



ANALYSIS

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2006, No. 3

An Act to amend the International Companies Act 1981-82

(19 June 2006)

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

1. Short Title – This Act may be cited as the International Companies Amendment Act 2006 and shall be read together with and deemed part of the International Companies Act 1981-82 ("the principal Act").

2. Interpretation – Section 2 of the principal Act is amended by adding to the definition of "International Company" the words "and includes a company registered on incorporation as an international shipping company pursuant to section 14A".

3. Issue and effect of share warrants to bearer - The principal Act is amended by deleting section 36 and substituting the following:

"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 share, or the Custodian of a bearer share, exchange registered or bearer

several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one or several joint holders shall be sufficient delivery to all such holders.”

- (c) deleting Article 39 and substituting the following –

“39. The instrument of transfer must be left for registration at the office of company together with such fee as the directors from time to time may require, accompanied by such other evidence as the directors may reasonably require (including, where issued, any share certificate) to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these Articles register the transferee as a shareholder and retain the instrument of transfer.”

- (d) deleting Article 119 and substituting the following -

“119. Whenever such a resolution as aforesaid shall have been passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional shares or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.”

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shares in respect of such registered or bearer shares for a share warrant to bearer. Upon the surrender of the registered or bearer share, the international company shall issue a share warrant to bearer bearing the same number (if any) as the shares so surrendered.

(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 shares in respect of the share warrant. Upon the surrender of the share warrant, the international company shall issue and enter on the register of members, shares 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 shares 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 warrant.

(5) The exchange of any shares 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 shares 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 in accordance with the provisions of section 35A.”

4. Currency of Shares, Interest-Bearing Shares, Redeemable Shares, Shares with Special Rights and Gift Shares – Section 43 of the principal Act is deleted by deleting from subsection (3), paragraph (j), and substituting the following –

“(j) where the articles so permit and subject to the terms provided therein by way of gift, and without receiving any valuable consideration, and such shares may be deemed to be fully paid shares, shares issued by way of gift shall not, if any share certificate has been issued, for 3 months after the date of issue thereof be contained in the same certificate as other shares, any certificates issued for all such shares and the register of members shall clearly express the date of issue of the share or shares to which they relate and for at least 3 months after such date of issue any such certificates and the register of members shall bear a notation clearly written thereon that such shares are liable to forfeiture under the provisions of this section within 3 months of the date of issue and no other note of or relating to the fact that such shares were issued without valuable consideration need be made upon any share certificate but a notification of such issue shall be made in the Minute Book of the company and in the register of members;”

5. Register of members to be evidence of title – The principal Act is amended by deleting section 63, and substituting the following section -

“63. Register of members to be evidence of title – (1) Subject to section 109, the entry of the name of a person in the register of members kept pursuant to section 105 as the holder of a share, is prima facie evidence that legal title to the share vests in that person as registered holder.

(2) A company may treat the registered holder of a share as the only person entitled to –

- (a) exercise the right to vote attaching to the share; and
- (b) receive notices; and
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

(3) The registered holder of a share in an international company may in writing apply to the company for a certificate relating to some or all of the shareholder's shares in the international company.

(4) On receipt of the application for a share certificate under subsection (3) the company must within 20 working days after receiving the application –

- (a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates and the other parcel being any remaining shares; and
- (b) in all cases send to the shareholder a certificate stating –
 - (i) the name of the company and the authority under which the company is constituted;
 - (ii) the address of the registered office of the company in the Cook Islands or, where the certificate is issued by a branch of the company, the address of that branch;
 - (iii) where the shares have a par value, the nominal value and the extent to which the shares are paid up;
 - (iv) the class of the shares;
 - (v) the number of shares to which the certificate relates.

(5) Notwithstanding section 66, where a share certificate has been issued, a transfer of the shares to which it relates shall not be registered by the company unless the form of transfer required by that section is accompanied by the share certificate relating to the share or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the directors.

(6) Where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except on the application of the transferee or at the discretion of the directors.

(7) If default is made in complying with subsection (4), the company and every officer of the company who is in default shall be guilty of an offence against this Act.”

6. Loss or destruction of certificate – Subsection (1) of section 65 of the principal Act is amended by -

- (a) deleting paragraphs (a), (b) and (c); and
- (b) by adding after the words “accompanied by”, the words “evidence as to its loss or destruction and if required, an indemnity in a form required by the directors.”

7. Registration of transfer at request of transferor – Section 68 of the principal Act is amended by deleting from subsection (1), paragraph (b), and substituting the following -

- “(b) the company shall by notice in writing require the person having possession, custody or control of any share certificate or debenture and the instrument of transfer thereof or either of them to post or deliver it or them to the registered office of the company in the Cook Islands within a stated period, being not less than 14 and not more than 42 days after the date of the notice, to have any such share certificate or debenture cancelled or rectified and the transfer registered or otherwise dealt with.”

8. Duties of company with respect to certificates - Section 71 of the principal Act is amended by -

- (a) deleting subsection (1) and substituting the following -

“(1) Other than such a transfer as the company is for any reason entitled to refuse to register and does not register, every International Company, within 2 months after the issue of any shares or debentures, and within 1 month after the date on which a transfer of any share or debenture is lodged, shall except as provided by this Act, complete and have ready for delivery the appropriate certificate, warrant or debenture in connection with the issue or transfer, unless the conditions of issue or transfer otherwise provide.”;

- (b) (i) deleting from subsection (2), the words “the Certificate” and substituting the words “any Certificate”; and
- (ii) deleting the words “shares or”.

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

- (a) deleting from subsection (2), the words “the company shall be thereupon dissolved;”, and substituting the words “the company shall thereupon, subject to subsection (3A), be dissolved;”

- (b) inserting after subsection (3), the following subsection -

“(3A) Notwithstanding section 199(1), upon the Registrar restoring to the register the name of an international company pursuant to subsection (3) -

- (a) the international company shall be deemed to have continued in existence as if its name had not been struck off, and unless the Registrar at the time of restoration orders to the contrary, the international company and all

- other persons shall be deemed to be in the same position as nearly as may be as if the international company had not been struck off; and
- (b) any property, real or personal, including choses in action and whether within or outside the Cook Islands that has pursuant to section 199(1) become vested in the Registrar, shall be deemed notwithstanding section 199(1), never to have been so vested, other than -
- (i) property actually sold, otherwise disposed of or dealt with by the Registrar pursuant to section 199(2), which property shall remain the property of any bona fide purchaser or recipient; and
 - (ii) property the subject of an order of the Court, which property shall be deemed to have been dealt with according to the order .”

10. Outstanding assets of defunct company to vest in Registrar – Section 199(1) of the principal Act is amended by inserting the words “Subject to section 197(3A)” at the commencement of that subsection.

11. Certain property deemed never to have vested – Where before the coming into force of this Act any property, real or personal, including choses in action and whether within or outside the Cook Islands has pursuant to section 199(1) of the principal Act become vested in the Registrar, all such property, shall be deemed, notwithstanding section 199(1), never to have been so vested, other than-

- (a) property actually sold, otherwise disposed of or dealt with by the Registrar pursuant to section 199(2), which property shall remain the property of any bona fide purchaser or recipient;
- (b) property the subject of an order of the Court, which property shall be deemed to have been dealt with according to the order.

12. Application of other Acts to international companies – Section 249 of the principal Act is amended, by –

- (a) deleting the word “and” where it appears immediately before the words “the Terrorist Suppression Act 2004”; and
- (b) inserting after those words, the words “and the Shipping Act 1998.”

13. Second Schedule amended – The Second Schedule to the principle Act (Table A Articles) is amended by –

- (a) Amending Article 21, by inserting after the words “in any certificate”, the words “if issued”;
- (b) deleting Article 26, and substituting the following –

“26. Every person whose name is entered as a member in the register of members shall upon making a request pursuant to section 63 of the Act be entitled without payment to receive a certificate under the seal of the company in accordance with the Act but in respect of a share or shares held jointly by

several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one or several joint holders shall be sufficient delivery to all such holders.”

(c) deleting Article 39 and substituting the following –

“39. The instrument of transfer must be left for registration at the office of company together with such fee as the directors from time to time may require, accompanied by such other evidence as the directors may reasonably require (including, where issued, any share certificate) to show the right of the transferor to make the transfer, and thereupon the company shall subject to the powers vested in the directors by these Articles register the transferee as a shareholder and retain the instrument of transfer.”

(d) deleting Article 119 and substituting the following -

“119. Whenever such a resolution as aforesaid shall have been passed, the directors shall make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares or debentures, if any, and generally shall do all acts and things required to give effect thereto, with full power to the directors to make such provision by the issue of fractional shares or by payment in cash or otherwise as they think fit for the case of shares or debentures becoming distributable in fractions, and also to authorise any person to enter on behalf of all the members entitled thereto into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares or debentures to which they may be entitled upon such capitalisation or, as the case may require, for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares, and any agreement made under such authority shall be effective and binding on all such members.”

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