



ANALYSIS.

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1990, No. 4

An Act to amend the International Companies Act 1981-82

(13 September 1990)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the International Companies Amendment Act 1990 and shall be read together with and deemed part of the International Companies Act 1981-82 (hereinafter referred to as "the principal Act").

(2) Section 6 of this Act shall be deemed to have commenced on the same day as the principal Act.

2. Interpretation - Subsection (1) of section 2 of the principal Act is hereby amended by:

- (a) Inserting the following term and its definition:
" "Approved newspaper" in relation to any notice required to be published by any provision of this Act means any newspaper approved by the Registrar:";
- (b) Adding to the definition of the term "Capital surplus" the following words:
"and includes unrealised capital profits of all kinds";
- (c) Inserting the following term and its definition:
" "Table B Debenture" means:
 - (a) a debenture stated on its face to be a secured debenture issued in accordance with this Act prior to 15 October 1990 provided that a debenture secured by mortgage or charge and not issued upon terms that the provisions of Table B shall apply (with or without amendments or modifications) shall not be a Table B Debenture for the purposes of this Act; and
 - (b) a debenture expressed on its face to be a Table B Debenture or expressed to be issued upon terms that the provisions of

Table B shall apply with such modifications or amendments as are set out in the terms of issue of any such debenture."

3. Alteration of articles - Section 26 of the principal Act is hereby amended by omitting subsection (2) and substituting the following subsection:

- "(2) (a) A copy of such resolution shall be lodged with the Registrar within 1 month of its being passed or within such further period as the Registrar may allow.
(b) Notwithstanding any failure to lodge such resolution with the Registrar the resolution shall be effective from the date of its passing."

4. Division 2 - Debentures - Division 2 of Part IV of the principal Act is hereby amended by omitting all references to the term "secured debenture" and substituting references to the term "Table B Debenture".

5. Power to issue debentures - Section 57 of the principal Act is hereby amended by:

- (a) Omitting from subsection (3) the words "shall, subject to the terms of the debenture have effect" and substituting the words "shall be deemed to be issued subject to the terms contained in Table B and such Table B Debenture shall (subject always to the terms thereof) have the following effect";
(b) Adding to paragraph (a) of subsection (3) after the words "suspended or modified" the words "in accordance with the terms of the Table B Debenture";
(c) Adding to subsection (3) the following new paragraph:
"(j) the holder of a Table B Debenture shall not be deemed to be or to have been a member or a shareholder of an international company by reason only of the holding of such Table B Debenture or the exercise by him or on his behalf of any rights or powers or discretions pursuant to the terms of the Table B Debenture or the dealing in any way with the Table B Debenture.";
(d) Inserting the following new subsection:
"(3A) Notwithstanding any other provision of this Act or any implication which apart from this subsection might arise or would arise at law or in equity, the holding or dealing with any Table B Debenture shall not impose or imply and shall be deemed (subject to any express provision contained in the terms of issue of any such debenture or arising as a necessary implication therefrom) never to have imposed or implied any duty on the part of the holder of the Table B Debenture to exercise any right or power or discretion contained in or arising out of or connected with the Table B Debenture for any particular purpose or to exercise any such right or power or discretion subject to any fiduciary or other like obligations whatsoever."

6. Negation of the rule in Re Charge Card Services Limited and Broad v Commissioner of Stamp Duties - (1) The principal Act is hereby further amended by inserting the following new section as section 74A:

"74A. (1) Notwithstanding any rule of law to the contrary, any charge or security given, or purported to be given, by any person ("the chargor") in favour of another person ("the chargee") where:

- (a) the charged property is or includes a debt due or to become due to the chargor from the chargee; and
- (b) which debt is situated in the Cook Islands shall be deemed to be a charge over an asset and shall be as valid and enforceable to the same extent as if the charge or security had been given over that debt in favour of any other person.

(2) For the purpose of subsection (1) of this section, a debt shall be deemed to be situated in the Cook Islands if either:

- (a) the chargor is an international company; or
- (b) the chargee is an international company and
 - (i) the contract or deed evidencing the debt has been entered into (by one or all of the parties) in the Cook Islands; or
 - (ii) the contract or deed evidencing the debt is, or is to be, given effect to (whether in whole or in part) in the Cook Islands.

(3) Nothing in this section shall be construed in any way to limit the validity or effect of:

- (a) any contractual, legal or equitable right of set off arising between the parties (including any right of a bank and the rules relating to matters of account between parties); or
- (b) any provision creating other rights, powers, obligations (or the imposition of restrictions on obligations) between a debtor and a creditor; and, for the avoidance of doubt, nothing in this section shall be construed to require the giving of any charge or security by the parties to any contract or deed.

(4) For the purposes of this section any reference to a debt becoming due includes a reference to:

- (a) a credit balance of an account (whether or not ascertained at any particular time);
- (b) a contingent claim;
- (c) proceeds and receivables due from time."

(2) Where charge or security of the type referred to in subsection (1) of section 74A of the principal Act (as inserted by subsection (1) of this section) has been given, or purported to have been given by an international company which has not been registered in accordance with Division 4 of Part IV of the principal Act, the charge may be registered pursuant to Division 4 within 42 days of the commencement of this Act, and on such registration the charge or security shall be deemed to have been registered in accordance with Division 4 within 42 days of the giving of the charge or security.

7. Proxies - Section 97 of the principal Act is hereby amended by omitting subsection (1) and substituting the following subsection:

"(1) A member of an international company entitled to attend and vote at a meeting of the company or at a meeting of any class of members of the company may

appoint any person or persons, whether a member or members or not, as his proxy to attend and vote instead of the member at a meeting and a proxy so appointed shall have the same right as a member to speak at the meeting."

8. Branch registers - Paragraph (b) of subsection (3) of section 111 of the principal Act is hereby amended by omitting the number "7" and substituting the number "28".

9. New Part VIA - Registered Listed Companies - The principal Act is hereby further amended by omitting section 126A and inserting a new Part VIA as follows:

"PART VIA

REGISTERED LISTED COMPANIES

DIVISION 1 - REGISTRATION

126A Interpretation - In this Part of this Act, except insofar as the context or subject matter otherwise indicates or requires -

"Approved Stock Exchange" means any Stock Exchange lawfully operating for the trading of equities in any of the following places:

- (i) Australia
- (ii) Canada
- (iii) France
- (iv) Hong Kong
- (v) Indonesia
- (vi) Japan
- (vii) Luxembourg
- (viii) Malaysia
- (ix) Netherlands
- (x) New Zealand
- (xi) Singapore
- (xii) South Africa
- (xiii) Taiwan
- (xiv) Thailand
- (xv) United Kingdom
- (xvi) United States of America

and any other Stock Exchange which has been approved by the Registrar pursuant to subsection (2) of section 126B of this Act:

"Registered Listed Company" means a company listed on an Approved Stock Exchange and registered pursuant to section 126E of this Act.

126B Approval of Stock Exchanges - (1) Any person may apply to the Registrar for his approval of any Stock Exchange as an Approved Stock Exchange.

(2) Upon application under subsection (1), supported by such material as he considers adequate and satisfactory, the Registrar may, if he is satisfied that the relevant Stock Exchange provides an active public market in the shares or securities or both of substantial public companies, grant his approval in writing to that Stock Exchange being designated an Approved Stock Exchange and, if such approval is given, that Stock Exchange shall be deemed thereafter to be an Approved Stock Exchange pursuant to this Act.

126C Entitlement to apply for registration as Registered Listed Company - (1) Any international company which is listed or proposes to become listed on an Approved Stock Exchange may apply to the Registrar for registration pursuant to section 126E of this Act.

(2) Any foreign company which is listed on an Approved Stock Exchange and which proposes to be registered as being continued pursuant to section 16 of this Act may apply to the Registrar for registration pursuant to section 126E of this Act.

126D Application for registration - Application for registration shall be made by lodging with the Registrar:

- (a) A request for registration in the prescribed form;
- (b) A resolution of the directors of the applicant company resolving to apply for the registration;
- (c) In the case of an international company not listed on an Approved Stock Exchange, a resolution of the directors resolving to apply to an Approved Stock Exchange for listing;
- (d) In the case of a foreign company which is listed on an Approved Stock Exchange, a resolution of the directors resolving to apply to be registered as being continued pursuant to section 16 of this Act.
- (e) The prescribed fee.

126E Registrar's duties - (1) On compliance with the requirements for registration set out in section 126D the Registrar shall enter on the certificate of incorporation of the company or certificate of continuance as the case may be a Minute that the company is registered under this section and shall sign the Minute and state therein the date thereof:

Provided that in the case of a foreign company proposing to be registered as being continued pursuant to section 16 of this Act the Registrar shall not sign and date the Minute until the date on which the foreign company is so registered pursuant to section 16 of this Act.

(2) The completed Minute shall be conclusive evidence that all the requirements of this Division of this Part of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the company is a Registered Listed Company.

(3) Every subsequent renewed certificate of incorporation or continuance of a Registered Listed Company shall have a similar Minute entered thereon signed by the Registrar on the date of the issue of the certificate and such Minute shall be conclusive evidence in a similar manner to that provided in subsection (2) of this section.

DIVISION 2 - SPECIAL PROVISIONS

126F Application of this Division - (1) The provisions of this Division of this Part of this Act shall apply to every Registered Listed Company and shall not apply to any company which is not a Registered Listed Company.

(2) In the application of the provisions of this Division of this Part of this Act to any Registered Listed Company if there is any conflict between any provision of this Division of this Part of this Act with any provision of any other part of this Act the provisions of this Division of this Part of this Act shall prevail.

126G Inspection, production and copying of documents kept by Registrar - (1) Any person may:

- (a) inspect any document kept by the Registrar in connection with any Registered Listed Company;
 - (b) require any certificate issued under this Act or a copy or extract from any document kept by the Registrar in respect of any Registered Listed Company to be given or certified by the Registrar on the payment of such fees as may be prescribed.
- (2) Subsection (5) of section 8 and subsection (2) of section 12 of this Act shall not apply where the information relates to any Registered Listed Company.

126H Premiums received on issue of shares to be share capital and limitations on application thereof - (1) Section 40 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where a Registered Listed Company issues at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to the share premium account and where assets are acquired by the issue of shares of a Registered Listed Company and no consideration is recorded, the assets so acquired shall be valued and if the value of the assets is more than the par value of such shares, the difference between the par value of the shares and the value of the assets so acquired shall be transferred to the share premium account.

(3) The premium account may, notwithstanding anything contained in subsection (2), be applied by the Registered Listed Company in paying up unissued shares of the Registered Limited Company to be issued to members of the Registered Listed Company as fully paid capitalisation shares or in writing off -

- (a) the preliminary expenses of the Registered Listed Company; or
 - (b) the expenses of, or the commission paid or discount allowed on, the creation or issue of any shares or debentures of the Registered Listed Company; or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the Registered Listed Company.
- (4) Except as provided in subsection (3) of this section, the share premium account shall be treated as part of the paid up capital of the Registered Listed Company for the purposes of this Act.

126I Section 126H(2) not to apply to premiums on shares issued pursuant to scheme of acquisition - (1) For the purposes of this section and section 126J:

"equity share capital" means, in relation to a Registered Listed Company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution:

"issuing company" means a Registered Listed Company which issues shares in consideration for the acquisition of shares in, or the undertaking of, another company:

"merged company" means a company in respect of which an issuing company issues shares:

"scheme of acquisition" means:

- (a) Any arrangement pursuant to sections 126T, 126V, 126W, 129A or 129B of this Act;
- (b) Any sale or arrangement of the whole or part of the business or property of a Registered Listed Company to which section 181 of this Act applies:

"undertaking" means the whole of a business and all property, rights and interests relating to that business.

(2) Nothing in subsection (2) of 126H of this Act shall apply to the issue of shares at a premium by an issuing company pursuant to a scheme of acquisition whereby the shares are issued as fully paid up in consideration for either:

- (a) The transfer or issue to the issuing company of shares in a merged company, or the cancellation of shares in a merged company, which results in the issuing company acquiring (together with any shares already held by it or any subsidiaries of the issuing company) 90 percent or more of the nominal value of the issued equity shares in the merged company; or
- (b) The transfer or sale to the issuing company of the whole of the undertaking of the merged company.

126J Section 126H(2) not to apply to premiums on shares issued in certain group reconstructions - (1) This section applies to the issue by an issuing company which is a wholly owned subsidiary of its holding company of shares to:

- (a) that holding company; or
- (b) a wholly owned subsidiary of that holding company, in consideration for the transfer to the issuing company of shares in any other subsidiary of that holding company.

(2) Where an issuing company which is a Registered Listed Company issues shares to which this section applies at a premium, nothing in subsection (2) of 126H of this Act shall require the issuing company to transfer to the share premium account any sum greater than the amount by which the value of the shares in the subsidiary transferred to the issuing company as shown in the accounting records of the company transferring the shares immediately before the transfer, exceeds the nominal value of the shares issued by the issuing company.

(3) For the purposes of this section, a company shall be deemed to be a wholly owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

126K Balance Sheet to disclose origin of sums not required to be transferred to share premium account Where a Registered Listed Company issues shares at a premium but, by virtue of section 126I of this Act, is not required to transfer a sum equal to the aggregate amount or value of the premiums on those shares to a share premium account, and that sum is included or shown in any reserve or retained profits of the Registered Listed Company in its balance sheet, that balance sheet shall state, whether by note or otherwise, the amount, origin, and nature of that sum.

126L Redemption of redeemable shares - (1) A Registered Listed Company shall not redeem any of its redeemable shares unless that Registered Listed Company complies with the following provisions:

- (a) at a date not more than 30 days and not less than 15 days before the date from which the redemption of the shares is to have effect the Registered Listed Company shall cause a notice to be published in an approved newspaper in each of the jurisdictions in which the Registered Listed Company is listed stating the number of the shares in issue, the number of the shares to be redeemed, and the date as from which the redemption is to have effect; and
- (b) on the date as from which the redemption is to have effect a statutory declaration shall be declared by at least 2 directors of the Registered Listed Company declaring either that on that date the Registered Listed Company is to the best of their knowledge, after due inquiry able to pay all its debts (including contingent debts) or that all the creditors of the Registered Listed Company on that date have expressed in writing their concurrence to the redemption; and
- (c) where a Registered Listed Company redeems any of its shares pursuant to this section, then within 28 days after the date as from which the redemption has effect the Registered Listed Company shall file a memorandum, with a copy of the notice referred to in paragraph (a) and the declaration referred to in paragraph (b) annexed thereto, together with the prescribed fee in the office of the Registrar stating that the provisions of this section have been duly complied with.

(2) If any Registered Listed Company fails to comply with paragraphs (a), (b) or (c) of this section every officer of the Registered Listed Company shall be liable to a fine of \$5,000.

126M Dealing by a company in its own shares - (1)
A Registered Listed Company shall not purchase its own shares or provide financial assistance whether by guarantee, loan or otherwise and whether directly or indirectly for the purchase of its own shares unless -

- (a) the articles of the company authorise such purchase or financial assistance;
- (b) a special resolution of the company has been passed authorising the purchase or financial assistance as the case may be;
- (c) the purchase or financial assistance is made from capital surplus of the company;
- (d) at a date not more than 30 days and not less than 15 days before the date from which the purchase or financial assistance is to have effect the Registered Listed Company shall cause a notice to be published in an approved newspaper in each of the jurisdictions in which the Registered Listed Company is listed stating the number of shares to be purchased and the date as from which the purchase is to have effect and, where financial assistance is to be given, the name of the party to whom financial assistance is to be given and the terms of the financial assistance;

- (e) on the date as from which the purchase or financial assistance is to have effect a statutory declaration is declared by at least two directors of the Registered Listed Company declaring either that on that date the Registered Listed Company is to the best of their knowledge, after due enquiry, able to pay all its current obligations or that all the creditors of the Registered Listed Company on that date have expressed in writing their concurrence to the purchase or the financial assistance as the case may be.
- (2) Where a Registered Listed Company purchases its shares or provides financial assistance for the purchase of its shares pursuant to subsection (1) of this section, then within 28 days after the date as from which the purchase or the financial assistance as the case may be has effect the Registered Listed Company shall lodge a memorandum, with a copy of the notice referred to in paragraph (d) and the declaration referred to in paragraph (e) annexed thereto, together with the prescribed fee in the office of the Registrar stating that the provisions of subsection (1) of this section have been duly complied with.
- (3) Notwithstanding subsection (1) a Registered Listed Company may purchase or otherwise acquire its own shares for the purposes of -
- (a) eliminating fractional shares;
 - (b) paying dissenting shareholders entitled to payment for their shares under the provisions of this Act or regulations made under this Act; or
 - (c) effecting, subject to this Act, the retirement of its redeemable shares by redemption or by purchase at a price not exceeding the redemption price.
- (4) For the purposes of this section "purchase" shall include exchange of shares for assets and acquisition by any method, but shall not include redemption.
- (5) If any Registered Listed Company fails to comply with paragraph (c) or (d) of subsection (1) of this section or subsection (2) of this section every officer of the Registered Listed Company shall be liable to a fine of \$5,000.
- (6) If a company acts in contravention of this section, the company and any director of the company who made a declaration pursuant to paragraph (d) of subsection (1) of this section without reasonable grounds for any opinion expressed therein commits an offence and is liable to a fine not exceeding \$10,000.
- (7) Nothing in this section shall affect the validity of any contract for the sale of shares in a Registered Listed Company or financial assistance made in breach of the provisions of this section.

126N Cancellation of re-acquired shares by a Registered Listed Company - All shares of a Registered Listed Company purchased by that Registered Listed Company in accordance with the provisions of subsection (1) of section 126M of this Act shall be cancelled and thereupon such shares shall be restored to the status of authorised but unissued shares and a statement of cancellation of such shares shall be filed with the Registrar in accordance with this Act.

1260 Power to issue shares at a discount - (1) Section 50 of this Act shall not apply to Registered Listed Companies and instead, (subject as provided in this section), it shall be lawful for a Registered Listed Company to issue at a discount shares in the Registered Listed Company of a class already issued

Provided that:

- (a) The issue of the shares at a discount are authorised by resolution passed in general meeting of the Registered Listed Company, and are sanctioned by the Court;
- (b) The resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c) At the date of the issue not less than 1 year has elapsed since the date on which the Registered Listed Company was entitled to commence business;
- (d) The shares are issued within 1 month after the date on which the issue is sanctioned by the Court or within such extended time as the Court may allow.

(2) Where a Registered Listed Company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares of a Registered Listed Company must contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. If default is made in complying with this subsection, the company and every officer of the company who is in default shall commit an offence against this Act.

126P Reduction of share capital - (1) Section 54 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to confirmation by the Court, a Registered Listed Company may, if so authorised by its articles, by special resolution, reduce its share capital in any way and, in particular, without limiting the generality of the foregoing, may do all or any of the following:

- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
- (b) cancel any paid up capital which is lost or unrepresented by available assets;
- (c) repay any paid up share capital which is in excess of the needs of the Registered Listed Company or which it is otherwise in the interests of the Registered Listed Company as a whole to have paid off,

and may, so far as necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(3) Where the proposed reduction of share capital involves limitation of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, and in any other case if the Court so directs

- (a) every creditor of the Registered Listed Company who, at the time fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the

- Registered Listed Company would be admissible in proof against the Registered Listed Company, shall be entitled to object to the reduction;
- (b) the Court, unless satisfied by statutory declaration that there are no such creditors, shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of those creditors and the nature and the amount of their debts or claims, and may publish notices fixing a final day on or before which creditors not entered on the list may claim to be so entered;
- (c) where a creditor entered on the list whose debt is not discharged or whose claim has not been determined does not consent to the reduction, the Court may dispense with the consent of that creditor on the Registered Listed Company securing payment of his debt or claim by appropriating as the Court directs -
- (i) if the Registered Listed Company admits the full amount of the debt or claim or although not admitting it is willing to provide for it, the full amount of the debt or claim; or
- (ii) if the Registered Listed Company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, an amount fixed by the Court.
- (4) Notwithstanding the provisions of subsection (3) the Court may, having regard to the circumstances of the case, direct that all or any of the provisions of that subsection shall not apply as regards any class of creditors.
- (5) All applications to the Court under the provisions of subsections (3) and (4) shall be lodged with the Court and the Registered Listed Company making such application shall bear the costs of any enquiry and advertisement directed by the Court under the provisions of those subsections.
- (6) The Court, if satisfied with respect to every creditor who under subsection (3) is entitled to object that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit and may by order require the Registered Listed Company to publish as the Court directs the reasons for reduction or such other information as the Court thinks expedient, and, if the Court thinks fit, the causes which led to the reduction.
- (7) An order made under subsection (6) shall show the amount of the share capital of the Registered Listed Company as altered by the order, the number of shares into which it is to be divided and the amount of each share and the amount, if any, at the date of the order deemed to be paid up on each share.
- (8) A copy of the order made by the Court confirming a resolution for reducing share capital shall be lodged by the Registered Listed Company with the Registrar together with the prescribed fee and on the filing of the copy of the order the reduction of share capital confirmed by that order shall take effect.
- (9) A certificate of the Registrar shall be conclusive evidence that all the requirements of this Act with respect

to reduction of share capital have been complied with and that the share capital of a Registered Listed Company is as stated in that order.

(10) On the filing of the copy of an order the particulars shown in the order pursuant to subsection (7) shall be deemed to be substituted for the corresponding particulars in the memorandum and such substitution and any addition ordered by the Court to be made in the name of the Registered Listed Company shall, in the case of any addition to the same, for such period as is specified in the order of the Court, be deemed to be an alteration of the memorandum for the purposes of this Act.

(11) A member, past or present, shall not be liable in respect of any share, to any call or contribution exceeding in amount the difference between the amount of the share as fixed by the order and the amount paid, or the reduced amount which is to be deemed to have been paid, on the share, as the case may be. Where any creditor entitled to object to the reduction is not entered on the list of creditors, by reason of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, and after the reduction the Registered Listed Company is unable to pay the amount of his debt or claim within 1 year after the debt or claim becomes due and payable or 1 year after the date of reduction whichever is the later then -

- (a) every person who was a member of that Registered Listed Company at the date of the registration of the order for reduction shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Registered Listed Company had commenced to be wound up on the day before the date of the registration of the order for reduction; and
- (b) if that Registered Listed Company is wound up by the Court on an application by any such creditor, then upon proof of his ignorance of the proceedings for reduction or of their nature and effect upon his claim, the Court may settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories in a winding-up,

but nothing in this subsection shall affect the rights of the contributories among themselves.

(12) Any officer of any Registered Listed Company who -

- (a) wilfully conceals the name of any creditor entitled to object to the reduction;
- (b) wilfully misrepresents the nature of the amount of the debt or claim of any creditor; or
- (c) is party to any such concealment or misrepresentation,

shall be guilty of an offence against this Act and shall be personally liable for the amount of such debt or claim.

126Q Rights of holders of classes of shares - (1)
Section 55 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) If the share capital of a Registered Listed Company is divided into different classes of shares and provision is made by its articles for authorising the variation or abrogation of the rights attached to any class of shares and provision is made by its articles for authorising the variation or abrogation of the rights

attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares and, in pursuance of the said provisions, the rights attached to any class of shares are at any time varied or abrogated, the holders or not less in the aggregate than 10 per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation or abrogation, may lodge an application with the Court to have the variation or abrogation cancelled and if any such application is made, the variation or abrogation shall not have effect until confirmed by the Court on application lodged by the Registered Listed Company in the manner prescribed.

(3) An application shall not be invalid by reason of any applicant having consented to or voted in favour of the resolution for the variation or abrogation if the Court is satisfied that any relevant fact was not disclosed by the Registered Listed Company to that applicant before he so consented or voted and the applicant shall be deemed not to have consented to, or voted in favour of that resolution.

(4) The application shall be lodged within 28 days after the date on which consent was given or the resolution was passed or such further time as the Court allows, and the application shall be lodged in the first instance in writing in the prescribed form.

(5) After hearing the applicant and any other person who lodges an application with the Court to be heard and who appears to the Court to be interested, the Court may disallow or confirm the variation or abrogation as the case may be. The decision of the Court shall be final and it shall have a discretion as to how the costs and expenses of and incidental to such application shall be paid and may order accordingly.

(6) A Registered Listed Company shall within 28 days after the making of an order by the Court on any such application cause to be lodged with the Registrar a copy of the Court's order and if default is made in complying with this provision the Registered Listed Company and every officer of the company who is in default shall be guilty of an offence against this Act.

126R Power to issue debentures - Paragraph (e) of subsection (1) and subsection (3) of section 57 of this Act shall have no application to Registered Listed Companies which shall have no power to issue Table B Debentures.

126S Meetings - The approval of the members of any Registered Listed Company shall not be required to locate any annual general meeting or extraordinary general meeting of the company in any country in which the company is listed on an Approved Stock Exchange.

126T Power to compromise with creditors and members -

(1) Section 127 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) In this section, except insofar as the context or subject matter otherwise indicates or requires -

"arrangement" includes a reorganization of the share capital of a Registered Listed 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" means any Registered Listed Company liable to be wound up under this Act.

(3) Where a compromise or arrangement is proposed between a Registered Listed Company and its creditors or any class of them or between the company and its members or any class of them, the Court, on an application being lodged by the company or by any creditor or member of the company or, in the case of a company being wound up, by the liquidator, may order a meeting of the creditors or a class of creditors or of members of the company or a class of members to be summoned in such manner as the Court may direct.

(4) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members present and voting either in person or by proxy at the meeting agrees to any compromise or arrangement, the compromise or arrangement if approved by order of the Court or, in the case of companies being wound up compulsorily, by the Court, shall be binding on all the creditors or class of creditors or on all the members or class of members, as the case may be, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

(5) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as is thought fit.

(6) An order under subsection (4) shall have no effect until an office copy of the order is lodged with the Registrar and the prescribed fee paid and, upon being so lodged, the order shall take effect on and from the date of filing of the same or such earlier date as the Court may determine and as may be specified in the order.

(7) A copy of any order made under subsection (4) shall be annexed to every copy of the memorandum and articles of the company issued after the order has been made.

(8) Where any such compromise or arrangement in respect of a Registered Listed Company for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies has been proposed, the directors of the company -

(a) if a meeting of the members of the company by resolution so directs, shall instruct such experts or a trustee company or both as are named in the resolution to report on the proposal and forward their report or reports to the directors as soon as may be; and

(b) shall make such report or reports available at the registered office of the company in the Cook Islands for inspection by the shareholders and creditors of the company at least 14 days before the date of any meeting ordered by the Court to be summoned as provided in subsection (3).

(9) A Registered Listed Company which defaults in complying with subsection (7) or (8) and every officer of a Registered Listed Company who is in default shall be guilty of an offence against this Act.

(10) Where no order has been made or resolution passed for the winding up of a Registered Listed Company and any such compromise or arrangement as is referred to in subsection (3) of this section has been proposed

between the Registered Listed Company and its creditors, or any class of such creditors, the Court on such application lodged by the Registered Listed Company or by any member or creditor of the Registered Listed Company, may restrain further proceedings in any action or proceeding against the Registered Listed Company except by leave of the Court and subject to such terms as the Court imposes.

126U Information as to compromise with creditors and members - (1) Section 128 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where a meeting is summoned in respect of a Registered Listed Company under section 126T -

(a) with every notice summoning the meeting which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or arrangement and in particular stating the material interests of the directors, whether as directors or as members or as creditors of the company or otherwise, and the effect thereon of the compromise or arrangement in so far as it is different from the effect on the like interests of other persons; and

(b) in every notice summoning the meeting which is given by advertisement, there shall be included either such statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such statement.

(3) Where the compromise or arrangement affects the rights of debenture holders, the statement shall give the like explanation with respect to a trustee company when the trustee company is acting as trustee for the debenture holders as, under subsection (2), a statement is required to give with respect to the directors.

(4) Where a notice given by a Registered Listed Company by advertisement includes a notification that copies of such statement can be obtained, every creditor or member entitled to attend the meeting shall on making application in the manner indicated by the notice be furnished by the company free of charge with a copy of the statement.

(5) Each director of a Registered Listed Company and the trustee company on behalf of the debenture holders shall give notice to the company of such matters relating to himself and itself as may be necessary for the purposes of this section.

(6) Where default is made by a Registered Listed Company in complying with any requirements of this section, the Registered Listed Company and every officer of the Registered Listed Company who is in default shall be guilty of an offence against this Act.

(7) For the purpose of subsection (6), a liquidator of a Registered Listed Company and the trustee company acting on behalf of debenture holders shall be deemed to be officers of the Registered Listed Company.

(8) Notwithstanding the provisions of subsection (6), a person shall not be liable under that subsection if he shows that the default was due to the refusal of any director or trustee company to supply the necessary particulars as to his or its interests.

126V Provisions for facilitating reconstruction and amalgamation of Registered Listed Companies - (1)
Section 129 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) In this section, except in so far as the context or subject matter otherwise indicates or requires, "property" includes property rights and powers of every description.

(3) Where an application is made to the Court under section 126T for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any Registered Listed Company, or the amalgamation of any Registered Listed Company with any one or more companies (whether a Registered Listed Company or not) and that under the scheme the whole or any part of the undertaking or the property of any such company concerned in the scheme, in this section referred to as the "transferor company", is to be transferred to any other company, in this section referred to as the "transferee company", the Court may either by order approving the compromise or arrangement or by any subsequent order provide for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding -up, of the transferor company;
- (e) the provision to be made for any persons, who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(4) Where an order made under this section provides for the transfer of property or liabilities then by virtue of the order that property shall be transferred to and vest in, and those liabilities shall be transferred to and become liabilities of, the transferee company, free in the case of any particular property if the order so directs from any charge which is by virtue of the compromise or arrangement to cease to have effect.

(5) Where an order is made under this section, a Registered Listed Company in relation to which the order is made shall lodge an office copy thereof with the Court and pay the prescribed fee within 14 days after the making of the order and every Registered Listed Company which makes default in complying with this subsection and every officer of the Registered Listed Company who is in default shall be guilty of an offence against this Act.

126W Holders of 90 per cent of shares may acquire remainder - (1) The holder or holders of not less than 90 per cent of the shares or any class of shares in a Registered Listed Company (hereinafter in this section referred to as the "purchasers") may give notice to the remaining shareholders or class of shareholders of the intention to acquire their shares on the terms (including the terms as to price, timing and settlement) set out in the notice. When such a notice is given the purchasers shall be entitled and bound to acquire the shares of the remaining shareholders on the terms set out in the notice unless a remaining shareholder applies to the Court for an appraisal under subsection (2):

Provided that the foregoing provisions of this subsection shall not apply unless the purchasers offer the same terms to all holders of the shares whose acquisition is involved.

(2) Any shareholder to whom a notice has been given under subsection (1) may within 1 month of receiving the notice apply to the Court to appraise the value of the shares to be purchased from him and the purchasers shall be entitled to acquire the shares at the price so fixed by the Court:

Provided that the value appraised by the Court shall not be less than the value stipulated in the notice referred to in subsection (1) of this section.

(3) Within 1 month of the Court appraising the value of any shares under subsection (2) the purchasers shall be entitled either:

- (a) to acquire all the shares involved at the price fixed by the Court; or
- (b) cancel the notice given under subsection (1).

(4) Where the Court has appraised any shares under subsection (2) and the purchasers have prior to the appraisal acquired any shares by virtue of a notice under subsection (1) then within 1 month of the Court appraising the value of the shares if the price of the shares they have paid to any shareholder is less than that appraised by the Court they shall either:

- (a) pay to such shareholder the difference in the price they have paid to him and the price appraised by the Court; or
- (b) cancel the notice given under subsection (1) return to the shareholder any shares they have acquired and the shareholder shall repay the purchasers the purchase price.

(5) No appeal shall lie from an appraisal by the Court under this section.

(6) The costs of any application to the Court under this section shall be at the discretion of the Court.

(7) In this section:

"price" shall include not only monetary price but also the monetary value of any shares, securities or other assets offered by the purchasers in exchange for the shares to be acquired.

126X Capital maintenance - (1) Section 217 of this Act shall not apply to Registered Listed Companies.

(2) A Registered Listed Company may make payment of dividends to shareholders out of its profits, including for the avoidance of doubt any capital surplus.

126Y Investigation of the affairs of a Registered Listed Company and the protection of minorities - (1)
The Registrar may, at any time of his own volition or on the application of

- (a) members holding not less than one-tenth of the shares in the Registered Listed Company, or
- (b) the relevant Minister or official or statutory body invested with the appropriate power in the jurisdiction where the Registered Listed Company is listed on a stock exchange who is responsible for the administration of the legislation or regulations as to the inspection of affairs of companies in that jurisdiction,

appoint one or more inspectors within or outside the Cook Islands to investigate the affairs of the Registered Listed Company and to report thereon in such manner as he may direct.

(2) The application by the members of a Registered Listed Company shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for the investigation; and the Registrar may, before appointing an inspector require the applicants to give security for payment of the costs of the inquiry.

(3) If an inspector considers that any officer or agent of the Registered Listed Company or any other person is or may be in possession of any books or documents of or relating to the company or in possession of any information concerning the affairs of the company, he may require that person to produce to him any books or documents in his custody or power of or relating to the company and/or attend before him and otherwise to give him all assistance in connection with the investigation he is reasonably able to give; and it shall be the duty of that person to comply with the requirement.

(4) An inspector may examine on oath any such person as is mentioned in subsection (3) in relation to the affairs of the Registered Listed Company and may administer an oath accordingly.

(5) Where any officer or agent or person mentioned in subsection (3) refuses to produce any book or document that under this section it is his duty to produce, or to answer any question relating to the affairs of the Registered Listed Company, he shall be liable to a fine not exceeding \$10,000 and the Court convicting him may order him to produce to the inspector the books or documents in respect of which he was convicted.

(6) A person shall not be excused from answering a question put to him under this section by an inspector on the ground that the answer might tend to incriminate him but, where such person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings in relation to a charge of perjury in respect of the answer.

(7) A person who complies with any requirement under this section of an inspector investigating the affairs of a company shall not incur any liability to any person by reason only of that compliance, and a certificate by the inspector under his hand stating that

he is investigating the affairs of the company and that the person to whom the requirement is made is an officer, agent or employee, as the case may be, of the company or person whom he considers may be in possession of any information concerning its affairs shall be conclusive evidence of those facts.

(8) If an inspector appointed under this section to investigate the affairs of a Registered Listed Company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other company that is or has at any relevant time been -

- (a) a subsidiary or a holding company of the Registered Listed Company;
- (b) a subsidiary of its holding company;
- (c) a holding company of its subsidiary, or
- (d) substantially under the control of the same person as the Registered Listed Company

he shall have power so to do, and shall report on the affairs of the other company so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the Registered Listed Company.

(9) In this section, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of this section the expression "agents", in relation to a company shall include the bankers and solicitors of the company and any person employed by the company as auditor, whether any such person is or is not an officer of the company. A copy of any report of an inspector appointed under this section, signed by the inspector and counter-signed by the Registrar, shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(10) Nothing in this section shall require disclosure to an inspector -

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a Registered Listed Company's bankers as such of any information as to the affairs of any of their customers other than the Registered Listed Company.

(11) Any person who fails to obey an order of the Court made under subsection (5) requiring the production of any books or documents shall be guilty of contempt of Court and may be punished accordingly.

(12) On the conclusion of the investigation the inspector shall report his opinion to the Registrar, and a copy of the report shall be forwarded by the Registrar to the Registered Listed Company and to the head functionary of any Stock Exchange on which the Registered Listed Company is listed and a further copy may in his discretion, at the request of the applicants for the investigation, be delivered to them. On receipt of the report the Registered Listed Company may at its discretion publish the report generally or the findings of the inspector thereunder.

(13) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Registrar directs that they be paid by the Registered Listed Company or its officers if substantial wrongdoing by such officers can be properly attributed to them in the activities of the Registered Listed Company.

(14) The exercise of any discretion by any inspector appointed pursuant to this section shall, upon application by the Registered Listed Company or any person affected by the exercise of the discretion, be subject to appeal to the Court which may make such orders as it sees fit.

126Z Letters of understanding - (1) The Cook Islands Monetary Board may at any time of its own volition enter into letters of understanding with the relevant Minister or statutory or regulatory authority invested with appropriate powers in any jurisdiction, with respect to them cooperating with each other in the investigation or other lawful regulation of Registered Listed Companies listed on the relevant Approved Stock Exchange in that jurisdiction.

(2) Where the Registrar considers it appropriate, he may apply to the Cook Islands Monetary Board for such Board to enter into the letters of understanding as contemplated by subsection (1) of this section and the Cook Islands Monetary Board shall consider such application of the Registrar and exercise its discretion as to whether the application of the Registrar should be approved.

126AA Alternative remedy to winding up in cases of oppressive or prejudicial conduct - (1) Any member of a Registered Listed Company who complains that the affairs of the Registered Listed Company are being conducted in a manner oppressive or prejudicial to the interests of some part of the members, including himself, or where a report has been made to the Registrar under section 126Y of this Act, the Registrar may make an application to the Court by petition for an order under this section.

(2) If on any such petition the Court is of opinion:

- (a) that the Registered Listed Company's affairs are being conducted as aforesaid; and
- (b) that to wind up the Registered Listed Company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the Registered Listed Company should be wound up;

the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the Registered Listed Company's affairs in future, or for the purchase of the shares of any members of the Registered Listed Company by other members of the Registered Listed Company or by the Registered Listed Company and, in the case of a purchase by the Registered Listed Company, for the

reduction accordingly of the Registered Listed Company's capital, or directing the Registered Listed Company to institute, prosecute, defend, or discontinue Court proceedings, or authorising a member or members of the Registered Listed Company to institute, prosecute, defend, or discontinue Court proceedings in the name of and on behalf of the Registered Listed Company, or otherwise.

(3) Where the conduct complained of ceases after an application has been made to the Court but before the Court has made an order under this section the Court may, notwithstanding that the matters complained of have been brought to an end, make any such order that the Court may have made if the conduct complained of had not ceased.

(4) Where an order under this section makes an alteration in or addition to any Registered Listed Company's memorandum or articles, then, notwithstanding anything in any other provision but subject to the provisions of the order, the Registered Listed Company concerned shall not have power without the leave of the Court to make further alteration in or addition to the memorandum or articles as so altered or added to accordingly.

(5) A sealed copy of any order under this section altering or adding to, or giving leave to alter or add to, a Registered Listed Company's memorandum or articles shall, within 30 days after the making thereof, be delivered by the Registered Listed Company to the Registrar for registration; and if a Registered Listed Company makes default in complying with this subsection, the Registered Listed Company and every officer of the Registered Listed Company who is in default shall be liable to a default fine.

(6) In this section the term "member" includes the legal personal representatives of a deceased member, and every person to whom shares of a member have been transferred by operation of law.

126BB Preservation of the books and assets of a Registered Listed Company - (1) The Registrar in any case where he has made an order under subsection (1) of section 126Y or where he has made an application under subsection (1) of section 126AA may apply to the Court ex parte for an order that the assets, books and papers of the Registered Listed Company be preserved and not moved.

(2) If on any such application the Court is satisfied that there is a likelihood that the assets of the Company will be transferred or that the books and papers of the Registered Listed Company may be destroyed or removed it shall make an order that the assets of the Registered Listed Company shall not be transferred to any other person, removed from the Cook Islands or otherwise dealt with and that the books or papers of the Registered Listed Company shall not be destroyed or moved until a further order is made by the Court.

(3) Where a Registered Listed Company is served with an order under subsection (1) the Registered Listed Company may apply to the Court for the order to be discharged and the Court may:

- (a) confirm the order;
- (b) vary the order in such manner as it considers just; or

(c) discharge the order;
and in any case make such orders as it thinks desirable for the preservation of the assets of the Registered Listed Company and the custody, inspection and copying of the books and papers of the Registered Listed Company.

(4) The Registered Listed Company and any officer of the Registered Listed Company who acts in contravention of an order of the Court made under subsections (2) or (3) shall be guilty of contempt of Court.

126CC - True and fair accounts - (1) Every balance sheet of a Registered Listed Company shall give a true and fair view of the state of affairs of the company as at the end of its financial year, and every profit and loss account of a Registered Listed Company shall give a true and fair view of the profit and loss account of the company for the financial year.

(2) Subsection (1) of this section shall not apply to a Registered Listed Company's profit and loss account if -

- (a) the company has subsidiaries; and
- (b) the profit and loss account is framed as a consolidated profit and loss account dealing with all or any of the company's subsidiaries as well as the company and shows how much of the consolidated profit or loss for the financial year is dealt with in the accounts of the company.

(3) Any person being a director of a Registered Listed Company who fails to take all reasonable steps to secure compliance as respects any accounts laid before the company in general meeting with the provisions of this section commits an offence and shall, in respect of each offence, be liable on conviction to imprisonment for 6 months and to a fine of \$10,000:

Provided that -

- (a) in any proceedings against a person in respect of an offence under this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the said provisions were complied with and was in a position to discharge that duty; and
- (b) a person shall not be sentenced to imprisonment for any such offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.

(4) For the purposes of this section, except where the context otherwise requires -

- (a) any reference to a balance sheet or profit and loss account shall include any notes thereon or document annexed thereto; and
- (b) any reference to a profit and loss account shall be taken, in the case of a company not trading for profit, as referring to its income and expenditure account and references to profit or to loss and, if the company has subsidiaries, references

to a consolidated profit and loss account shall be construed accordingly.

DIVISION 3 - DEREGISTRATION

126DD Application for deregistration - (1) Any Registered Listed Company may apply to the Registrar to cease to be registered pursuant to section 126E of this Act if the following requirements are satisfied:

- (a) all shareholders of the company have been notified;
 - (b) a resolution approving the application has been passed by shareholders of the company who together hold in aggregate not less than 90 percent of the total votes of the members present (either in person or by proxy) and entitled to vote on that resolution and who together hold in aggregate not less than 75 percent of the total votes of all members of the company entitled to vote on such a resolution;
 - (c) the company has not more than 45 days and not less than 30 days prior to lodging the application published a notice in an approved newspaper in each of the jurisdictions in which the company trades or conducts its business stating the company's intention to cease to be registered under section 126E of this Act.
 - (d) the Registrar is satisfied that all regulatory or other requirements in the jurisdiction in which the Registered Listed Company maintains previously or previously maintained its primary listing have been satisfied.
- (2) The application to the Registrar shall be made in the prescribed form and shall be lodged with the Registrar together with evidence to the satisfaction of the Registrar of the requirements prescribed in subsection (1) of this section and the prescribed fee.

126EE Registrar's duties - (1) On compliance with the requirements for deregistration the Registrar shall enter on the certificate of incorporation of the company or the certificate of continuance as the case may be a Minute that the company has ceased to be registered pursuant to section 126E of this Act and shall sign the Minute and state therein the date thereof.

(2) The completed Minute shall be conclusive evidence that all the requirements of this Division of this Part of this Act in respect of deregistration and of matters precedent and incidental thereto have been complied with and that the company has ceased to be a Registered Listed Company."

10. PART VII - Arrangements and Reconstructions - Part VII of the principal Act is hereby amended by inserting the following new sections:

"129A Amalgamation of companies - (1) Two or more companies, at least one of which is an international company and all of which are registered in the Cook

Islands including holding and subsidiary companies, may subject to the consent of the Court given in its discretion amalgamate and continue as one international company.

(2) Each company proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out:

- (a) the provisions that are required to be included in the memorandum;
- (b) the name and address of each proposed director of the amalgamated international company;
- (c) the manner in which the shares of each amalgamating company are to be converted into shares or other securities of the amalgamated international company;
- (d) if any shares of an amalgamating company are not to be converted into securities by the amalgamated international company, the amount of money or securities that the holders of such shares are to receive in addition to or instead of securities of the amalgamated international company;
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated international company or of any other securities which are to be received in the amalgamation;
- (f) whether the articles of the amalgamated international company are to be those of one of the amalgamating companies and, if not, a copy of the proposed articles; and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated international company.

(3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation agreement shall provide for the cancellation of such shares when the amalgamation becomes effective without any repayment of capital in respect thereof, and no provision shall be made in the agreement for the conversion of such into shares of the amalgamated international company.

(4) The directors of each amalgamating company shall submit the amalgamation agreement for approval to a meeting of the holders of shares of the amalgamating company of which they are directors and to the holders of each class or series of such shares.

(5) A notice of a meeting of shareholders complying with section 99 of this Act shall be sent in accordance with that section to each shareholder of each amalgamating company, and shall:

- (a) include or be accompanied by a copy or summary of the amalgamating agreement; and
- (b) state that a dissenting shareholder is entitled to be paid the fair value of his shares, but failure to make that statement shall not invalidate an amalgamation.

(6) Each share of an amalgamating company shall carry the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

(7) An amalgamation agreement shall be deemed to have been adopted when it has been approved by the shareholders as provided in this section.

(8) Any shareholder not satisfied that he has been paid fair value for his shares may apply to the Court for the proper valuation of his shares and section 126W of this Act shall apply mutatis mutandis to such application as if the company were a Registered Listed Company under Part VIA of this Act.

(9) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating company, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating companies.

129B Short form amalgamation - (1) An international company which is a holding company and one or more of its wholly-owned subsidiary companies which are international companies may amalgamate and continue as one company without complying with section 129A if:

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating company; and
- (b) the resolutions provide that:
 - (i) the shares of each amalgamating subsidiary company shall be cancelled without any repayment of capital in respect thereof;
 - (ii) the memorandum of association shall be the same as the memorandum of the amalgamating international company; and
 - (iii) no securities shall be issued by the amalgamated company in connection with the amalgamation.

129C Registration of amalgamated companies - (1) Subject to subsections (2) and (3) of this section after the amalgamation of companies has been adopted, the amalgamated company shall on application be registered by the Registrar and a certificate of incorporation issued to the amalgamated company.

(2) Any application for the registration of an amalgamated company shall be accompanied by:

- (a) the consent of the Court except where an application is pursuant to section 129B of this Act;
- (b) the registered address of the amalgamated company;
- (c) the memorandum of the amalgamated company; and
- (d) the statutory declarations referred to in subsection (3).

(3) An application for registration of an amalgamated company shall have attached thereto a statutory declaration by a director of each amalgamating company that establishes that:

- (a) there are reasonable grounds for believing that:
 - (i) each amalgamating company is and the amalgamated company will be able to pay its liabilities (including contingent liabilities) as they become due; and

- (ii) the realisable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and
- (b) there are reasonable grounds for believing that:
 - (i) no creditor will be prejudiced by the amalgamation; or
 - (ii) adequate notice has been given to all known creditors of the amalgamating companies and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.
- (4) For the purposes of subsection (3) adequate notice to all known creditors of the amalgamating companies shall be deemed to be given if:
 - (a) a notice in writing is sent to each known creditor having a claim against the company that exceeds \$1,000; and
 - (b) a notice is published in a newspaper in each of the jurisdictions where the company trades or conducts its business stating that the company intends to amalgamate with one or more specified companies in accordance with this Act and that a creditor of the company may object to the amalgamation within 30 days from the date of the notice.

129D Effect of certificate of amalgamated companies

- ~ (1) On the date shown in the certificate of amalgamation:
- (a) the amalgamation of the amalgamating companies and their continuance as one company shall become effective;
 - (b) the property of each amalgamating company shall become the property of the amalgamated company;
 - (c) the amalgamated company shall continue to be liable for the obligations of each amalgamating company;
 - (d) an existing cause of action, claim or liability to prosecution shall be unaffected;
 - (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating company may be continued to be prosecuted by or against the amalgamated company;
 - (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company; and
 - (g) the memorandum of amalgamation shall be deemed to be the memorandum of the amalgamated company and the certificate of amalgamation shall be deemed to be the certificate of incorporation of the amalgamated company.

130A Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

- (1) Where an offer involving the transfer of shares or any class of shares in an international company (in this section referred to as "the transferor company") to another person (in this section referred to as the "acquirer") has within 4 months after the making of the offer been approved by the holders of not less than 90% in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the acquirer) the acquirer may, at any time within 2 months after the expiration of the said 4 months, give notice to any dissenting shareholder that the acquirer desires to acquire the dissenting shareholder's shares.

(2) When such a notice is given the acquirer shall, unless on an application made by a dissenting shareholder within 1 month from the date on which the notice was given the Court thinks fit to order otherwise, be entitled and bound to acquire all the shares of the dissenting shareholders on the terms on which under the offer, the shares of the approving shareholders are (or were) to be transferred to the acquirer.

(3) Where, in pursuance of any such offer, shares in an international company are transferred to an acquirer and those shares together with any other shares in the international company held by or for the acquirer at the date of the transfer comprise or include 90 percent in value of the shares in the international company or of any class of those shares, then:

- (a) the acquirer shall within 1 month from the date of transfer, give notice of that fact to the holders of the remaining shares of that class who have not assented to the scheme; and
- (b) any such holder may within 3 months from the giving of the notice to him, himself give notice requiring the acquirer to acquire the shares in question,

and where a shareholder gives notice under paragraph (b) of this subsection with respect to any shares the acquirer shall be entitled and bound to acquire those shares on the terms on which under the scheme the shares of the approving shareholders were transferred to the acquirer, or on such other terms as may be agreed or as the Court on the application of either the acquirer or the shareholder thinks fit to order.

(4) Where a notice has been given by the acquirer under subsection (1) of this section and the Court has not, on an application made by a dissenting shareholder, ordered to the contrary the acquirer shall, on the expiration of 1 month from the date on which the notice has been given, or, if an application to the Court by a dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the acquirer and on its own behalf by the acquirer, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the acquirer for the shares which by virtue of this section the acquirer is

entitled to acquire, and the transferor company shall thereupon register the acquirer as the holder of those shares.

(5) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(6) In this section, except insofar as the context or subject matter otherwise indicates or requires:

"dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the acquirer in accordance with the scheme or contract;

"nominee" includes any person acting jointly or in concert with the acquirer (including any related companies of the concert party who are or habitually act in concert with the acquirer).

11. PART XII - Shares and Debentures - (1) The title to Division 1 of Part XII of the principal Act is hereby amended by adding the words "and Application".

(2) Division 1 of Part XII of the principal Act is hereby further amended by adding a new section 229A as follows:

"229A Non-application of Division 2 where prospectus registered in approved jurisdiction - Division 2 of this Part of this Act shall have no application to any invitation, prospectus or advertisement where a prospectus in connection with the issue of shares or debentures in or the depositing or lending of money with or to an international company as the case may be has been registered in any jurisdiction in which is located an Approved Stock Exchange as defined in section 126A of this Act:

Provided that within 28 days of registering or filing the prospectus in the relevant jurisdiction a copy of such prospectus has been delivered to the registered office of the international company and a duplicate copy signed by at least 2 directors of the international company has been delivered to the Registrar who shall forthwith file such duplicate prospectus on the international company's file at his office."

12. Registration of prospectus - Paragraph (c) of subsection (2) of section 236 of the principal Act is hereby amended by inserting after the word "prospectus" and before the word "or" the words "and of all material contracts referred to in the prospectus".

13. Minimum subscriptions - Section 240 of the principal Act is hereby amended by adding a new subsection as follows:

"(10) None of the provisions of subsections (1) to (9) (both inclusive) of this section shall have any application in any case where Division 2 of this Part has no application by virtue of section 229A."

14. Application moneys to be held in trust until allotment
- Section 241 of the principal Act is hereby amended by:
- (a) Inserting after the word "Subject" in subsection (1) the words "in any case where Division 2 of this Part has no application by virtue of section 229A";
 - (b) Adding to subsection (3) the words "and, in any case where Division 2 of this Part has no application by virtue of section 229A, shall also mean any bank in any jurisdiction in which is located an Approved Stock Exchange as defined in section 126A of this Act the name of which has been notified by the relevant official of that jurisdiction responsible for regulating banks to the Registrar that such bank is an approved bank."
15. Contents of trust deed - Subsection (1) of section 243 of the principal Act is hereby amended by adding the following proviso:
- "Provided that in any case where Division 2 of this Part has no application by virtue of section 229A paragraph (d) of this subsection shall not apply compulsorily but may apply at the election of the borrowing company."
16. Duties of trustee company - Section 244 of the principal Act is hereby amended by adding a new subsection as follows:
- "(9) In any case where Division 2 of this Part has no application by virtue of section 229A:
- (a) The references to "the Registrar" in subsections (2), (3), (4), (5) and (6) of this section shall be deemed to be references to "the Court";
 - (b) The Court may order that all or any actions or proceedings before the Court by or against the borrowing company be stayed in lieu of the direction prescribed in paragraph (b) of subsection (4) of this section."
17. Proper law - Section 245 of the principal Act is hereby amended by adding the following proviso:
- "Provided that this section shall have no application in any case where Division 2 of this Part has no application by virtue of section 229A."

This Act is administered by the Cook Islands Monetary Board