

## **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.
- (1) 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.
- (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 12(4); and
  - (c) the pre-emptive rights of other shareholders under clauses 17 to 24.
- (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.

**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.
- (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.

**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.

- (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.

#### **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.

(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.

#### *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.
- (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.

#### **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.
- (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 directors.
- (2) 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.
- (1) 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.

- (2) 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.
- (1) The directors may at any time withdraw or vary the delegation.
- (2) 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.
- (1) 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.
- (2) 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.