been served or or sent, given, or delivered to a person if the person proves that, through no fault of the person, the document was not received within the time specified.

Schedule 16

Consequential amendments to other Acts

1. **Meaning of transitional period**
In this schedule, **transitional period** means the period of 1 year after the commencement of this Act.
2. **References to Companies Act 1970-1971 in other Acts**
 - (1) A reference in another Act to the Companies Act 1970-1971 (or 1970-71) must be read (with any necessary modifications)—
 - (a) in the case of a company incorporated under that Act and not re-registered, as unchanged for the transitional period of 1 year after the commencement of this Act;
 - (b) in the case of a company incorporated under that Act and re-registered, as the Companies Act 2017;
 - (c) in the case of a company incorporated under this Act, as the Companies Act 2017.
 - (2) A reference in another Act to the Companies Act 2017 must be read, in the case of a company incorporated under the Companies Act 1970-1971 and not re-registered, as a reference to the Companies Act 1970-1971 for the transitional period of 1 year after the commencement of this Act.
 - (3) In the appropriate context, a reference in another Act to incorporation (for example, “a company incorporated under the Companies Act”) includes re-registration under this Act.
3. **International Companies Act 1981-1982**
Section 200(1) is amended by omitting “Companies Act 1970-1971” and substituting “Companies Act 2017”.
4. **Trustee Companies Act 2014**
Section 17 is repealed and the following section substituted—

“17 Application for licence
A company may apply to the Commission for a licence to carry on trustee company business if it is—

 - “(a) a company incorporated or re-registered under the Companies Act 2017; or
 - “(b) registered as an overseas company under Part 17 of that Act; or
 - “(c) until the expiry of the period of 1 year after the commencement of the Companies Act 2017, is incorporated under the Companies Act 1970-1971 or registered as an overseas company under Part XII of the Companies Act 1970-1971.”
5. **Insurance Act 2008**
 - (1) Section 2(1) is amended by repealing the definition of **Company** and substituting the following—

“Companies Act means the Companies Act 2017”.

- (2) Section 71(3) is amended by repealing paragraph (f) and substituting the following—

“(f) apply to the Court for the liquidation of the licensee under section 205 of the Companies Act or section 158 of the International Companies Act as applicable.”

- (3) Sections 80 to 84 are repealed and the following substituted—

“80 Liquidation of insurers, insurance intermediaries, and insurance managers

The provisions listed in this subsection are modified in respect of insurers, relevant insurance intermediaries, and relevant insurance managers to the extent specified in this Part—

“(a) the Companies Act relating to the liquidation of companies:

“(b) the International Companies Act relating to the winding up of international companies.

“81 Restrictions on voluntary liquidation

“(1) A long-term insurer, general insurer, relevant insurance intermediary, or relevant insurance manager that is a company must not be placed in liquidation by a resolution of the shareholders under section 204(1)(b) of the Companies Act.

“(2) A long-term insurer that is an international company must not be voluntarily wound up under Part IX, Division 3 of the International Companies Act.

“(3) A general insurer, relevant insurance intermediary, or relevant insurance manager that is an international company may be voluntarily wound up under Part IX, Division 3 of the International Companies Act only if the Commission has given its prior written consent.

“(4) A resolution by shareholders or members for the liquidation of a company, or the winding up of an international company, in breach of this section is void and of no effect.

“(5) Where the members of a general insurer, relevant insurance intermediary, or relevant insurance manager that is an international company pass a resolution for its voluntary winding up with the prior consent of the Commission given under subsection (3), the Commission may by notice in writing direct the liquidator to advertise his or her appointment in such manner as the notice specifies.

“(6) A liquidator who fails to advertise his or her appointment in accordance with a direction of the Commission under subsection (5) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

“82 When Commission may apply for liquidation

“(1) The Commission may apply to the Court under the Companies Act or the International Companies Act for the liquidation or winding up of—

“(a) an unlicensed insurer; or

“(b) an insurer, a relevant insurance intermediary, or a relevant insurance manager, if the Commission is entitled to take enforcement action against the insurer under Part 6.

“(2) On an application under subsection (1), the Court may make an order appointing a liquidator on the grounds that—

- “(a) the company is unable to pay its debts; or
- “(b) it is in the public interest that the company be liquidated or wound up.

“(3) For the purposes of subsection (2)(b), the public interest includes the interests of the policyholders of an insurer.

“(4) An insurer is deemed to be unable to pay its debts if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 18.

“83 Service on Commission

“(1) An application by a person other than the Commission for the liquidation or winding up of an insurer, a relevant insurance intermediary, or a relevant insurance manager must be served on the Commission.

“(2) The Commission is entitled to appear and be heard at the hearing of the application.

“84 Reduction of contracts as alternative to liquidation

“(1) If, on an application for the liquidation or winding up of an insurer, the Court is satisfied that the insurer is unable to pay its debts, the Court may, instead of making an order for the liquidation or winding up of the insurer, reduce the amount of the insurer’s contracts on such conditions as the Court thinks just.”

(4) Section 85(2) is amended by inserting “the liquidation or” after “the commencement of”.

(5) Section 86(1) is amended by omitting “the winding up” and substituting “the liquidation or the winding up”.

(6) Section 86(3) is amended by omitting “a winding up order” and substituting “an order for liquidation or winding up”.

6. Captive Insurance Act 2013

(1) Section 3(1) is amended by repealing the definition of **Companies Act** and substituting the following—

“**Companies Act** means the Companies Act 2017”.

(2) Section 3(1) is amended by repealing the definition of **holding company** and substituting the following—

“**holding company** has same meaning as in the Companies Act 2017”.

(3) Section 26(1) is amended by repealing paragraph (b) and substituting the following—

“(b) the licensee—

“(i) is compulsorily liquidated or wound up; or

“(ii) has passed a resolution for liquidation or voluntary winding up; or

“(iii) is dissolved.”.

(4) Section 26(3) is amended by repealing paragraph (d) and substituting the following—

“(d) apply to the Court for the liquidation of the licensee under section 205 of the Companies Act or section 158 of the International Companies Act as applicable.”

- (5) Sections 32 to 35 are repealed and the following substituted—

“32 Liquidation of licensed captive insurers

The provisions of the Companies Act relating to the liquidation of companies and of the International Companies Act relating to the winding up of international companies are modified in respect of licensed captive insurers to the extent specified in this Part.

“33 Restrictions on voluntary liquidation

- “(1) A licensed captive insurer that is a company must not be placed in liquidation by a resolution of the shareholders under section 204(1)(b) of the Companies Act unless the Commission has given its prior written consent.
- “(2) A licensed captive insurer that is an international company must not be voluntarily wound up under Part IX, Division 3 of the International Companies Act unless the Commission has given its prior written consent.
- “(3) A resolution by shareholders or members for the liquidation of a company, or the winding up of an international company, in breach of this section is void and of no effect.
- “(4) Where the shareholders or members of a licensed captive insurer pass a resolution for its liquidation or voluntary winding up with the prior written consent of the Commission, the Commission may by notice in writing direct the liquidator to advertise his or her appointment in such manner as the notice specifies.
- “(5) A liquidator who fails to advertise his or her appointment in accordance with a direction of the Commission under subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

“34 When Commission may apply for liquidation

- “(1) The Commission may apply to the Court under the Companies Act or the International Companies Act for the liquidation or winding up of—
- “(a) an unlicensed insurer; or
- “(b) an insurer if the Commission is entitled to take enforcement action against the insurer under section 26.
- “(2) On an application under subsection (1), the Court may make an order appointing a liquidator on the ground that the company is unable to pay its debts. —
- “(3) An insurer is deemed to be unable to pay its debts if the total value of its assets does not exceed the total amount of its liabilities as calculated in accordance with the Act and regulations.

“35 Service on Commission

- “(1) An application by a person other than the Commission for the liquidation or winding up of a licensed captive insurer must be served on the Commission.
- “(2) The Commission is entitled to appear and be heard at the hearing of the application.”

7. Banking Act 2011

- (1) Section 4(1) is amended by repealing the definitions of **holding company** and **subsidiary** and substituting the following in their appropriate alphabetical order—

“**holding company** has the same meaning as in the Companies Act 2017:

“**subsidiary** has the same meaning as in the Companies Act 2017.”

- (2) Section 16(3) is amended by omitting “be wound up” and substituting “be placed in liquidation”.
- (3) Section 16 is amended by repealing subsection (4) and substituting the following—
- “(4) If the Court orders that the licensee be placed in liquidation, the provisions of the Companies Act 2017 relating to the liquidation of a company by, or subject to the supervision of, the Court apply with all necessary modifications.”
- (4) Section 23(3) is amended by repealing paragraph (e) and substituting the following—
- “(e) apply to the Court in accordance with the provisions of the Companies Act 2017 for the liquidation of the licensee if sufficient grounds exist under that legislation.”
- (5) Section 23 is amended by repealing subsection (4) and substituting the following—
- “(4) For the purposes of this section, the provisions of the Companies Act 2017 relating to the liquidation of a company apply, with all necessary modifications, to a licensee—
- “(a) as if the licensee were incorporated as a company under the Companies Act 2017; and
- “(b) except that, on the liquidation of a licensee, the depositors of a licensee that are residents of the Cook Islands must be paid prior to all other unsecured creditors of the licensee.”
- (6) Section 26(5) is amended by omitting “Companies Act 1970-71” and substituting “Companies Act 2017”.
- (7) Section 27(1)(b) is amended repealing subparagraph (ii) and substituting the following—
- “(ii) the power to apply to the Court for the liquidation of the licensee; and.”
- (8) Section 27(1)(c) is amended by omitting “Companies Act 1970-71” and substituting “Companies Act 2017”.

8. Financial Institutions (Provision of Customer Information) Act 2013

In section 3, the definition of **Company** is amended by omitting “under the Companies Act 1970-71” and substituting “incorporated or re-registered under the Companies Act 2017”.

9. Incorporated Societies Act 1994

Section 28 is amended by repealing subsection (3) and substituting the following—

“(3) Subject to this Act and any regulations made under it, an application to the High Court for the winding up of a society, and the winding up of a society, must be governed by the same rules that apply in the case of the liquidation of a company by the High Court under the Companies Act 2017.”

10. Law Practitioners Act 1993-1994

(1) Section 62(1) is amended by omitting “Companies Act 1970-71” and substituting “Companies Act 2017”.

(2) Section 62 is amended by repealing subsection (2) and substituting the following—

“(2) A firm of practitioners duly incorporated as as a company under the Companies Act 2017 may, despite anything to the contrary in this Act or the Companies Act 2017, may use in place of the word “Limited” or Ltd” the words “professional corporation or “PC” as part of the name of the company.”

(3) Section 62 is amended by repealing subsection (3).

11. Digital Registers Act 2011

Section 3 is amended by repealing paragraph (b) of the definition of **specified Act**.

12. Defamation Act 1993

Clause 13 of the Schedule is amended by omitting “(other than a private company within the meaning of the Companies Act 1970-71)”.

13. Carriage of Goods Act 1998

Section 11(4) is amended by omitting “Companies Act 1970-71” and substituting “Companies Act 2017”.

14. Leases Restrictions Regulations 1977

Clause 19(e) (as inserted by clause 5 of the Leases Restrictions (Amendment) Regulations 2006) is amended by omitting “Company whose memorandum or articles are registered in the Cook Islands pursuant to section 26 of the Companies Act 1970-71” and substituting “company incorporated or re-registered under the Companies Act 2017”.

15. Cook Islands Investment Corporation Act 1998

Section 17(1) is amended by omitting “Companies Act 1970-71” and substituting “Companies Act 2017”.

This Act is administered by the Ministry of Justice.

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