



ANALYSIS

Contents

1	Title	13
2	Commencement	13
Part 1		
Preliminary matters		
3	Purpose	14
4	Interpretation	14
5	Act binds the Crown	14
Part 2		
Incorporation		
6	Essential requirements	14
7	Application for registration	14
8	Certificate of incorporation	15
9	Incorporation	15
10	Separate legal personality with full capacity	15
Part 3		
Company name		
11	Name of company	16
12	Change of name	16
13	Direction to change name	16
14	Use of company name	17
Part 4		
Company constitution		
15	Company must have constitution	17
16	Substitution, adoption, or amendment of constitution after incorporation	18
17	Content and effect of constitution	18
Part 5		
Shares		
Subpart 1—General		
18	Legal nature of shares	18
19	No nominal value or bearer share	18
20	Minimum number of shares	18
21	Rights and powers attached to shares	19
22	Shares must not impose liabilities on holder	19
Subpart 2—Issue of shares		
23	Issue of initial shares	19
24	Issue of other shares	20

25	Time of issue of shares	20
26	Pre-emptive rights	20
27	Consideration for issue of shares	20
28	Consent to issue of shares	20
	Subpart 3—Distributions to shareholders	
29	Distributions prohibited unless solvency test satisfied	21
30	Meaning of distribution	21
31	Recovery of improper distributions	21
	Subpart 4—Dividends	
32	Dividends	22
	Subpart 5—Company may acquire its own shares	
33	Company may acquire its own shares	22
34	Notice of company's acquisition of its own shares	22
35	Cancellation of shares acquired by company	23
36	Enforceability of contract to repurchase shares	23
	Subpart 6—Treasury stock	
37	Company may hold its own shares	23
38	Rights and obligations of treasury stock suspended	23
39	Company may transfer treasury stock	23
	Subpart 7—Redeemable shares	
40	Meaning of redeemable	24
41	Redemption of redeemable shares	24
42	Cancellation of redeemed shares	24
43	Notice of redemption of redeemable shares	24
	Subpart 8—Assistance by company for purchase of its own shares	
44	Financial assistance	25
	Subpart 9—Cross-holdings	
45	Subsidiary may not hold shares in holding company	25
46	Exception for company that subsequently becomes subsidiary	26
	Subpart 10—Transfer of shares	
47	Transfer of shares	26
48	Transfer of shares by operation of law	26
	Subpart 11—Share register	
49	Company to maintain share register	26
50	Share register as evidence of legal title	27
51	Power of Court to rectify share register	27
52	Beneficial ownership of shares	27
53	Personal representative of deceased shareholder or assignee of bankrupt may be registered	28
	Subpart 12—Share certificates	
54	Share certificates	28
55	Registration of share transfer	29
	Part 6	
	Shareholders	
	Subpart 1—General	
56	Company must have at least 1 shareholder	29
57	Liability of shareholders	29
	Subpart 2—Powers of shareholders	
58	Decisions reserved for shareholders only	29

59	How shareholder power may be exercised	30
60	Types of shareholder resolution	30
61	Shareholder approval of major transaction	30
62	Unanimous assent to certain types of action	31
	Subpart 3—Alteration of shareholder rights	
63	Alteration of shareholder rights	31
64	Meaning of class and interest group	32
65	Dissenting shareholder may require company to purchase shares	32
66	Meaning of dissent	33
	Subpart 4—Meetings of shareholders	
67	Shareholder meetings	33
68	Annual meeting of shareholders	33
69	Special meeting of shareholders	33
70	Written resolution in lieu of meeting	34
71	Procedure for written resolution in lieu of meeting	34
72	Court may call meeting of shareholders	34
	Part 7	
	Directors	
	Subpart 1—Appointment and removal of directors	
73	Meaning of director	34
74	Number of directors	35
75	Qualification of directors	35
76	Director's consent required	35
77	Appointment of first and subsequent directors	35
78	Removal of directors	35
79	Director ceasing to hold office	36
80	Resignation by director	36
81	Restrictions on resignation by sole director	36
82	Notice of change of directors or details of directors	36
83	Remuneration of directors	37
84	Proceedings of directors	37
	Subpart 2—Management of company	
85	Management of company	37
	Subpart 3—Directors' duties	
86	Director must act in good faith and in best interests of company	38
87	Director must comply with Act and constitution	38
88	Reckless trading	38
89	Duty in relation to obligations	38
90	Duty in relation to self-interest	38
91	Duty in relation to company information	38
92	Director's duty of care	39
93	Reliance on information and advice	39
94	Offence of serious breach of duty to act in good faith and in company's best interests	39
95	Effect of unanimous shareholder approval on certain duties of directors	40
	Subpart 4—Liability of directors	
96	Extended meaning of director for purposes of liability	40
97	Liability of shadow director	40
98	Liability of controller of director powers	40

99	Liability of delegate of director power	41
100	Exclusion of shareholder liability	41
101	Certain indemnities prohibited	41
102	Company may indemnify or insure directors in accordance with constitution or with unanimous shareholder approval	41
103	Defences to criminal liability	42
	Subpart 5—Prohibition and disqualification of directors	
104	Persons prohibited from managing companies	42
105	Prohibited person may apply for leave to be director, etc	43
106	Court may disqualify directors	43
107	Who may apply for disqualification order	43
108	Notice of application for disqualification order	44
	Part 8	
	Enforcement	
	Subpart 1—Injunctions	
109	Injunction restraining contravention of Act or constitution	44
	Subpart 2—Derivative proceeding	
110	Meaning of derivative proceeding	44
111	Leave of Court required for derivative proceeding	44
112	Who may apply for leave to bring proceeding	45
113	Matters that Court must consider on application for leave	45
114	Requirements for grant of leave	45
115	Procedure for application for leave	45
116	Powers of Court in relation to derivative proceeding	45
117	Costs of derivative proceeding	46
	Subpart 3—Personal proceedings by shareholder	
118	Shareholder proceeding against director for breach of duty	46
119	Shareholder proceeding to enforce director compliance	46
120	Shareholder proceeding against company for breach of duty	46
121	Shareholder proceeding to enforce company compliance	46
122	Representative proceeding	46
	Subpart 4—Prejudiced shareholders	
123	Prejudiced shareholders	47
124	Conduct taken to be prejudicial	47
125	Alteration to constitution	48
	Subpart 5—Investigation	
126	Investigation initiated by shareholder	48
127	Report to Court following investigation	48
	Part 9	
	Administration of companies	
	Subpart 1—Company transactions	
128	Requirements for company obligation	49
129	Attorneys	49
130	Validity of company transaction	49
131	Person dealing with company may make certain assumptions	50
132	Effect of assumptions by person dealing with company	51
133	No constructive notice	51
134	Company may cancel transaction in which director interested	51
135	Company may cancel transaction for breach of director duty	52
136	Effect of cancellation on third parties	52

	Subpart 2—Pre-incorporation contracts	
137	Meaning of pre-incorporation contract	52
138	Company may ratify pre-incorporation contract	53
139	Warranties implied in pre-incorporation contract	53
140	Damages for breach of implied warranty	53
141	Failure to ratify	53
	Subpart 3—Registered office	
142	Registered office and postal address	54
143	Change of registered office or postal address	54
	Subpart 4—Company records	
144	Company records	54
145	Place where company records must be kept	55
146	Form of company records	55
147	Inspection of company records	55
148	Inspection of company records by public	55
149	Inspection of company records by shareholder	56
150	Manner of inspection	56
151	Copies of records	56
152	Inspection of company documents by directors	56
	Subpart 5—Annual return	
153	Annual return	57
154	Time for filing annual return	57
155	Annual return pre-filled by Registrar	57
156	Registrar may alter Cook Islands register to correct company's address	58
157	Other updating notices for information events	58
	Part 10	
	Accounting records and financial reporting	
	Subpart 1—Accounting records	
158	Company must keep accounting records	58
159	Form and content of accounting records	59
	Subpart 2—Financial statements	
160	Companies that must prepare financial statements	59
161	Financial statements	60
162	Financial statements must be audited	60
163	Company may opt out of preparing financial statements	60
	Subpart 3—Auditor's appointment and role	
164	Requirement that auditor be appointed	60
165	Registrar may appoint auditor	61
166	Resignation and casual vacancy	61
167	Replacement of auditor	61
168	Statement by auditor on resignation	61
169	Qualifications of auditor	61
170	Auditor must avoid conflict of interest	62
171	Auditor must report to shareholders	62
172	Auditor's attendance at shareholder meetings	62
173	Auditor's access to information	63

Part 11**Disclosure to shareholders**

Subpart 1—Annual report

174	Annual report to shareholders	63
175	Contents of annual report	63
	Subpart 2—Miscellaneous documents	
176	Other documents that company must send to shareholders	64
	Subpart 3—Shareholder request for information	
177	Shareholder may request information held by company	64
178	Company must respond to request	64
179	Reasons for refusing information	65
180	Withdrawal of request	65
181	Court may order company to provide requested information	65

Part 12

Company reorganisations

Subpart 1—Amalgamations

182	Amalgamations	65
	Subpart 2—Court approved reorganisations	
183	Meaning of arrangement and company	65
184	Application to Court for order approving amalgamation, arrangement, or compromise	66
185	Court may approve amalgamation, arrangement, or compromise	66
186	Additional orders	67
187	Copies of orders must be filed with Registrar	67

Part 13

Compromises with creditors

Subpart 1—General

188	Meaning of compromise	67
189	Who may make compromise proposal	67

Subpart 2—Compromise procedure

190	Proponent must compile list of affected creditors	68
191	Proponent must give notice of proposed compromise	68
192	Requirements for notice of proposed compromise	68
193	Approval of compromise	69

Subpart 3—Effect of compromise

194	Compromise is binding on company and creditors	69
195	Variation of compromise	69
196	Court may make orders in relation to procedure or moratorium	69
197	Court may order that creditor not bound by compromise	70
198	Effect of compromise on liquidation of company	70
199	Costs of compromise	71

Part 14

Liquidations

Subpart 1—General

200	What this Part does	71
201	Meaning of insolvency in this Part	71

Subpart 2—Appointment of liquidator

202	Liquidation begins with appointment of liquidator	71
203	Who may be appointed liquidator	71
204	Who appoints liquidator	72

Subpart 3—Court appointment of liquidator

Role of Court

205	When Court may appoint liquidator	72
	<i>Proof of insolvency</i>	
206	Appointment of liquidator on ground that company is insolvent	73
207	Presumption of insolvency	73
208	Statutory demand	73
209	Court may set aside statutory demand	74
210	Procedure for application to set aside statutory demand	74
211	Court's options if satisfied that debt is due by company	74
	<i>Interim liquidator</i>	
212	Appointment of interim liquidator	75
213	Role of interim liquidator	75
	Subpart 4—Process of liquidation	
	<i>Commencement of liquidation</i>	
214	Liquidator must give public notice of appointment	75
215	Documents must state that company is in liquidation	75
216	Effect of commencement of liquidation	75
217	Obligations of suppliers of essential services	76
	<i>Taking control of company property</i>	
218	Directors and others must deliver company property to liquidator	76
	<i>First steps in liquidation process</i>	
219	First report to creditors	77
220	First meeting of creditors	77
221	Purpose of first meeting of creditors	78
222	First report and first meeting of creditors not required for solvent company	78
223	Liquidator may dispense with first meeting of creditors	79
	<i>Reports</i>	
224	Six-monthly report	79
225	Dispensing with reporting	79
	<i>Meetings</i>	
226	Meeting of creditors or shareholders to appoint liquidation committee	80
227	Other meetings of creditors or shareholders	80
228	Procedure for meeting of creditors or shareholders	81
	<i>Liquidation committees</i>	
229	Liquidation committees	81
230	Restrictions on members of liquidation committee	81
	<i>Creditors' claims</i>	
231	Claims process	82
232	Order in which claims are paid	82
233	Other rules relating to claims	82
	<i>Final report</i>	
234	Final report and accounts	82
235	Dispensing with final report and accounts	83
	<i>Termination of liquidation</i>	
236	Termination of liquidation	83
237	Notice of termination of liquidation	83
	<i>Completion of liquidation</i>	
238	Completion of liquidation	84
239	Liquidation Surplus Account	84
	<i>Liquidation of assets of overseas company</i>	
240	Court may order liquidation of assets of overseas company	85

	<i>Pooling of assets and joint liquidation</i>	
241	Pooling of assets of related companies	85
242	Guidelines for orders	85
	Subpart 5—Office of liquidator	
	<i>Vacancy</i>	
243	Vacancy	86
244	Resignation	86
245	Court may review appointment of successor	86
246	Appointment of successor by Court	86
247	Duty to assist successor	87
	<i>Remuneration</i>	
248	Remuneration	87
	Subpart 6—Duties of liquidator	
249	Principal duty of liquidator	87
250	Other duties	88
251	Liquidator not required to act in relation to property subject to charge or security interest	88
252	Duty to consider views of creditors and shareholders	88
253	Duty in relation to accounts	88
254	Duties in relation to funds	88
255	Duties in relation to company transactions	89
	Subpart 7—Powers of liquidator	
	<i>General powers</i>	
256	Powers of liquidator	89
257	Liquidators must act jointly unless otherwise stated	89
	<i>Specific powers</i>	
258	Liquidator has specific powers set out in Schedule 11	89
	<i>Production of documents and other information</i>	
259	Liquidator may require production of company documents or records	89
260	Liquidator may require provision of information	90
261	Examination by liquidator	90
262	Court may order person to comply with requirement under section 259 or 260	91
263	Court process for examination and production of documents	91
264	Restriction on enforcement of lien over company	91
265	Documents held by receiver	91
266	Document held by secured creditor	92
267	Self-incrimination	92
	<i>Enforcement of shareholder liability</i>	
268	Power to enforce liability of shareholders and former shareholders	92
	<i>Disclaimer of onerous property</i>	
269	Meaning of onerous property	92
270	Power to disclaim onerous property	92
271	Effect of disclaimer	92
272	Liquidator may be required to elect whether to disclaim	93
	Subpart 8—Court supervision	
273	Court may make orders and give directions in relation to liquidation	93
274	Liquidator's defence of acting in accordance with Court direction	94
275	Compliance order	94
276	Prohibition order	94

277	Person who may apply for compliance or prohibition orders	95
	Subpart 9—Voidable transactions	
278	Definition of time periods	95
	<i>Insolvent transaction</i>	
279	Insolvent transaction voidable	96
280	Intent or purpose of company must be disregarded	96
281	Procedure for setting aside insolvent transaction	97
	<i>Voidable security</i>	
282	Voidable security	97
283	Exception for money actually advanced, etc	97
284	Exception for substituted security	97
285	Exception for security securing unpaid purchase price	97
286	Payments received by secured party	97
287	Procedure for setting aside voidable security	98
	<i>Transactions under or over value</i>	
288	Recovery of profit in transaction at undervalue	98
289	Acquisition for excessive consideration	98
290	Disposal for inadequate consideration	99
	<i>Court may set aside security</i>	
291	Court may set aside security over company property	99
292	Section 291 does not apply to certain securities	100
	Subpart 10—Liability of directors and others	
293	Liability if proper accounting records not kept	100
294	Defence to liability under section 293	101
295	Court may require repayment of money or return of property	101
	Part 15	
	Company receiverships	
	Subpart 1—General	
296	What this Part does	101
297	Outline of company receivership	101
	Subpart 2—Appointment of receiver	
298	Who may be appointed receiver	102
299	Appointment of receiver under document	102
300	Extent of power to appoint receiver	103
301	Notice of appointment	103
302	Notice of receivership	103
	Subpart 3—Vacancy	
303	Vacancy	103
304	Resignation	104
305	Notice of resignation or disqualification	104
306	Duty to assist successor	104
	Subpart 4—Duties of receiver	
307	General duties	104
308	Duty of receiver disposing of property in receivership	105
309	No defence or indemnity	105
310	Duty in relation to money	105
311	Duty in relation to accounting records	105
312	Duty to notify suspected offences, etc	106
313	Duty to prepare reports	106

314	Persons entitled to receive and inspect receiver's reports	106
	Subpart 5—Powers of receiver	
315	General powers	107
316	Specific powers	107
317	Power to execute documents	107
318	Power to sell real property in absence of mortgagee's consent	107
319	Power of receiver on liquidation	108
320	Validity of receiver's acts	108
	Subpart 6—Liability of receiver	
321	Contractual liability	108
322	Liability for wages or salary under existing contract of employment	108
323	Liability for director's remuneration	109
324	Liability for rent and other payments	109
325	Liability on contract entered into without authority	109
	<i>Relief from liability</i>	
326	Receiver is entitled to indemnity	110
327	Court may relieve receiver from liability	110
	Subpart 7—Court supervision	
328	Court may give directions in relation to receivership	110
329	Court may make orders in relation to remuneration and validity of appointment	110
330	Receiver's defence of acting in accordance with Court direction	111
331	Compliance order	111
332	Prohibition order	111
333	Person who may apply for compliance or prohibition orders	112
334	Order protecting property in receivership	112
335	Court may terminate or limit receivership	112
	Subpart 8—Supply of essential services	
336	Obligations of suppliers of essential services	113
	Part 16	
	Removal from Cook Islands register	
	Subpart 1—Removal from register	
337	Removal from register	114
338	Grounds for removal	114
339	Request for removal	114
	Subpart 2—Procedure for removal from register	
340	When notice of removal required	115
341	Objection to removal	115
342	Meaning of undischarged claim	115
343	Procedure for objection	116
	Subpart 3—Effect of removal from register	
344	Property of company vests in Crown	116
345	Person claiming property may apply to Court	116
346	Liability of directors, shareholders, and others continues	117
	Subpart 4—Crown's disclaimer of property vesting on removal from register	
347	Crown may disclaim onerous property	117
348	Restrictions on Crown's disclaimer	117
349	Effect of Crown's disclaimer	117
	Subpart 5—Restoration of company to register	

350	When Registrar must restore company to Cook Islands register	118
351	Court may order restoration	118
352	Restoration to register	119
353	Property re-vests in company on restoration to register	119
354	Court may order re-transfer of land or compensation on restoration of company to register	119

Part 17

Overseas companies

Subpart 1—Preliminary

355	Meaning of carrying on business	120
356	Name of overseas company must comply with section 11	120
357	Use of name by overseas company	121

Subpart 2—Registration

358	Overseas company must register under this Act	121
359	Validity of transactions not affected	121
360	Application for registration	121

Subpart 3—Administration of overseas company

361	Annual return by overseas company	121
362	Allocated month	122
363	Registrar must remove overseas company for failure to make annual return after 6 months	122
364	Notice of change of directors, etc, of overseas company	122
365	Overseas company ceasing to carry on business in Cook Islands	123
366	Attorneys of overseas companies	123
367	Exemption from requirements of this Part	124

Part 18

Registrar of Companies

Subpart 1—Registrar

368	Registrar	124
369	Deputy Registrars	124
370	First appointment of Registrar under this Act	124

Subpart 2—Cook Islands register

371	Register	124
372	Registration of documents	124
373	When document registered	124
374	When Registrar may reject document for registration	125
375	No presumption of validity or invalidity	125
376	Inspection of register	125
377	Copies and certified copies of documents	125

Subpart 3—Changes to register

378	Rectification or correction of register	126
379	Registrar may require information from company	126
380	Registrar may amend register	126

Subpart 4—Inspection by Registrar

381	Registrar may require production of documents and confirmation of information	126
382	Disclosure of information and reports	127
383	Restrictions on disclosing information	128
384	Report admissible in liquidation proceedings	128

	Subpart 5—Appeals	
385	Appeals from Registrar's decisions	128
386	Exercise of inspection power not affected by appeal	128
387	Destruction of documents on successful appeal against inspection power	129
	Subpart 6—Notices by Registrar	
388	Notices generally	129
389	Notice to individuals	129
390	Admissibility of copy of Registrar's notice	129
	Part 19	
	Offences	
	Subpart 1—Dishonesty offences	
391	False statements in documents	130
392	Fraudulent use or destruction of company property	130
393	Falsification of records	130
394	Carrying on business fraudulently	131
395	Causing material loss to creditors	131
396	Dishonestly incurring debt	131
	Subpart 2—Offence in relation to offer of securities to public	
397	Misleading or deceptive conduct in relation to offer of securities to public	132
398	Definitions for purposes of section 397	132
	Subpart 3—Liquidation offences	
399	Conduct hindering liquidation	134
400	False or misleading claim in liquidation	134
	Subpart 4—Procedure	
401	Proceedings for offences	135
	Part 20	
	Miscellaneous	
	Subpart 1—Service and communication of documents	
402	Service of documents	135
403	Company communication with shareholders	135
	Subpart 2—Privileged communications	
404	Privileged communications	135
	Subpart 3—Regulations	
405	Regulations	135
406	Regulations providing for transitional matters, etc	137
	Subpart 4—Re-registration	
407	Application for re-registration of existing company	137
408	Failure to apply for re-registration	138
409	Application for re-registration of existing overseas company	138
410	Re-registration	138
411	Meaning of existing company, etc	139
	Subpart 5—Transitional provisions	
412	Liquidation or other proceeding that is incomplete on commencement of this Act	139
	Subpart 6—Repeal and revocation	
413	Companies Act 1970-71 repealed	140
	Subpart 7—Amendments to other enactments	
414	Other enactments: consequential amendments and references updated	140
	Subpart 8—Company charges	

415 Part IV Companies Act 1955 of New Zealand continues to apply 140

Schedule 1

Interpretation

Schedule 2

Default constitution for company registered with 1 shareholder

Schedule 3

Default constitution for company registered with 2 to 9 shareholders

Directors

Schedule 4

Default constitution for company registered with 10 or more shareholders

Schedule 5

Procedure for minority buy-out

Schedule 6

Amalgamations

Schedule 7

Meetings of creditors

Schedule 8

Restrictions on prior execution process

Schedule 9

Creditors' claims

Schedule 10

Meetings of liquidation committees

Schedule 11

Powers of liquidator

Schedule 12

Procedure for setting aside voidable transactions and securities

Schedule 13

Liquidation of assets of overseas companies

Schedule 14

Requirements for receiver's reports

Schedule 15

Service of documents

Schedule 16

Consequential amendments to other Acts

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

The Parliament of the Cook Islands enacts as follows—

(30 November 2017)

1 Title

This Act is the Companies Act 2017.

2 Commencement

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

Part 1

Preliminary matters

3 Purpose

This Act has the following purposes—

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

4 Interpretation

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

5 Act binds the Crown

This Act binds the Crown.

Part 2

Incorporation

6 Essential requirements

A company must have—

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

7 Application for registration

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

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

8 Certificate of incorporation

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

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

9 Incorporation

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

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

10 Separate legal personality with full capacity

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

Part 3

Company name

11 Name of company

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

12 Change of name

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

13 Direction to change name

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

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

14 Use of company name

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

Part 4 Company constitution

15 Company must have constitution

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

- (5) A company that substitutes a constitution for its default constitution, or alters or modifies its default constitution, must hold at its registered office and make available for inspection the following, as applicable—
- (a) the substituted constitution; or
 - (b) the modifications and alterations to its default constitution.
- 16 Substitution, adoption, or amendment of constitution after incorporation**
- (1) Subject to any restrictions in its constitution, a company may by special resolution, substitute or adopt a new constitution or amend its existing constitution or default constitution.
- (2) Within 10 working days after a change in constitution under subsection (1), the company must file a notice in the prescribed form with the Registrar for registration.
- 17 Content and effect of constitution**
- (1) The constitution of a company may contain—
- (a) matters contemplated by this Act for inclusion in the constitution of a company; and
 - (b) any other matters that the company wishes to include in its constitution.
- (2) The constitution is of no effect to the extent that it contravenes, or is inconsistent with, this Act.
- (3) Subject to subsection (2),—
- (a) the constitution has effect and may be enforced as if it constituted a contract—
 - (i) between the company and its shareholders; and
 - (ii) between the company and each director; and
 - (b) the shareholders and directors of a company have the rights, powers, duties, and obligations set out in the constitution of the company.

Part 5

Shares

Subpart 1—General

- 18 Legal nature of shares**
A share in a company is personal property.
- 19 No nominal value or bearer share**
- (1) A share must not have a nominal or par value.
- (2) Nothing in subsection (1) prevents the issue by a company of a redeemable share.
- (3) A company must not issue a share that is a bearer share and a share that is issued in contravention of this subsection is a nullity.
- 20 Minimum number of shares**
A company must have at least 1 issued share.

21 Rights and powers attached to shares

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

22 Shares must not impose liabilities on holder

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

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

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

24 Issue of other shares

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

25 Time of issue of shares

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

26 Pre-emptive rights

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

27 Consideration for issue of shares

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

28 Consent to issue of shares

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

Subpart 3—Distributions to shareholders

29 Distributions prohibited unless solvency test satisfied

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

30 Meaning of distribution

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

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

31 Recovery of improper distributions

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

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

Subpart 4—Dividends

32 Dividends

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

Subpart 5—Company may acquire its own shares

33 Company may acquire its own shares

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

34 Notice of company's acquisition of its own shares

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

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

35 Cancellation of shares acquired by company

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

36 Enforceability of contract to repurchase shares

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

Subpart 6—Treasury stock

37 Company may hold its own shares

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

38 Rights and obligations of treasury stock suspended

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

39 Company may transfer treasury stock

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

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

Subpart 7—Redeemable shares

40 Meaning of redeemable

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

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

41 Redemption of redeemable shares

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

42 Cancellation of redeemed shares

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

43 Notice of redemption of redeemable shares

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

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

44 Financial assistance

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

Subpart 9—Cross-holdings

45 Subsidiary may not hold shares in holding company

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

- (5) This section and section 46 apply to a nominee for a subsidiary in the same way as they apply to the subsidiary.

46 Exception for company that subsequently becomes subsidiary

If a company that holds shares in another company becomes a subsidiary of that other company, the subsidiary—

- (a) may, despite section 45(1), continue to hold those shares; but
- (b) may not exercise any voting rights attaching to those shares.

Subpart 10—Transfer of shares

47 Transfer of shares

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

48 Transfer of shares by operation of law

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

Subpart 11—Share register

49 Company to maintain share register

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

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

50 Share register as evidence of legal title

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

51 Power of Court to rectify share register

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

52 Beneficial ownership of shares

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

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

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

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

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

55 Registration of share transfer

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

Part 6 Shareholders

Subpart 1—General

56 Company must have at least 1 shareholder

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

57 Liability of shareholders

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

Subpart 2—Powers of shareholders

58 Decisions reserved for shareholders only

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

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

59 How shareholder power may be exercised

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

60 Types of shareholder resolution

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

61 Shareholder approval of major transaction

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

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

62 Unanimous assent to certain types of action

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

Subpart 3—Alteration of shareholder rights

63 Alteration of shareholder rights

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

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

64 Meaning of class and interest group

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

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

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

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

65 Dissenting shareholder may require company to purchase shares

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

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

66 Meaning of dissent

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

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

Subpart 4—Meetings of shareholders

67 Shareholder meetings

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

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

68 Annual meeting of shareholders

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

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

- (2) However,—

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

69 Special meeting of shareholders

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

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

70 Written resolution in lieu of meeting

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

71 Procedure for written resolution in lieu of meeting

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

72 Court may call meeting of shareholders

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

Part 7

Directors

Subpart 1—Appointment and removal of directors

73 Meaning of director

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

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

74 Number of directors

A company must have 1 or more directors.

75 Qualification of directors

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

76 Director's consent required

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

77 Appointment of first and subsequent directors

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

78 Removal of directors

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

79 Director ceasing to hold office

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

80 Resignation by director

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

81 Restrictions on resignation by sole director

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

82 Notice of change of directors or details of directors

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

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

83 Remuneration of directors

Directors may receive remuneration and other benefits from the company—

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

84 Proceedings of directors

The constitution of a company must include provisions—

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

Subpart 2—Management of company

85 Management of company

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

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

Subpart 3—Directors' duties

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

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

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

87 Director must comply with Act and constitution

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

88 Reckless trading

A director of a company must not—

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

89 Duty in relation to obligations

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

90 Duty in relation to self-interest

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

91 Duty in relation to company information

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

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

92 **Director's duty of care**

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

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

93 **Reliance on information and advice**

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

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

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

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

- (1) A director of a company commits an offence if he or she exercises powers or performs duties as a director of the company—

- (a) in bad faith towards the company and believing that the conduct is not in the best interests of the company; and
 - (b) knowing that the conduct will cause serious loss to the company.

- (2) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

95 Effect of unanimous shareholder approval on certain duties of directors

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

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

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

97 Liability of shadow director

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

98 Liability of controller of director powers

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

99 Liability of delegate of director power

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

100 Exclusion of shareholder liability

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

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

101 Certain indemnities prohibited

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

director includes—

- (a) a person specified in section 96 who is liable under any of subpart 3 of this Part; and
- (b) a former director

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

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

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

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

103 Defences to criminal liability

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

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

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

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

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

106 Court may disqualify directors

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

107 Who may apply for disqualification order

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

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

108 Notice of application for disqualification order

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

Part 8 Enforcement

Subpart 1—Injunctions

109 Injunction restraining contravention of Act or constitution

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

Subpart 2—Derivative proceeding

110 Meaning of derivative proceeding

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

111 Leave of Court required for derivative proceeding

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

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

112 Who may apply for leave to bring proceeding

The following persons may apply for leave under section 111—

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

113 Matters that Court must consider on application for leave

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

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

114 Requirements for grant of leave

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

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

115 Procedure for application for leave

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

116 Powers of Court in relation to derivative proceeding

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

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

- (b) give directions for the conduct of the proceeding; and
 - (c) order the company or the directors to provide information or assistance in relation to the proceeding; and
 - (d) direct that any amount ordered to be paid by a defendant in the proceeding must be paid, in whole or part, to former and present shareholders of the company or subsidiary instead of to the company or subsidiary company.
- 117 Costs of derivative proceeding**
- (1) On the application of the person to whom leave under section 111 was granted, the Court must order that the company pay some or all of the reasonable costs of bringing or intervening in the proceeding (including any costs relating to any settlement, compromise, or discontinuance approved by the Court).
 - (2) Subsection (2) does not apply to the extent that it would be unjust or inequitable for the company to bear those costs, or to bear the whole of those costs.

Subpart 3—Personal proceedings by shareholder

- 118 Shareholder proceeding against director for breach of duty**
A shareholder or former shareholder may sue a director or former director for breach of a director duty owed to the shareholder in that capacity.
- 119 Shareholder proceeding to enforce director compliance**
On the application of a shareholder, and if it is just and equitable, the Court may—
- (a) order the director to take any action that is required to be taken by the directors under the constitution of the company or under this Act; and
 - (b) on making the order, also order any consequential relief that it thinks fit.
- 120 Shareholder proceeding against company for breach of duty**
A shareholder may sue the company for breach of a company duty owed to the shareholder in that capacity.
- 121 Shareholder proceeding to enforce company compliance**
On the application of a shareholder, and if it is just and equitable, the Court may—
- (a) order the company to take any action that is required to be taken by the company under the constitution of the company or under this Act; and
 - (b) on making the order, also order any consequential relief that it thinks fit.
- 122 Representative proceeding**
- (1) This section applies if—
 - (a) a shareholder (S) brings a proceeding against the company or a director; and
 - (b) other shareholders have the same, or substantially the same, interest in relation to the subject matter of the proceeding.
 - (2) The Court may appoint S to represent all or some of those other shareholders, and for that purpose may also make any other order that it thinks fit, including an order for any of the following—

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

Subpart 4—Prejudiced shareholders

123 Prejudiced shareholders

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

124 Conduct taken to be prejudicial

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

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

125 Alteration to constitution

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

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

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

127 Report to Court following investigation

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

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

Part 9

Administration of companies

Subpart 1—Company transactions

128 Requirements for company obligation

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

129 Attorneys

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

130 Validity of company transaction

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

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

131 Person dealing with company may make certain assumptions

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

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

132 Effect of assumptions by person dealing with company

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

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

133 No constructive notice

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

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

134 Company may cancel transaction in which director interested

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

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

135 Company may cancel transaction for breach of director duty

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

136 Effect of cancellation on third parties

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

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

Subpart 2—Pre-incorporation contracts

137 Meaning of pre-incorporation contract

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

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

138 Company may ratify pre-incorporation contract

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

139 Warranties implied in pre-incorporation contract

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

140 Damages for breach of implied warranty

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

141 Failure to ratify

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

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

Subpart 3—Registered office

142 Registered office and postal address

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

143 Change of registered office or postal address

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

Subpart 4—Company records

144 Company records

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

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

145 Place where company records must be kept

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

146 Form of company records

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

147 Inspection of company records

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

148 Inspection of company records by public

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

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

149 Inspection of company records by shareholder

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

150 Manner of inspection

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

151 Copies of records

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

152 Inspection of company documents by directors

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

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

Subpart 5—Annual return

153 Annual return

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

154 Time for filing annual return

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

155 Annual return pre-filled by Registrar

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

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

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

157 Other updating notices for information events

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

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

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

159 Form and content of accounting records

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

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

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

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

161 Financial statements

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

162 Financial statements must be audited

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

163 Company may opt out of preparing financial statements

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

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

Subpart 3—Auditor's appointment and role

164 Requirement that auditor be appointed

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

165 Registrar may appoint auditor

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

166 Resignation and casual vacancy

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

167 Replacement of auditor

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

168 Statement by auditor on resignation

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

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

169 Qualifications of auditor

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

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

170 Auditor must avoid conflict of interest

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

171 Auditor must report to shareholders

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

172 Auditor's attendance at shareholder meetings

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

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

173 Auditor's access to information

The auditor of a company may require—

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

Part 11

Disclosure to shareholders

Subpart 1—Annual report

174 Annual report to shareholders

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

175 Contents of annual report

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