

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 or 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.