



ANALYSIS

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1991, No. 31An Act to amend the International Companies Act 1981-82.

(19 December 1991)

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

1. Short Title and commencement - (1) This Act may be cited as the International Companies Amendment Act (No.2) 1991 and shall be read together and deemed part of the International Companies Act 1981-82 (hereinafter referred to as "the principal Act").

(2) Except where otherwise indicated, the provisions of this Act shall apply as from the day being one month after the date of assent.

(3) Section 87 of this Act shall be deemed to have come into force on the same day the principal Act came into force.

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

(a) Omitting from the definition of "Audit period" the words "and, when used in relation to the appointment of an auditor, means a period expiring on the 30th day of June next after the expiry of the preceding audit period or, if there be no preceding audit period, a period expiring on the 30th day of June next after the appointment of the auditor";

(b) Inserting after the term "Company" and its definition the following terms and definitions:

"Company limited by guarantee" means an international company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute from time to time and in the event of it being wound up and which is stated to be an international company limited by guarantee in its memorandum;

"Company limited by shares" means an international company formed on the principle of having the liability of its members limited to the amount (if any) unpaid on the shares respectively held by them and which is stated to be an international company limited by shares in its memorandum;

"Company limited both by shares and by guarantee" means an international company formed on the principle of having the liability of its members:

- (a) in the case of members who have given a guarantee, limited to the respective amount that they have undertaken to contribute from time to time and in the event of it being wound up; and
- (b) in the case of members who are shareholders, limited to the amount (if any) unpaid on the shares respectively held by them,

and which is stated to be a company limited both by shares and by guarantee in its memorandum;"

- (c) Omitting the definition of the term "Creditor" and substituting the following definition:

"means a person whose debt or claim is admissible against the company under section 155 and, in respect of the proof of debts or claims, includes a person seeking to prove that his claim is so admissible, but shall exclude any foreign government and any taxation authority of any foreign government";

- (d) Inserting after the term "Debenture" and its definition the following term and definition:

"Debt" means any actual or contingent debt, but shall exclude any taxation, fine or penalty or any liability under any public law imposed by any foreign government and any other debt or obligation incapable of being enforced in the Cook Islands;"

- (e) Omitting the definition of the term "Director" and substituting the following definition:

"means any person occupying the position of director of an international company and any person held out by a company to be a director";

- (f) Inserting after the term "Foreign company" and its definition the following term and definition:

"Foreign Government" means any government, governmental authority or agency or any quasi-governmental authority or agency (other than the government of the Cook Islands or any governmental authority or agency or any quasi-governmental authority or agency of the Cook Islands);" ;

- (g) Inserting after the term "Lodged" and its definition the following terms and definitions:

"Meeting" shall have the extended meaning ascribed to it in section 96(4) of this Act;

"Membership interest" means:

- (a) in the case of a company limited by guarantee, the guarantors membership interest;
 - (b) in the case of a company limited by shares, a no liability company or an unlimited company, the shareholders membership interest;
 - (c) in the case of a company limited by shares and by guarantee
 - (i) the guarantors membership interest; and
 - (ii) the shareholders membership interest as the case may be
 - (d) in the case of a mutual company the rights of any policy holder as member, or any other such interest envisaged by section 18E(1)(b) of this Act;"
- (h) Inserting after the term "Minister" and its definition the following terms and definitions:
- "Mutual company" shall have the meaning attributed to it in subsection (1) of section 18E of this Act;
- "No liability company" means an international company formed on the principle of having no liability placed on its members and which is stated to be a no liability company in its memorandum;"
- (i) Omitting the definition of the term "Person" and substituting the following definition:
- "includes a natural person, a corporation sole, a company, a partnership, a statutory body or office, an instrumentality of government, any other public authority, any court or tribunal and any other body of persons whether corporate or incorporate";
- (j) Inserting after the term "Registered company auditor" and its definition the following term and definition:
- "Registered share" means any share issued by an international company standing in the register of members of the company in the name of a member;"

- (k) Omitting the definition of the term "Resident secretary" and substituting the following definition:
- "means a trustee company, any wholly owned subsidiary thereof or any officer of a trustee company appointed to be such under section 90";
- (l) Omitting the definition of the term "Share" and substituting the following definition:
- "in relation to an international company means a share in the share capital of that company and includes stock";
- (m) Inserting after the term "Trustee company" and its definition the following term and definition:
- ""Unlimited company" means a company formed on the principle of having no limit placed on the liability of its members and which is stated to be an unlimited company in its memorandum;"

3. Restriction on shareholding in international and foreign companies - Section 6 of the principal Act is amended by adding after the words "this Act" the words "or a foreign company that has the centre of its administrative management in the Cook Islands unless that foreign company is registered under the Companies Act 1970-71".

4. Permitted purposes for incorporation - Section 7 of the principal Act is amended by:-

- (a) Adding to paragraph (c) of subsection (2) the words "unless it is permitted to do so pursuant to the Trustee Companies Act 1981-82";

- (b) Adding a new subsection as follows:

"(3) For the purposes of this section an international company shall not be regarded as carrying on the business of acting as a trustee company when acting as the trustee or one of the trustees of not more than three trusts."

5. Registered company auditors - Section 10 of the principal Act is amended by repealing subsections (6), (7), (8) and (10).

6. Registers - Section 12 of the principal Act is amended by inserting after subsection (2) the following subsection -

"(2A) Notwithstanding the provisions of subsection (2), except in the case of a debenture holder, director or liquidator or in any case where the prior written consent of the international company or the trustee

company acting for the international company is given, the Registrar shall not allow any person to inspect any document or provide any person with a copy or extract of any document unless the Registrar has given reasonable notice to the international company of his intention to do so, such notice to include details of the relevant documents and the persons who will inspect or be provided with a copy of such documents."

7. Formation of companies - Section 13 of the principal Act is amended by repealing subsection (3) and inserting the following subsections:

"(3) Every international company incorporated under this Act shall be:

- (a) a company limited by shares; or
- (b) a no liability company; or
- (c) a company limited by guarantee; or
- (d) a company limited by both shares and by guarantee; or
- (e) an unlimited company; or
- (f) a mutual company;

(4) Nothing in subsection (3) of this section shall in any way be construed to limit an international company's ability to issue debentures pursuant to section 57 of this Act."

8. Registration and incorporation - (1) Section 14 of the principal Act is amended by -

- (a) Inserting after subsection (6) the following subsection:

"(6A) Until such time as an international company is dissolved pursuant to the provisions of this Act, the international company shall continue its corporate existence (without rendering defective any legal or other proceedings instituted against the company or affecting any property, rights, powers, authorities, duties, functions, liabilities or obligations of the international company or any other person) notwithstanding that the certificate of incorporation of the international company may have expired and not been renewed within the time specified in this section.";

- (b) Inserting after subsection (7) the following subsection:

"(7A) Save as may be specified by this Act or by contract, the members of an international company do not owe any duty, liability or obligation to the international company, any other member of the international company, any creditor of the international company or any other company related to the international company.";

(2) Subsection (6A) of section 14 (as inserted by subsection (1) of this section) shall be deemed to have been in effect as from the date of the coming into force of the principal Act.

9. Requirements as to memorandum - (1) Subsection (1) of section 18 of the principal Act is amended by -

(a) Inserting in paragraph (b) after the words "in relation to the share capital of a company" the words "(if any)";

(b) Adding the following paragraph:

"(e) whether the company is a company limited by shares, a no liability company, a company limited by guarantee, a company limited both by shares and by guarantee an unlimited company, or a mutual company."

(2) Every international company incorporated before the coming into force of this Act shall be a company limited by shares and there shall be no requirement upon such company to state that the company is a company limited by shares in its memorandum.

10. Liability of members - The principal Act is further amended by inserting after section 18 the following section:

"18A. (1) Subject to this Act an international company is

(a) a legal entity, considered in law as a fictitious person, distinct from its members, and with separate rights, obligations and liabilities; and

(b) an entity with perpetual succession.

(2) Notwithstanding any rule of common law or equity to the contrary, but subject always to other provisions of this Act, the separate corporate personality of an international company may be ignored only in cases of:

(a) actual agency or actual trust save that membership of the same group of companies shall not raise any presumption as to agency or as to trust; or

(b) actual fraud (as contrasted with any action which the law of equity may regard as improper).

(3) In the case of a company limited by shares, members shall be liable only to the international company to the amount (if any) unpaid on the shares respectively held by them.

(4) In the case of an unlimited company, the liability of the members shall not be limited.

(5) In the case of a no liability company members shall have no liability to the international company.

(6) Each of the rights and obligations of members of an international company (including the right to vote and the right to receive dividends) are severable and capable of being transferred, charged, or otherwise dealt with independently from the other rights of that member.

(7) In the case of a company limited by guarantee, a member is liable to the international company only to the extent to which that member has undertaken to contribute from time to time and in the event of it being wound up: provided that this liability shall cease three months (or such longer period as may be specified in the articles) after that person ceases to be a member of the international company.

(8) In the case of a company limited both by shares and by guarantee a member is liable to the international company:

- (a) in the case of members who have given a guarantee, only to the extent to which that member has undertaken to contribute from time to time and in the event of it being wound up: provided that this liability shall cease three months (or such longer period as may be specified in the articles) after that person ceases to be a member of the international company; and
- (b) in the case of members who are shareholders, only to the extent of any amount unpaid on the shares respectively held by them.

11. No liability companies - The principal Act is further amended by inserting after section 18 the following section -

"18B. (1) The acceptance of a share in a no liability company (whether by allotment or by transfer) does not constitute a contract on the part of the shareholder to pay any calls in respect of that share or to make any contribution to the debts and liabilities of that international company; and any such shareholder is not liable to be sued for any calls or contributions by the no liability company.

(2) Calls upon shares in a no liability company shall be so made that they are payable not more than 90 days from the date on which the call is made.

(3) Subject to the articles of the international company providing for a longer period, any share in a no liability company upon which a call is unpaid at the expiration of 14 days after the day for its payment is thereupon forfeited without the need for any resolution of the directors (or any other proceedings) and may be offered for sale or otherwise dealt with in the manner and form specified in the articles of the international company.

(4) The articles of a no liability company may regulate all other matters concerning the corporate activities of the international company including without limitation:

- (i) any distributions of the assets of the international company on a winding up or otherwise as between the members;
- (ii) the priorities of payment as between different shareholders and between shareholders and promoters or vendors;
- (iii) provisions as to forfeiture of shares;
- (iv) the provisions as to dealing with shares held in trust; and
- (v) the rights and obligations of members other than as specified in this Act.

(5) The permissible objects, powers or activities of a no liability company are not restricted other than as may be specifically prohibited by this Act.

(6) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of no liability companies."

12. Companies limited by guarantee and companies limited both by shares and by guarantee - The principal Act is further amended by inserting after section 18 the following section:

"18C. (1) Notwithstanding any rule of common law or equity dealing with the nature of guarantees, where an international company is a company limited by guarantee, or is a company limited both by shares and by guarantee, a guarantee given by a member is deemed to be a proprietary interest which is capable of constituting a membership interest in the international company and also of being freely transferred, assigned, charged or otherwise disposed of or dealt with to or in favour of any person in the manner prescribed in the articles of the international company; and such transfer, assignment, charge or other disposition or dealing shall not affect the validity of the guarantee, but shall transfer both the membership interest and the guarantee obligation to that other person.

(2) In the case of a transfer or other absolute disposition of such a guarantee as referred to in subsection (1), the transferor shall no longer be a member of the international company.

(3) The transfer of a guarantee interest shall be effected by notice in writing to the international company.

(4) In the case of a company limited both by shares and by guarantee, nothing in this Act shall require a shareholder to also be a guarantee member of that international company or vice versa.

(5) Subject to the articles and any contract to the contrary a guarantee member may surrender his guarantee to an international company, and following any such surrender made in writing, his liability shall cease absolutely three months after the date of such surrender.

(6) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of companies limited by guarantee or companies limited by both shares and by guarantee.

13. Unlimited companies - The principal Act is further amended by inserting after section 18 the following section:

"18D. (1) An unlimited company may have share capital in which case it shall state in its memorandum of association the amount of that share capital and the division of that share capital into shares or a fixed amount and the shareholders shall be liable for all the debts of the unlimited company.

(2) An unlimited company may be without share capital and the subscriber to the memorandum of association shall be liable for all the debts of the unlimited company.

(3) Sections 46, 54 and 54A of this Act shall not apply to an unlimited company.

(4) The liability of any director of an unlimited company shall not be unlimited but shall be determined in accordance with the provisions of this Act.

(5) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of unlimited companies."

14. Mutual companies - The principal Act is further amended by inserting after section 18 the following section:

"18E. (1) In this Act "mutual company" means:

- (a) any international company licensed under the Off-Shore Insurance Act, 1981-82; or
- (b) any other international company approved by the Cook Islands Monetary Board for the purposes of this section;

"Premiums" means the premiums payable on any insurance, re-insurance, guarantee, indemnity, superannuation, pension or investment policy issued or effected by a mutual company to, or on behalf of, any member of the mutual company.

(2) Any person to whom a mutual company issues an insurance, re-insurance, guarantee, indemnity, superannuation, pension investment policy or contract may, if so provided by the articles, be a member of such mutual company.

(3) A member of a mutual company is liable to the company only to the extent of any unpaid premiums (or any undischarged portion thereof) due to the mutual company (or any contractual amount pending) on the date of the commencement of the winding up from such member.

(4) The provisions of this section shall apply to a mutual company and to the relevant member whether or not the mutual company is a company limited by shares or by guarantee or by both.

(5) Regulations may be made by the Queen's Representative prescribing the form of documents and filing requirements of mutual companies."

15. Change of status - The principal Act is further amended by inserting after section 18 the following section -

"18F. (1) Every international company incorporated (or continued) under this Act may, unless its memorandum otherwise provides, change its status from any of the types of companies specified in paragraphs (a) to (f) of section 13(3) to any other type of company specified therein in accordance with this section; and such change may be effected notwithstanding that at some earlier time the company has been any other (or the same) type of company as contemplated by the provisions of that subsection.

(2) An international company may change its status only if all of the following requirements are complied with:

(a) the proposed change is specifically authorised by a special resolution of the members of the international company and is given effect to, as contemplated by subsection (3) within six months from the date of such resolution: and

(b) the directors make a statutory declaration which is lodged with the Registrar that:

(i) the change of status will, in their honest belief, not result in the international company thereby being incapable of meeting its obligations to its creditors as they fall due; and

(ii) the international company has complied with all the provisions of this Act (including the payment of any fees due to the Registrar); and

(iii) the memorandum and articles will be duly amended within at least three days to reflect the change of status.

(3) The change of status of an international company shall take effect upon the day upon which it files a copy of the amended memorandum and articles with the Registrar.

(4) Where:

- (a) any member of an international company did not vote in favour of the member's special resolution to change the status of the international company; and
- (b) the change of status may have the effect of increasing the liability of that member; -

then except in so far as that change was made in accordance with the rights of that member as were specified in the articles of the international company at the time that person became a member, that member may either:

- (i) at any time within 60 days of the passing of the resolution, forfeit his membership interest to the international company whereupon his liability shall be immediately and absolutely terminated; or
 - (ii) lodge an application with the Registrar to have the change of status of the international company cancelled, and if any such application is made the change of status shall not have effect until confirmed by the Registrar and the provisions of subsections (2), (3), (4) and (5) of section 55 of this Act shall apply mutatis mutandis where any such application is made.
- (5) A member who has forfeited his membership interest pursuant to subsection (4) (i) shall receive from the international company such amount as may be specified in the articles or as may be agreed or, failing that such amount as may be determined by the Registrar (or a chartered accountant approved by the Registrar, whose costs are to be paid by the international company) as representing that members proportional interest in the realisable net tangible assets of the international company save however that any such amount shall be paid only to the extent to which the international company would not otherwise be rendered insolvent.
- (6) A certificate of change of status, in the form of a certificate of incorporation issued by the Registrar shall be conclusive evidence that all the requirements of this Act with respect to the change of status have been complied with and that the international company is henceforth of the type stated in that certificate, being a company validly incorporated pursuant to this Act.
- (7) Any change in status of an international company pursuant to this section shall not operate to:

- (a) create a new legal entity;
- (b) prejudice or affect the identity of the body corporate, or its continuity;
- (c) affect the property or rights or obligations of the international company; or
- (d) render defective any legal proceedings whatsoever."

16. Alteration of memorandum - Section 19 of the principal Act is repealed and the following section substituted -

"19.(1) Subject to any limitation in its memorandum an international company may alter any of the objects or powers set out in the memorandum by a special resolution of the members or, where permitted by its memorandum, by a resolution of the directors.

(2) An international company that alters its memorandum must, within 21 days of the resolution having been passed, submit a copy of the alteration and the resolution authorising such alteration to the Registrar and the Registrar must retain and register the copy of the alteration and the resolution.

(3) Notwithstanding any failure to submit such a resolution to the Registrar the resolution shall be effective from the date of its passing.

(4) Every officer of the international company who knowingly permits a contravention of the provisions of this section is guilty of an offence under this Act."

17. Pre-incorporation contracts - Section 20A of the principal Act is amended by repealing subsection (8) and substituting the following subsection -

"(8) Where a company, after its incorporation and with the consent of all other parties to the contract, ratifies a contract to which this section applies the liability of the person who purports to make the contract in the name of, or on behalf of, the company in respect of the contract (including any liability under an order made by the Court thereunder for the payment of damages) shall be discharged."

18. Names of companies - (1) Section 22 of the principal Act is amended by repealing subsection (2) and substituting the following subsections -

"(2) Subject to subsection (2A), an international company shall have as part of and at the end of its name either:

- (a) the word "Corporation" or the abbreviation "Corp"; or
- (b) the word "Incorporated" or the abbreviation "Inc"; or
- (c) the word "Limited" or the abbreviation "Ltd"; or

- (d) the word "Berhad" or the abbreviation "Bhd"; or
- (e) the words "Public Limited Company" or the abbreviation "P.L.C."; or
- (f) the words "Societe Anonyme" or "Sociedad Anonima", or the abbreviation "S.A."; or
- (g) the words "Naamloze Vennootschap" or the abbreviation "N.V."; or
- (h) the words "Besloten Vennootschap" or the abbreviation "B.V."; or
- (i) the word "Aktiengesellschaft" or the abbreviation "A.G.".

(2A) Notwithstanding the provisions of subsection (2), an international company may, in lieu of any of the words or abbreviations in subsection (2), have as part of its name any other words or popular abbreviations of those words in any language being any words or abbreviations which a trustee company can satisfy the Registrar connotes the existence of a body corporate as distinct from any other person or entity and such words or abbreviations may appear at the beginning, the end or elsewhere in the name of the international company in accordance with common practice.

(2B) Any person or entity which carries on business under any name or title being any word or abbreviation referred to in subsections (2) or (2A) unless it is an international company incorporated or foreign company registered under this Act (or a domestic company or an overseas company registered under the Companies Act 1970-71) shall be guilty of an offence against this Act.

(2C) Any international company may apply in writing to the Minister for an exemption from the provisions of this section pursuant to section 224 stating the reasons why the applicant believes this section ought not to apply."

19. Alteration of articles - Section 26 of the principal Act is repealed and the following section substituted -

"26. (1) Subject to any limitation in its articles an international company may alter its articles by a special resolution of the members or, where permitted by its articles, by a resolution of the directors.

(2) An international company that alters its articles must, within 21 days of the resolution having been passed, submit a copy of the alteration and the resolution authorising such alteration to the Registrar and the Registrar must retain and register the copy of the alteration and the resolution.

(3) Notwithstanding any failure to lodge such resolution with the Registrar the resolution shall be effective from its date of passing.

(4) Every officer of the international company who knowingly permits a contravention of the provisions of this section is guilty of an offence under this Act."

20. Transactions and branches - Section 29 of the principal Act is amended by omitting paragraph (a) of subsection (1) and substituting the following paragraph -

"(a) a contract which if made by private persons would by law be required to be in writing under seal, may be made on behalf of the company either -

- (i) in writing under the common seal of the company and signed by a director or by some other person appointed by the directors for the purpose: Provided that such signature need not be made contemporaneously with the affixing of the common seal of the company; or
- (ii) in the case of an international company having only one director, signed by that director; or
- (iii) in the case of an international company having two or more directors, signed by any two directors;"

21. Persons having dealings with international companies - The principal Act is amended by inserting after section 29 the following section -

"29A. (1) A person having dealings with an international company is, subject to subsection (3), entitled to make, in relation to those dealings, the assumptions referred to in subsection (2) and, in any proceedings in relation to those dealings, any assertion by the international company that the matters that the person is so entitled to assume were not correct shall be disregarded.

(2) The assumptions that a person is, by virtue of subsection (1), entitled to make in relation to dealings, transactions or acts with an international company are -

- (a) that, at all relevant times, the memorandum and articles of the international company have been complied with;
- (b) that a person who appears, from the register of directors of the international company, to be a director of that company has been duly appointed and has authority to bind the company, and authorise others to do so, free of any limitation under the articles of the company;

- (c) that a person who is held out by an international company to be an officer or an agent of the international company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by an officer or agent of the kind concerned;
- (d) that a document has been duly authorised and executed by an international company in accordance with section 29, whether or not the common seal of the company has been affixed and without the need to enquire as to whether or not a valid meeting of the relevant officers was, in fact, properly held; and
- (e) that the officers of the international company properly perform their duties to the international company.

(3) Notwithstanding subsection (1), a person is not entitled to make an assumption referred to in subsection (2) in relation to dealings with the company if he had actual knowledge, or suspected, that the matter that, but for this subsection, he would be entitled to assume is not correct; but a person shall be presumed to act in good faith unless the contrary is proven."

22. Prohibition against carrying on business with no members - Section 30 of the principal Act is repealed and the following section substituted -

"30. (1) Where an international company carries on business with no members then the last member shall be directly liable both jointly and severally to creditors for all of the debts contracted, and liabilities incurred, by the international company and shall be capable of being sued by a creditor as a principal obligor.

(2) Nothing in subsection (1) shall affect any international company:

- (a) which upon incorporation specifies in its memorandum that it may carry on business notwithstanding that it has no members; or
- (b) which has altered its memorandum so that it may carry on business notwithstanding that it has no members but only if the international company was solvent at the time such alteration was made; or
- (c) which has on issue any debentures of the kind specified in section 57(3) of this Act (and which are not redeemed); or
- (d) which is controlled by a liquidator or receiver, or is subject to any direction of the Court.

(3) Nothing in subsection (1) shall affect the liability of an international company in relation to any of its debts nor the international company's separate corporate personality."

23. Calls and shares - Section 33 of the principal Act is amended by adding the following subsection:

"(3) The articles of an international company may provide for or may allow for the directors to provide for the making of calls on shares on the happening of any event."

24. Bearer shares and bearer share warrants - (1) Sections 35 to 39, inclusive, of the principal Act are repealed and the following sections substituted -

"35. Issue and effect of bearer shares - (1) An international company may, unless its articles otherwise provide, issue bearer shares (upon incorporation or otherwise), but such shares must be fully paid up. Where an international company issues any bearer share in accordance with this subsection, the company shall also issue a share certificate in respect of the bearer share so issued and such share certificate shall be endorsed with the word "Bearer".

(2) An international company may, unless its articles otherwise provide, upon the request of a holder of any fully paid up registered share redenominate that registered share as a bearer share. Upon the surrender of the certificate of the registered share, the international company shall issue a new certificate to be issued bearing the same number (if any) as the certificate so surrendered and endorsed with the word "Bearer".

(3) An international company may, unless its articles otherwise provide, upon the request of a holder of any bearer share redenominate that bearer share as a registered share. Upon the surrender of the certificate of the bearer share, the international company shall issue a new registered share certificate bearing the same number (if any) as the certificate so surrendered.

(4) An international company may issue bearer shares in accordance with subsection (1) or redenominate registered shares as bearer shares or vice versa in accordance with subsections (2) or (3), notwithstanding that the company may have no registered shares or bearer shares on issue.

(5) An international company may issue bearer shares in accordance with subsection (1) or redenominate registered shares or vice versa in accordance with subsections (2) and (3) in respect of any or all of a particular class of shares issued or to be issued by the international company.

(6) Any bearer share issued by an international company may carry coupons or other certificates -

(a) for the payment of dividends; and

(b) in respect of any other rights determined in accordance with the articles, and, where the articles so permit, such coupons or certificates may be divisible from any other rights attaching to that share.

(7) The redenomination of any registered share as a bearer share or vice versa in accordance with subsections (2) or (3) shall not constitute a cancellation of the existing share and the issue of a fresh share.

(8) A bearer share issued by an international company may be transferred by delivery of the certificate issued in respect of that bearer share.

36. Issue and effect of share warrants to bearer -

(1) An international company may, unless its articles otherwise provide, upon the request of a holder of any fully paid up registered or bearer share exchange a share certificate in respect of that registered or bearer share for a share warrant to bearer. Upon the surrender of the certificate of the registered or bearer share, the international company shall issue a share warrant bearing the same number (if any) as the certificate so surrendered. A share warrant shall constitute conclusive evidence of the right to the title to the share specified in that share warrant.

(2) An international company may, unless its articles otherwise provide, upon the request of a holder of any share warrant exchange that share warrant for a share certificate in respect of any share. Upon the surrender of the share warrant, the international company shall issue a share certificate in respect of the registered share bearing the same number (if any) as the share warrant so surrendered.

(3) The holder of a share warrant issued by an international company shall be deemed not to be a member of that international company and, subject to subsection (4), shall not be entitled to exercise any of the rights or receive any of the benefits of membership of the international company unless and until such time as the share warrant is surrendered and exchanged for a share certificate pursuant to subsection (2) but shall be entitled to notice of any meeting of the members of the class of shares in respect of which the share warrant is issued if the holder has notified the international company of an address for notices of meetings at the time notices of the meeting are issued.

(4) Any share warrant issued by an international company may carry coupons or other certificates for the payment of dividends and where the articles so permit, such coupons or certificates may be divisible from any other rights attaching to that share.

(5) The exchange of any share certificate for a share warrant or vice versa in accordance with subsections (1) or (2) shall not constitute a cancellation of the existing share and the issue of a new share.

(6) An international company may exchange any share certificate for a share warrant or vice versa in accordance with subsections (1) and (2) in respect of all or any of a particular class of shares issued by the international company.

(7) A share warrant issued to bearer by an international company may be transferred by delivery of the share warrant.

37. Particulars in register in relation to bearer shares - (1) Upon the issue of a bearer share or the redenomination of a registered share as a bearer share, the international company shall -

- (a) strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the share in respect of which the bearer share is issued; and
- (b) enter in the register of members the following particulars:
 - (i) the fact of the issue of the bearer share or the redenomination of a registered share; and
 - (ii) the date of the issue of the bearer share or the redenomination of a registered share.

(2) Upon the surrender of a certificate in respect of a bearer share, the date of such surrender shall be entered as if it were the date on which the person ceased to be a member.

38. Particulars in register in relation to share warrants - (1) Upon the exchange of a share warrant in respect of any share, the international company shall -

- (a) strike out of its register of members and any branch register wherein the share is registered the name of the member entered therein as holding the shares in respect of which the share warrant is issued; and

- (b) enter in the register of members the following particulars:
 - (i) the fact of the issue of the share warrant;
 - (ii) the date of the issue of the share warrant.

(2) Upon the surrender of a share warrant, the date of such surrender shall be entered as if it were the date on which the person ceased to be a member.

39. Effect on meetings - (1) Whilst any bearer share or share warrant remains unsurrendered the date, time and location of each annual general meeting to be held by the company may be specified:

- (a) in the articles of the international company; or,
- (b) where authorised by the articles, on the bearer share certificate or share warrant, and in such case the holder of the bearer share certificate or share warrant shall be deemed to have received proper notice of the meeting and the company shall hold the annual general meeting in accordance with the date, time and location so specified.

(2) Where the date, time and location of each annual general meeting has not been specified pursuant to subsection (1), the annual general meeting shall be held at the registered office of the company at 9.00am on the 10th day of October in each year in which an annual general meeting is required to be held and the holder of any bearer share certificate or share warrant shall be deemed to have received proper notice of such meeting."

(2) Every share warrant issued in accordance with the provisions of section 35 of the principal Act prior to the commencement of this Act shall be deemed to be a share certificate issued to bearer.

25. Premiums received on issue of shares may be share capital - Section 40 of the principal Act is repealed and the following section substituted -

"40. (1) Where an international company issues shares having a par value at a premium whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares may be transferred to an account to be called "the share premium account".

(2) Where assets are acquired by the issue of shares of an international company having a par value 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 may be transferred to the share premium account.

(3) The share premium account may, notwithstanding anything contained in subsections (1) or (2), be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid shares or in writing off -

(a) the preliminary expenses of the 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 company,

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(4) Except as provided in subsection (3), the share premium account shall be treated as part of the paid up capital of the international company for the purposes of this Act."

26. Proceeds of issue of shares of no par value - Section 41 of the principal Act is repealed and the following section substituted -

"41. Proceeds of issue of shares of no par value may be stated capital - (1) Where an international company issues shares having no par value whether for cash or otherwise the whole of the proceeds of the issue may be transferred to an account called the "stated capital account".

(2) Notwithstanding subsection (1), the stated capital account may be applied by an international company in writing off -

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid on, the creation or issue of any such shares.

or in providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

(3) Except as provided in subsection (2) the stated capital account shall be treated as part of the paid up capital of the international company for the purposes of this Act."

27. Effect of conversion of par value share capital into no par value share capital and vice versa - Section 42 of the principal Act is repealed and the following section substituted -

"42. Effect of conversion of par value share capital into no par value share capital and vice versa - (1) Where an international company converts any share having a par value into a share without par value -

- (a) the share capital attributable to that share not being part of any share premium account shall be transferred to the stated capital account;
 - (b) the share premium account attributable to that share shall be retained as a share premium account.
- (2) Where an international company converts any share of no par value into a share having a par value, there shall be transferred to the share capital account of the company the stated capital account attributable to that share.
- (3) Fractions, fractional surpluses or amounts arising in respect of the nominal share capital or the stated capital may be rounded off."

28. Currency of shares, interest-bearing shares, redeemable shares, shares with special rights and gift shares - (1)
Subsection (3) of section 43 of the principal Act is amended by:

- (a) Omitting from paragraph (j) the words "being shares having a par value of up to \$10 in total nominal value" and substituting the words "where the articles so permit and subject to the terms provided therein,";
- (b) Omitting from paragraph (j) the word "shall" where it first appears and substituting the word "may";
- (c) Omitting after paragraph (i) the word "and";
- (d) Inserting after paragraph (j) the following paragraphs:
 - "(k) where the articles so permit and subject to the terms provided therein, entitling the holder to forfeit the shares to the international company, whereupon the holder's liability in respect of those shares will be limited to the amount of any calls of amounts (if any) unpaid on those shares where the call is made within a period of three months after the date of forfeiture: Provided that a forfeiture, or where there have been previous forfeitures, the last forfeiture shall not be effective if the forfeiture by itself or in combination with any other forfeiture results in the reduction of the number of members of the international company to less than permitted by this Act. A forfeiture of shares shall be deemed not to result in the reduction of the number of members of the international company to less than permitted by this Act where:
 - (i) at the time of the forfeiture the international company had on issue one or more convertible notes and one or more of the convertible note holders has

consented, in advance or otherwise, to the forfeiture - in which event, upon the forfeiture of the shares each convertible note held by the consenting convertible note holder shall be deemed to have been automatically converted into an ordinary share in the international company with a par value of one dollar and the note holder shall be entitled to all of the benefits and rights and subject to all of the obligations and liabilities as a holder of an ordinary share in the company and no fresh issue of an ordinary share shall be necessary; or

- (ii) at the time of the forfeiture the international company had on issue one or more Table B debentures and did not have on issue any convertible notes, and one or more of the debenture holders has consented, in advance or otherwise, to the forfeiture - in which event, upon the forfeiture of the shares the debentures shall be deemed to have been automatically converted into one ordinary share in the international company for every \$1 secured by the said debenture and the debenture holders shall be entitled to all of the benefits and rights and subject to all of the obligations and liabilities as a holder of ordinary shares in the company and no fresh issue of those ordinary shares shall be necessary or be deemed to have been made;

- (1) where the articles so permit, which have the effect of suspending, automatically or at the election of the holder of those shares, all the rights of other members (including the power to vote and to demand a poll). Every holder of shares issued pursuant to this paragraph (1) shall have such voting rights as the articles provide; and

- (m) fractional shares carrying the corresponding fractional liabilities, limitations, preferences, privileges, qualifications, restrictions, rights and other attributes of a whole share or a class or series of shares."

(2) Section 43 of the principal Act is further amended by repealing subsections (5) and (6).

29. Redeemable shares and repurchase of shares - Section 44 of the principal Act is repealed and the following section substituted -

"44. (1) An international company which has issued redeemable shares may, if its articles so provide, redeem those shares provided such redemption complies with the provisions of section 54A of this Act.

(2) Unless the articles otherwise provide, where shares of an international company are repurchased or redeemed by an international company, the purchase or redemption shall constitute a cancellation of the shares and thereupon such shares shall be restored to the status of authorised, but unissued shares."

30. Dealing by a company in its own shares - (1) Section 46 of the principal Act is repealed and the following section substituted -

"46. (1) Subject to any provision to the contrary in the articles, an international company may provide financial assistance, whether directly or indirectly, and whether by way of loan, guarantee, or otherwise, for the purpose of, or in connection with the purchase or subscription of its own shares, the shares of any subsidiary or of any holding company.

(2) An international company may purchase its own shares if the articles provide for such purchases to be made and if the directors honestly believe that any purchase by the international company of its own shares will not result in the international company thereby being incapable of meeting its obligations to its creditors as they fall due, within the meaning of section 54C.

(3) Where an international company purchases its own shares, other than out of current or prior year profits (including capital profits), any other realised gains, or from any other reserves, there shall be lodged with the Registrar for filing within 42 days of the company having effected such purchase a declaration made by a majority of the directors of the company stating with reasonable accuracy the nature of the purchase and any reduction of liability of any member as a result thereof.

(4) If this section is not complied with every officer of the international company in default shall be guilty of an offence against this Act."

(2) Nothing in this section shall apply to any conduct engaged in prior to the commencement of this Act or any conduct subsequently engaged in respect of or in relation to any binding contract entered into prior to the commencement of this Act.

31. Power to pay certain commissions - Section 49 of the principal Act is repealed.

32. Issue of shares at a discount - Section 50 of the principal Act is amended by repealing subsection (2) and substituting the following subsection:

"(2) No shares shall be issued at a discount while any share warrants for the international company remain unsurrendered unless provided for in the terms of the issue of those warrants."

33. Alteration of share capital - Section 52 of the principal Act is amended by -

- (a) Omitting from subsection (1) the words "in any one or more of the following ways" and substituting the words "in any way, and in particular without limiting the generality of the foregoing, may do all or any of the following";
- (b) Omitting after paragraph (g) of subsection (1) the word "or";
- (c) Adding to subsection (1) the following paragraphs:
 - "(i) redenominate the currency of any shares by the conversion of shares denominated in one currency to the same number of shares of another currency; and
 - (j) increase the par value of any shares by the capitalisation of profits.";
- (d) Inserting after subsection (2) the following subsection:
 - "(2A) A redenomination of the currency of any shares under subsection (1)(i) shall be deemed not to effect a cancellation of the existing shares and the issue of fresh shares.".

34. New sections inserted - (1) The principal Act is amended by inserting after section 54 the following sections -

"54A. Capital maintenance, dividends and other distributions - (1) An international company may, if so authorised by its articles, make any distribution to members or reduce or extinguish the liability of its members in any way and, in particular, but without limiting the generality of the foregoing may:

- (a) extinguish or reduce the liability of any of the shares in respect of share capital not paid up;
- (b) either with or without extinguishing or reducing liabilities on any of its shares, cancel paid up capital which is lost or unrepresented by available assets;
- (c) either with or without extinguishing or reducing liabilities on any of its shares, repay to the members any paid up share capital which is in excess of the needs of the company or which is otherwise in the interests of the company to repay; or
- (d) convert any amount of the capital of the company to debt obligations owed by the company to the holder of those shares (whether by repayment or by direct conversion to an instrument);

and may, so far as is necessary, alter its memorandum by reducing the amount of its share capital and its shares accordingly. Each such transaction is henceforth referred to in this section as a "capital reduction transaction".

(2) Except insofar as this section otherwise provides, any capital reduction transaction shall be a valid act of the international company if, at the time of effecting that capital reduction transaction the directors have an honest belief that the transaction will not result in the company being incapable of meeting its obligations to creditors as they fall due.

(3) Any capital reduction transaction if it has the effect of returning assets to or reducing liabilities in respect of some but not all of the shareholders of the company (or to some but not all of the holders of any class of shares in the company) shall, except insofar as is effected in accordance with the rights of members as specified in the articles of the company, be deemed to be a variation of those rights to which the shareholders may object and the provisions of section 55 shall apply mutatis mutandis to such deemed variation.

(4) Any capital reduction transaction effected otherwise than in accordance with the provisions of subsection (2) shall be void at the absolute discretion of a liquidator and any creditor of the company.

(5) Where an international company effects a capital reduction transaction, other than the payment of a dividend in accordance with subsection (6), there shall be lodged with the Registrar for filing within 42 days of the company having effected that transaction a declaration made by a majority of the directors of the company stating with reasonable accuracy the nature of the capital reduction transaction and any distribution made to or reduction of liability of any member as a result thereof.

(6) Notwithstanding anything to the contrary in this Act, an international company may pay dividends out of current or prior year profits (including any capital profits), any unrealised gains, or from any other reserve (other than from a share premium account maintained in accordance with section 40) without the need to make good prior year losses (if any) and such dividends may be distributed in cash or any other form.

(7) If the provisions of this section are not complied with every officer of the international company in default shall be guilty of an offence against this Act.

(8) Nothing in this section shall affect:

- (a) any transaction effected in accordance with sections 46 or 54 of this Act;
- (b) if the articles so provide, the redemption of any shares out of the proceeds of a fresh issue of shares;
- (c) any bonus issue;

(d) the forfeiture of any shares in accordance with section 43 (j): Provided such forfeiture does not involve the distribution of any asset of the international company; or

(e) the cancellation of shares or reduction of capital in any other manner permitted by this Act.

(9) Nothing in this section shall preclude an international company from further limiting, whether by contract or otherwise, its ability to make distributions.

(10) Other than subsection (6), nothing in this section shall apply to -

(a) banks licensed under the Off-Shore Banking Act 1981; or

(b) any international company licensed under the Off-Shore Insurance Act 1981-82.

54B. Capital maintenance exempt companies - Where an international company issues a prospectus disclosing that it, or any other person or entity may or will purchase, repurchase or redeem any shares issued by the company or guarantee or defease any capital liability of the company, or otherwise benefit any member or person, then the rules of capital maintenance (including those contained in sections 44, 46, 52, 54 and 54A) shall not affect the validity or terms of any transaction entered into to achieve that objective.

54C. Debts to be taken into account in determining solvency - Where this Act requires the directors of an international company to determine whether any act or omission shall result in the international company being incapable of meeting its obligations to its creditors as they fall due, the directors shall take into account:

(a) all actual debts of the international company; and

(b) such contingent debts of the international company which the directors honestly believe, on the balance of probabilities, will require a disposition of any economic benefit of the international company at any future time to satisfy those debts."

(2) Nothing in section 54B, as enacted by subsection (1) of this section, shall invalidate any transaction arrangement or dealing entered into or performed in accordance with subsection (6) of section 217 of the principal Act prior to the coming into force of this Act, nor shall anything in section 54B require the issue of a prospectus in respect of any such transaction, arrangement or dealing.

35. Rights of holders of classes of shares - Section 55 of the principal Act is amended by adding the following subsection -

"(7) The issue of:

- (a) a Table B Debenture; or
- (b) shares carrying rights of forfeiture pursuant to section 43(3)(k),

by an international company shall be deemed to be a variation of the rights of any other shares issued by the international company to which the holders of those shares may object and the provisions of this section shall apply mutatis mutandis to such deemed variation."

36. Numbering of shares - Section 62 of the principal Act is repealed.

37. Instruments of transfer - Section 66 of the principal Act is amended by -

- (a) Inserting in subsection (1) after the words "Except in the case of" the words "share warrants"; and
- (b) Repealing subsection (3) and substituting the following subsection:

"(3) Bearer shares and share warrants issued to bearer shall be transferable in the manner described in sections 35 and 36, respectively."

38. Filing of charges - Section 72 of the principal Act is amended by -

- (a) Repealing subsection (1) and substituting the following subsection:

"(1) Subject to this Division, where a charge to which this section applies is created by an international company, the company or any other person interested in the charge may cause to be lodged with the Registrar for filing within 42 days after the creation of the charge -

- (a) A copy of the instrument, if any, by which the charge is created or evidenced; or
- (b) A statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of the chargees or persons entitled to the benefit thereof."

- (b) Inserting after subsection (1) the following subsection:

"(1A) Where any charge to which this section applies is not filed with the Registrar pursuant to subsection (1), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

- (c) Repealing subsection (3) and substituting the following subsection:

"(3) The charges to which this section applies are all charges (including any charge securing a contingent debt or obligation) whether fixed or floating on any asset of an international company.";

- (d) Omitting from subsection (4) the word "shall" and substituting the word "may";

- (e) Omitting from subsection (6) the word "shall" and substituting the word "may".

39. Duty to file charges and filing of pre-existing charges
- Sections 73 and 74 of the principal Act are repealed and the following sections substituted:

"73. Filing of pre-existing charges - (1) Where an international company acquires any property which is subject to a charge of any such kind as may, if it had been created by the company after acquisition of the property, have been filed under this Division, the company or any other person interested in the charge may cause:

- (a) A copy of the instrument, if any, by which the charge is created or evidenced; or
(b) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of the chargees or persons entitled to the benefit thereof,

to be lodged with the Registrar for filing within 42 days after the date on which the acquisition is effected.

(2) Where any charge to which this section applies is not filed with the Registrar pursuant to subsection (1), the charge shall, so far as any security on the company's property or undertaking is conferred thereby, but without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

74. Filing of charges by foreign companies which become registered under this Act - (1) This section applies to charges by foreign companies in respect of property situated in the Cook Islands if:

- (a) the foreign company creates the charge whilst registered under Part X;
- (b) the foreign company has previously created the charge prior to registration, but subsequently registers under Part X.

(2) In respect of such a charge:

- (a) the company or any other person interested in the charge may cause:
 - (i) A copy of the instrument, if any, by which the charge is created or evidenced; or
 - (ii) a statement giving a short description of the nature of the instrument by which the charge was created, the property charged, the amount thereby secured, and the names of the chargees or persons entitled to the benefit thereof,

to be lodged with the Registrar for filing within 42 days after the date on which the charge was created where the charge was created whilst the foreign company was registered under Part X, and within 42 days after the registration of the foreign company under Part X where the charge was created prior to registration under Part X; and

- (b) the company shall give notice in writing to all other persons interested in the charge of the fact of the registration of the company under Part X of this Act together with a copy of this section, and such notice shall be given to such persons within 15 days of the registration of the company under Part X where the charge was created prior to the registration and within 15 days of the creation of the charge where the charge was created after the registration.

(3) Where, in relation to any charge to which this section applies:-

- (a) notice has been given to all persons interested in the charge pursuant to paragraph (b) of subsection (1); and
- (b) the charge is not filed with the Registrar pursuant to paragraph (a) of subsection (1), the charge shall, so far as any security on the company's property is conferred thereby, and without prejudice to any contract or obligation for repayment of the money thereby secured, be void against a liquidator and any creditor of the company.

(4) Where, in relation to any charge to which this section applies, notice is not given to all persons interested in the charge pursuant to paragraph (b) of subsection (1), the company and every officer in default shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding \$50,000.

(5) Nothing in this section shall render void any charge to which this section applies where notice has not been given by the company to all other persons interested in the charge pursuant to paragraph (b) of subsection (1)."

40. Application of Division - Section 80 of the principal Act is repealed and the following section substituted:

"80. (1) A reference in this Division to an international company shall be read as including a reference to a foreign company registered under this Act, but nothing in this Division applies to a charge of a foreign company on property outside the Cook Islands.

(2) Nothing in this Division shall require a foreign company to file any charge until the foreign company is registered under Part X of this Act."

41. Publication of name - Section 82 of the principal Act is amended repealing subsection (2).

42. Disclosure of interest in contracts, property, offices etc - Section 88 of the principal Act is amended by -

(a) Omitting from subsection (1) the words "every director of the company" and substituting the words "every director of a company";

(b) Repealing subsections (9) and (10) and substituting the following subsection:

"(9) Where:

(a) any contract is entered into in contravention of this section; and

- (b) any party to that contract cannot establish on the balance of probabilities that he did not have actual knowledge or suspect at the time of entering the contract that the contract was entered into by any other party in contravention of this section,

then the contract shall be voidable at the absolute discretion of the company as against that party and all of the profits earned or derived by that party from the contract shall be payable to the company together with such other compensation as a Court may think just in the circumstances."

43. Code for the establishment of liabilities of officers
- Section 89 of the principal Act is repealed and the following section substituted -

"89. (1) An officer of an international company shall at all times act for a proper purpose and honestly.

(2) An officer of an international company shall not make improper use of his position as an officer to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the international company.

(3) An officer of an international company is obliged to use such diligence as might reasonably be expected of a person of his knowledge and experience in the performance of his duties as such an officer, having regard to the requirements and business activities of the international company.

(4) Nothing in this section shall preclude -

- (a) the right an international company to impose, in its articles or by contract, obligations and duties on its officers in addition to the obligations and duties imposed in this section;
- (b) the right of the members of an international company to ratify by special resolution the conduct of the officers notwithstanding that any such conduct may contravene this section or the memorandum and articles; and
- (c) an international company entering into a contract of insurance or indemnity or any other similar contractual obligation with or for the benefit of any officer.

(5) Notwithstanding that the obligations and duties of the officers of an international company are owed to the company, the company and any other person affected by any breach of those duties and liabilities may commence any civil proceedings against the officers: Provided that, in the case of any proceedings commenced by any person other than the company such proceedings shall be commenced only with the leave of the court and only if:

- (a) the Court is satisfied that a strong prima facie case exists against the officers; and
- (b) the person commencing the proceedings pays into Court such amount determined by the Court as security for the costs and expenses of any other party to the proceedings;

and any net financial benefit derived from such proceedings shall be payable to or otherwise applied in favour of the company.

(6) Subject to subsection (4), this Division constitutes a codification of the duties and obligations of officers of international companies and no further duties or obligations to any persons (including the creditors of the international company) shall be created, expressly or by implication, by any rule of common law or equity; save that nothing herein shall preclude the Court from referring to the rules of common law or equity to assist in interpreting the provisions of this section."

44. Limitation of liability of officers - The principal Act is further amended by inserting after section 89 the following section -

"89A. (1) Notwithstanding any other provision of this Act, no relevant person shall in the performance of any obligations, duties, services or other activities for or on behalf of an international company:

- (a) be liable for any penalty under this Act other than where such penalty arises by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person;
- (b) incur any tortious liability arising otherwise than by reason of the wilful misconduct, wilful default or wilful neglect of the relevant person, unless the articles of the company provide for such liability;
- (c) be liable for any breach of trust or other equitable obligation other than where the relevant person had actual knowledge of and knowingly assisted in such breach, unless the articles of the company provide for such liability;
- (d) shall in the absence of wilful misconduct, wilful default or wilful neglect, incur any liability (whether tortious, contractual, equitable or otherwise) by reason only that the company incurs any debts or obligations or continues to carry on business at a time when the company is unable to meet its obligations to its creditors as they fall due.

(2) For the purposes of paragraph (c) of subsection (1) no inference shall be made as to the knowledge of a relevant person by reason of any failure to make inquiries in relation to the activities of the company or the source of any of the funds or assets received by the company or by reason of upholding any obligation as to confidentiality provided by this Act.

(3) For the purposes of this section "relevant person" means:

- (a) a resident director;
- (b) a resident secretary;
- (c) a trustee company, a subsidiary of a trustee company and any officer thereof;
- (d) a nominee or representative of any of the persons referred to in (a), (b) or (c) hereof;
- (e) any person acting on the instructions or under the authority (whether general or specific) of any of the persons referred to in (a), (b) or (c) hereof.

45. Annual general meeting - Section 92 of the principal Act is amended by repealing subsection (6) and substituting the following subsection:

"(6) Notwithstanding any other provision of this Act, an international company need not -

- (a) hold any particular annual general meeting if all members entitled to attend that meeting agree thereto in writing, and in such event a resolution in writing dealing with -
 - (i) the matters required by this Act to be dealt with and disposed of at an annual general meeting of an international company; and
 - (ii) such other matters, if any, as may in terms of subsection (2) be dealt with at such a meeting,

and which is signed by all members entitled to vote at that meeting, before the expiration of the period within which that meeting is to be held, shall be deemed to be a resolution passed at an annual general meeting of the company held in terms of this section on the date on which the last signature to such resolution is affixed; or

- (b) hold any annual general meetings if all the members of the company at any time agree thereto in writing, and in such a case none of the matters required by this Act to be dealt with and disposed of at an annual general meeting of an international company shall apply:

Provided that if any member of the company by notice in writing to the company requires future annual general meetings to be held, such meetings shall be held and the first of such meetings shall be held within 3 months of the receipt of the notice by the company."

46. Meetings - Section 96 of the principal Act is amended by adding the following subsection -

"(4) Unless the articles of an international company otherwise provide -

- (a) any meeting may be held by radio, telephone, closed circuit television or other electronic means of audio or audio visual communication; and
- (b) the presence of one person may constitute a meeting; and
- (c) "meeting" shall have the same meaning as in section 215 of this Act."

47. Auditors - Section 117 of the principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

"(b) the members of the company so resolve at each annual general meeting of the company that such an appointment should not be made, or in the case of a company which pursuant to section 92(6)(b) does not hold an annual general meeting the members so agree in writing that such an appointment should not be made. In the case of the appointment of an auditor in respect of the first audit period of any company it shall be sufficient for the resolution not to appoint an auditor to be passed at the first annual general meeting of the company."

48. Mode in which objects of company may be altered - The principal Act is further amended by inserting after section 126G the following section -

"126GA. (1) Section 19 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to this section, a Registered Listed Company, if so authorised by its articles, may by special resolution alter its memorandum with respect to the objects of the company.

(3) Where a Registered Listed Company proposes to so alter its memorandum, it shall give by post 21 days' written notice of the proposed special resolution and the intention to submit it for passing to a meeting of the company to be held on a day specified in the notice.

(4) The notice shall be given to members and registered debenture holders.

(5) The Court may, in the case of a person or class of persons for such reasons as seem sufficient to it, dispense with the notice required by subsection (3).

(6) An application may be made to the Court for the cancellation of such a resolution -

- (a) by the holders of not less than 10 per centum in the aggregate of the nominal value of the company's issued share capital or any class of that capital where the company has issued only par value shares; or
- (b) by not less than 10 per centum of the company's members; or
- (c) by the holders of not less than 10 per centum in nominal value of the company's debentures,

and the resolution shall not have effect except in so far as it is confirmed by the Court or, if no application shall be made to the Court then until that day being 21 days after the day on which the resolution was passed.

(7) The application shall be made within 21 days after the date on which the resolution was passed, and may be made on behalf of the persons entitled to make the application by such one or more of their number as they appoint in writing for the purpose.

(8) On the application the Court -

- (a) shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors;
- (b) may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissenting members;
- (c) may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement; and
- (d) may make an order cancelling the resolution or confirming the resolution either wholly or in part and on such terms and conditions as it thinks fit.

(9) Notwithstanding any other provision of this Act, a copy of a resolution altering the objects of a Registered Listed Company shall not be lodged with the Registrar before the expiration of 21 days after the

passing of the resolution or if any application to the Court has been made, before the application has been determined by the Court (whichever is the later).

(10) A copy of the resolution shall be lodged with the Registrar by the Registered Listed Company within 14 days after the expiration of the 21 days referred to in subsection (9), but if an application has been lodged with the Registrar together with a sealed copy of the order of the Court, within 14 days after the application has been determined by the Court."

49. Alteration of Articles - The principal Act is further amended by inserting after section 126G the following section -

"126GB. (1) Section 26 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to this Act, a Registered Listed Company may by special resolution alter or add to its articles.

(3) (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."

50. Premiums received on issue of shares to be share capital and limitation on application thereof - Section 126H of the principal Act is amended by -

(a) Inserting in subsection (2) after the word "issues" and before the words "at a premium" the word "shares";

(b) Omitting from subsection (3) the words "The premium account" and substituting the words "The share premium account".

51. Section 126H(2) not to apply to premiums on shares issued pursuant to scheme of acquisition - Subsection (1) of section 126I of the principal Act is amended by omitting the definition of the term "scheme of acquisition" and substituting the following definition:

"means -

(a) any arrangement pursuant to sections 126T, 126V or 126W of this Act;

(b) any scheme of arrangement approved or ordered by a Court of competent jurisdiction in a place in which is located an Approved Stock Exchange;

- (c) 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;".

52. Proceeds of issue of shares of no par value to be stated capital - The principal Act is further amended by inserting after section 126K the following section:

"126KA. - (1) Section 41 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) The whole of the proceeds of an issue of shares having no par value shall be paid-up capital of a Registered Listed Company and shall be transferred to an account called the "stated capital account".

(3) If shares having no par value are issued by a Registered Listed Company for a consideration other than cash, a sum equal to the value of the consideration as determined by the directors shall be transferred to the stated capital account.

(4) Notwithstanding subsections (2) and (3), the stated capital account may be applied by a Registered Listed Company in writing off -

(a) the preliminary expenses of the company; or

(b) the expenses of, or the commission paid on, the creation or issue of any such shares.".

53. Effect of conversion of par value share capital into no par value share capital and vice versa - The principal Act is further amended by inserting after section 126KA the following section:

"126KB. - (1) Section 42 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where a Registered Listed Company converts all its or ordinary or preference shares having a par value, or both such ordinary and such preference shares, into shares without par value, there shall be transferred to the stated capital account of the company -

(a) the whole of the ordinary or preference share capital, as the case may be; and

(b) the whole of the share premium account or that part thereof contributed to it by the shares so converted.

(3) Where a Registered Listed Company converts all its ordinary or preference shares of no par value or both such ordinary and such preference shares into shares having a par value, there shall be transferred to the share capital account of the company the whole of the stated capital account or that part thereof contributed to it by shares so converted.

(4) Fractions, fractional surpluses or amounts arising in respect of the nominal share capital or the stated capital may be rounded off."

54. Currency of shares, interest-bearing shares, redeemable shares and shares with special rights - The principal Act is further amended by inserting after section 126KB the following section -

"126KC. (1) Section 43 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) A Registered Listed Company shall have power to issue the number of shares stated in its memorandum and those shares may be shares having a par value, or may be shares having no par value, or a combination of both, and may be divided into one or more classes, with such designations, preferences, limitations and relative rights as shall be stated or provided for in the articles and all prices and values given in respect of shares shall be expressed in dollars or in the money of any other country.

(3) The articles may limit or deny voting rights of or provide special voting rights for the shares of any class or the shares within any class to any extent not inconsistent with the provisions of this Act or the regulations.

(4) A Registered Listed Company may issue shares of preferred or special classes and in particular, but without limiting the generality of the foregoing, may issue shares -

- (a) subject to the right of the company to redeem any of those shares at the price fixed by the articles for the redemption thereof or at the price fixed pursuant to power contained therein;
- (b) entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends;
- (c) having preference over any other class or class of shares as to the payment of dividends;
- (d) having a preferential right to a dividend;
- (e) having preference in respect of the assets of the company over any other class or classes of shares upon the voluntary or compulsory liquidation of the company;

- (f) having rights only to return of paid up capital or to return of paid up capital plus no more than a fixed proportion thereof upon a liquidation of the company;
- (g) convertible into shares of any other class or into shares of any series of classes: Provided that shares shall not be converted into a class having prior or superior rights or preferences as to dividends or distribution of assets upon liquidation over shares proposed to be converted unless the consent of all members holding shares having such prior or superior rights is obtained;
- (h) subject to forfeiture by the company in the circumstances or in the event provided in the articles or in terms of issue of the shares: Provided -
 - (i) that the articles shall not be altered to make shares subject to forfeiture which were not originally so issued without the holders thereof being given an opportunity to object thereto and, in the even of their so doing, any alteration to that effect shall be void; and
 - (ii) that a forfeiture or, where there have been previous forfeitures, the last forfeiture shall not be effective for any purpose if it by itself or in any combination with any other forfeiture results in the reduction of the number of members of the company to less than permitted by this Act;
- (i) unless the articles provide to the contrary, on which interest is payable by the company to the holder at such rates and upon such terms and conditions as are fixed at the time of issue or by the articles: Provided that such interest shall not become due and payable by the company to the holder if the company has any liabilities actual or contingent other than liabilities for interest on shares and, upon a winding-up, there shall be deemed to be no liability in the company for the payment of such interest unless and until the claims of all creditors and the costs of the winding-up have been met or satisfied."

55. Dealing by a company in its own shares - Section 126M of the principal Act is repealed and the following section substituted:

"126M. (1) Section 46 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Subject to subsection (5) of this section, 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) the purchase or financial assistance is made from surplus (including earned surplus and capital surplus) or the proceeds of a fresh issue of shares made for the purpose of the purchase or financial assistance;
- (c) the purchase or financial assistance has been authorised by the company in general meeting; and
- (d) 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 meet all its current obligations as they fall due 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.

(3) For the purposes of paragraph (c) of subsection (2) of this section, an authorisation given by a company in general meeting shall be valid for the period expiring on the date of the next annual general meeting of the company and such period may be extended by the company at such annual general meeting until the date of the next annual general meeting of the company.

(4) Where a Registered Listed Company purchases its shares or provides financial assistance for the purchase of its shares pursuant to subsection (2) 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 declaration referred to in paragraph (d) annexed thereto, together with the prescribed fee with the Registrar stating that the provisions of subsection (2) of this section have been duly complied with.

(5) Notwithstanding subsection (2), 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.

(6) For the purposes of this section, "purchase" shall include exchange of shares for assets and acquisition by any method, but shall not include redemption.

(7) 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 (2) without reasonable grounds for any opinion expressed therein commits an offence and shall be liable to a fine not exceeding \$10,000.

(8) 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."

56. Duties and liabilities of officers - The principal Act is further amended by inserting after section 126R the following section:

"126RA. - (1) Sections 89 and 89A of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) A director of a Registered Listed Company shall at all times act honestly and use reasonable diligence in the discharge of the duties of his office.

(3) An officer of a Registered Listed Company shall not make use of any information acquired by virtue of his position as such an officer to gain directly or indirectly an improper advantage for himself or to cause detriment to the company.

(4) An officer of a Registered Listed Company who commits a breach of this section shall be -

- (a) liable to the company for any profit made by him and for any damage suffered by the company as a result of such breach; and
- (b) guilty of an offence against this Act.

(5) This section is in addition to and not in derogation of any other rule of law relating to the duty or liability of directors or officers of a company."

57. Meetings - Section 126S of the principal Act is amended by -

(a) Designating the existing section as subsection (1);

(b) Adding the following subsection:

"(2) Subsection (6) of section 92 of this Act shall not apply to Registered Listed Companies."

58. Inspection and closing of register - The principal Act is further amended by inserting after section 126S the following section -

"126SA. (1) Section 107 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) A Registered Listed Company may, on giving not less than 21 days notice by advertisement in such manner as the articles provide or in default of such provision, such manner as the Registrar may approve, close the register of members or any class of members for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any year.

(3) The register shall be open to the inspection of any member. Any inspection by a member shall be without charge.

(4) Any person may request the Registered Listed Company to furnish him with a copy of the register, or any part thereof, on payment in advance of \$5 or such lesser sum as the company requires for every 200 words or part thereof required to be copied and the company shall cause any copy so requested by any person to be sent to that person within a period of 30 days or within such further period as the Registrar considers reasonable in the circumstances, commencing on the day next after the day on which the request is received by the company.

(5) If any copy so requested of a Registered Listed Company is not sent within the period specified in subsection (4), the company and every officer of the company who is in default shall be guilty of an offence against this Act."

59. Sales other than at proper value - The principal Act is further amended by inserting after section 126W the following section -

"126WA. (1) Section 191 of this Act shall not apply to Registered Listed Companies and the provisions of this section shall apply.

(2) Where any property, business or undertaking has been acquired by a Registered Listed Company for a cash consideration within a period of 2 years before the commencement of the winding-up of the company -

- (a) from a person who was at the time of the acquisition a director of the company; or
- (b) from a company of which, at the time of the acquisition, a person was a director who was also a director of the first mentioned company,

the liquidator may recover from the person or the company from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(3) Where any property, business or undertaking has been sold by a Registered Listed Company for a cash consideration within a period of 2 years before the commencement of the winding-up of the company -

- (a) to a person who was at the time of the sale a director of the company; or
- (b) to a company of which at the time of the sale a person was a director who was also a director of the company first mentioned,

the liquidator may recover from the person or company to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(4) For the purposes of this section the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar consideration.

(5) In this section, "cash consideration" means any consideration payable otherwise than by the issue of shares."

60. Secrecy - The principal Act is further amended by inserting after section 126X the following section -

"126XA. Subsections (3), (4), (5), (6), (7) and (8) of section 227 of this Act shall not apply to Registered Listed Companies."

61. Asset protection - The principal Act is further amended by inserting after section 126XA the following section -

"126XB. Section 228B of this Act shall not apply to Registered Listed Companies."

62. Amalgamation of companies - (1) The principal Act is amended by repealing sections 129A, 129B, 129C and 129D.

(2) Nothing in this section shall affect the validity of any amalgamation effected pursuant to sections 129A, 129B, 129C and 129D prior to the coming into force of this Act.

63. Power to acquire shares of holders dissenting from scheme or contract approved by majority - Subsection (1) of section 130A of the principal Act is amended by omitting the word "approved" and substituting the word "accepted".

64. Payment of certain debts out of assets subject to floating charge in priority to claims under charge - Section 138 of the principal Act is repealed.

65. Effect on winding-up - Section 142 of the principal Act is amended by repealing subsection (1) and substituting the following subsection -

"(1) An international company shall from the commencement of the winding up cease to carry on business, except so far as, in the opinion of the liquidator -

(a) is required for the beneficial winding up of the international company; or

(b) subject to section 143, is required for the performance of any contract which the liquidator may not disclaim pursuant to section 192,

but the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in the articles, continue until it is dissolved."

66. Books of liquidator and company - Section 185 of the principal Act is amended by repealing subsections (2) and (3) and substituting the following subsections:

"(2) When an international company has been wound up the liquidator shall return the books and papers to the resident secretary of that company who shall ensure that those books and papers are retained by a trustee company for a period of 6 years from the commencement of the winding-up. After the expiration of the 6 years the books and papers may be destroyed.

(3) The Registrar may cause any additional records or registers to be destroyed after the expiration of 6 years from the commencement of the winding-up."

67. Voidable transactions - Section 190 of the principal Act is repealed and the following section substituted -

"190. (1) Every conveyance, assignment, transfer or disposition of property or any charge thereon made, and every payment or obligation incurred, and any judicial proceeding taken or suffered (all of which shall be

referred to in this section as "transactions") by an international company unable to meet its obligations to creditors as they fall due which has the effect of, and was made with a view to, giving any person (whether a creditor, member or any surety or guarantor or trustee for the same or any other person) a preference over any other person which that person would not have had in any winding up of that international company on the date of giving effect to that transaction shall, subject to subsections (2) and (3), be deemed to be voidable at the absolute discretion of a liquidator, if the international company making, taking, paying or suffering the same is commenced to be wound up within 3 months of that transaction being given effect to or is struck off and dissolved within 1 year of that transaction being given effect to.

(2) A liquidator's entitlement to exercise the discretion referred to in subsection (1) shall expire 2 years after the date of the commencement of the winding up of the international company.

(3) In respect of any transaction set aside as a voidable preference pursuant to this section the liquidator and any creditor shall, on repayment, have the same remedies against any guarantor or surety (and against any property securing the same) as he would have had if the international company had not entered into the transaction. No proceeding shall, however, defeat the interests of a bona fide purchaser for value of property (or other bona fide person with an interest in such property).

(4) Any such proceedings referred to in subsection (3) may be taken directly against any such guarantor or surety without the need to join the creditor, or against that creditor without the need to join any such guarantor or surety."

68. Contracts avoiding rules as to distribution of assets - The principal Act is amended by inserting after section 190 the following section:

"190A. A contract shall be unenforceable if it has the purpose of avoiding the rules as to the distribution of assets as specified by this Act but only if:

- (a) any party to the contract was a member, or officer, of that international company; and
- (b) that particular party seeks to enforce, or to rely upon, the contract."

69. Sales other than at proper value - Section 191 of the principal Act is amended by omitting the number "2" where it appears in each of subsections (1), (2) and (3) and substituting in each place the number "1".

70. Disclaimer of onerous property - Section 192 of the principal Act is amended by omitting from subsection (1) the following words -

"Where any part of the property of an international company consists of -

- (a) any estate or interest in land which is burdened with onerous covenants;
- (b) shares or stocks in companies;
- (c) unprofitable contracts; or
- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money,"

and substituting the following words:

"Where -

- (a) any part of the property of an international company consists of -
 - (i) any estate or interest in land burdened with onerous covenants;
 - (ii) shares or stocks in companies;
 - (iii) unprofitable contracts; or
 - (iv) any other property that, for whatever reason, is unprofitable or not readily saleable; and
- (b) the mere interest in that property binds the international company, or is likely to bind the international company, to the payment of any sum of money or the disposition of any assets of the international company,".

71. Offences by officers of companies in liquidation - Paragraph (c) of subsection (1) of section 193 of the principal Act is amended by -

- (a) Omitting the number and word "6 years" and substituting the number and word "12 months";
- (b) Omitting the word "or" at the end of subparagraph (vii) and inserting that word at the end of subparagraph (vi);
- (c) Omitting subparagraph (viii).

72. Liability where proper accounts not kept or debts incurred without reasonable expectation of payment - Section 195 of the principal Act is amended by inserting after the words "international company" in subsections (1) and (2) the words "which is a Registered Listed Company pursuant to Part VIA of this Act".

73. Personal liability for debts - Section 196 of the principal Act is amended by inserting after the words "international company" the words "which is a Registered Listed Company pursuant to Part VIA of this Act".

74. Defunct companies - Section 197 of the principal Act is amended by -

- (a) Omitting from subsection (1) the words "is not in operation or";
- (b) Inserting the following subsection after subsection (2):

"(2A) Upon the request of an international company, such request having been approved by a special resolution of the members and being accompanied by a statutory declaration signed by all of the directors to the effect that the international company no longer carries on business and has no outstanding liabilities to creditors and no assets (other than assets represented by cash) the Registrar shall, unless he has cause to believe that the contents of the directors' statutory declaration are incorrect, strike the name of the international company off the register and the international company shall thereupon be dissolved and the provisions of subsection (2) shall mutatis mutandis apply."; and

- (c) Inserting in paragraph (a) of subsection (2) after the word "continue" the words "for a period of two years following the date upon which the company is dissolved";

- (d) Adding the following subsections:

"(6) When an international company has been struck off the resident secretary shall ensure that the books and papers are retained by a trustee company for a period of six years from the striking off, but thereafter the books and papers may be destroyed.

"(7) The Registrar may cause any additional records or registers to be destroyed after the expiration of six years from the striking off."

75. Foreign companies - Interpretation - Section 200 of the principal Act is amended by adding the following subsection

"(7) Registration of any company under Part X shall be conclusive of the fact that, for all of the purposes of this Act, the company is validly incorporated outside the Cook Islands."

76. Transfer from Cook Islands of companies incorporated under this Act - Section 209 of the principal Act is amended by:-

- (a) Omitting from subsection (1) the words "upon obtaining the approval of the Registrar and within 2

months from the date on which that approval is obtained" and substituting the words:

"if permitted by its articles or a special resolution of its members and if its directors sign a statutory declaration to the effect that:

- (a) the proposed transfer will not adversely affect any creditor; and
- (b) the company has complied with the provisions of this Act (including the payment of all fees); and
- (c) secured creditors (if any) have consented in writing".

- (b) Repealing subsections (2) and (3).

77. Translation of instruments - Section 216 of the principal Act is amended by repealing subsection (3) and substituting the following subsection -

"(3) For the purpose of this section, a "certified translation" means a translation into the English language certified in the English language as a correct translation by the translator before -

- (a) a diplomatic or consular officer of any country;
- (b) a notary public, justice of the peace or similar person of any country;
- (c) any solicitor in the Cook Islands or similar person of any country specified by s 229A of this Act; or
- (d) or any other person before whom by any law of the Cook Islands affidavits may lawfully be sworn for use in proceedings in any Court in the Cook Islands."

78. General penalty provisions - Section 219 of the principal Act is amended by -

- (a) Inserting in subsection (3) after the number "195" the number "227"; and
- (b) Adding the following subsection:

"(4) Where -

 - (a) any person is convicted of an offence involving dishonesty; and
 - (b) the Court is satisfied that the international company has suffered loss or damage as a result of the act or omission that constitutes the offence,

the Court may in addition to imposing a penalty if it sees fit, order the convicted person to pay compensation to the international company of such amount as the Court specifies."

79. Prohibitions by Minister - Section 225 of the principal Act is amended by omitting from subsection (1) the following words -

"The Minister shall have an absolute right, of his own accord or otherwise and without assigning reasons, to make an order"

and substituting the following words:

"Where the Minister suspects that:

- (a) any international company or foreign company has been, or may be, involved in, or is associated with or related to any person who has been, or may be, involved in the laundering of the proceeds of the sale of prohibited narcotic substances or illegal drugs whether in the Cook Islands or elsewhere; or
- (b) an international or foreign company has been, or may be, involved in, or is associated with or related to any person who has been, or may be, involved in criminally fraudulent activities whether in the Cook Islands or elsewhere;

then the Minister may make an order ".

80. Secrecy - (1) Section 227 of the principal Act is amended by adding the following subsections -

"(3) Any person or entity who, with respect to an international company or a foreign company registered under this Act and whether in the Cook Islands or elsewhere -

- (a) divulges;
- (b) attempts, offers or threatens to divulge;
- (c) induces or attempts to induce other persons to divulge;
- (d) incites, abets, counsels or procures any person to divulge; or
- (e) is knowingly concerned in the divulging of; any information or communication in respect of, in relation to or concerning -
 - (i) the membership of or beneficial ownership of, any share or other interest in such a company;
 - (ii) the identity of any member of such a company or the interest (legal or beneficial) of any such member in such a company;

- (iii) the management or officers of such a company;
- (iv) any of the business, financial or other affairs or transactions of such a company;
- (v) the assets or liabilities of such a company; or
- (vi) the existence of, or the contents of, any register maintained by such a company or any other documentation held by the company,

shall be guilty of an offence against this Act.

(4) Notwithstanding subsection (3) of this section, an offence shall not be committed where information is divulged or made available to the extent reasonably required in the circumstances:

- (a) by an officer of an international company or a foreign company to the Registrar or the Minister for the purpose of complying with, or facilitating the giving effect to of, the provisions of this Act;
- (b) by an officer of an international company or foreign company to any person for the purpose of carrying on the business of the company or is otherwise in the best interests of members: provided that nothing herein shall permit compliance with any demand or request for information by any foreign government or any court or tribunal of any country other than the Cook Islands where the divulging of the information will, or is likely to, result in the payment of any tax, penalty or any fine by the company; or
- (c) by an officer of an international company or a foreign company to any foreign government or any court or tribunal of any country other than the Cook Islands, but only if and to the extent that the court in the Cook Islands so directs, having been satisfied that the information is required and will be used solely for the purposes of an investigation or prosecution of any person in relation to the sale, or the laundering of the proceeds of sale, of any prohibited narcotic substances, whether that sale or laundering occurred in the Cook Islands or elsewhere;

- (d) by any person to an officer of an international company or a foreign company or trustee company in the course of the performance of the duties of that officer;
- (e) by an officer of an international company or foreign company to a member of the company where all of the directors of that company consent to such disclosure (or otherwise in accordance with section 107 of this Act);
- (f) by an officer of an international company or a foreign company to any other person where all of the directors of that company consent to such disclosure;
- (g) by an officer of an international company or a foreign company to a legal practitioner for the purpose of obtaining legal advice for the benefit of that officer;

Provided that the Minister may in his absolute discretion prohibit any disclosure of any information permitted by this Act.

(5) Nothing in this section shall prevent the Court from requiring any person to produce documents or to give evidence in any criminal proceedings or in any civil proceedings of any facts relevant in such proceedings in a Court in the Cook Islands.

(6) In recognition of the desirability of maintaining secrecy in respect of the activities of all international companies and foreign companies registered under this Act, the Minister shall be obliged to do all things which, in his opinion, are necessary to give full effect to the provisions of this section.

(7) This section shall bind all instrumentalities of the Government of the Cook Islands in their executive, legislative and judicial capacities.

(8) This section shall apply to every international company and to every foreign company to the extent to which that information relates to any branch of the foreign company in the Cook Islands or any business which it conducts in the Cook Islands or in relation to any person who is a resident of the Cook Islands."

81. Form of company registers and records - The principal Act is further amended by inserting after section 228 the following section -

"228A. Subject to section 103 of this Act, any register, records, accounts or documents required to be kept by an international company pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that the international company can readily produce legible printed evidence of its contents.".

82. Asset protection - The principal Act is further amended by inserting after section 228A the following section:

"228B. (1) This section shall only apply to an international company where the articles of that international company state that the section shall so apply.

(2) In this section -

"Expropriation" means any act of confiscation, compulsory acquisition, nationalisation or any similar act;

"Membership interest" means -

(a) any share or interest in any share in an international company (other than a bearer share); or

(b) any other interest of a person where that interest arises from or in connection with the fact that the person is a member of an international company.

"Specified person" means the person or persons nominated in the articles of an international company for the purpose of this section; and

"Specified event" means any event stated in the articles of an international company to be a specified event in respect of one or more of the members of that international company.

(3) The articles of an international company may provide that on the happening of any specified event (including without limitation where any foreign government expropriates any membership interest of a member of an international company) then the provisions of this section shall apply.

(4) Upon the occurrence of any specified event:

(a) the membership interest of any member of an international company affected by that event shall automatically vest in the specified person and if more than one specified person, to those specified persons in the proportions in the manner stated in the articles of the international company; and

(b) no other person (including the original owner) shall have any rights in or to the membership interest.

(5) Every holder of a membership interest in an international company shall be entitled to nominate one or more specified persons and if more than one specified person is nominated by a holder of a membership interest, the proportions and manner in which the membership interest shall vest in each of those specified persons shall be stated.

(6) A holder of a membership interest in an international company shall be entitled at any time, and from time to time, to nominate or remove a specified person by notice in writing to the international company."

83. Application of various sections to companies limited by guarantee and companies limited by both guarantee and shares - The principal Act is further amended by inserting after section 228B the following section:

"228C. (1) Reference in the following sections of this Act to the words "share", "shares" and "shareholder" shall, in respect of a company limited by guarantee or a company limited by shares and limited by guarantee, be taken to be a reference to the words "membership interest", "membership interests" and "member", respectively:

Section 6	Section 71
Section 14	Section 94
Section 16	Section 99
Section 31	Section 105
Section 33	Section 107
Section 49	Section 111
Section 53	Section 117
Section 55	Section 127
Section 61	Section 130A
Section 62	Section 159
Section 63	Section 172
Section 65	Section 209
Section 68	Section 210
Section 69	All the sections of Part XII."
Section 70	

84. Non-application of Divisions 2 and 3 to Registered Listed Companies - Division I of Part XII of the principal Act is amended by inserting after section 229A the following section:

"229B. Nothing in Division 2 or Division 3 of this Part of this Act shall apply to any Registered Listed Company."

85. Application moneys to be held in trust until allotment - Section 241 of the principal Act is amended by:-

- (a) Omitting subsection (1) and substituting the following subsection:

"(1) Subject to section 240(3), (4) and (5), all application and other moneys paid prior to allotment by any applicant on account of shares or debentures offered to the public by an international company, shall until the allotment of such shares or debentures, be held by the company upon trust for the applicant in a separate trust account at a bank or in the case of a prospectus registered in any jurisdiction in which is located an Approved Stock Exchange as defined in section 126A of this Act shall be held in accordance with the laws of that jurisdiction.";

- (b) Omitting from 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".

86. Proper law - Section 245 of the principal Act is amended by omitting the word "notwithstanding" and substituting the words "subject to.".

87. Regulation of foreign investment in the Cook Islands - Subsection (1) of Section 249A of the principal Act is amended by:-

- (a) Omitting from the definition of "Administrative onshore business" paragraph (c) and substituting the following paragraph:

"(c) any transaction or dealing by an international company or a foreign company with a local entity -

- (i) registered under the Banking Act 1969 for the purposes of facilitating the deposit with or movement by that local entity of any of the monies of that company; or
- (ii) registered under the Off-Shore Banking Act 1981 where the transaction or dealing is with that division of the local entity which exercises the right to transact off-shore banking business conferred on it pursuant to that Act;"

- (b) Omitting from the definition of "Local entity" paragraph (a) and substituting the following paragraph:

"(a) in the case of a body corporate -

- (i) a domestic company (except where such a company is a trustee company);
- (ii) the branch or office in the Cook Islands of an overseas company registered as such under the Companies Act 1970-71 (which branch or office shall for the purposes of this part of this Act be deemed to have legal existence and personality separate and distinct from the legal existence and personality of that company as a whole and its business and operations deemed similarly separate and distinct);
- (iii) any foreign company which in contravention of Section 200(4) of this Act either has a place of business in the Cook Islands or carries on business in the Cook Islands;
- (iv) any other body corporate formed or incorporated in the Cook Islands (except a body incorporated or registered this Company, the International Trusts Act 1984 or the International Partnership Act 1984;".

88. Consequential repeals and amendments - (1)

Subsection (10) of section 14 of the principal Act is amended by inserting after the words "desiring the incorporation of an international company" the words "having a share capital".

(2) Subsection (3) of section 18 of the principal Act is repealed.

(3) Subsection (19) of section 14 of the principal Act is amended by omitting the words "share warrant" and substituting the words "share certificate issued to bearer".

(4) Subsection (1) of section 68 of the principal Act is amended by inserting after the words "other than a" the words "share warrant".

(5) Subsection (11) of section 83 of the principal Act is repealed.

(6) Subsection (1) of section 93 of the principal Act is amended by inserting after the words "paid-up capital" the words "or other membership interests".

(7) Subsection (2) of section 107 of the principal Act is amended by omitting the word "shareholding" wherever it appears and substituting the words "membership interest".

(8) Subsection (4) of section 114 of the principal Act is amended by adding the following paragraph:

"(e) in the case of a mutual company the number and total aggregate value of all membership interests issued by the company.".

(9) Section 126N of the principal Act is amended by omitting the words "subsection (1) " and substituting the words "subsection (2)".

(10) Subsection (1) of section 126X of the principal Act is amended by omitting the number "217" and substituting the word and numbers "54A, 54B and 54C".

(11) Subsection (2) of section 126G of the principal Act is amended by omitting the words "subsection (2)" and substituting the words "subsections (2) and (2A)".

(12) Subsection (1) of section 167 of the principal Act is amended by inserting after the words "bearer shares" the words "or share warrants" .

(13) Section 217 of the principal Act is repealed.

(14) Section 218 of the principal Act is repealed.

This Act is administered by the Cook Islands Monetary Board.