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Amendments to regulations

Price \$3.00

An Act to amend the Companies Act 1970-71

(10 June 2013)

The Parliament of the Cook Islands enacts as follows—**1 Title**

This Act is the Companies Amendment Act 2013.

2 Commencement

This Act comes into force on the day fixed by the Queen's Representative by an Order in Executive Council.

3 Principal Act amended

(1) This Act amends the Companies Act 1970-71.

(2) Despite subsection (1), references to sections amended by this Act are references to those sections of the Companies Act 1955 of New Zealand as applied in the Cook Islands by the Companies Act 1970-71.

Part 1**Companies Act amended****4 Interpretation**

Section 2 is amended by adding, after the definition of "Director" the following—

"**digital register** has the same meaning as in the Digital Registers Act 2011".

5 Registers to be kept for purposes of this Act

Section 7 is repealed and the following section is substituted—

"7 Registers to be kept for the purposes of this Act

"(1) The Registrar may, subject to the Act and regulations, keep registers of a sort and in a form the Registrar thinks appropriate.

"(2) Despite any other provision of the Act or regulations, the Registrar may maintain a separate register of private companies in a form that—

"(a) combines the register of private companies and the register of charges granted by private companies in a single digital register; and

"(b) allows a person who searches that register access to brief details of other companies registered under this Act."

6 Formation of private companies

Section 353 is repealed and the following section substituted—

"353 Formation of private companies

"(1) Any person may apply to the Registrar to register a company as a private company under this Act.

"(2) The application must be in a form approved by the Registrar and specify—

"(a) the name of the company, which must comply with section 31; and

- “(b) whether the articles of the company differ from the model articles published on the public website that hosts the digital register of private companies; and
 - “(c) the full name, residential address, and postal address of every director of the company; and
 - “(d) whether each person named as a director of the company has consented to act as a director of the company; and
 - “(e) the full name of every member of the company and the number of shares to be issued to each member; and
 - “(f) the registered office of the company; and
 - “(g) the postal address of the company (which may be the registered office or any other postal address).
- “(3) An application for registration must be accompanied by—
- “(a) a copy of the company’s articles if they differ from the model articles set out on the public website that hosts the digital register of private companies; and
 - “(b) the prescribed fee.
- “(4) The Registrar must not register a company as a private company unless—
- “(a) it is a company limited by shares; and
 - “(b) its articles prohibit it from offering its shares to, borrowing money from or accepting deposits from, the public; and
 - “(c) it has no more than 50 members; and
 - “(d) its articles restrict the number of its members to not more than 50; and
 - “(e) its name ends with the word “Limited”.
- “(5) If members hold one or more shares jointly, the Registrar must, for the purpose of this part of the Act, treat them as a single member.
- “(6) As soon as the Registrar receives an application for registration that complies with this section, the Registrar must—
- “(a) enter the company as a private company on the register; and
 - “(b) issue a certificate of incorporation in respect of the company that states expressly that the company is a private company.”

7 Application of Act to private companies

Section 354 is repealed and the following section substituted—

“354 Application of Act to private companies

- “(1) If there is an inconsistency between a provision of this Part and a provision elsewhere in the Act, the provision of this Part applies to a private company to the exclusion of that other provision.
- “(2) The following provisions of the Act are modified in their application to a private company—
 - “(a) the power to alter or add to articles contained in section 23 applies—
 - “(i) to a company with a memorandum, subject to the conditions contained in that memorandum:
 - “(ii) to a company without a memorandum, subject to the conditions contained in its articles.

- “(b) section 27(1) does not apply to a private company and the reference to subscribers of the memorandum in subsection (3) must be read as applying to those members notified in the application filed under section 353(2).
- “(c) sections 41, 217(d) and 219(1)(a) must be read so that references to seven members are references to one member.
- “(d) the express prohibition on the issue of special shares referred to in section 60(1) may be inserted in the articles of a private company that does not have a memorandum.
- “(e) the power of a private company to alter its share capital contained in section 70 may only be exercised by a private company that has a memorandum of association.
- “(f) section 138(c) must be read so that the reference to three members is a reference to one member.
- “(g) section 159(1) and section 180 must be read so that the references to two directors are references to one director.
- “(h) section 163 of the Act does not apply to a private company unless a member notifies the directors of the company, at least 24 hours before an annual general meeting, that the member requires an auditor to be appointed. In that case—
 - “(i) an auditor must be appointed at that meeting; and
 - “(ii) section 163 applies until the members unanimously resolve that it shall no longer apply.
- “(i) the power to allow for the unlimited liability of a director contained in sections 201 and 202 may be exercised by insertion in, or alteration to, the articles of a private company that does not have a memorandum.
- “(j) sections 181 and 182 do not apply to a private company so that every other reference in this Act to the secretary of a company must be read, in its application to a private company, as a reference to any director of the company.
- “(3) The provisions of this Act specified in the Ninth Schedule do not apply to private companies.
- “(4) A reference in this Act to the memorandum of association of a company applies only to those private companies that have a memorandum of association.”

8 Powers and status of a private company

Section 355 is repealed and the following section substituted—

“355 Powers and status of a private company

- “(1) A private company is a legal entity in its own right separate from its members and continues in existence until it is dissolved.
- “(2) Subject to any restrictions that may be contained in its articles, a private company that is incorporated after the coming into force of this section—
 - “(a) has the powers of a natural person (as if that person were a body corporate);
 - “(b) must not have a memorandum of association.

“(3) A private company that has a memorandum of association may, by special resolution, alter its objects to provide that it has the same powers as a natural person (as if that person were a body corporate).”

9 Share capital of a private company

Section 356 is repealed and the following section substituted—

“356 Share capital of private company

“(1) The authorized share capital of a private company is the total of all share capital issued by it from time to time.

“(2) A private company must have at least one issued share and the shares of a private company must not have a nominal or par value.

“(3) A private company must not issue a share that is partly paid or that otherwise imposes any liability to make a payment to the company on its holder.

“(4) Despite subsection (3) a private company may do any one or more of the following—

“(a) impose conditions, limits, or restrictions to the rights and powers attached to a share;

“(b) issue a share on credit terms that provide for a liability to make future payments to the company on the part of the person to whom it is first issued;

“(c) issue a share for a consideration other than cash, provided full details of any non-cash consideration are recorded in the books of account of the company at the time of issue.

“(5) Immediately after it receives notification of its registration, a private company must issue, to every person named in its application for registration as a member, the number of shares specified in that application as to be issued to that person.

“(6) A private company must not enter into a transaction of any sort with a third party until—

“(a) it has received notification of its registration; and

“(b) it has complied with subsection (5).

“(7) This section applies only to a private company incorporated after this section comes into force.”

10 Alteration of Articles

Section 357 is repealed and the following section substituted—

“357 Alteration of Articles

“(1) The articles of a private company that does not have a memorandum may contain conditions that restrict the ability of the company to alter or add to those articles.

“(2) The power to alter those articles contained in section 23 is subject to those conditions.”

11 Prohibition of increasing membership beyond two hundred and fifty

Section 359 is amended—

(a) by amending each reference to “two hundred and fifty” in the heading of the section and in subsection (1) and substituting the number “50”; and

(b) by repealing subsections (2) and (3).

12 Prohibition of issue of share prospectus

Section 360 is repealed and the following section substituted—

“360. Prohibition on dealings with the public

- “(1) A private company must not offer its shares to, borrow money from, or accept deposits from, the public.
- “(2) A private company must not circulate to the public any invitation or prospectus to become a member of the company, to lend money to it, or to make deposits with it.
- “(3) This section shall not apply to any private company that is registered under the Banking Act 2011.
- “(4) If a private company acts in breach of this section the company and every person who is knowingly a party to that breach shall be liable to a fine not exceeding one thousand dollars.”

13 Alteration of share capital

Section 361 is amended by adding the following new subsection after subsection (5)—

- “(6) Subsections (1) to (5) of this section shall not apply to a private company that is incorporated after the commencement of the Companies Amendment Act 2012. In that case, the company may issue further shares from time to time but must not reduce its share capital (either directly or indirectly) in any way that is not authorised by the Act.”

14 Re-registration of public companies as private companies

- (1) Section 365(1) is amended by omitting the words “twenty-five” and substituting the word “fifty”.
- (2) Subsections (4) and (5) are repealed and the following subsections are substituted—
 - “(4) As soon as the Registrar receives an application for registration that complies with this section, the Registrar must—
 - “(a) enter the company as a private company on the register; and
 - “(b) register on the file of the company a signed and dated certificate of incorporation in respect of the company stating expressly that the company is re-registered under this Part of the Act as a private company; and
 - “(c) sign and date a similar endorsement on the memorandum of the company.
 - “(5) Once the Registrar has issued the certificate of registration referred to in subsection (4)(b), the company is a private company as if it had first been registered under this Part of this Act on the day prior to the commencement of the Companies Amendment Act 2012.
 - “(6) Despite subsection (5) the re-registration of a company under this section shall not affect—
 - “(a) the rights of the company against any person;
 - “(b) the obligations of the company to any person.”

15 Re-registration of private companies as public companies

Section 366(4) is amended by adding, after the words “memorandum of the company” the words “if any”.

16 Power to alter tables and forms, and requirements as to accounts

Section 470 is amended by adding the following new subsections—

- “(5) In the case of private companies, the Registrar may, from time to time do any one or more of the following—
- “(a) alter any table or form;
 - “(b) alter the requirements of this Act as to the matters to be stated in a table or form or the documents to be annexed;
 - “(c) alter the requirements for the signing of any form;
 - “(d) dispense with the requirement that a table or form be filed.
- “(6) The Registrar may only use the power given in subsection (5) if doing so is reasonably necessary to—
- “(a) allow the Registrar to use readily available software to maintain the register of private companies as a digital register; or
 - “(b) adopt a form of articles similar to that in common use in the Cook Islands without requiring those to be signed as required by section 23; or
 - “(c) address any issue arising from a private company not having a memorandum.
- “(7) If the Registrar chooses to exercise the power given in subsection (5), the Registrar must notify full details of its exercise at least seven days prior to doing so—
- “(a) to the Minister; and
 - “(b) by publication in the Gazette.”

17 First Schedule

The First Schedule of Act as substituted by section 41 of the Companies Act 1970-71 is repealed and is substituted by that set out in Schedule 1.

18 Amendments to regulations

The regulations listed in Schedule 2 are amended as set out in that schedule.

Part 2**General and miscellaneous provisions***Offences***19 Transitional provisions**

The secretary of a private company is treated as having resigned on the commencement of this Act.

20 Savings provisions

A private company registered under the Act at the commencement of this Act—

- (a) continues its corporate existence with its share capital, memorandum and articles unaltered; and
- (b) may alter its share capital in any way set out in sections 70 and 361 of the Act.

Schedule 1

Sections 8, 470, Part XV

First Schedule

Table of fees to be paid to the Registrar of Companies

<i>A. Fees Payable on registration of a Company or Overseas Company</i>	
For registration	\$150
For registration of an overseas company	\$150
<i>B. Miscellaneous Fees</i>	
For registration of any increase in share capital made after the registration of the company	\$50
For registration of any increase in the number of members made after the registration of the company	\$50
For an application for the Registrar's approval or consent required under this Act or any Regulation, where no other fee is prescribed	\$50
For registration of documents delivered to the Registrar under section 18 of this Act altering the memorandum of association of a company	\$50
For registering of any change of name (except as provided in section 8(1)(b) of this Act)	\$20
For registering under Part IV of this Act any instrument creating or evidencing any charge required to be registered thereunder	\$75
Where two or more instruments create or evidence a charge or charges securing the same moneys, for every such instrument after the first	\$20
For registering any satisfaction or partial satisfaction of a charge or release or partial release of property from a charge under Part IV of this Act	\$50
For a certificate of the registration of any charge under Part IV of this Act	\$10
For a copy of any memorandum of satisfaction or of any memorandum entered by the Registrar on the register under section 107 of this Act	\$10
For re-registration of a company pursuant to section 365 or section 366 of this Act	\$150
For a certificate of incorporation of any company	\$20

For a certificate of a copy of or extract from any document	\$10
For a copy of or extract from any document, in addition to any fee for certifying the same	\$5
For the submission of any document to the Registrar after the time specified in this Act in respect of that document (whether or not any fee is payable, and in addition to any other fee payable) –	
(a) Where submitted not more than one month after the time specified	\$30
(b) Where submitted more than one month after the time specified	\$50
<i>C. Annual Return and other Fees Payable under Part XV of this Act</i>	
The annual return fees payable under Part XV of this Act shall be the amount equal to –	
In the case any company having a nominal share capital of:	
Less than \$1,000.00	\$20
More than \$1,000.00 but less than \$10,000.00	\$50
More than \$10,000.00 but less than \$100,000.00	\$100
More than \$100,000.00 but less than \$200,000.00	\$200
More than \$200,000.00 but less than \$300,000.00	\$300
More than \$300,000.00 but less than \$400,000.00	\$400
More than \$400,000.00 but less than \$500,000.00	\$500
More than \$500,000.00 but less than \$600,000.00	\$600
More than \$600,000.00 but less than \$700,000.00	\$700
More than \$700,000.00 but less than \$800,000.00	\$800
More than \$800,000.00 but less than \$900,000.00	\$900
More than \$900,000.00 but less than \$1,000,000.00	\$1,000
More than \$1,000,000.00	\$1,000
In the case of any company not having any nominal share capital	\$30

Schedule 2 Amendments to regulations

The Companies Regulations 1971

1. Regulation 3 is amended by deleting clause (3) and substituting the following—
 - “(3) A document submitted for filing on a digital register must meet the requirements of the public website that hosts the digital register.”

2. Regulation 5 is deleted and the following substituted—
 - “5. Forms
 - “(1) A person must use the following forms when filing a document on a register—
 - (a) if a form is to be filed on a digital register, the form required by the public website that hosts the digital register; or
 - (b) if the form is to be filed on any other register, the form required by the Schedule to these regulations.
 - (2) Despite regulation (1) the Registrar may allow other forms to be used, either generally or in any particular case.
 - (3) If the Registrar allows another form to be used, that form has the same legal effect as if it was required to be used by this regulation.”