

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.
- (1) 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.
- (1) 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).
- (2) 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.
- (1) 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 given 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.
- (1) 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.
- (1) 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.
- (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 or place, or to such other date, time, and place as the directors may appoint.
- (3) 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.
- (1) 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.
- (1) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were a shareholder.
- (2) A proxy must be appointed by notice in writing signed by the shareholder.
- (3) The notice must state whether the appointment is for a particular meeting or for a specified term.
- (4) 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.
- (1) 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.
- (1) 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.
- (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).
- (3) 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.
- (4) 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.
- (1) 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.

- (1) 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.
- (1) 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.

(1) 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.
- (1) 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.
- (1) 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.
- (1) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind.
- (2) 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.