

- (d) state—
  - (i) the names of the directors in office at the end of the accounting period; and
  - (ii) the name of any person who ceased to be a director during the accounting period; and
- (e) contain any other information that may be required by—
  - (i) regulations made under this Act; and
  - (ii) the constitution; and
- (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

### Subpart 2—Miscellaneous documents

#### 176 Other documents that company must send to shareholders

A company must send the following documents to shareholders—

- (a) any document that is required by the constitution to be sent to shareholders;
- (b) a notice of acquisition of the company's own shares (*see* section 34(2));
- (c) a disclosure document for the purposes of an offer of financial assistance for the purchase of the company's own shares (*see* section 44(4));
- (d) a copy of a written resolution approved under section 70 (*see* section 71(3));
- (e) an auditor's written statement of reasons for resigning (*see* section 168(a)).

### Subpart 3—Shareholder request for information

#### 177 Shareholder may request information held by company

- (1) A shareholder of a company may at any time request the company to provide information held by it.
- (2) The request must—
  - (a) be in writing; and
  - (b) specify the information sought in sufficient detail for the company to identify it.

#### 178 Company must respond to request

- (1) A company must, within 10 working days after receiving a request under section 174,—
  - (a) provide the information; or
  - (b) undertake to provide the information within a specified period; or
  - (c) refuse to provide the information and specify the reason for the refusal.
- (2) An undertaking to provide the information within a specified period may be subject to payment of a reasonable fee, as specified and explained by the company, to meet the cost of providing the information.

**179 Reasons for refusing information**

Without limiting the reasons for which a company may refuse to provide information under section 178, the company may refuse to provide information if—

- (a) the disclosure of the information would or would be likely to prejudice the commercial position of the company; or
- (b) the disclosure of the information would or would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or
- (c) the request for the information is frivolous or vexatious.

**180 Withdrawal of request**

- (1) A shareholder is taken to have withdrawn a request for information under section 177 if, after notification of the fee that may be required, the shareholder has not paid the fee within 10 working days after receiving the notification.
- (2) Subsection (1) does not apply if the shareholder—
  - (a) undertakes to pay the fee; or
  - (b) disputes that the fee is reasonable.

**181 Court may order company to provide requested information**

- (1) A shareholder of a company who has requested information under section 177 may apply to the Court for an order requiring the company to provide the information requested.
- (2) The Court may order the company to provide the information within the time and on payment of the fee that the Court thinks fit if it is satisfied that—
  - (a) the company does not have sufficient reason to refuse the information; or
  - (b) the period specified for providing the information is unreasonable; or
  - (c) the fee required by the company is unreasonable.
- (3) An order under subsection (2) may specify the use that may be made of the information and the persons to whom it may be disclosed.

**Part 12****Company reorganisations****Subpart 1—Amalgamations****182 Amalgamations**

Any 2 or more companies may amalgamate, and continue as 1 company, in accordance with Schedule 6.

**Subpart 2—Court approved reorganisations****183 Meaning of arrangement and company**

In this subpart,—

**arrangement** includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods

**company** includes an overseas company that is registered on the Cook Islands register.

**184 Application to Court for order approving amalgamation, arrangement, or compromise**

- (1) A company or any shareholder or creditor of a company may apply to the Court for an order under section 185 approving an amalgamation, arrangement, or compromise.
- (2) Before making an order under section 185, the Court may make any 1 or more of the following interim orders—
  - (a) an order that notice of the application, together with any information relating to it that the Court thinks fit, must be in the form and manner and given to any persons or classes of persons that the Court thinks fit;
  - (b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or class of creditors of a company to consider and, if thought fit, approve, in the manner specified by the Court, the proposed amalgamation, arrangement, or compromise;
  - (c) for the purposes of an order under paragraph (b), an order determining the shareholders or creditors that constitute a class of shareholders or creditors;
  - (d) an order requiring that a report on the proposed amalgamation, arrangement, or compromise be prepared for the Court by a person specified by the Court;
  - (e) an order that the report referred to in paragraph (d) be provided to the shareholders, class of shareholders, creditors, or class of creditors of a company, or to any other person that the Court considers has an interest;
  - (f) an order as to the payment of the costs incurred in preparing the report;
  - (g) an order specifying the persons who are entitled to appear and be heard on the application to approve the amalgamation, arrangement, or compromise.
- (3) In making an order under subsection (2), the Court must have regard to the procedures for amalgamations under Schedule 6 and for arrangements and compromises under Part 13.

**185 Court may approve amalgamation, arrangement, or compromise**

- (1) On an application under section 184(1), the Court may order that an amalgamation, arrangement, or compromise is binding on the company and on any other person or classes of person specified by the Court.
- (2) The Court must not make an order under this section in relation to an amalgamation or compromise unless it is impracticable to effect an amalgamation under Schedule 6 or a compromise under Part 13 or both.
- (3) To avoid doubt, it is not impracticable to effect an amalgamation under Schedule 6 or a compromise under Part 13 by reason only that the amalgamation or compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in Schedule 6 or Part 13, as the case may be.

- (4) The Court may make an order under subsection (1) on any conditions that the Court thinks fit, and the order has effect in and from the date specified in the order.
- (5) Section 198 applies, with all necessary modifications, to a compromise approved under this section.

**186 Additional orders**

Without limiting section 185(1), the Court may, for the purpose of giving effect to any amalgamation, arrangement, or compromise approved under that section, provide for, and prescribe terms and conditions relating to, the following—

- (a) the transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements;
- (b) the issue of shares, securities, or policies of any kind;
- (c) the liquidation of any company;
- (d) the provision to be made for persons who voted against the amalgamation, arrangement, or compromise at a meeting ordered to be held under section 184(2)(b), or who appeared before the Court in opposition to the application for approval;
- (e) any other matter that is necessary or desirable to give effect to the amalgamation, arrangement, or compromise.

**187 Copies of orders must be filed with Registrar**

- (1) A company that is the subject to an order under this subpart must ensure that, within 10 working days after the order is made, a copy of the order is filed (using the prescribed form) with the Registrar for registration.
- (2) If a company fails to comply with subsection (1), each director of the company commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

## **Part 13**

### **Compromises with creditors**

#### **Subpart 1—General**

**188 Meaning of compromise**

In this Part, unless the context otherwise requires, **compromise** means a compromise between a company and its creditors, including a compromise—

- (a) cancelling all or part of a debt of the company; or
- (b) varying the rights of its creditors or the terms of a debt; or
- (c) relating to an alteration of the company's constitution that affects the likelihood of the company being able to pay a debt.

**189 Who may make compromise proposal**

- (1) Any of the following persons with reason to believe that a company is or will be insolvent may propose a compromise under this Part—
  - (a) the directors of the company:



- (b) a receiver appointed to the whole or substantially the whole of the company's assets and undertaking;
  - (c) a liquidator of the company;
  - (d) with the leave of the Court, any creditor or shareholder of the company.
- (2) Where the Court grants leave to a creditor or shareholder under subsection (1)(d), the Court may make an order directing the company to provide the creditor or shareholder, within a specified time, with—
- (a) a list of the names and addresses of the company's creditors showing the amounts owed to each of them; and
  - (b) such other specified information that will enable the creditor or shareholder to propose a compromise.

### Subpart 2—Compromise procedure

#### **190 Proponent must compile list of affected creditors**

- (1) A person who proposes a compromise (the **proponent**) must compile, in relation to each class of creditors of the company, a list of the creditors known to the proponent who would be affected by the compromise.
- (2) The list of creditors must set out—
- (a) the amount owing or estimated to be owing to each of them; and
  - (b) the number of votes that each of them is entitled to cast on a resolution approving the compromise.

#### **191 Proponent must give notice of proposed compromise**

The proponent must give notice in accordance with Schedule 7 of the intention to hold a meeting of creditors (or any 2 or more classes of creditors) to vote on a resolution approving the proposed compromise.

#### **192 Requirements for notice of proposed compromise**

- (1) The notice of the meeting must—
- (a) comply with Schedule 7; and
  - (b) be accompanied by—
    - (i) a statement that sets out the matters in subsection (2); and
    - (ii) the list of creditors compiled under section 190; and
  - (c) be given to—
    - (i) each known creditor; and
    - (ii) the company; and
    - (iii) any receiver or liquidator; and
  - (d) be filed with the accompanying documents with the Registrar in the prescribed form for registration.
- (2) The statement accompanying the notice of meeting must—
- (a) state the proponent's name and address and the capacity in which the proponent is acting; and
  - (b) contain contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours; and

- (c) set out the terms of the proposed compromise and the reasons for it; and
- (d) set out the reasonably foreseeable consequences for creditors of the company if the compromise is approved; and
- (e) set out the extent of the interest of any director in the proposed compromise; and
- (f) explain that the compromise will be binding on creditors (whether all creditors or a class of creditors) if approved; and
- (g) contain details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval.

**193 Approval of compromise**

- (1) A compromise, including any amendment proposed at the meeting, is approved by the creditors, or a class of creditors if, adopted by the creditors or class of creditors at a meeting conducted in accordance with Schedule 7.
- (2) Approval of a compromise by a class of creditors is presumed, if there is more than 1 class voting, to be conditional on approval by every other class voting, unless the resolution expressly provides to the contrary.
- (3) The proponent must give written notice in the prescribed form of the result of the voting to—
  - (a) each known creditor, the company, and any receiver or liquidator; and
  - (b) the Registrar for registration.

**Subpart 3—Effect of compromise**

**194 Compromise is binding on company and creditors**

A compromise, including any amendment, that is approved by creditors or a class of creditors in accordance with this Part is binding on the company and on all the creditors, or, if there is more than 1 class of creditors, on all creditors of that class, to whom notice of the proposal was given.

**195 Variation of compromise**

- (1) A compromise approved under section 193 may be varied either—
  - (a) in accordance with any procedure for variation incorporated in the compromise as approved; or
  - (b) by the approval of a variation as if the proposed variation were a proposed compromise to which this Part applies but subject to all necessary modifications.
- (2) This Part applies to any compromise that is varied in accordance with this section.

**196 Court may make orders in relation to procedure or moratorium**

- (1) On the application of the proponent or the company, the Court may—
  - (a) give directions in relation to a procedural requirement imposed by this Part, or waive or vary that requirement, if it considers that it would be just to do so; or
  - (b) order that during a specified moratorium period—

- (i) proceedings in relation to a debt owing by the company be stayed; or
  - (ii) a creditor not take any other measures to enforce payment of a debt owing by the company.
- (2) For the purposes of an order under subsection (1)(b), a moratorium period—
  - (a) must not begin earlier than the date on which notice was given of the proposed compromise; and
  - (b) must end not later than 10 working days after the date on which notice was given of the result of voting on it.
- (3) Nothing in subsection (1)(b) affects the right of a secured creditor during the specified moratorium period to take possession of, realise, or otherwise deal with, property of the company in which that creditor has a security interest.

**197 Court may order that creditor not bound by compromise**

- (1) A creditor who was entitled to vote on a compromise may apply, on 1 or more of the grounds set out in subsection (3), to the Court for an order that the creditor is not bound by the compromise or for such other order that the Court thinks fit.
- (2) An application under subsection (1) must be made not later than 10 working days after the date on which notice of the result of the voting on the compromise was given to the creditor.
- (3) The Court may make the order if it is satisfied that—
  - (a) the creditor was not given sufficient notice of the meeting or the matters required to be notified to creditors under section 192(1)(b); or
  - (b) there was some other material irregularity in obtaining approval of the compromise; or
  - (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs.

**198 Effect of compromise on liquidation of company**

- (1) If a compromise is approved, the Court may make an order as it thinks fit with respect to the extent (if any) to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator.
- (2) The Court may make an order under subsection (1) on the application of—
  - (a) the company; or
  - (b) a receiver appointed in relation to the property of the company; or
  - (c) with the leave of the Court, any creditor or shareholder of the company.
- (3) If a compromise is approved and the company is later put into liquidation, the Court may make an order as it thinks fit with respect to the extent, if any, to which the compromise continues in effect and is binding on the liquidator.
- (4) The Court may make an order under subsection (3) on the application of—
  - (a) the liquidator; or
  - (b) a person described in subsection (2)(b) or (c).

**199 Costs of compromise**

Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise—

- (a) must be met by the company; or
- (b) if incurred by a receiver or a liquidator, are a cost of the receivership or liquidation; or
- (c) if incurred by any other person, are a debt due to that person by the company.

## **Part 14**

### **Liquidations**

#### Subpart 1—General

**200 What this Part does**

This Part sets out the procedure for, and the effect of, the liquidation of a company.

**201 Meaning of insolvency in this Part**

For the purposes of this Part, unless the context otherwise requires, a company is insolvent if it is unable to pay its debts as they become due in the normal course of business.

#### Subpart 2—Appointment of liquidator

**202 Liquidation begins with appointment of liquidator**

- (1) The liquidation of a company begins on the date on which, and the time when, the liquidator is appointed.
- (2) The date and time of appointment must be recorded in the order or resolution appointing the liquidator.
- (3) For the purposes of a liquidation, an act done, or a transaction entered into or effected, on the date on which a liquidator is appointed, must be treated as done or entered into or effected after the time of the appointment on that date, unless the contrary is shown.

**203 Who may be appointed liquidator**

- (1) The liquidator must—
  - (a) be a named person; and
  - (b) consent in writing to the appointment.
- (2) Subject to subsection (5), none of the following persons may be appointed or act as the liquidator of a company—
  - (a) a corporation:
  - (b) a person who is under 21 years of age:
  - (c) a creditor of the company:

- (d) a person who has, within the 2 years immediately preceding the commencement of the liquidation, been a shareholder, director, auditor, or receiver of the company or of a related company;
  - (e) an undischarged bankrupt in any jurisdiction;
  - (f) a person in respect of whom an order is in force under the Cook Islands mental health legislation;
  - (g) a person who is prohibited by an order under section 276 from being or continuing as a liquidator;
  - (h) a person who is prohibited from being a director or promoter, or being concerned in or taking part in the management, of a company under this Act,
- (3) The appointment of a person as liquidator without the written consent of that person is of no effect.
  - (4) On the application of a person who is or becomes disqualified to become or remain a liquidator under subsection (2)(b) to (h), the Court may order that the person may be appointed and act, or may continue to act, as liquidator, despite being disqualified.
  - (5) A person who acts in contravention of subsection (2) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

#### **204 Who appoints liquidator**

- (1) A liquidator of a company may be appointed by—
  - (a) the directors, on the occurrence of an event specified in the constitution of the company;
  - (b) the shareholders, by special resolution;
  - (c) the Court, on the application of—
    - (i) the company; or
    - (ii) a director; or
    - (iii) a shareholder; or
    - (iv) a creditor (including any contingent or prospective creditor); or
    - (v) the Registrar.
- (2) At any time after the making of an application under subsection (1)(c) and before a liquidator is appointed, the Court may, on the application of the company or any creditor or shareholder of the company, stay any application or proceeding against the company that is pending in the Court, the Court of Appeal, or any other tribunal.

### **Subpart 3—Court appointment of liquidator**

#### *Role of Court*

#### **205 When Court may appoint liquidator**

The Court may appoint a liquidator if it is satisfied that—

- (a) the company is insolvent; or

- (b) the company or its directors have persistently or seriously failed to comply with this Act; or
- (c) the company does not comply with section 6; or
- (d) it is just and equitable that a liquidator be appointed.

*Proof of insolvency*

**206 Appointment of liquidator on ground that company is insolvent**

- (1) For the purpose of the appointment of a liquidator by the Court, a company's insolvency may be—
  - (a) presumed under section 207; or
  - (b) proved by other means.
- (2) Information or records obtained under section 177 or, if the Court so orders, under section 181 may be received as evidence that a company is insolvent.
- (3) In determining whether a company is insolvent, the Court may take into account contingent or prospective liabilities.
- (4) However, in the case of a prospective or contingent creditor,—
  - (a) the creditor may apply to the Court for the appointment of a liquidator only with the leave of the Court; and
  - (b) the Court may give leave, with or without conditions, only if it is satisfied that a prima facie case has been made out that the company is insolvent.

**207 Presumption of insolvency**

Unless the contrary is proved, a company is presumed to be insolvent if—

- (a) the company has failed to comply with a statutory demand (*see* section 208); or
- (b) execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (c) a person with a security over all or substantially all of the property has appointed a receiver under the document creating the security; or
- (d) a compromise between a company and its creditors has been put to a vote in accordance with Part 13.

**208 Statutory demand**

- (1) A statutory demand is a demand by a creditor in respect of a debt owing or due by a company that is made in accordance with subsection (2).
- (2) A statutory demand must—
  - (a) be in respect of a debt that is not less than the prescribed amount; and
  - (b) be in writing; and
  - (c) be served on the company; and
  - (d) require the company to do any of the following things to the reasonable satisfaction of the creditor, within 30 working days after the date of service (or any longer period that the Court may order under section 210(3))—
    - (i) pay the debt;
    - (ii) enter into a compromise under Part 13;

- (iii) otherwise compound with the creditor;
  - (iv) give a security over its property to secure payment of the debt.
- (3) For failure by a company to comply with a statutory demand to be admissible as evidence of insolvency in an application to appoint a liquidator, the application must be made within 30 working days after the last date for compliance with the demand.

**209 Court may set aside statutory demand**

- (1) On the application of the company, the Court may set aside a statutory demand if it is satisfied that—
  - (a) there is a substantial dispute whether or not the debt is owing or due; or
  - (b) the company appears to have a counterclaim, set-off, or cross-demand for an amount that, when deducted from the amount of the demand, leaves an amount owing or due by the company that is less than the prescribed amount; or
  - (c) the demand ought to be set aside on other grounds.
- (2) The Court must not set aside a statutory demand by reason only of a defect or irregularity unless the Court considers that substantial injustice would result if it were not set aside.
- (3) In subsection (2), **defect** includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the statutory demand.
- (4) An order setting aside a demand may be made subject to conditions.

**210 Procedure for application to set aside statutory demand**

- (1) A company must make its application to set aside a statutory demand, and serve it on the creditor, within 20 working days after the date of service of the statutory demand.
- (2) The Court must not extend the time for making or serving the application.
- (3) When hearing an application to set aside a statutory demand, the Court may extend the time for compliance with the demand.

**211 Court's options if satisfied that debt is due by company**

- (1) This section applies if, on hearing an application to set aside a statutory demand, the Court is satisfied that there is a debt owing or due by the company to the creditor that is not the subject of a substantial dispute nor subject to a counterclaim, set-off, or cross-demand.
- (2) On the ground that the company is unable to pay its debts, the Court may—
  - (a) order the company to pay the debt within a specified period and further order that, in default of payment, the creditor may apply for the appointment of a liquidator; or
  - (b) dismiss the application to set aside the demand and immediately make an order appointing a liquidator.
- (3) A company is presumed to be insolvent if it defaults in making payment with the period specified by an order under subsection (2)(a).



*Interim liquidator***212 Appointment of interim liquidator**

- (1) The Court may appoint a named person as interim liquidator if—
  - (a) an application has been made to the Court for the appointment of a liquidator; and
  - (b) the Court is satisfied that the appointment of an interim liquidator is necessary or expedient for maintaining the value of assets owned or managed by the company.
- (2) The appointment takes effect on the date on which, and the time when, the order appointing the interim liquidator is made.
- (3) The Court must record in the order the date and time of the appointment.
- (4) For the purposes of a liquidation, an act done, or a transaction entered into or effected, on the date on which an interim liquidator is appointed, must be treated as done or entered into or effected after the time of the appointment on that date, unless the contrary is shown.

**213 Role of interim liquidator**

- (1) An interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company.
- (2) However, the Court may limit the rights and powers of an interim liquidator as it thinks fit.

**Subpart 4—Process of liquidation***Commencement of liquidation***214 Liquidator must give public notice of appointment**

- (1) A liquidator must, without delay after being appointed or being notified of his or her appointment, give public notice of—
  - (a) the liquidator's appointment; and
  - (b) the date and time of the commencement of the liquidation; and
  - (c) the address and contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours by a creditor or shareholder.
- (2) A liquidator must, within 10 working days after being appointed or being notified of his or her appointment, file with the Registrar for registration a notice in the prescribed form of his or her appointment as liquidator.

**215 Documents must state that company is in liquidation**

Any document or negotiable instrument entered into, made, or issued by a liquidator of a company must state, in a prominent position, that the company is in liquidation.

**216 Effect of commencement of liquidation**

- (1) With effect from the commencement of liquidation of a company,—
  - (a) the liquidator has custody and control of the company's assets:

- (b) the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Part:
- (c) unless the liquidator agrees or the Court orders otherwise, a person must not—
  - (i) commence or continue legal proceedings against the company or in relation to its property; or
  - (ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company:
- (d) unless the Court orders otherwise, a share in the company must not be transferred:
- (e) there must be no alteration in the rights and liabilities of a shareholder of the company:
- (f) a shareholder must not exercise a power under the constitution of the company or this Act except for the purposes of this Part:
- (g) there must be no alteration in the constitution of the company.
- (2) A creditor is subject to the restrictions relating to prior execution process set out in Schedule 8.
- (3) Subsection (1) does not affect the right of a secured creditor, subject to Part 3 of Schedule 9, to take possession of, and realise or otherwise deal with, property of the company that is subject to the creditor's security interest.

## 217 **Obligations of suppliers of essential services**

- (1) Despite any other enactment or contract, a supplier of an essential service must not—
  - (a) refuse to supply the service to the liquidator, or to a company in liquidation, on the ground that the company has defaulted in paying charges due for the service for a period before commencement of the liquidation; or
  - (b) make it a condition of the supply of the service to the liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service for a period before commencement of the liquidation.
- (2) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of clause 19(a) of Schedule 9.
- (3) In this section, an **essential service** means—
  - (a) the retail supply of gas; or
  - (b) the retail supply of electricity; or
  - (c) the supply of water; or
  - (d) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
  - (e) telecommunications services.

### *Taking control of company property*

## 218 **Directors and others must deliver company property to liquidator**

- (1) A present or former director or employee of a company in liquidation must—

- (a) without delay after the appointment of the liquidator, give the liquidator details of company property in that person's possession or under his or her control; and
  - (b) on being required to do so by the liquidator, without delay or within any time specified by the liquidator,—
    - (i) deliver the property to the liquidator or any other person as the liquidator directs; or
    - (ii) dispose of the property as the liquidator directs.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or both.

*First steps in liquidation process*

**219 First report to creditors**

- (1) The liquidator must, within the applicable period,—
- (a) prepare a list of every known creditor of the company; and
  - (b) prepare and send to every known creditor and shareholder, and (using the prescribed form) file with the Registrar for registration,—
    - (i) a report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and
    - (ii) a notice explaining the right of a creditor or shareholder to request a meeting of creditors or shareholders (as the case may be) under section 226.
- (2) For the purposes of subsection (1), the **applicable period** is—
- (a) in the case of a liquidator appointed by the directors or the shareholders, within 5 working days after appointment;
  - (b) in the case of a liquidator appointed by the Court, within 25 working days after appointment;
  - (c) in either case, within any longer period as the Court may direct.
- (3) The requirement to prepare a first report to creditors may be—
- (a) dispensed with or modified by an order of the Court under section 225 (1); or
  - (b) dispensed with by the liquidator under section 225(2).

**220 First meeting of creditors**

- (1) Unless the liquidator has dispensed with creditors' meetings, the liquidator must call a meeting of the creditors of the company,—
- (a) in the case of a liquidator appointed by the directors or the shareholders, within 10 working days after appointment;
  - (b) in the case of a liquidator appointed by the Court, within 30 working days after appointment;
  - (c) in either case, within any longer period as the Court may direct.

- (2) If the liquidator has dispensed with creditors' meetings but receives a notice under section 223(1)(c) requesting a meeting, the first meeting of creditors must be held within 15 working days after the liquidator receives the notice.
- (3) The liquidator must—
  - (a) give every known creditor notice of the meeting; and
  - (b) include with the notice the section 219 report; and
  - (c) not less than 5 working days before the meeting, give public notice of the meeting.
- (4) In subsection (3)(b), **section 219 report** means the report and notice required under section 219(1)(b).

## **221 Purpose of first meeting of creditors**

- (1) The purpose of the first meeting of creditors is—
  - (a) in the case of a liquidator appointed by the directors or the shareholders, to resolve whether to confirm the appointment or to appoint a replacement liquidator;
  - (b) in the case of a liquidator appointed by the Court, to resolve whether to confirm that appointment or to apply to the Court for the appointment of a replacement liquidator;
  - (c) in either case, to determine whether to pass a resolution expressing the views of the creditors.
- (2) If the meeting resolves to appoint a replacement for the liquidator appointed by the directors or the shareholders, the person named as the replacement by the resolution is, subject to section 203 (Who may be appointed liquidator), appointed liquidator.
- (3) If the meeting resolves to appoint a replacement for the liquidator appointed by the Court,—
  - (a) the liquidator must without delay apply to the Court for the appointment of the person named as the replacement by the resolution; and
  - (b) the Court may appoint that person as liquidator.

## **222 First report and first meeting of creditors not required for solvent company**

- (1) Sections 219 to 221 do not apply if—
  - (a) the liquidator has been appointed by the shareholders or the directors; and
  - (b) within 20 working days before the appointment, the directors resolved that the company would, on the appointment of a liquidator by the shareholders or the directors, be able to pay its debts; and
  - (c) a copy of the resolution is (using the prescribed form) filed with the Registrar for registration.
- (2) However, if the liquidator once appointed is not satisfied as to the solvency of the company, the liquidator must without delay call a first meeting of the creditors and sections 219 to 221 apply with all necessary modifications.
- (3) For the purposes of subsection (2), the liquidator is not satisfied as to the solvency of the company if the liquidator considers that—



- (a) the directors who voted in favour of a resolution referred to in subsection (1)(b) did not have reasonable grounds to believe that the company would be able to pay its debts; or
  - (b) the company is insolvent.
- (4) Subsection (2) is subject to section 223 (Liquidator may dispense with first meeting of creditors).

**223 Liquidator may dispense with first meeting of creditors**

- (1) A liquidator is not required to call a meeting under section 220 (first meeting of creditors) or 222(2) (liquidator not satisfied as to solvency), as the case may be, if—
  - (a) the liquidator considers that a meeting is unnecessary, having regard to—
    - (i) the assets and liabilities of the company; and
    - (ii) the likely result of the liquidation; and
    - (iii) any other relevant matters; and
  - (b) the liquidator gives a notice in writing to the creditors that complies with subsection (2); and
  - (c) no creditor has requested a meeting or, if a creditor has requested a meeting, the Court has directed that a meeting is not necessary.
- (2) The liquidator's notice must state—
  - (a) that the liquidator considers that a meeting is unnecessary; and
  - (b) the reasons for the liquidator's view; and
  - (c) that a meeting will not be called unless a creditor gives the liquidator written notice, within 10 working days after receiving the liquidator's notice, requesting a meeting and giving reasons why it is necessary.
- (3) The liquidator's notice must be given to every known creditor together with the report referred to in section 219(1)(b) (the **section 219 report**).

*Reports*

**224 Six-monthly report**

The liquidator must, within 2 months after the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and shareholder, and (using the prescribed form) file with the Registrar for registration, a report on—

- (a) the conduct and progress of the liquidation during the preceding 6 months; and
- (b) any further proposals that the liquidator has for completing the liquidation.

**225 Dispensing with reporting**

- (1) On the application of a liquidator, the Court may, on any conditions that the Court thinks fit,—
  - (a) dispense with the requirement to prepare a first report to creditors or a 6-monthly report; or
  - (b) modify 1 or both of those requirements.

- (2) The liquidator may dispense with the requirement to prepare a first report to creditors or a 6-monthly report if the liquidator considers that the value of the assets of the company available for distribution to unsecured creditors who are not preferential creditors is not likely to exceed \$0.20, or any other prescribed sum, in every dollar owed to those creditors.
- (3) If subsection (2) applies, and the liquidator intends not to prepare a first report to creditors or a 6-monthly report, the liquidator must (using the prescribed form) file a notice of that intention with the Registrar.

### *Meetings*

#### **226 Meeting of creditors or shareholders to appoint liquidation committee**

- (1) At any time in the liquidation, the liquidator may, on the request of any creditor or shareholder or on the liquidator's own initiative, call a meeting of creditors or shareholders—
  - (a) to vote on a proposal that a liquidation committee be appointed to act with the liquidator; and
  - (b) if it is so decided, to choose the members of the committee.
- (2) The liquidator may decline the request on the ground that—
  - (a) the request is frivolous or vexatious; or
  - (b) the request was not made in good faith; or
  - (c) except if a creditor or a shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company's assets.
- (3) The liquidator's decision to decline the request may be reviewed by the Court on the application of any creditor or shareholder.
- (4) The sole shareholder of a company may present to the liquidator a view on any matter that could have been decided at a meeting of shareholders called under this section, and that view must, for all purposes, be treated as a decision taken at a meeting of shareholders.

#### **227 Other meetings of creditors or shareholders**

The liquidator —

- (a) must call meetings of shareholders at the times specified by a resolution of shareholders passed at a meeting to appoint a liquidator;
- (b) must call meetings of creditors at the times specified by a resolution of creditors passed at the first meeting of creditors;
- (c) must call a meeting of shareholders without delay when required to do so by a notice in writing given by shareholders who hold not less than 10% of all the shares issued by the company;
- (d) must call a meeting of creditors without delay when required to do so by notice in writing given by creditors to whom is owed not less than 10% of the total amount owed to all creditors of the company;
- (e) may, at his or her discretion, call a meeting of creditors or shareholders.

**228 Procedure for meeting of creditors or shareholders**

A liquidator who calls a meeting of creditors or shareholders must call the meeting in accordance with—

- (a) Schedule 7; or
- (b) in the case of a meeting of shareholders, the constitution of the company, except that the liquidator has the power to give notice of the meeting and to act as, or appoint, the chairperson of the meeting.

*Liquidation committees***229 Liquidation committees**

- (1) A liquidation committee must consist of not less than 3 persons who are—
  - (a) creditors or shareholders; or
  - (b) persons holding general powers of attorney from creditors or shareholders; or
  - (c) authorised directors or representatives of companies that are creditors or shareholders of the company in liquidation.
- (2) A liquidation committee has the power to—
  - (a) call for reports from the liquidator on the progress of the liquidation;
  - (b) call a meeting of creditors or shareholders (which must be held in accordance with Schedule 7);
  - (c) apply to the Court under sections 273, 275, or 276;
  - (d) assist the liquidator as appropriate in the conduct of the liquidation.
- (3) If meetings of shareholders and creditors differ on the issue of whether to appoint a liquidation committee or on the membership of the committee, the liquidator must refer the matter to the Court which may determine the issue as it sees fit.
- (4) The provisions set out in Schedule 10 govern meetings of a liquidation committee.
- (5) If a liquidation committee is unable to act because of vacancies in membership, the liquidator must call attention to that situation in the liquidator's next 6-monthly report.

**230 Restrictions on members of liquidation committee**

- (1) Except with the leave of the Court, a member of a liquidation committee (a **member**) must not receive any remuneration for services as member.
- (2) Except with the leave of the Court,—
  - (a) a member must not, directly or indirectly, become a purchaser of any asset of the company in liquidation;
  - (b) must not receive out of the assets of the company in liquidation any payment for services by the member in connection with the administration of the assets of the company;
  - (c) must not receive out of the assets of the company in liquidation any payment for goods supplied by the member to the liquidator for, or on account of, the company.



- (3) The Court may set aside a transaction in breach of subsection (1) and may make other orders in relation to the breach as it sees fit, including orders for the recovery of assets and the repayment of any benefit or payment received by the member.
- (4) The Court may grant leave under this section on any conditions that it thinks fit.
- (5) The Court must not grant leave for the payment for services by a member unless the services are of a special nature and the Court must specify in its order the nature of the services for which payment may be made.

#### *Creditors' claims*

#### **231 Claims process**

- (1) A claim by a creditor in the liquidation of a company is—
  - (a) preferential claim; or
  - (b) a non-preferential claim.
- (2) A claim is made according to the procedure set out in Schedule 9.

#### **232 Order in which claims are paid**

- (1) The liquidator must pay the preferential claims before non-preferential claims, that is, the liquidator must—
  - (a) first pay out of the assets of the company the expenses, fees, and claims set out in Part 4 of Schedule 9; and
  - (b) pay them to the extent and in the order of priority specified in Part 4 of Schedule 9.
- (2) The assets of the company that remain after paying the preferential claims must be applied in payment of all other claims, that is, the non-preferential claims.
- (3) The non-preferential claims rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment abates rateably among them.

#### **233 Other rules relating to claims**

The other rules relating to claims are set out in Schedule 9.

#### *Final report*

#### **234 Final report and accounts**

- (1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator must—
  - (a) prepare and send the documents set out in subsection (2) to every creditor whose claim has been admitted and to every shareholder; and
  - (b) (using the prescribed form) file those documents with the Registrar for registration.
- (2) The documents are—
  - (a) the final report and statement of realisation and distribution in respect of the liquidation; and
  - (b) a statement that—

- (i) all known assets have been disclaimed, or realised, or distributed without realisation; and
  - (ii) all proceeds of realisation have been distributed; and
  - (iii) the company is ready to be removed from the Cook Islands register; and
- (c) a summary of the applicable grounds on which a creditor or shareholder may object to the removal of the company from the Cook Islands register under section 341.

**235 Dispensing with final report and accounts**

- (1) On the application of the liquidator, the Court may make an order—
- (a) exempting the liquidator from compliance with section 234 (Final report and accounts); or
  - (b) modifying the application of all or part of section 234 in relation to the liquidation.
- (2) The Court may make the order on any conditions that it thinks fit.

*Termination of liquidation*

**236 Termination of liquidation**

- (1) At any time after the appointment of a liquidator, the Court may make an order terminating the liquidation of the company if the Court considers that it is just and equitable to do so.
- (2) The following persons may apply for an order under subsection (1)—
- (a) the liquidator;
  - (b) a director;
  - (c) a shareholder;
  - (d) a creditor;
  - (e) the Registrar.
- (3) The Court may require the liquidator to provide a report to the Court on any facts or matters relevant to the application.
- (4) If the Court makes an order, the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or any other date specified in the order.
- (5) The Court may, on making the order or at any later time, make any other order that it thinks fit in relation to the termination of the liquidation.

**237 Notice of termination of liquidation**

- (1) The applicant for an order terminating the liquidation of a company must, within 10 working days after the order was made, file (using the prescribed form) a notice of the order with the Registrar for registration.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

*Completion of liquidation***238 Completion of liquidation**

The liquidation of a company is completed when the liquidator,—

- (a) complies with section 234(1)(b); or
- (b) files with the Registrar for registration—
  - (i) a copy of any order made under section 235(1)(a); or
  - (ii) a copy of any order made under section 235(1)(b) together with any documents required to comply with the order.

**239 Liquidation Surplus Account**

(1) After completion of the liquidation,—

- (a) the liquidator must pay to the Registrar any money representing unclaimed assets of the company standing to the credit of the liquidator; and
- (b) the Registrar must hold the money on trust and deal with it in accordance with this section.

(2) Twelve months after the date on which the money is paid, the Registrar must—

- (a) deduct any amount required to meet the claim of any person that is established in the 12-month period; and
- (b) pay the balance into an account entitled the “Liquidation Surplus Account” for distribution in accordance with this section.

(3) Money held in the Liquidation Surplus Account—

- (a) may be invested only in a bank that is licensed as a banking business under the Banking Act 2011, and the interest earned may be distributed in accordance with this section;
- (b) is not subject to the Unclaimed Moneys Act 1970.

(4) The Registrar may, from the Liquidation Surplus Account,—

- (a) pay or distribute money to any person entitled to payment or distribution in the liquidation of a company of any money representing the surplus assets of the company that has been paid into the Liquidation Surplus Account; or
- (b) subject to any conditions that the Registrar may impose, pay costs incurred in the course of the liquidation of a company for the purpose of proceedings brought by the company (including the costs of legal or other expert advice, or the costs of any expert witness), if the Registrar is satisfied that it is fair and reasonable for those costs to be met out of the Liquidation Surplus Account.

(5) In making a payment under this section, the Registrar is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

*Liquidation of assets of overseas company***240 Court may order liquidation of assets of overseas company**

- (1) An application may be made to the Court for an order for the liquidation of the assets in the Cook Islands of an overseas company in accordance with this Part subject to the modifications and exclusions set out in Schedule 13.
- (2) The Court may make the order whether or not the overseas company—
  - (a) is registered under section 361; or
  - (b) has given public notice of an intention to cease to carry on business in the Cook Islands in accordance with section 365(1)(a); or
  - (c) has given notice to the Registrar of the date on which it will cease to carry on business in the Cook Islands in accordance with section 365(1)(b); or
  - (d) has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

*Pooling of assets and joint liquidation***241 Pooling of assets of related companies**

- (1) On the application of a person listed in subsection (2), the Court may, if it considers that it is just and equitable, order that—
  - (a) a company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation;
  - (b) if 2 or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were 1 company to the extent that the Court orders and subject to any terms and conditions that the Court imposes.
- (2) The persons who may make the application are the liquidator, a creditor, or a shareholder of the company in liquidation or of 1 or more of the related companies in liquidation.
- (3) The Court may make any other order or give any directions to facilitate giving effect to an order under subsection (1) that it thinks fit.

**242 Guidelines for orders**

- (1) In deciding whether it is just and equitable to make an order under section 241(1)(a), the Court must consider the following—
  - (a) the extent to which the related company took part in the management of the company in liquidation;
  - (b) the conduct of the related company towards the creditors of the company in liquidation;
  - (c) the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company;
  - (d) any other matters that the Court considers relevant.
- (2) In deciding whether it is just and equitable to make an order under section 241(1)(b), the Court must consider the following—
  - (a) the extent to which any of the companies took part in the management of any of the other companies;



- (b) the conduct of any of the companies towards the creditors of any of the other companies;
  - (c) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies;
  - (d) the extent to which the businesses of the companies have been combined;
  - (e) any other matters that the Court considers relevant.
- (3) Reliance by the creditors of a company in liquidation on the fact that another company was, or is, related to it is not a ground for making an order under section 241(1).

### Subpart 5—Office of liquidator

#### *Vacancy*

#### **243 Vacancy**

- (1) The office of liquidator becomes vacant if the liquidator—
- (a) resigns in accordance with section 244; or
  - (b) dies; or
  - (c) is removed by the Court; or
  - (d) is or becomes disqualified to act as liquidator.
- (2) Except in the case of resignation, the person vacating office or his or her personal representative must without delay file a notice (using the prescribed form) of the vacancy with the Registrar.
- (3) If, as a result of vacancy, no person is acting as liquidator, the Registrar may appoint a person to act as liquidator until a successor is appointed by the Court.

#### **244 Resignation**

A liquidator may resign by—

- (a) appointing another person as his or her successor; and
- (b) filing a notice (using the prescribed form) of that appointment with the Registrar for registration.

#### **245 Court may review appointment of successor**

- (1) On the application of a person listed in subsection (2), the Court may review the appointment of a successor to a liquidator and instead appoint as liquidator any person qualified for appointment.
- (2) The persons who may make the application are—
- (a) the company;
  - (b) a shareholder or other entitled person;
  - (c) a director or creditor.

#### **246 Appointment of successor by Court**

- (1) On the application of a person listed in subsection (3), the Court may appoint a liquidator if a vacancy has occurred and—
- (a) has not been filled; or
  - (b) has been filled by an appointment by the Registrar.

- (2) The Court may appoint as liquidator any person qualified for appointment.
- (3) The following persons may apply—
  - (a) the company:
  - (b) a shareholder or other entitled person:
  - (c) a director or creditor.
- (4) A liquidator appointed under this section must, within 10 working days after being appointed or being notified of the appointment, file a notice (using the prescribed form) of the appointment with the Registrar for registration.

**247 Duty to assist successor**

- (1) A person vacating the office of liquidator must, where practicable, provide the information and give the assistance to his or her successor as the successor reasonably requires in taking over the duties of liquidator.
- (2) A person vacating the office of liquidator must without delay, or within any reasonable time specified by his or her successor, deliver to the successor the following items that are in his or her possession or under his or her control—
  - (a) any company records or documents:
  - (b) any other property of the company:
  - (c) all claims:
  - (d) the liquidation accounts, records, and documents.

*Remuneration*

**248 Remuneration**

- (1) A liquidator appointed by a resolution or directors or shareholders is entitled to charge reasonable remuneration for carrying out his or duties and exercising his or her powers as liquidator.
- (2) Unless the Court orders otherwise, a liquidator appointed by the Court is entitled to charge remuneration—
  - (a) of an amount fixed by regulations made under this Act; or
  - (b) at the rate or rates prescribed by regulations made under this Act.
- (3) A liquidator's remuneration and expenses are payable out of the assets of the company but the Court may approve payment of remuneration and expenses from another specific source.

Subpart 6—Duties of liquidator

**249 Principal duty of liquidator**

The principal duty of a liquidator of a company is, properly and efficiently,—

- (a) to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and
- (b) if there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets,—
  - (i) in accordance with the company's constitution; or

- (ii) if the constitution makes no provision for the distribution of surplus assets, in accordance with section 21(2)(c).

**250 Other duties**

Without limiting section 249, a liquidator has the other duties and functions specified in this Act.

**251 Liquidator not required to act in relation to property subject to charge or security interest**

- (1) Despite anything in this Act, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge or security interest.
- (2) However, subsection (1) does not apply if the charge or security interest is surrendered or taken to be surrendered or redeemed.

**252 Duty to consider views of creditors and shareholders**

- (1) The liquidator must consider—
  - (a) the views of the shareholders expressed in a resolution at the meeting held to appoint a liquidator;
  - (b) the views of creditors set out in a resolution passed at the first meeting of creditors;
  - (c) the views of creditors or shareholders set out at a meeting of creditors or shareholders called by the liquidator;
  - (d) the views of any liquidation committee given in writing to the liquidator.
- (2) Nothing in this section limits or prevents a liquidator from exercising his or her discretion in carrying out his or her functions and duties under this Act.

**253 Duty in relation to accounts**

- (1) The liquidator must keep accounts and records of the liquidation (the **liquidation accounts and records**).
- (2) The liquidator must permit inspection of the liquidation accounts and records, and of the company accounts and records (the **company accounts and records**), by—
  - (a) a liquidation committee, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
  - (b) if the Court so orders, a creditor or shareholder.
- (3) The liquidator must retain the liquidation accounts and records and the company accounts and records for not less than 1 year after completion of the liquidation.
- (4) However, the Registrar may, whether before or after the completion of the liquidation,—
  - (a) authorise the disposal of any accounts and records; and
  - (b) require any accounts or records to be retained for longer than 1 year after the completion of the liquidation.

**254 Duties in relation to funds**

- (1) A liquidator must deposit any funds received on behalf of a company in liquidation in a bank account in the name of the company or in a trust account with a bank to be held on trust for the benefit of the company.



- (2) A liquidator may invest funds held on behalf of or to the credit of the company and not required for the time being to meet creditors' claims only in the form of—
- (a) bank deposits; or
  - (b) securities issued by the Government of the Cook Islands; or
  - (c) any other investment approved by the Court.

**255 Duties in relation to company transactions**

- (1) Except with the leave of the Court, —
- (a) a liquidator must not, directly or indirectly, become a purchaser of any asset of the company in liquidation;
  - (b) must not purchase goods or services for the purposes of the liquidation from any person whose connection with the liquidator would result in a direct or indirect benefit to the liquidator as a result of the purchase.
- (2) The Court may set aside a transaction in breach of subsection (1) and may make other orders in relation to the breach as it sees fit, including orders for the recovery of assets and the repayment of any benefit by the liquidator.
- (3) The Court may grant leave under subsection (1) on any conditions that it sees fit.

**Subpart 7—Powers of liquidator**

*General powers*

**256 Powers of liquidator**

A liquidator has the powers—

- (a) necessary to carry out the functions and duties of a liquidator under this Act; and
- (b) conferred on a liquidator by this Act.

**257 Liquidators must act jointly unless otherwise stated**

If 2 or more persons are appointed as liquidators of a company, they must act jointly unless the resolution of shareholders or directors or the order of the Court appointing them states that they may exercise their powers individually.

*Specific powers*

**258 Liquidator has specific powers set out in Schedule 11**

Without limiting section 256, a liquidator has the specific powers set out in Schedule 11.

*Production of documents and other information*

**259 Liquidator may require production of company documents or records**

A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator any documents or records of the company in that person's possession or under that person's control, as the liquidator requires.

**260 Liquidator may require provision of information**

- (1) A liquidator may, from time to time, by notice in writing (the **liquidator's notice**), require any of the person listed in subsection (2) to—
  - (a) attend on the liquidator at any reasonable time or times, and at the place, specified in the liquidator's notice (and this may include attendance at a meeting of creditors);
  - (b) provide the liquidator with information requested by the liquidator about the business, accounts, or affairs of the company;
  - (c) be questioned on oath or affirmation by the liquidator or a lawyer acting for the liquidator about any matter relating to the business, accounts, or affairs of the company;
  - (d) assist in the liquidation to the best of the person's ability.
- (2) The persons referred to in subsection (1) are—
  - (a) a director or former director of the company;
  - (b) a shareholder of the company;
  - (c) a person who was involved in the promotion or formation of the company;
  - (d) a current employee of the company;
  - (e) a past employee of the company;
  - (f) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company;
  - (g) a person who is acting, or who has at any time acted, as a lawyer for the company.
- (3) The liquidator may pay the reasonable travel and other expenses incurred by a person listed in subsection (2)(e), (f), or (g) in complying with the liquidator's notice.
- (4) On the application of a person listed in subsection (2)(e), (f), or (g), the Court may order the liquidator to pay that person reasonable remuneration and travel and other expenses incurred in complying with the liquidator's notice.
- (5) A person listed in subsection (2)(e), (f), or (g) may not refuse to comply with the liquidator's notice by reason only that—
  - (a) an application under subsection (4) has yet to be made or determined; or
  - (b) the person has not been paid in advance the remuneration or expenses to which he or she is entitled; or
  - (c) the liquidator has not paid that person travel or other expenses previously incurred.

**261 Examination by liquidator**

- (1) A liquidator, or a lawyer acting for a liquidator, may administer an oath to, or take the affirmation of, a person required to be questioned under section 260(1)(c).
- (2) A person required to be questioned under section 260(1)(c) is entitled to be represented by a lawyer.
- (3) A liquidator or lawyer acting for a liquidator who questions a person under section 260(1)(c) must ensure that the questions and answers are recorded in writing or by means of a sound recording, video and sound recording, or other similar means.

**262 Court may order person to comply with requirement under section 259 or 260**

On the application of the liquidator, the Court may order a person who has failed to comply with a requirement of a liquidator under section 259 or 260 to comply with that requirement.

**263 Court process for examination and production of documents**

(1) On the application of the liquidator, the Court may order a person (P) to whom section 260 applies to—

- (a) attend the Court and be questioned on oath or affirmation by the Court or the liquidator on any matter relating to the business, accounts, or affairs of the company;
- (b) produce any documents relating to the business, accounts, or affairs of the company in P's possession or under P's control.

(2) If P is questioned by the Court or the liquidator under subsection (1)(a),—

- (a) the questions and answers must be recorded in writing; and
- (b) the person questioned must sign the record.

(3) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under this Part or under section 106.

**264 Restriction on enforcement of lien over company**

(1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over the documents of the company.

(2) If the lien arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company under Part 4 of Schedule 9 to the extent of \$500 or such greater amount as may be prescribed at the commencement of the liquidation.

(3) Nothing in this section applies to a company if—

- (a) the liquidator was appointed by the directors or shareholders under section 204(1); and
- (b) the directors passed a resolution of the kind referred to in section 222(1)(b); and
- (c) section 222(2) does not apply in relation to the company.

**265 Documents held by receiver**

(1) A receiver is not required to deliver to a liquidator under section 259 any document that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to the property of a company in liquidation.

(2) The liquidator may, from time to time, by notice in writing, require the receiver to—

- (a) make any documents available for inspection by the liquidator at any reasonable time or times; and
- (b) provide the liquidator with copies of any documents or extracts from them.

(3) The liquidator may take copies of any documents made available or extracts from them.

- (4) The liquidator must pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

**266 Document held by secured creditor**

- (1) A person must deliver a document to a liquidator under section 259 even though possession of the document creates a security interest in property of a company.
- (2) Production of the document to the liquidator does not prejudice the existence or priority of the security interest, and the liquidator must make the document available to the person entitled to it for the purpose of dealing with, or realising, the security interest.

**267 Self-incrimination**

- (1) A person is not excused from answering a question in the course of being questioned under section 261 (Examination by liquidator) or 263 (Court process for examination and production of documents) on the ground that the answer may incriminate or tend to incriminate that person.
- (2) The testimony of the person questioned is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

*Enforcement of shareholder liability*

**268 Power to enforce liability of shareholders and former shareholders**

A liquidator may enforce the liability of a shareholder or former shareholder in respect of any shares issued to the shareholder or former shareholder.

*Disclaimer of onerous property*

**269 Meaning of onerous property**

For the purposes of sections 270 to 272, **onerous property** means—

- (a) an unprofitable contract; or
- (b) property of a company that—
- (i) is unsaleable; or
  - (ii) is not readily saleable; or
  - (iii) may give rise to a liability to pay money or perform an onerous act.

**270 Power to disclaim onerous property**

- (1) A liquidator may disclaim onerous property even though the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) A liquidator who disclaims onerous property must, within 10 working days after the disclaimer, give notice in writing of the disclaimer to any person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

**271 Effect of disclaimer**

- (1) A disclaimer—
- (a) brings to an end, on and from the date of the disclaimer, the rights, interests, and liabilities of the company in relation to the property disclaimed:

- (b) does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.
- (2) A person who suffers loss or damage as a result of a disclaimer under section 270 may—
  - (a) claim as a creditor of the company for the amount of the loss or damage, taking account of any order made by the Court under paragraph (b):
  - (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (3) The Court may make an order under subsection (2)(b) if it is satisfied that it is just and equitable that the property should be vested in the applicant.

**272 Liquidator may be required to elect whether to disclaim**

- (1) A person whose rights would be affected by the disclaimer of onerous property may give the liquidator notice in writing requiring the liquidator to elect whether to disclaim the property before the close of a date specified in the notice (the **specified date**).
- (2) The specified date must be at least 20 working days after the date on which the notice is received by the liquidator.
- (3) The liquidator is not entitled to disclaim the property after the close of the specified date.

**Subpart 8—Court supervision**

**273 Court may make orders and give directions in relation to liquidation**

- (1) On the application of a person listed in subsection (2), the Court may do any of the following—
  - (a) give directions in relation to any matter arising in the liquidation:
  - (b) confirm, reverse, or modify an act or decision of the liquidator:
  - (c) order an audit of the liquidator's accounts:
  - (d) order the liquidator to produce the liquidation accounts and records for audit and to provide the auditor with the information about the conduct of the liquidation that the auditor requests:
  - (e) for any period, review or fix the remuneration of the liquidator at a level that is reasonable in the circumstances:
  - (f) order the liquidator to repay remuneration to the extent that the Court finds that it is unreasonable in the circumstances:
  - (g) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property:
  - (h) make an order concerning the retention or the disposition of the liquidation accounts and records or the company accounts and records.
- (2) The persons who may make the application are—
  - (a) the liquidator:
  - (b) a liquidation committee:
  - (c) with the leave of the Court, a creditor, shareholder, or director of the company in liquidation.
- (3) The powers of the Court under subsection (1)—



- (a) are in addition to any other powers the Court may exercise in its jurisdiction in relation to liquidators under this Act; and
- (b) may be exercised—
  - (i) in relation to a matter occurring either before or after the liquidation commenced or the removal of the company from the Cook Islands register; and
  - (ii) whether or not the liquidator has ceased to act as liquidator when the application or order is made.

#### **274 Liquidator's defence of acting in accordance with Court direction**

- (1) A liquidator who acts in accordance with a direction of the Court has a defence in relation to anything done or not done in accordance with that direction.
- (2) However, on the application of any person, the Court may order that, because of the circumstances in which the direction was obtained, the liquidator does not have the defence given by subsection (1).

#### **275 Compliance order**

- (1) On the application of a person listed in section 277(1), the Court may, if satisfied that there is a failure of liquidator compliance,—
  - (a) relieve the liquidator of the duty to comply wholly or in part; or
  - (b) order the liquidator to comply to the extent specified in the order (which may extend the time for compliance).
- (2) An order to comply is made without prejudice to any other remedy that may be available in relation to the failure to comply.
- (3) If a liquidator fails to comply with an order made under subsection (1)(b), the Court may make an order removing the liquidator from office.
- (4) In this section and in sections 276 and 277, **failure of liquidator compliance** means that a liquidator has failed, or is failing, to comply with a relevant duty arising—
  - (a) under this Act or any other enactment or law; or
  - (b) any order or direction of the Court (other than an order made under subsection (1)(b)).

#### **276 Prohibition order**

- (1) This section applies if the Court is satisfied that a person (**P**) is unfit to act as liquidator because of—
  - (a) his or her persistent failures of liquidator compliance; or
  - (b) the seriousness of his or her failure of liquidator compliance.
- (2) On the application of a person listed in section 277(1), the Court must prohibit **P**, for a period not exceeding 5 years, from—
  - (a) acting as a liquidator in a current or other liquidation; and
  - (b) acting as a receiver in a current or other receivership.
- (3) For the purposes of subsection (1)(a), evidence of **P**'s persistent failures of liquidator compliance includes, in the absence of special reasons to the contrary,—

- (a) evidence that, on 2 or more occasions within the preceding 5 years, the Court has made a compliance order under section 275(1)(b) in respect of P;
  - (b) evidence that, on 2 or more occasions within the preceding 5 years, an application for a compliance order under section 275(1)(b) has been made in respect of P and that in each case P complied after the application was made and before the hearing.
- (4) The applicant for an order made under this section must file a copy of the order with the Registrar within 10 working days after the order is made.

**277 Person who may apply for compliance or prohibition orders**

- (1) The persons who may make an application under section 275(1) or (3) or 276(2) are—
  - (a) the liquidator;
  - (b) a liquidation committee;
  - (c) a receiver appointed in relation to the property of the company in liquidation;
  - (d) a creditor, shareholder, or director of the company in liquidation;
  - (e) the Registrar.
- (2) A person other than the liquidator must not apply for an order under section 275(1)(b) unless—
  - (a) notice of the failure of liquidator compliance has been served on the liquidator not less than 5 working days before the date of the application; and
  - (b) as at the date of the application, there is a continuing failure of liquidator compliance.

**Subpart 9—Voidable transactions**

**278 Definition of time periods**

In this subpart,—

**2-year period** means—

- (a) the period of 2 years counted back from the close of the day on which liquidation commences; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 2 years counted back from the close of the day on which the application was filed in the Court plus the period counted forward from that day until the time and date of the order; and
- (c) in the case of the appointment of a liquidator by a resolution of the shareholders or the directors subsequent to an application to the Court, the period of 2 years counted back from the close of the day on which the application was filed in the Court plus the period counted forward from that day until the date and time of the appointment

**1-year period** has the same meaning as 2-year period except that “1 year” must be substituted for “2 years”

**3-year period** has the same meaning as 2-year period except that “3 years” must be substituted for “2 years”



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

*Insolvent transaction*

**279 Insolvent transaction voidable**

- (1) A transaction by a company is voidable by a liquidator if it is—
  - (a) an insolvent transaction; and
  - (b) entered into otherwise than in the ordinary course of business; and
  - (c) entered into within the 2-year period.
- (2) An insolvent transaction is a transaction by a company that—
  - (a) is entered into at a time when the company is unable to pay its due debts; and
  - (b) enables another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company’s liquidation.
- (3) In this section, **transaction** means any of the following steps by the company—
  - (a) conveying or transferring the company’s property;
  - (b) giving a security in the property of the company;
  - (c) incurring an obligation;
  - (d) undergoing an execution process;
  - (e) paying money (including paying money in accordance with a judgment or an order of a court);
  - (f) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.
- (4) A transaction that is entered into within the 6-month period is presumed, unless the contrary is proved, to be entered into—
  - (a) at a time when the company is unable to pay its due debts; and
  - (b) otherwise than in the ordinary course of business.

**280 Intent or purpose of company must be disregarded**

- (1) In determining whether a transaction took place in the ordinary course of business, no account is to be taken of any intent or purpose of the company to—
  - (a) enable another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company’s liquidation; or
  - (b) reduce or cancel the liability, whether in whole or in part, of another person in respect of a debt incurred by the company; or
  - (c) contribute towards the satisfaction of the liability, whether in whole or in part, of another person in respect of a debt incurred by the company.
- (2) However, subsection (1) does not apply if the other person knew that it was the intent or purpose of the company to do any of the things listed in subsection (1)(a), (b), or (c).

**281 Procedure for setting aside insolvent transaction**

The procedure for setting aside an insolvent transaction is the procedure set out in Schedule 12.

*Voidable security***282 Voidable security**

- (1) A security in any property or undertaking of a company is voidable by the liquidator if—
- (a) the security was given within the 1-year period; and
  - (b) immediately after the security was given, the company was unable to pay its due debts.
- (2) Unless the contrary is proved, a company giving a security within the 6-month period is presumed to have been unable to pay its due debts immediately after giving the security.

**283 Exception for money actually advanced, etc**

Section 282 does not apply if the security secures any of the following things done at the time of, or immediately after, the giving of the security—

- (a) money actually advanced or paid to the company;
- (b) the actual price or value of property sold or supplied to the company;
- (c) valuable consideration given in good faith by the security holder.

**284 Exception for substituted security**

- (1) Section 282 does not apply if the security is in substitution for a security given before the 1-year period.
- (2) However, the exception in subsection (1) does not apply to the extent that—
- (a) the amount secured by the substituted security exceeds the amount secured by the existing security; or
  - (b) the value of the property subject to the substituted security at the date of the substitution exceeds the value of the property subject to the existing security at that date.

**285 Exception for security securing unpaid purchase price**

- (1) Section 282 does not apply if the security secures the unpaid purchase price of property (whether or not the security is given over that property) if the instrument creating the security is executed—
- (a) not later than 30 days after the sale of the property; or
  - (b) in the case of the sale of an estate or interest in land, not later than 30 days after the final settlement of the sale.

**286 Payments received by secured party**

- (1) For the purposes of sections 283 and 285, if a security was given by the company within the 1-year period, all payments received by the security holder after it was given are taken to have been appropriated so far as may be necessary towards—
- (a) repayment of money actually advanced or paid by the security holder to the company; or

- (b) payment of the actual price or value of property sold by the security holder to the company on or after the giving of the security; or
- (c) payment of any other liability of the company to the security holder in respect of any other valuable consideration given in good faith on or after the giving of the security.

**287 Procedure for setting aside voidable security**

The procedure for setting aside a voidable security is the procedure set out in Schedule 12.

*Transactions under or over value*

**288 Recovery of profit in transaction at undervalue**

- (1) Under subsection (2) the liquidator of a company may recover from a person **(X)** the amount **C** in the formula  $A - B = C$  where—
  - (a) **A** is the value that **X** received from the company under a transaction to which the company was or is a party; and
  - (b) **B** is the value (if any) that the company received from **X** under the transaction.
- (2) The liquidator may recover the difference in value (that is, **C** in the formula in subsection (1)) from **X** if—
  - (a) the company entered into the transaction within the 2-year period; and
  - (b) either—
    - (i) the company was unable to pay its due debts when it entered into the transaction; or
    - (ii) the company became unable to pay its due debts as a result of entering into the transaction.
- (3) For the purposes of this section, **transaction** has the same meaning as in section 279(3).

**289 Acquisition for excessive consideration**

- (1) This section applies if—
  - (a) a company has acquired a business, property, or services (the **acquisition**) within the 3-year period; and
  - (b) the acquisition was acquired from a person listed in subsection (2); and
  - (c) the consideration given by the company for the acquisition exceeded its value at the time it was made.
- (2) The liquidator may recover the difference between the consideration given for the acquisition and the value at the time it was made from the person from whom it was acquired if that person was, at the time of the acquisition, any of the following—
  - (a) a director of the company;
  - (b) a nominee or relative of a director;
  - (c) a trustee for a director or for a relative of a director;
  - (d) a person, or a relative of a person, who controlled the company;
  - (e) a company controlled by a person listed in paragraph (a), (b), or (c):

- (f) a related company.
- (3) For the purposes of this section and sections 290 and 291,—
  - (a) the value of a business or property includes the value of any goodwill attaching to the business or property;
  - (b) without limiting the circumstances in which a company may be taken to be controlled by a person, a person controls a company if that person may, by exercise of a power exercisable by that person (with or without the consent or concurrence of any other person), appoint or remove all the directors of the company, or any number of directors as together hold a majority of voting rights at a meeting of directors.

**290 Disposal for inadequate consideration**

- (1) This section applies if—
  - (a) a company has disposed of a business, property, or services (the **disposition**) within the 3-year period; and
  - (b) the disposition was made to a person listed in subsection (2); and
  - (c) the value of the business, property, or services exceeded the consideration received by the company for the disposal.
- (2) The liquidator may recover the difference between the consideration received for the disposal and the value at the time it was made from the person to whom it was disposed if that person was, at the time of the disposition,—
  - (a) a director of the company;
  - (b) a nominee or relative of a director;
  - (c) a trustee for a director or for a relative of a director;
  - (d) a person, or a relative of a person, who controlled the company;
  - (e) a company controlled by a person listed in paragraph (a), (b), or (c);
  - (f) a related company.

*Court may set aside security*

**291 Court may set aside security over company property**

- (1) On the application of the liquidator, the Court may, as against the liquidator, set aside a security given by the company over any of its property or undertaking if—
  - (a) the company is unable to meet all its debts; and
  - (b) the security holder is a person listed in subsection (2); and
  - (c) the Court considers that it is just and equitable to set the security aside having regard to the considerations set out in subsection (3).
- (2) A person referred to in subsection (1)(b) is any of the following at the time when the security was given—
  - (a) a director of the company;
  - (b) a nominee or relative of a director;
  - (c) a trustee for a director or for a relative of a director;
  - (d) a person, or a relative of a person, who controlled the company;
  - (e) a company controlled by a person listed in paragraph (a), (b), or (c):

- (f) a related company.
- (3) The considerations referred to in subsection (1)(c) are—
  - (a) the circumstances in which the security was given; and
  - (b) the conduct of the security holder in relation to the affairs of the company; and
  - (c) any other relevant circumstances.
- (4) The Court may make any other orders that it thinks proper for giving effect to an order under this section.
- (5) Nothing in any enactment relating to the registration of an interest or estate in land restricts the operation of this section.

**292 Section 291 does not apply to certain securities**

Section 291 does not apply to a security that has been transferred by the person (A) who was the original security holder and has been purchased by another person (whether or not from A) if—

- (a) at the time of purchase, the purchaser was not a person listed in section 291(2); and
- (b) the purchase was made in good faith and for valuable consideration.

**Subpart 10—Liability of directors and others**

**293 Liability if proper accounting records not kept**

- (1) This section applies if—
  - (a) a company in liquidation is unable to pay all its debts; and
  - (b) the company has failed to comply with—
    - (i) section 158 (which relates to the keeping of accounting records); or
    - (ii) section 160 (which relates to the preparation of financial statements); and
  - (c) the Court considers that—
    - (i) the failure to comply has—
      - (A) contributed to the company's inability to pay all its debts; or
      - (B) resulted in substantial uncertainty as to the company's assets and liabilities; or
      - (C) substantially impeded the orderly liquidation; or
    - (ii) for any other reason it is proper to make a declaration under subsection (2).
- (2) On the application of the liquidator, the Court may declare that any 1 or more of the directors or former directors of the company are personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company.
- (3) The Court may give any direction it thinks fit for giving effect to the declaration.
- (4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence.



**294 Defence to liability under section 293**

The Court must not make a declaration under section 293 in relation to a person if the Court considers that the person—

- (a) took all reasonable steps to secure compliance by the company with the applicable provision referred to in section 293(1)(b); or
- (b) had reasonable grounds to believe, and did believe, that a competent and reliable person was responsible for ensuring compliance with that provision and was in a position to discharge that responsibility.

**295 Court may require repayment of money or return of property**

(1) This section applies if it appears to the Court that a person (P) listed in subsection (3) has—

- (a) misapplied, or retained, or become liable or accountable for, money or property of a company; or
- (b) been guilty of negligence, default, or breach of duty or trust in relation to a company.

(2) On the application of the liquidator or a creditor or shareholder, the Court may—

- (a) inquire into the conduct of P; and
- (b) order P to—
  - (i) repay or restore the money or property or any part of it with interest at a rate that the Court thinks just; or
  - (ii) contribute such sum to the assets of the company by way of compensation as the Court thinks just; or
- (c) if the application is made by a creditor, order that person to pay or transfer to the creditor the money or property or any part of it with interest at a rate that the Court thinks just.

(3) The persons referred to in subsection (1) are—

- (a) a past or present director of the company;
- (b) a manager or officer of the company;
- (c) a liquidator or receiver of the company.

(4) This section has effect even though the conduct may constitute an offence.

**Part 15****Company receiverships****Subpart 1—General****296 What this Part does**

This Part sets out the law relating to the conduct of company receiverships.

**297 Outline of company receivership**

(1) A receiver is appointed by a secured creditor of a company to take control of the property of the company that is subject to the creditor's security.

(2) In this Part, unless the context otherwise requires,—

**company** means the company in respect of whose property a receiver is appointed



**property in receivership** means the property of the company in respect of which a receiver is appointed.

### Subpart 2—Appointment of receiver

#### **298 Who may be appointed receiver**

- (1) Subject to subsection (3), none of the following persons may be appointed or act as the receiver of a company—
  - (a) a corporation:
  - (b) a person who is under 21 years of age:
  - (c) a creditor of the company:
  - (d) a person who is, or who has within the 2 years immediately before the commencement of the receivership, been—
    - (i) a director or employee of the company:
    - (ii) a director or employee of a mortgagee of the property in receivership:
  - (e) an undischarged bankrupt in any jurisdiction:
  - (f) a person in respect of whom an order is in force under the Cooks Islands mental health legislation:
  - (g) a person who is prohibited by an order under section 276 from being or continuing as a liquidator:
  - (h) a person who is prohibited by an order under section 332 from being or continuing as a receiver:
  - (i) a person who is prohibited from being a director or promoter, or being concerned in or taking part in the management, of a company under section 104:
  - (j) a person who is disqualified from acting as a receiver by the document that confers the power to appoint a receiver.
- (2) A person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.
- (3) The appointment of a person as a receiver without the written consent of that person is of no effect.
- (4) On the application of a person who is or becomes disqualified to become or remain a receiver under subsection (1)(b) to (j), the Court may order that the person may be appointed and act, or may continue to act, as a receiver, despite being disqualified.

#### **299 Appointment of receiver under document**

- (1) A receiver may be appointed in respect of the property of a company by, or in the exercise of a power conferred by, a document to which the company is a party.
- (2) The appointment of a receiver in the exercise of a power conferred by a document must be in writing.
- (3) A receiver appointed under subsection (1) is the agent of the company unless the terms of appointment expressly provide otherwise.

- (4) Appointment under subsection (1) is in addition to appointment by the Court.

**300 Extent of power to appoint receiver**

- (1) A power conferred by a document to appoint a receiver includes, unless the document expressly provides otherwise, the power to appoint—
- (a) 2 or more receivers;
  - (b) an additional receiver;
  - (c) a receiver to succeed a receiver who has vacated office.
- (2) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the terms of appointment expressly provide otherwise.

**301 Notice of appointment**

- (1) A receiver must, within 5 working days after appointment,—
- (a) give written notice of appointment to the company; and
  - (b) give public notice of appointment, including—
    - (i) the receiver's full name; and
    - (ii) the date of appointment; and
    - (iii) the receiver's address and contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours; and
    - (iv) a description of the property in receivership; and
  - (c) file a copy of the public notice (using the prescribed form) with the Registrar.
- (2) If applicable, a notice under this section must also state that the receiver is—
- (a) appointed as an additional receiver;
  - (b) appointed as a replacement receiver.
- (3) A receiver who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

**302 Notice of receivership**

- (1) A company or receiver who, in the course of a receivership, issues a document on which the name of the company appears must ensure that the document clearly states that a receiver has been appointed.
- (2) A failure to comply with subsection (1) does not affect the validity of the document.
- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

**Subpart 3—Vacancy**

**303 Vacancy**

The office of receiver becomes vacant if the receiver—

- (a) resigns; or
- (b) dies; or
- (c) is removed by the Court; or

(d) is or becomes disqualified to act as receiver.

**304 Resignation**

- (1) A receiver resigns by giving written notice of not less than 5 working days to the person who appointed him or her.
- (2) A receiver appointed by the Court resigns by giving written notice of not less than 5 working days to the Registrar of the Court.

**305 Notice of resignation or disqualification**

- (1) If a receiver is disqualified, he or she must without delay give written notice of the resulting vacancy to the person who appointed him or her.
- (2) If a receiver resigns or is disqualified, he or she—
  - (a) must without delay give public notice of the resulting vacancy; and
  - (b) must, within 5 working days after the vacancy occurred, file a notice (using the prescribed form) of the vacancy with the Registrar.
- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

**306 Duty to assist successor**

- (1) A person vacating the office of receiver must, where practicable, provide the information and give assistance in the conduct of the receivership to his or her successor as that person reasonably requires.
- (2) On the application of a replacement receiver, the Court may make any order that the Court considers necessary or desirable to facilitate the performance of the receiver's duties.

**Subpart 4—Duties of receiver**

**307 General duties**

- (1) A receiver must exercise his or her powers in good faith and for a proper purpose.
- (2) A receiver must exercise his or her powers in a manner that he or she believes on reasonable grounds to be in the best interests of the person in whose interests he or she was appointed.
- (3) To the extent consistent with subsections (1) and (2), a receiver must exercise his or her powers with reasonable regard to the interests of—
  - (a) the company; and
  - (b) persons claiming, through the company, interests in the property in receivership; and
  - (c) unsecured creditors of the company; and
  - (d) sureties who may be called upon to fulfil obligations of the company.
- (4) If a receiver appointed under a document acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver—
  - (a) is not in breach of the duty referred to in subsection (2); but
  - (b) is still liable for breach of the duty referred to in subsection (1) or (3).

- (5) Nothing in this section limits section 308 (Duty of receiver disposing of property in receivership).

**308 Duty of receiver disposing of property in receivership**

- (1) In disposing of the property in receivership, a receiver owes a duty to the persons listed in subsection (2) to act in a commercially reasonable manner.
- (2) The duty is owed to—
- (a) the company; and
  - (b) persons claiming, through the company, interests in the property in receivership; and
  - (c) unsecured creditors of the company; and
  - (d) sureties who may be called upon to fulfil obligations of the company.
- (3) A disposition is not commercially unreasonable merely because a better price could have been obtained by disposition at a different time or by a different method from the time and method adopted by the receiver.
- (4) In the case of personal property, a disposition of the property is commercially reasonable if the receiver disposes of the property—
- (a) in conformity with commercial practice among dealers in that type of property; or
  - (b) at a public auction held after public notice of not less than 5 working days.
- (5) If the Court has given directions for the disposition of the property in receivership, disposition in accordance with those directions is commercially reasonable, but nothing in this section requires that the directions of the Court be obtained.

**309 No defence or indemnity**

Despite any enactment or rule of law or anything contained in the document under which a receiver is appointed,—

- (a) it is not a defence to a breach of the duty in section 308 that the receiver was acting as the company's agent or under a power of attorney from the company;
- (b) a receiver is not entitled to compensation or indemnity from the property in receivership or the company for any liability for breach of the duty in section 308.

**310 Duty in relation to money**

A receiver must keep money relating to the property in receivership separate from—

- (a) the other money received in the course of, but not relating to, the receivership; and
- (b) other money held by or under the control of the receiver.

**311 Duty in relation to accounting records**

- (1) A receiver must at all times keep accounting records that correctly record and explain the receipts, expenditure, and other transactions relating to the property in receivership.



- (2) The receiver must retain the accounting records for not less than 7 years after the receivership ends.

**312 Duty to notify suspected offences, etc**

- (1) A receiver of a company must notify the Registrar in writing if the receiver considers that—
  - (a) the company or any director or officer of the company has committed an offence under this Act; or
  - (b) any director or officer of the company has been guilty of any default, breach of duty, or breach of trust in relation to the company.
- (2) A report made under subsection (1), and any communication between the receiver and the Registrar relating to that report, are protected by absolute privilege.
- (3) Nothing in subsection (1) imposes a duty on a receiver to investigate whether an offence has been committed.
- (4) A receiver who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

**313 Duty to prepare reports**

- (1) A receiver must prepare the following reports—
  - (a) an initial report that complies with clause 1 of Schedule 14:
  - (b) interim reports that comply with clause 2 of Schedule 14 for each 6-month period after appointment:
  - (c) a final report that complies with clause 3 of Schedule 14 at the end the receivership.
- (2) The receiver must prepare—
  - (a) the initial report within 2 months after appointment:
  - (b) an interim report within 2 months after the end of the period to which it relates:
  - (c) the final report within 2 months after the end of the receivership.
- (3) On the application of the receiver, the time for preparing a report may be extended by—
  - (a) the Court, in the case of a receiver appointed by the Court:
  - (b) the Registrar, in all other cases.
- (4) In this section and section 314, **receiver** includes the person who was receiver at the end of the receivership.
- (5) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

**314 Persons entitled to receive and inspect receiver's reports**

- (1) A receiver must send a copy of each report required under section 313,—
  - (a) within 5 working days after preparing it, to each of the following—
    - (i) the company:
    - (ii) the person in whose interests the receiver was appointed:
    - (iii) the Registrar (using the prescribed form):



- (iv) the Registrar of the Court, if the receiver was appointed by the Court:
- (b) to any of the following, within 15 working days of a written request for a copy and on payment of the reasonable cost of making and sending the copy—
  - (i) a creditor, director, or surety of the company:
  - (ii) any other person with an interest in the receivership:
  - (iii) the authorised agent of a person referred to in subparagraph (i) or (ii).
- (2) A person entitled to receive a receiver's report is entitled to inspect it at the office of the receiver during normal business hours.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

### Subpart 5—Powers of receiver

#### **315 General powers**

A receiver has the powers expressly or impliedly conferred by the terms of appointment.

#### **316 Specific powers**

Subject to the terms of appointment, a receiver may do any of the following—

- (a) demand and recover income of the property in receivership:
- (b) issue receipts for income recovered:
- (c) manage the property in receivership:
- (d) insure the property in receivership:
- (e) repair and maintain the property in receivership:
- (f) inspect at any reasonable time documents that relate to the property in receivership and are in the possession or under the control of the company:
- (g) exercise, on behalf of the company, a right to inspect documents that relate to the property in receivership and that are in the possession or under the control of a person other than the company:
- (h) buy and sell the property in receivership in the ordinary course of business.

#### **317 Power to execute documents**

- (1) A receiver may execute in the name and on behalf of the company all documents necessary or incidental to the exercise of the receiver's powers.
- (2) A document signed by a receiver on behalf of the company must be taken to have been properly executed.

#### **318 Power to sell real property in absence of mortgagee's consent**

- (1) This section applies if a receiver is unable to obtain the requisite consent of a mortgagee to the sale of real property in the receivership.
- (2) On an application by the receiver, the Court may make any order that it thinks fit authorising the receiver to sell the property (alone or together with other assets) if the Court is satisfied that—

- (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
  - (b) the sale—
    - (i) is in the interests of the company and the company's creditors; and
    - (ii) will not substantially prejudice the interests of the mortgagee.
- (3) An order under subsection (2) may be made on the terms and conditions that the Court thinks fit.

**319 Power of receiver on liquidation**

- (1) Subject to subsection (2), a receiver may, unless the Court orders otherwise, be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company in liquidation.
- (2) A receiver in respect of property of a company in liquidation may act as the agent of the company only—
  - (a) with the approval of the Court; or
  - (b) with the written consent of the liquidator.
- (3) A person who is excluded by subsection (2) from acting as the agent of the company does not on that account become the agent of a person by whom or in whose interests the receiver was appointed.
- (4) A debt or liability incurred by a company through the acts of a receiver acting as the agent of the company is not a cost, charge, or expense of the liquidation.

**320 Validity of receiver's acts**

- (1) The act of a receiver is not invalid merely because of any of the following defects—
  - (a) the receiver was not validly appointed;
  - (b) the receiver is disqualified as a receiver;
  - (c) the receiver is not authorised to do the act.
- (2) However, subsection (1) does not apply to a transaction entered into by a receiver if the person dealing with the receiver—
  - (a) knows of a defect listed in subsection (1); or
  - (b) ought to know of that defect by reason of the person's relationship with the receiver or the receiver's appointor.

**Subpart 6—Liability of receiver****321 Contractual liability**

- (1) A receiver is personally liable on a contract entered into in the exercise of any of the receiver's powers.
- (2) However, the contract may exclude or limit the personal liability of a receiver who is not appointed by the Court.

**322 Liability for wages or salary under existing contract of employment**

- (1) A receiver is personally liable for payment of wages or salary that accrue under a contract of employment entered into before the receiver's appointment if—
  - (a) the wages or salary accrue during the receivership; and

- (b) the contract of employment relates to the property in receivership.
- (2) However, subsection (1) does not apply if, within 10 working days after his or her appointment, the receiver gives notice lawfully terminating the contract of employment.
- (3) On the application of the receiver and on any conditions that the Court thinks fit, the Court may extend the period for terminating the contract after appointment.
- (4) The application must be made before the expiry of the 10-working day period.

**323 Liability for director's remuneration**

A receiver is personally liable for the payment of remuneration under a contract with a director of the company if the receiver has expressly confirmed the contract.

**324 Liability for rent and other payments**

- (1) This section applies if—
  - (a) rent and any other payments become due under an agreement in force at the date of appointment of a receiver; and
  - (b) the rent and payments relate to the use, possession, or occupation by the company of property in receivership.
- (2) The receiver is personally liable for that portion of the rent or other payments that accrues in the period beginning 10 working days after the date of appointment and ending on the earlier of—
  - (a) the date on which the receivership ends; or
  - (b) the date on which the company ceases to use, possess, or occupy the property.
- (3) The Court may, on the application of a receiver,—
  - (a) excuse the receiver from liability under this section; or
  - (b) limit the liability of the receiver to a greater extent than specified in this section.
- (4) Nothing in this section—
  - (a) must be taken as giving rise to an adoption by a receiver of an agreement referred to in subsection (1)(a); or
  - (b) renders a receiver liable to perform any other obligation under the agreement.

**325 Liability on contract entered into without authority**

Nothing in sections 321 to 324—

- (a) limits the liability of a receiver on a contract entered into without authority; or
- (b) confers on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

*Relief from liability***326 Receiver is entitled to indemnity**

A receiver is entitled to an indemnity out of the property in receivership in respect of the receiver's liability under sections 321 to 324.

**327 Court may relieve receiver from liability**

- (1) The Court may make an order relieving a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership if the Court is satisfied that—
  - (a) the liability was incurred solely by reason of a defect in the receiver's appointment or in the document or order of Court under which the receiver was appointed; and
  - (b) the receiver acted honestly and reasonably; and
  - (c) the receiver ought, in the circumstances, to be excused.
- (2) The Court may make the order on any terms and conditions that it thinks fit.
- (3) A person in whose interests a receiver was appointed is liable, subject to any terms and conditions that the Court thinks fit, to the extent that the receiver is relieved from liability under subsection (1).

**Subpart 7—Court supervision****328 Court may give directions in relation to receivership**

On the application of a receiver, the Court may—

- (a) give directions in relation to any matter arising in the receivership;
- (b) revoke or vary those directions.

**329 Court may make orders in relation to remuneration and validity of appointment**

- (1) On the application of a person listed in subsection (2), the Court may—
  - (a) for any period, review or fix a receiver's remuneration at a level that is reasonable in the circumstances; or
  - (b) order a receiver to refund remuneration in excess of what the Court finds is reasonable remuneration in the circumstances; or
  - (c) declare whether or not a receiver was validly appointed in respect of any property; or
  - (d) declare whether or not a receiver validly entered into possession or assumed control of any property; or
  - (e) revoke or vary an order made under this subsection.
- (2) The persons who may make an application under subsection (1) are any of the following—
  - (a) the receiver;
  - (b) the company;
  - (c) a creditor of the company;
  - (d) a person claiming, through the company, an interest in the property in receivership;

- (e) the directors of the company or, if the company is in liquidation, the directors of the company at the time the liquidator was appointed;
  - (f) if the company is in liquidation, the liquidator.
- (3) The powers of the Court under this section or section 328 may be exercised whether or not the receiver has ceased to act as receiver when the application is made.

**330 Receiver's defence of acting in accordance with Court direction**

- (1) A receiver who acts in accordance with a direction of the Court has a defence in relation to anything done or not done in accordance with that direction.
- (2) However, on the application of any person, the Court may order that, because of the circumstances in which the direction was obtained, the receiver does not have the defence given by subsection (1).

**331 Compliance order**

- (1) On the application of a person listed in section 333(1), the Court may, if satisfied that there is a failure of compliance,—
  - (a) relieve the receiver of the duty to comply wholly or in part; or
  - (b) order the receiver to comply to the extent specified in the order (which may extend the time for compliance).
- (2) An order to comply is made without prejudice to any other remedy that may be available in relation to the failure to comply.
- (3) If a receiver fails to comply with an order made under subsection (1)(b), the Court may make an order removing the receiver from office.
- (4) In this section, **failure of compliance** means that a receiver has failed, or is failing, to comply with a relevant duty arising—
  - (a) under this Act or any other enactment or law; or
  - (b) any order or direction of the Court (other than an order made under subsection (1)(b)).

**332 Prohibition order**

- (1) This section applies if the Court is satisfied that a person (**P**) is unfit to act as receiver because of—
  - (a) the seriousness of his or her failure of compliance; or
  - (b) his or her persistent failures of compliance.
- (2) On the application of a person listed in section 333(1), the Court must prohibit **P**, for a period not exceeding 5 years, from—
  - (a) acting as a receiver in a current or other receivership;
  - (b) acting as a liquidator in a current or other liquidation.
- (3) For the purposes of subsection (1)(b), evidence of **P**'s persistent failures of compliance includes, in the absence of special reasons to the contrary,—
  - (a) evidence that, on 2 or more occasions within the preceding 5 years, the Court has made a compliance order under section 275(1)(b) or 331(1)(b) in respect of **P**;



- (b) evidence that, within the preceding 5 years and in respect of P, the Court has made 1 or more orders under section 275(1)(b) and 1 or more orders under section 331(1)(b):
  - (c) evidence that, on 2 or more occasions within the preceding 5 years, an application for a compliance order under section 275(1)(b) or 331(1)(b) has been made in respect of P and that in each case P complied after the application was made and before the hearing:
  - (d) evidence that, within the preceding 5 years and in respect of P, there have been 1 or more applications for an order under section 275(1)(b) and 1 or more applications for an order under section 331(1)(b) and that in each case P complied after the application was made and before the hearing.
- (4) The applicant for an order made under this section must file a copy of the order with the Registrar within 10 working days after the order is made and the Registrar must file the order by reference to the name of the person subject to the order.

### **333 Person who may apply for compliance or prohibition orders**

- (1) The persons who may make an application for an order under section 331(1) or (3) or 332(2) are any of the following—
- (a) the Registrar:
  - (b) a receiver:
  - (c) a person seeking appointment as a receiver:
  - (d) the company:
  - (e) a creditor of the company:
  - (f) a person claiming, through the company, an interest in the property in receivership:
  - (g) a guarantor of an obligation of the company:
  - (h) if the company is in liquidation, the liquidator.
- (2) A person must not apply for an order under section 333(1) unless—
- (a) notice of the failure of compliance has been served on the receiver not less than 5 working days before the date of the application; and
  - (b) as at the date of the application, there is a continuing failure of compliance.

### **334 Order protecting property in receivership**

The Court may, on making an order that removes or has the effect of removing a receiver from office, make the orders that it thinks fit—

- (a) for preserving the property in receivership:
- (b) requiring the receiver for that purpose to make available to any person specified in the order any information and documents in or under the receiver's possession or control.

### **335 Court may terminate or limit receivership**

- (1) On the application of a person listed in subsection (2), the Court may make an order—
- (a) terminating the receivership, including prohibiting the appointment of another receiver; or

- (b) limiting the receivership to specified assets.
- (2) The persons who may make an application under subsection (1) are—
  - (a) the company; or
  - (b) if the company is in liquidation, the liquidator.
- (3) An order under this section—
  - (a) may be made only if the Court is satisfied that the purpose of the receivership has as far as possible been met or that its continuation is not justified;
  - (b) may include an order prohibiting a person in whose interests the receiver was appointed from taking possession or assuming control of the property in receivership;
  - (c) may be made on the terms and conditions that the Court thinks fit;
  - (d) may be rescinded or amended on the application of any person who applied for the order or who is affected by it;
  - (e) except for an order under paragraph (b), does not affect a security or charge over the property to which the order relates.
- (4) Unless the Court orders otherwise,—
  - (a) a copy of an application under this section must be served on the receiver not less than 5 working days before the hearing of the application; and
  - (b) the receiver may appear and make submissions at the hearing.

### Subpart 8—Supply of essential services

#### 336 Obligations of suppliers of essential services

- (1) Despite any other enactment or contract, a supplier of an essential service must not—
  - (a) refuse to supply the service to a receiver or to the company on the ground that the company has defaulted in paying charges due for the service for a period before the date of the appointment of the receiver; or
  - (b) make it a condition of the supply of the service to a receiver or to the company that payment be made of outstanding charges due for the service for a period before the appointment of the receiver.
- (2) In this section, an **essential service** means—
  - (a) the retail supply of gas; or
  - (b) the retail supply of electricity; or
  - (c) the supply of water; or
  - (d) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
  - (e) telecommunications services.

## **Part 16**

### **Removal from Cook Islands register**

#### **Subpart 1—Removal from register**

**337 Removal from register**

A company is removed from the Cook Islands register when the Registrar registers a notice stating the company is removed from the Cook Islands register.

**338 Grounds for removal**

Subject to section 340, the Registrar must remove a company from the Cook Islands register if—

- (a) the company fails to file its annual return within the period of 6 months after the month allocated for filing the return; or
- (b) the company does not comply with section 6 (Essential requirements); or
- (c) the company is in liquidation and—
  - (i) 6 months have elapsed after the completion of liquidation; and
  - (ii) the Registrar has not received the prescribed documents confirming completion of liquidation; or
- (d) the company is in liquidation and the Registrar receives the prescribed documents confirming completion of liquidation; or
- (e) there is filed with the Registrar a request under section 339 for the company's removal.

**339 Request for removal**

- (1) Any of the following persons may request the removal of a company from the Cook Islands register—
  - (a) a shareholder;
  - (b) a person authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question;
  - (c) a director or any other person, if the constitution so provides.
- (2) A request for removal may be made on the grounds that the company—
  - (a) has ceased to carry on business, has discharged in full its liabilities to all known creditors, and has distributed its surplus assets in accordance with its constitution and this Act; or
  - (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.
- (3) The request must be—
  - (a) in the prescribed form (if any); and
  - (b) accompanied by prescribed third party consents (if any); and
  - (c) filed with the Registrar.

## Subpart 2—Procedure for removal from register

**340 When notice of removal required**

- (1) The Registrar must not remove a company from the Cook Islands register unless—
  - (a) public notice of the removal has first been given,—
    - (i) for removal under section 338(b) or (c), by the Registrar;
    - (ii) for removal under section 338(d), by the liquidator;
    - (iii) for removal under section 338(e), by the person requesting removal; and
  - (b) the deadline date has passed without an application for an order under section 343.
- (2) Public notice is not required for removal under section 338(a).
- (3) The notice of removal must specify a date that is the deadline for a person who objects to the removal to apply for an order under section 343.

**341 Objection to removal**

- (1) No person may object to the removal of a company from the Cook Islands register under section 338(a).
- (2) Any person may object to the removal of a company from the Cook Islands register under any of section 338(b) to (e).
- (3) A person may object to removal on any 1 or more of the following grounds—
  - (a) the company is still carrying on business or there is other reason for it to continue in existence;
  - (b) the company is a party to a legal proceeding;
  - (c) the company is in receivership or liquidation;
  - (d) the person objecting is a creditor, shareholder, or other person having an undischarged claim against the company;
  - (e) the person objecting believes that there exists, and intends to pursue, a right of action on the part of the company under Part 8;
  - (f) for any other reason, removal would not be just and equitable.

**342 Meaning of undischarged claim**

- (1) For the purposes of section 341(3)(d), a claim by a creditor against the company is not an undischarged claim if—
  - (a) the claim has been paid in full; or
  - (b) the claim has been paid in part under a compromise entered into under Part 13 or by being otherwise compounded to the reasonable satisfaction of the creditor; or
  - (c) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or
  - (d) a receiver or liquidator has notified the creditor that the assets of the company are not sufficient for any payment to be made to the creditor.
- (2) For the purposes of section 341(3)(d), a claim by a shareholder or other person against the company is not an undischarged claim if—

- (a) the shareholder or other person has been paid in accordance with a right under the constitution to receive or share in the company's surplus assets; or
- (b) a receiver or liquidator has notified the shareholder or other person that the company has no surplus assets.

**343 Procedure for objection**

- (1) A person objects to the removal of a company from the Cook Islands register by applying to the Court for an order that the company not be removed.
- (2) The application must be made on or before the date specified in the public notice of the removal.
- (3) The Court may order that the company not be removed if the Court is satisfied, on 1 or more of the grounds specified in section 341(3), that the company should not be removed.

**Subpart 3—Effect of removal from register****344 Property of company vests in Crown**

- (1) Property of a company that, immediately before the company's removal from the Cook Islands register, had not been distributed or disclaimed vests in the Crown on removal from the register.
- (2) For the purposes of this section, property of the former company—
  - (a) includes leasehold property and all other rights vested in or held on trust for the former company; but
  - (b) does not include property held by the former company on trust for any other person.
- (3) The Minister must without delay give public notice that the property has vested in the Crown, and the notice must state the name of the former company and describe the property.

**345 Person claiming property may apply to Court**

- (1) This section applies if a person (P) would have been entitled to receive all or part of the property of a company removed from the register, or payment from the proceeds of its realization, if the property had been in the hands of the former company immediately before its removal from the register.
- (2) On an application by P, or a person claiming through P, the Court may—
  - (a) order that all or part of the property vest in the applicant; or
  - (b) order the Crown to pay the applicant compensation which must not be greater than the value of the property.
- (3) The Court may also—
  - (a) determine issues of value, entitlement, and apportionment; and
  - (b) consolidate the hearing of applications; and
  - (c) treat an application as made on behalf of all the persons, or all of a class of persons, with an interest in the property; and
  - (d) make any ancillary order.
- (4) Compensation ordered to be paid under subsection (2)(b) must be paid out of the Consolidated Fund without further appropriation than this section.



**346 Liability of directors, shareholders, and others continues**

The liability of any person (including a former director or shareholder) in respect of any act or omission occurring before the company was removed from the register—

- (a) is not affected by the removal; and
- (b) continues and may be enforced as if the company had not been removed.

Subpart 4—Crown's disclaimer of property vesting on removal from register

**347 Crown may disclaim onerous property**

- (1) The Minister may, by notice in writing, disclaim onerous property vesting in the Crown under section 344 and the property is then treated as not having vested in the Crown.
- (2) The Minister must without delay give public notice of the disclaimer
- (3) In this section, **onerous property** means—
  - (a) an unprofitable contract; or
  - (b) company property that—
    - (i) is unsaleable; or
    - (ii) is not readily saleable; or
    - (iii) may give rise to a liability on the part of the Crown.

**348 Restrictions on Crown's disclaimer**

- (1) Subject to any order of the Court, the Minister may not disclaim under section 347—
  - (a) after a date specified in a notice in writing to the Minister to elect whether to disclaim, provided that date is not less than 60 working days after the Minister receives the notice;
  - (b) in any event, after 12 months from the date when the Minister first became aware of the vesting of the property.
- (2) A statement in the Minister's notice of disclaimer that the Minister first became aware of the vesting of the property on a specified date is evidence of that fact in the absence of proof to the contrary.

**349 Effect of Crown's disclaimer**

- (1) The Crown's disclaimer under section 347—
  - (a) terminates, on and from the date of the disclaimer, the Crown's rights, interest, and liabilities in relation to the property; and
  - (b) does not affect the rights and liabilities of any other person (except to the extent necessary to release the Crown from a liability).
- (2) A person who suffers loss or damage as the result of disclaimer by the Crown under section 347 may—
  - (a) claim as a creditor of the company for the amount of the loss or damage, taking account of an order under paragraph (b); or
  - (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

## Subpart 5—Restoration of company to register

**350 When Registrar must restore company to Cook Islands register**

- (1) Subject to subsection (2), the Registrar must, on the application of a person specified in subsection (3), restore to the register a company that has been removed from the Cook Islands register under section 338(a) for failing to file an annual return.
- (2) The application must be—
  - (a) filed with the Registrar within 2 years after removal from the register; and
  - (b) in the prescribed form (if any); and
  - (c) accompanied by—
    - (i) all outstanding annual returns; and
    - (ii) the associated filing fees; and
    - (iii) a late filing fee for each outstanding annual return.
- (3) A person may apply if the person was any of the following at the time the company was removed from the register—
  - (a) a shareholder, director, creditor, or entitled person of the company;
  - (b) a party to any legal proceedings against the company;
  - (c) a person with an undischarged claim against the company;
  - (d) the liquidator;
  - (e) a receiver of property of the company.
- (4) The Registrar may waive the requirement in subsection (2)(c)(i) of all outstanding annual returns, or accept 1 or more partially completed annual returns, if the Registrar is satisfied that it is not practical for the applicant to fulfil the requirement.

**351 Court may order restoration**

- (1) The Court may, on the application of a person specified in subsection (2), order restoration to the register of a company that has been removed from the Cook Islands register under section 338 if the Court is satisfied that,—
  - (a) at the time of removal,—
    - (i) the company was still carrying on business or there was other reason for it to continue in existence; or
    - (ii) the company was a party to a legal proceeding; or
    - (iii) the company was in receivership or liquidation; or
    - (iv) the applicant was a creditor, shareholder, entitled person, or other person having an undischarged claim against the company; or
    - (v) the applicant believed that there existed, and intended to pursue, a right of action on the part of the company under Part 8; or
  - (b) for any other reason it is just and equitable to restore the company to the register.
- (2) Any of the following persons may apply—
  - (a) the Registrar;
  - (b) a person specified in section 350(3):

- (c) any other person who has the leave of the Court to apply.
- (3) The Court may make restoration conditional on compliance with any provisions of this Act or of regulations made under this Act if the company had failed to comply with those provisions before it was removed from the register.
- (4) The Court may give any directions or make any order that may be necessary or desirable for the purpose of restoration to the register.

**352 Restoration to register**

- (1) A company is restored to the Cook Islands register when the Registrar registers a notice stating that the company is restored to the Cook Islands register.
- (2) A company that is restored to the register is treated as having continued in existence as if it has not been removed from the register.

**353 Property re-vests in company on restoration to register**

- (1) Property of a company that has vested in the Crown under section 344(1) re-vests in the company on its restoration to the register as if the company had not been removed from the register.
- (2) However, subsection (1) does not apply to—
  - (a) property for which the Court has ordered the Crown to pay compensation under section 354(1)(b); or
  - (b) land or any estate or interest in land that has vested in the Crown under section 354(1) if transmission of the land or estate or interest in land to the Crown has been registered under any enactment relating to the registration of an estate or interest in land.

**354 Court may order re-transfer of land or compensation on restoration of company to register**

- (1) On the application of a company that has been restored to the Cook Islands register, the Court may make an order for—
  - (a) the re-transfer to the company of property referred to in section 353(2)(b); or
  - (b) payment of compensation by the Crown to the company.
- (2) Compensation by the Crown under subsection (1)(b) must be an amount—
  - (a) that does not exceed the value of the property as at the date of registration of the transmission to the Crown; or
  - (b) if the property has been sold or contracted to be sold, that is equal to the proceeds of the sale
- (3) On an application under this section, the Court may decide any issue of the value of the property.
- (4) Compensation by the Crown under subsection (1)(b) must be paid out of the Consolidated Fund without further authorisation than this section.

## **Part 17**

### **Overseas companies**

#### **Subpart 1—Preliminary**

##### **355 Meaning of carrying on business**

- (1) For the purposes of this Part, a reference to an overseas company carrying on business in the Cook Islands includes a reference to the overseas company—
  - (a) subject to subsection (3), establishing or using a share transfer office or a share registration office in the Cook Islands; or
  - (b) administering, managing, or dealing with property in the Cook Islands as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner.
- (2) For the purposes of this Part, an overseas company does not carry on business in the Cook Islands merely because in the Cook Islands it—
  - (a) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
  - (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
  - (c) maintains a bank account; or
  - (d) effects a sale of property through an independent contractor; or
  - (e) solicits or procures an order that becomes a binding contract only if the order is accepted outside the Cook Islands; or
  - (f) creates evidence of a debt or creates a charge over property or gives a security interest in property; or
  - (g) secures or collects any of its debtor or enforces its rights in relation to securities relating to those debts; or
  - (h) conducts an isolated transaction that is completed with a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or
  - (i) invests in funds or holds property.
- (3) An overseas company does not carry on business in the Cook Islands by reason only of transactions effected through an offshore register that is authorised, required, or established by or for the purposes of an offshore Act.

##### **356 Name of overseas company must comply with section 11**

- (1) An overseas company must not carry on business in the Cook Islands unless its name could be registered under section 11 if it were incorporated under this Act.
- (2) An overseas company that changes its name must file with the Registrar for registration a notice in the prescribed form of the change of name within 10 working days of the change of name.
- (3) On receiving the notice, the Registrar must register the change of name on the Cook Islands register.
- (4) An overseas company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

**357 Use of name by overseas company**

An overseas company that carries on business in the Cook Islands must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in—

- (a) written communications sent by or on behalf of the company; and
- (b) documents issued or signed by or on behalf of the company that evidence or create a legal obligation of the company.

**Subpart 2—Registration****358 Overseas company must register under this Act**

- (1) An overseas company that, on or after the commencement of this Act, commences to carry on business in the Cook Islands, must apply for registration under this Part in accordance with section 360 within 20 working days of commencing to carry on business.
- (2) An overseas company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

**359 Validity of transactions not affected**

A contravention by an overseas company of section 356 or 358 does not affect the validity or enforceability of any transaction entered into by the overseas company.

**360 Application for registration**

- (1) An application by an overseas company for registration under this Part must—
  - (a) be filed with the Registrar; and
  - (b) be in the prescribed form; and
  - (c) contain the prescribed information; and
  - (d) be signed by or on behalf of the overseas company; and
  - (e) be accompanied by the prescribed fee.
- (2) The application must also have attached—
  - (a) evidence of the company's overseas incorporation; and
  - (b) if the evidence of its overseas incorporation is not in English, a certified translation of it; and
  - (c) evidence of the company's compliance with Part V of the Development Investment Act 1995-96.
- (3) The Registrar must, on receiving a properly completed application for registration of an overseas company, without delay register the company on the Cook Islands register.

**Subpart 3—Administration of overseas company****361 Annual return by overseas company**

- (1) Each year in its allocated month, an overseas company that carries on business in the Cook Islands must file with the Registrar for registration an annual return that—
  - (a) is in the prescribed form; and



- (b) confirms that the information on the Cook islands register in respect of the company is correct at the date of the return; and
  - (c) is signed by or on behalf of the company; and
  - (d) is accompanied by the prescribed annual return fee.
- (2) The return must be dated as at a date within the allocated month.
  - (3) Despite subsection (1), an overseas company need not file an annual return in the calendar year of its registration under this Act.
  - (4) In this section, **allocated month** means the month allocated to the company under section 362.

### **362 Allocated month**

- (1) On registration or re-registration of an overseas company, the Registrar must allocate a month to the company for filing its annual return.
- (2) The Registrar may, by written notice to the overseas company, alter its allocated month.

### **363 Registrar must remove overseas company for failure to make annual return after 6 months**

- (1) If an overseas company fails to comply with section 361, and 6 months have elapsed without the company filing a late return that otherwise complies, the Registrar must remove the company from the Cook Islands register.
- (2) However, on the application of a director or shareholder that complies with subsection (3), the Registrar must restore to the register a company that has been removed under subsection (1).
- (3) The application must be—
  - (a) filed with the Registrar within 2 years after removal; and
  - (b) in the prescribed form; and
  - (c) accompanied by—
    - (i) all outstanding annual returns and associated filing fees; and
    - (ii) a late filing fee for each outstanding annual return.

### **364 Notice of change of directors, etc, of overseas company**

- (1) An overseas 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 an overseas 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.

**365 Overseas company ceasing to carry on business in Cook Islands**

- (1) An overseas company registered under this Part that intends to cease to carry on business in the Cook Islands must—
  - (a) give public notice of that intention; and
  - (b) file with the Registrar a notice in the prescribed form stating the date on which it will cease to carry on business in the Cook Islands.
- (2) The Registrar must remove an overseas company from the Cook Islands register as soon as practicable after—
  - (a) the date specified in the notice given under subsection (1)(b); or
  - (b) receipt of a written notice given by a liquidator that the liquidation of the assets in the Cook Islands of the overseas company has been completed.

**366 Attorneys of overseas companies**

- (1) Sections 134 to 139 of the Property Law Act 1952 (New Zealand) in force in the Cook Islands by virtue of the Property Law Act 1952 apply, with the necessary modifications, to a power of attorney executed by an overseas company registered under this Part to the same extent as if the company were a person and as if the commencement of the liquidation of the company was an event revoking the power of attorney within the meaning of those sections.
- (2) A declaration endorsed on or annexed to a document (the **document**) appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made in the country concerned by 1 of the directors before an authorised person, to the effect of the matters set out in paragraphs (a) to (d) is conclusive evidence of those matters—
  - (a) that the company is incorporated under the name stated in the document; and
  - (b) that the company is incorporated under that name in accordance with the law of the country in which it is incorporated (the name of country must be stated in the declaration); and
  - (c) that the document has been executed, and conferral of the powers conferred on the attorney by the document is authorised by,—
    - (i) the constitution of the company; or
    - (ii) the Act or instrument under which the company is incorporated; or
    - (iii) any other instrument constituting or defining the constitution of the company; and
  - (d) that the person making the declaration is a director of the company.

- (3) In subsection (2), **authorised person** means a person authorised to take a declaration outside the Cook Islands for use in the Cook Islands.

**367 Exemption from requirements of this Part**

Regulations may be made exempting any class or classes of overseas company from any or all of the requirements of this Part, or modifying the application of this Part to those overseas companies on the terms and conditions prescribed by those regulations.

## **Part 18**

### **Registrar of Companies**

#### **Subpart 1—Registrar**

**368 Registrar**

There must be a Registrar of Companies appointed under the Public Service Act 1995-96.

**369 Deputy Registrars**

- (1) There must be as many Deputy Registrars of Companies appointed under the Public Service Act 1995-96 as may be necessary for the purposes of this Act.
- (2) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties, and functions of the Registrar under this Act.
- (3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of his or her authority to do so.

**370 First appointment of Registrar under this Act**

The person holding office as Registrar of Companies under the Companies Act 1970-71 immediately before the commencement of this Act continues in office and is the first person appointed under section 368.

#### **Subpart 2—Cook Islands register**

**371 Register**

- (1) The Registrar must ensure that a register of companies (the **register**) is kept and maintained.
- (2) The register may be kept in the manner that the Registrar thinks fit including, either wholly or in part, by means of a digital register.

**372 Registration of documents**

On receiving a document for registration under this Act, the Registrar must without delay—

- (a) register the document in the register (unless the Registrar rejects the document under section 374); and
- (b) in the case of a document that is not an annual return, in writing notify the registration to the person from whom the document was received.

**373 When document registered**

For the purposes of this Act, a document is registered when—

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

**374 When Registrar may reject document for registration**

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

**375 No presumption of validity or invalidity**

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

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

**376 Inspection of register**

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

**377 Copies and certified copies of documents**

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

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

### Subpart 3—Changes to register

**378 Rectification or correction of register**

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

**379 Registrar may require information from company**

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

**380 Registrar may amend register**

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

### Subpart 4—Inspection by Registrar

**381 Registrar may require production of documents and confirmation of information**

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



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

### **382 Disclosure of information and reports**

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

- (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$4,000

### **383 Restrictions on disclosing information**

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

### **384 Report admissible in liquidation proceedings**

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

## **Subpart 5—Appeals**

### **385 Appeals from Registrar's decisions**

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

### **386 Exercise of inspection power not affected by appeal**

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

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

**387 Destruction of documents on successful appeal against inspection power**

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

**Subpart 6—Notices by Registrar**

**388 Notices generally**

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

**389 Notice to individuals**

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

**390 Admissibility of copy of Registrar's notice**

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

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

## **Part 19 Offences**

### **Subpart 1—Dishonesty offences**

#### **391 False statements in documents**

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

#### **392 Fraudulent use or destruction of company property**

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

#### **393 Falsification of records**

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

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

#### **394 Carrying on business fraudulently**

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

#### **395 Causing material loss to creditors**

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

#### **396 Dishonestly incurring debt**

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



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

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

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

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

### 398 **Definitions for purposes of section 397**

For the purposes of section 397,—

**advertisement** means a form of communication—

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

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

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

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

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

**debt security**—

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

**distribute** includes—

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

**equity security**—

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

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

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

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

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

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

### Subpart 3—Liquidation offences

#### **399 Conduct hindering liquidation**

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

#### **400 False or misleading claim in liquidation**

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

### Subpart 4—Procedure

**401 Proceedings for offences**

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

## **Part 20 Miscellaneous**

### Subpart 1—Service and communication of documents

**402 Service of documents**

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

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

**403 Company communication with shareholders**

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

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

### Subpart 2—Privileged communications

**404 Privileged communications**

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

### Subpart 3—Regulations

**405 Regulations**

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



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



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

**406 Regulations providing for transitional matters, etc**

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

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

**Subpart 4—Re-registration**

**407 Application for re-registration of existing company**

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

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

**408 Failure to apply for re-registration**

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

**409 Application for re-registration of existing overseas company**

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

**410 Re-registration**

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

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

#### 411 **Meaning of existing company, etc**

For the purposes of this subpart, —

**existing company—**

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

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

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

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

### Subpart 5—Transitional provisions

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

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



### Subpart 6—Repeal and revocation

**413 Companies Act 1970-71 repealed**

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

### Subpart 7—Amendments to other enactments

**414 Other enactments: consequential amendments and references updated**

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

### Subpart 8—Company charges

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

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

## Schedule 1 Interpretation

### 1. Interpretation

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

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

**accounting period**, in relation to a company, means—

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

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

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

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

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

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

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

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

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

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

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

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

**Court** means the High Court of the Cook Islands

**creditor**—

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

**Crown** includes—

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



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

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

**digital format**—

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

**digital register** means a register in digital format

**director** has the meaning set out in section 73

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

**document** means a document in any form; and includes—

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

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

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

**enforcement process**, in relation to property, means—

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

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

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

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

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

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

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

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

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

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

**liquidation committee** means the committee referred to in section 229

**liquidator** means the person appointed under section 202(1)

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

**Minister** means the Minister responsible for the administration of this Act

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

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

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

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

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

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

**prescribed** means prescribed by regulations made under this Act

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

**property** includes—

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

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

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

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

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

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

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

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

**Registrar** means the Registrar of Companies appointed under section 368

**regulations** means regulations made under this Act

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

**relative**, in relation to any person, means—

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

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

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

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

**signature** means—

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

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

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

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

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

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

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

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

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

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

## 2. Meaning of holding company

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

## 3. Meaning of related company

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

## 4. Meaning of subsidiary

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

- (b) the company is a subsidiary of a company that is that other company's subsidiary.
- (2) In subclause (1), **company** includes a corporation.

**5. Meaning of solvency test**

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



## Schedule 2

### Default constitution for company registered with 1 shareholder

#### Part 1—General provisions

- 1. Constitution supplements provisions of Act**
  - (1) This constitution supplements certain provisions of the Act.
  - (2) This is the default constitution for a company that—
    - (a) has 1 shareholder; and
    - (b) otherwise has no constitution.
- 2. Interpretation**
  - (1) This constitution must be read in conjunction with, and subject to, the Act.
  - (2) In this constitution, **Act** means the Companies Act 2017.
- 3. Name of company**
  - (1) The name of the company on registration or re-registration under the Act is the name that appears on the application for registration or re-registration, as the case may be.
  - (2) An application under section 12 of the Act to change the name of the company must not be made without the prior approval of the shareholder.

#### Part 2—Shares and share register

- 4. Company has single shareholder only**

The company—

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

At the time of registration or re-registration under the Act, the company has the number of shares specified in the application for registration or re-registration, as the case may be.
- 6. Share register**
  - (1) The company may appoint an agent to maintain the share register.
  - (2) No notice of a trust, whether express or implied, may be entered on the share register.
- 7. Form and location of share register**
  - (1) The share register must be kept—
    - (a) in written form; or
    - (b) in a form or in a manner that allows the contents of the register to be readily accessible so as to be usable for subsequent reference and convertible into written form.

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

**8. Status of registered shareholder**

- (1) The company must treat the registered holder of a share as the only person entitled to—
- (a) exercise the right to vote attaching to the share; and
  - (b) receive notices; and
  - (c) receive a distribution in respect of the share; and
  - (d) exercise the other rights and powers attaching to the share.
- (2) If the shareholder dies, the shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.
- (3) Any person who becomes entitled to a share as a consequence of the death, bankruptcy, insolvency, or incapacity of the shareholder may be registered as the holder of the shareholder's shares on making a request in writing to the company to be registered, accompanied by proof satisfactory to the directors of that entitlement.

**9. Transfer of shares**

- (1) The shares of the company are transferable by entry in the share register in accordance with clause 10.
- (2) However, the transferability of a share is subject to—
- (a) the terms of issue of the share; and
  - (b) the right of the directors to refuse registration under clause 10(4).
- (3) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

**10. Procedure for transfer of shares**

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

**11. Shareholder decisions and exercise of shareholder powers**

- (1) A resolution in writing signed by the shareholder is as valid as if it had been passed at a meeting of the shareholder.
- (2) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

**12. Distributions**

No dividend may be paid or other distribution made unless it is first approved by the shareholder.

**13. Company may acquire its own shares**

- (1) Subject to section 20 of the Act, the company may agree to acquire its own shares from the shareholder.
- (2) If the company acquires its own shares, those shares are cancelled immediately on acquisition.

**14. Annual report to shareholder**

The directors are not required to prepare an annual report in respect of any accounting period, unless requested to do so by the shareholder.

**Part 3—Directors****15. Number of directors**

The shareholder may fix the number of directors by notice in writing to the company.

**16. Appointment and removal of directors**

A director may be appointed or removed by the shareholder by notice in writing to the company.

**17. When director vacates office**

A director vacates office if he or she—

- (a) is removed from office in accordance with clause 16; or
- (b) resigns in accordance with sections 80 and 81 of the Act; or
- (c) becomes disqualified from being a director under section 75 of the Act;  
or
- (d) dies.

**18. Powers and duties of directors**

The business and affairs of the company must be managed by or under the direction or supervision of the directors subject to—

- (a) section 61 of the Act (which relates to shareholder approval of major transactions); and
- (b) any directions given to the board in writing by the shareholder.

**19. Delegation by directors**

- (1) The directors may delegate any of their powers that may be lawfully delegated to a committee of directors, or to a director or employee of the company.

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

**20. Interested directors**

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

**21. Use of company information**

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

**22. Indemnity and insurance**

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

**director** includes—

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

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

**23. Remuneration of directors**

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

*Directors' meetings*

**24. Procedure at meetings of directors**

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



**25. Chairperson**

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

**26. Notice of meeting**

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

**27. Methods of holding meeting**

A meeting of directors may be held either—

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

**28. Quorum**

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

**29. Voting**

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

**30. Minutes**

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



**31. Unanimous resolution of directors**

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

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

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

**33. Delegation to managing director**

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

**34. Remuneration of managing director and executive directors**

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

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

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

**36. Appointment of auditor**

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

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

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

**38. Distribution of surplus assets**

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

### **Schedule 3**

## **Default constitution for company registered with 2 to 9 shareholders**

### **Part 1—General provisions**

#### **1. Constitution supplements provisions of Act**

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

#### **2. Interpretation**

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

#### **3. Name of company**

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

### **Part 2—Shares and share register**

#### **4. Number of shareholders**

The company —

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

#### **5. Number and classes of shares**

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

#### **6. Share register**

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

#### **7. Form and location of share register**

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

**8. Status of registered shareholder**

- (1) The company must treat the registered holder of a share as the only person entitled to—
  - (a) exercise the right to vote attaching to the share; and
  - (b) receive notices; and
  - (c) receive a distribution in respect of the share; and
  - (d) exercise the other rights and powers attaching to the share.
- (2) If a joint holder of a share dies, the company must treat the remaining holders as the holders of the share.
- (3) If a sole shareholder dies, the shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.
- (4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy, insolvency, or incapacity of the shareholder may be registered as the holder of the shareholder's shares on making a request in writing to the company to be registered, accompanied by proof satisfactory to the directors of that entitlement.

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

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

**10. Procedure for issue of shares**

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

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

*Transfer of shares*

**11. Transfer of shares**

- (1) The shares of the company are transferable by entry in the share register in accordance with clause 12.
- (2) However, the transferability of a share is subject to—
- (a) the terms of issue of the share; and
  - (b) the right of the directors to refuse registration under clause 12(4); and
  - (c) the pre-emptive rights of other shareholders under clauses 17 to 24.
- (3) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

**12. Procedure for transfer of shares**

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

*Shareholders*

**13. Shareholders entitled to receive distributions**

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



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

**14. Shareholders entitled to exercise pre-emptive rights**

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

**15. Shareholders entitled to attend shareholder meeting**

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

**16. Dividends**

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

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

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

*Pre-emptive rights*

**17. Restrictions on selling shares**

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

**18. Selling shareholder must notify company**

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

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

**19. Company must notify shareholders**

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

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

**20. Notice given by company constitutes offer to sell**

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

**21. Contract concluded on advice of acceptance**

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

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

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

**23. Shares offered without any acceptance**

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

**24. Selling shareholder not obliged to sell**

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

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

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

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

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

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

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

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

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

### **Part 3—Shareholder meetings**

#### **28. Shareholder meetings**

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

#### **29. Notice of meeting**

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

#### **30. Irregularity in notice or accidental omission of notice**

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

#### **31. Methods of holding meetings**

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

#### **32. Quorum**

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

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

### **33. Chairperson**

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

### **34. Voting**

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

### **35. Poll**

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



**36. Votes of joint shareholders**

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

**37. Proxies**

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

**38. Corporations may act by representatives**

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

**39. Minutes**

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

**40. Written resolution of shareholders**

- (1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.
- (2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.
- (3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).
- (4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.
- (5) A resolution may be signed under subclause (1) without any prior notice being given to the shareholders.

**41. Special meeting of shareholders**

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

- (a) may be called at any time by a director; and
- (b) must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

#### **Part 4—Directors**

##### **Directors**

**42. Number of directors**

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

**43. Appointment and removal of directors**

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

**44. Term of office**

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

**45. When director vacates office**

A director vacates office if he or she—

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

**46. Casual vacancies**

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

**47. Delegation by directors**

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

**48. Indemnity and insurance**

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

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

#### 49. **Remuneration of directors**

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

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

#### 50. **Use of company information**

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

### *Directors' meetings*

#### 51. **Procedure at meetings of directors**

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

#### 52. **Chairperson**

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

**53. Notice of meeting**

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

**54. Methods of holding meeting**

A meeting of directors may be held either—

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

**55. Quorum**

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

**56. Voting**

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

**57. Minutes**

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

**58. Unanimous resolution of directors**

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

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

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

**60. Delegation to managing director**

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

**61. Remuneration of managing director and executive directors**

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

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

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

**63. Distribution of surplus assets**

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



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

#### **Part 6—Miscellaneous**

**64. Service of documents on shareholder**

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

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

**Part 1—General provisions**

**1. Constitution supplements provisions of Act**

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

**2. Interpretation**

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

- (g) exercisable only on the fulfilment of a condition; or
  - (h) exercisable alone or jointly with another person.
- 3. Name of the company**
- (1) The name of the company at the time of registration or re-registration under the Act appears on the application for registration or for re-registration, as the case may be.
  - (2) The name of the company may be changed in accordance with section 12 of the Act with the prior approval of the directors.

## **Part 2—Shares and share register**

- 4. Number of shares**  
At the time of registration or re-registration under the Act, the company has the number of shares specified in the application for registration or re-registration, as the case may be.
- 5. Share register**
- (1) The company may appoint an agent to maintain the share register.
  - (2) No notice of a trust, whether express or implied, may be entered on the share register.
- 6. Form and location of share register**
- (1) The share register must be kept—
    - (a) in written form; or
    - (b) in a form or in a manner that allows the contents of the register to be readily accessible so as to be usable for subsequent reference and convertible into written form.
  - (2) The share register must be kept at the company's registered office.
- 7. Status of registered shareholder**
- (1) The company must treat the registered holder of a share as the only person entitled to—
    - (a) exercise the right to vote attaching to the share; and
    - (b) receive notices; and
    - (c) receive a distribution in respect of the share; and
    - (d) exercise the other rights and powers attaching to the share.
  - (2) If the shareholder dies, the shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.
  - (3) Any person who becomes entitled to a share as a consequence of the death, bankruptcy, insolvency, or incapacity of the shareholder may be registered as the holder of the shareholder's shares on making a request in writing to the company to be registered, accompanied by proof satisfactory to the directors of that entitlement.

## *Issue of shares*

- 8. Issue of shares**

- (1) The company may issue more than 1 class of shares.
- (2) The company may issue shares that—
  - (a) are redeemable; or
  - (b) confer preferential rights to distribution of capital or income; or
  - (c) confer special, limited, or conditional voting rights; or
  - (d) do not confer voting rights.

**9. Procedure for issue of shares**

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

*Transfer of shares*

**10. Transfer of shares**

- (1) The shares of the company are transferable by entry in the share register in accordance with clause 11.
- (2) However, the transferability of a share is subject to—
  - (a) the terms of issue of the share; and
  - (b) the right of the directors to refuse registration under clause 11(4).
- (3) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

**11. Procedure for transfer of shares**

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

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

### *Shareholders*

#### **12. Shareholders entitled to receive dividends**

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

#### **13. Shareholders entitled to attend shareholder meeting**

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



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

#### 14. Dividends

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

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

#### 15. Distributions to shareholders

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

#### *Company acquisition of its own shares, etc*

#### 16. Company may acquire its own shares

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

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

The company may, in accordance with section 44 of the Act, provide financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company.

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

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

**19. Price for voting share**

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

**20. Requirements for purchase notice (price already determined)**

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

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

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

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

**22. Court appointment of arbitrator**

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

**23. Conduct of arbitration**

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

**24. Notice of determination of price by arbitrator**

- Within 10 working days after the date of the arbitrator's determination of the price, the company must give a notice to each minority shareholder that—
  - (a) advises the shareholder of the price determined by the arbitrator; and
  - (b) specifies a date (the **transfer date**) not less than 20 working days after the date of the notice on which the price will be paid and the shares acquired by the majority shareholder; and



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

## 25. Requirements on transfer date

### (1) On the transfer date—

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

## Part 4—Exit rights

## 26. When exit rights apply

### (1) Subject to subclause (2), clauses 27 to 32 apply to a shareholder (the **acquirer**) who—

- (a) makes an acquisition (the **acquisition**) of an interest in the voting shares in the company (the **voting shares**); and
- (b) before the acquisition had an interest in less than 50% of the voting shares; and

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

**27. Acquirer must give notice to company**

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

**28. Terms of purchase of remaining shares**

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



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

**29. Independent report**

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

**30. Notice to holders of remaining shares**

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

**31. Rights of holder of remaining shares**

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

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

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

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

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

**34. Notice of meeting**

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

**35. Irregularity in notice or accidental omission of notice**

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

**36. Methods of holding meetings**

A meeting of shareholders may be held either—

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

**37. Quorum**

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

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

**38. Chairperson**

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

**39. Voting**

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

**40. Poll**

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

**41. Votes of joint shareholders**

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

**42. Proxies**

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

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

**43. Corporations may act by representatives**

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

**44. Postal votes**

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

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

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

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

**46. Duty of chairperson in relation to postal votes**

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

**47. Written resolution of shareholders**

- (1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.
- (2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.
- (3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).
- (4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.
- (5) A resolution may be signed under subclause (1) without any prior notice being given to the shareholders.

**48. Minutes**

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

**Part 6—Directors**

**49. Number of directors**

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



**50. Appointment and removal of directors**

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

**51. Term of office**

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

**52. When director vacates office**

A director vacates office if he or she—

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

**53. Casual vacancies**

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

**54. Delegation by directors**

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

**55. Indemnity and insurance**

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



**director** includes—

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

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

**56. Remuneration of directors**

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

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

**57. Use of company information**

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

*Disclosure of interests*

**58. Directors' interests register**

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

**59. Contents of interests register**

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

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

**60. Disclosure of interest in company transaction**

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

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

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

**62. Chairperson**

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

**63. Notice of meeting**

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

**64. Methods of holding meeting**

A meeting of directors may be held either—

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

**65. Quorum**

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

**66. Voting**

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

**67. Minutes**

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

**68. Unanimous resolution**

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

*Managing director*

**69. Directors may appoint managing director**

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

**70. Delegation to managing director**

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

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

**71. Remuneration of managing director and executive directors**

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

**Part 7—Liquidation**

**72. Resolution to appoint liquidator**

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

**73. Distribution of surplus assets**

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

## **Schedule 5**

### **Procedure for minority buy-out**

**1. Buy-out notice**

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

**2. Time for giving buy-out notice**

S must give the buy-out notice,—

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

**3. How company must respond to buy-out notice**

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

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

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

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

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

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

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

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

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

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

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

**6. Objection to nominated buy-out price**

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

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

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

**8. Objection to nominated expert**

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

**9. Court must appoint expert in case of objection**

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

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

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

**11. Adjustment for provisional buy-out price**

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



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

**12. Purchase of shares by third party**

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

**13. Inability of company to pay buy-out price**

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

## **Schedule 6**

### **Amalgamations**

**1. Companies may amalgamate**

Two or more companies may amalgamate, and continue as 1 company, in accordance with this Schedule.

**2. Notice of proposed amalgamation**

(1) Each amalgamating company must—

- (a) send a copy of the amalgamation proposal to every secured creditor of the company; and
- (b) give public notice of the proposed amalgamation that complies with clause 3.

(2) The steps set out in subclause (1) must be taken not less than 20 working days before the amalgamation is proposed to take effect.

**3. Content of public notice**

The public notice required under clause 2(1)(b) must—

- (a) state that any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation—
  - (i) may inspect the amalgamation proposal; and
  - (ii) is entitled to be supplied on request with a free copy of the amalgamation proposal; and
- (b) state that inspection of the amalgamation proposal is available at the registered offices of the amalgamating companies and any other specified places, during normal business hours.

**4. Registration of amalgamation proposal**

For amalgamation, the following documents must be delivered to the Registrar for registration—

- (a) the amalgamation proposal;
- (b) in respect of each amalgamating company, a certificate signed by the directors certifying that the amalgamation proposal has been approved in accordance with this Act and the company's constitution;
- (c) a consent to be a director of the amalgamated company that is—
  - (i) in the prescribed form; and
  - (ii) signed by each person named in the amalgamation proposal as a director of the amalgamated company.

**5. Certificate of amalgamation**

(1) Without delay after receiving the documents specified in clause 4, the Registrar must issue a certificate of amalgamation in the prescribed form.

(2) If the amalgamation proposal specifies a date on which the amalgamation is intended to become effective, the certificate of amalgamation must be expressed to have effect on the specified date, and it does not matter that the Registrar has received the documents on or before that date.

**6. Effect of certificate of amalgamation**

On the date shown in a certificate of amalgamation,—

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

**7. Registers**

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

**8. Certificate by amalgamated company as to property**

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

- (3) Subclause (2) has effect despite any other enactment or rule of law or the provisions of any instrument.

**9. No derogation from provisions of enactment relating to transfer of estate or interest in land**

Except as expressly provided, nothing in this Schedule derogates from the provisions of any enactment relating to the transfer of an estate or interest in land.

**10. Power of Court in relation to amalgamations**

- (1) A shareholder or creditor of an amalgamating company, or a person to whom an amalgamating company is under an obligation, may apply to the Court for an order under subclause (2) on the ground that giving effect to the amalgamation proposal would unfairly prejudice the applicant.
- (2) On an application under subclause (1), the Court may make an order—
  - (a) directing that effect must not be given to the proposal; or
  - (b) modifying the proposal in the manner specified in the order; or
  - (c) directing the company or its directors to reconsider the proposal or any part of it.
- (3) An order under subclause (2) may be made on any conditions that the Court thinks fit.

## **Schedule 7**

### **Meetings of creditors**

#### **Part 1—Provisions that apply to meeting of creditors generally**

**1. Methods of holding meetings**

A meeting of creditors may be held—

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

**2. Notice of meeting**

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

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

**3. Contents of notice**

The notice of meeting must—

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

**4. Effect of irregularity, etc, in notice**

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

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

**5. Adjournment of meeting**

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

**6. Chairperson**

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

**7. Quorum**

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

**8. Voting**

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



**9. Proxies**

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

**10. Postal votes**

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

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

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

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

**12. Record of attendance and minutes**

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

**13. Body corporate may act by representative**

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

**14. Procedure generally**

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

**15. Effect of irregularity or defect**

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

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

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

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

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

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

**18. Liquidator must not solicit for proxies**

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

**19. Irregularity in notice of proxy**

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

**20. Disqualification from voting**

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

**21. Use of proxy by liquidator's nominee**

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

## **Schedule 8**

### **Restrictions on prior execution process**

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

For the purposes of clause 1,—

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

Despite clause 1,—

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

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



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

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

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

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

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

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

## **Schedule 9**

### **Creditors' claims**

#### **Part 1—Preliminary provisions**

##### **1. Admissible claims**

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

##### **2. Ascertainment of amount of claim**

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

##### **3. Claim for unascertained amount**

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

##### **4. Fines and penalties**

Nothing in this Act limits or affects the recovery of—

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