

# CONSULTATION DOCUMENT

## Notes for this consultation document

This is draft of the proposed Companies Bill 2019. It is not a final copy that will be recommended to be taken to Parliament.

### Comments on proposed Bill

Electronic submissions are preferred; however, hand-delivered or posted submissions will also be accepted.

The closing date for submissions is **Sunday, 9 June 2019**.

Electronic submissions should be directed to: [jarrod.harrington@adbpsdi.org](mailto:jarrod.harrington@adbpsdi.org)

Hand-delivered or posted submissions should be directed to:

Ministry of Commerce, Industry, and Cooperatives  
Betio

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REPUBLIC OF KIRIBATI

[CREST]

COMPANIES BILL 2019

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REPUBLIC OF KIRIBATI

(No \_\_\_\_\_ of 2019)

I assent,

\_\_\_\_\_  
Beretitenti

this \_\_\_ day of \_\_\_ of 2019

## A Bill

entitled

An Act to provide for the incorporation of companies and related purposes.

Commencement:  
2019

MADE by the Maneaba Ni Maungatabu and assented to by the Beretitenti

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### PART I – PRELIMINARY MATTERS

#### 1 Short title

This Act may be cited as the Companies Act 2019.

#### 2 Commencement

This Act comes into operation on a date appointed by the Minister by notice in the *Gazette*.

#### 3 Purpose

This Act has the following purposes:

- (a) to provide for the efficient registration and incorporation of companies in Kiribati; and
- (b) to provide for flexible and adaptable company structures in Kiribati that are economically efficient and economically enhancing; and
- (c) to provide for proper but not excessive regulation and administration of companies in Kiribati; and
- (d) to provide a modern and clear statement of the rules that apply to companies in Kiribati; and
- (e) to provide for a procedure for dissolving a solvent company.

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## 4 Interpretation

This Act must be interpreted in accordance with the definitions and other interpretative provisions set out in Schedule 1.

## 5 Application to the Republic

This Act binds the Republic.

## PART II – INCORPORATION

### Division 1 – Incorporation

## 6 Essential requirements

A company must have—

- (a) a name; and
- (b) a constitution; and
- (c) 1 or more shares; and
- (d) 1 or more shareholders, having limited or unlimited liability for the obligations of the company; and
- (e) 1 or more directors, of whom at least 1 must live in Kiribati.

## 7 Application for registration

- (1) Any person may, either alone or together with another person, apply for the registration of a company under this Act.
- (2) An application for the registration of a company must be—
  - (a) in the approved form; and
  - (b) signed by the person or persons making the application; and
  - (c) filed with the Registrar.
- (3) The application must specify—
  - (a) the name of the company, which must comply with section 11; and
  - (b) whether the constitution of the company differs from the default constitution set out in Schedule 2 or 3, as applicable; and
  - (c) the full name, residential address, and postal address of every proposed director of the company; and
  - (d) whether each person named as a director of the company has consented to act as a director of the company; and
  - (e) the full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
  - (f) the registered office of the proposed company; and

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- (g) the postal address of the company, which may be the registered office or any other postal address.
- (4) The application for registration must be accompanied by—
  - (a) a copy of the constitution to the extent that the company elects not to use, or elects to modify, the default constitution set out in Schedule 1; and
  - (b) the prescribed fee.

### **8 Certificate of incorporation**

As soon as the Registrar receives an application for registration that complies with section 7, the Registrar must—

- (a) enter the company on the Kiribati register; and
- (b) issue a certificate of incorporation of the company.

### **9 Incorporation**

A certificate of incorporation of a company is conclusive evidence that—

- (a) all the requirements of this Act as to incorporation have been complied with; and
- (b) on and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

### **10 Separate legal personality with full capacity**

- (1) A company is a legal entity in its own right separate from its shareholders and continues in existence until it is removed from Kiribati register.
- (2) A company—
  - (a) has full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
  - (b) may do anything authorised by this Act or the company's constitution; and
  - (c) may do anything that a natural person of full age and capacity may do.
- (3) Subsection (2) is subject to this Act, any other enactment and the general law.

## **PART III – COMPANY NAME**

### **11 Name of company**

- (1) The name of a company must end with the word “Limited” or “Ltd”.
- (2) The Registrar must not register a company with a name if—
  - (a) use of the name would contravene any enactment; or

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- (b) the name is identical or almost identical to the name of another company; or
- (c) in the opinion of the Registrar, the name is offensive or likely to mislead or deceive.

### 12 Change of name

- (1) An application to change the name of a company must be—
  - (a) in the approved form; and
  - (b) signed by a director of the company; and
  - (c) filed with the Registrar; and
  - (d) accompanied by the prescribed fee (if any).
- (2) An application to change the name of a company is not an amendment of the constitution of the company for the purposes of this Act.
- (3) As soon as the Registrar receives an application that complies with subsection (1) and the requirements of section 11, the Registrar must—
  - (a) enter the new name of the company on the Kiribati register; and
  - (b) issue a fresh certificate of incorporation for the company recording the new name of the company.
- (4) A change of name of a company—
  - (a) takes effect from the date specified in the certificate issued under subsection (3)(b); and
  - (b) does not affect rights or obligations of the company, or legal proceedings by or against the company.

### 13 Direction to change name

- (1) This section applies if the Registrar believes on reasonable grounds that a company has been registered under a name that contravened section 11 at the time of registration.
- (2) The Registrar may—
  - (a) serve a written notice on the company requiring it to change its name within a date specified in the notice that is not less than 20 working days after service of the notice; and
  - (b) if the company does not comply with the notice, enter a new name for the company on Kiribati register in the form of “Number x Company Limited” with “x” being a unique number assigned to the company by the Registrar.
- (3) On a change of name under subsection (2)(b)—
  - (a) the Registrar must issue an amended certificate of incorporation for the company recording the new name of the company; and

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- (b) section 12(4) applies to the registration of the new name as if the name of the company had been changed under section 12.

### 14 Use of company name

- (1) A company must ensure that its name is clearly stated in—
  - (a) every written communication sent by, or on behalf of, the company; and
  - (b) every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.
- (2) If a document referred to in subsection (1)(b) does not correctly state the name of the company, every person who issued or signed the document (the issuer or signatory) is liable to the same extent as the company if the company fails to discharge the obligation.
- (3) However, the issuer or signatory is not liable under subsection (2) if—
  - (a) that person proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or
  - (b) it would not be just or equitable for the issuer or signatory to be liable.
- (4) If a company gives public notice of any matter and the name of the company has been changed within the previous 12 months, the company must ensure that the notice states—
  - (a) that the name of the company has changed in that period; and
  - (b) the former name or names of the company.

## PART IV – COMPANY CONSTITUTION

### 15 Company must have constitution

- (1) Every company must have a constitution.
- (2) The constitution may be 1 of the following—
  - (a) the default constitution set out in Schedule 2 or 3, whichever applies; or
  - (b) that default constitution as altered or modified; or
  - (c) a constitution in substitution for the default constitution.
- (3) A company that substitutes a constitution for its default constitution, or alters or modifies its default constitution, must hold at its registered office and make available for inspection the following, as applicable—
  - (a) the substituted constitution; or
  - (b) the modifications and alterations to the default constitution.
- (4) The constitution of the company must be its default constitution as determined by its number of shareholders except to the extent that, whether on registration, re-registration, or at any subsequent time—

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- (a) there is substituted another constitution for it; or
- (b) it is altered or modified.

### 16 Substitution, adoption or amendment of constitution after incorporation

- (1) Subject to any restrictions in its constitution, a company may by special resolution, substitute or adopt a new constitution or amend its existing constitution or default constitution.
- (2) Within 14 days after a change in constitution under subsection (1), the company must file a notice in the approved form with the Registrar for registration.

### 17 Effect of constitution

- (1) The constitution is of no effect to the extent that it contravenes, or is inconsistent with, this Act.
- (2) Subject to subsection (1)—
  - (a) the constitution has effect and may be enforced as if it constituted a contract—
    - (i) between the company and its shareholders; and
    - (ii) between the company and each director; and
  - (b) the shareholders and directors of a company have the rights, powers, duties, and obligations set out in the constitution of the company.

## PART V – SHARES

### Division 1 – General

### 18 Legal nature of shares

A share in a company is personal property.

### 19 No nominal value or bearer share

- (1) A share must not have a nominal or par value.
- (2) Nothing in subsection (1) prevents the issue by a company of a redeemable share.
- (3) A company must not issue a share that is a bearer share and a share that is issued in contravention of this subsection is a nullity.

### 20 Minimum number of shares

A company must have at least 1 issued share.

### 21 Rights and powers attached to shares

- (1) Subject to subsection (2), a share in a company confers on the holder—

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- (a) the right to vote on a poll at a meeting of the company on any resolution, including any resolution to—
    - (i) appoint or remove a director or auditor;
    - (ii) adopt a constitution;
    - (iii) amend the company's constitution;
    - (iv) approve a major transaction;
    - (v) dissolve the company;
  - (b) the right to an equal share in dividends paid by the company;
  - (c) the right to an equal share in the distribution of the surplus assets of the company.
- (2) The rights specified in subsection (1) may be negated, limited, modified or added to—
- (a) by the constitution of the company; or
  - (b) in accordance with the terms on which the share is issued.
- (3) Subject to the constitution, a company may issue different classes of shares.
- (4) Without limiting subsection (2), shares in a company may—
- (a) be redeemable;
  - (b) confer preferential rights to distribution of capital or income;
  - (c) confer special, limited or conditional voting rights;
  - (d) not confer voting rights.

### **22 Shares must not impose liabilities on holder**

- (1) A share must not—
- (a) be partly paid; or
  - (b) otherwise impose any liability on its holder to make a payment to the company.
- (2) A company must not issue a share that contravenes subsection (1).
- (3) Nothing in subsection (1) or (2)—
- (a) prevents a company from attaching conditions, limits or restrictions to the rights and powers attached to the share; or
  - (b) prevents a company from issuing a share on credit terms that provide for a liability to make future payments to the company on the part of the person to whom it is first issued.

### **Division 2 – Issue of shares**

#### **23 Issue of initial shares**

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A company must, immediately after the registration of the company, issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

### 24 Issue of other shares

- (1) A company may issue shares—
  - (a) in accordance with its constitution; or
  - (b) with the approval of all shareholders under section 62.
- (2) A company must, within 14 days after the issue of any shares, file with the Registrar for registration a notice in the approved form of the issue of the shares by the company.
- (3) If the rights attached to the shares are not set out in full in the constitution, the notice must be accompanied by a document setting out the terms of the issue of the shares.
- (4) If a company fails to comply with subsection (2), every director of the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 25 Time of issue of shares

A share is issued when the name of the holder is entered on the share register.

### 26 Pre-emptive rights

- (1) Shares issued or proposed to be issued by a company that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the company must be offered for acquisition to the holders of the shares already issued in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those holders.
- (2) An offer under subsection (1) must remain open for acceptance for a reasonable time.
- (3) The constitution of a company may negate, limit, modify or add to the requirements of this section.

### 27 Consideration for issue of shares

- (1) The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property or other financial products of the company (for example, a debt security).
- (2) Before a company issues shares under section 24, the directors must—
  - (a) decide the consideration for which the shares will be issued; and
  - (b) if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

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- (c) resolve that, in their opinion, the consideration for, and the terms of, the issue are fair and reasonable to the company and all existing shareholders.

### 28 Consent to issue of shares

- (1) A company must not issue a share to a person that increases that person's liability to the company or imposes a new liability on that person to the company unless the person or the person's agent has first consented in writing.
- (2) The issue of a share in breach of subsection (1) is void.

### Division 3 – Distributions to shareholders

### 29 Distributions prohibited unless solvency test satisfied

- (1) A company must not make, and the directors must not authorise, a distribution to shareholders unless there are reasonable grounds for believing that, after the distribution is made, the company will satisfy the solvency test.
- (2) For the purposes of this Act, a company satisfies the solvency test if—
  - (a) the company is able to pay its debts as they become due in the normal course of business; and
  - (b) the value of its assets is greater than the value of its liabilities, including its contingent liabilities.

### 30 Meaning of distribution

For the purposes of this Part, a company makes a distribution to a shareholder if—

- (a) the company—
  - (i) directly or indirectly transfers money or property (other than the company's own shares) to or for the benefit of the shareholder; or
  - (ii) incurs a debt to or for the benefit of the shareholder; and
- (b) the company does so in relation to the shares held by that shareholder, whether by means of—
  - (i) a dividend; or
  - (ii) the purchase, redemption, or other acquisition of shares; or
  - (iii) a distribution of indebtedness; or
  - (iv) some other means.

### 31 Recovery of improper distributions

- (1) A company that has made a distribution to a shareholder in breach of section 29, 32, or 33 may recover the distribution from the shareholder unless subsection (2) applies.
- (2) The company may not recover the distribution if—

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- (a) the shareholder received the distribution in good faith and without knowledge of the company's breach of section 29, 32, or 33, as the case may be; and
  - (b) the shareholder has altered the shareholder's position in reliance on the validity of the distribution; and
  - (c) it would be unfair to require payment in full or in part.
- (3) A person who authorised a distribution that has been made in breach of section 29 and who at the time of authorising knew or ought to have known that the distribution did not comply with section 29 is liable to pay to the company so much of that distribution as is not reasonably recoverable from the person or persons to whom it was made.
- (4) In a proceeding under this section to recover an improper distribution, the Court may, if satisfied that distribution of a lesser amount could have complied with section 29, permit a shareholder to retain, or excuse a person who authorised the distribution from liability in respect of, any amount equal to the value of any distribution that could properly have been made.

### Division 4 – Dividends

#### 32 Dividends

- (1) A company may pay a dividend to shareholders if—
- (a) the company complies with section 29; and
  - (b) the dividend is authorised by—
    - (i) all the shareholders under section 62; or
    - (ii) the directors, if the constitution so provides.
- (2) A dividend authorised by the directors must comply with any conditions or restrictions set out in the constitution.
- (3) Subject to the constitution and to the terms of issue of any share, a company must not pay a dividend—
- (a) in respect of some but not all the shares; or
  - (b) that is of greater value per share in respect of some shares than of others.
- (4) In this section, dividend means any distribution other than—
- (a) a distribution by way of the repurchase or redemption of shares; or
  - (b) a distribution of the surplus assets of the company in liquidation.

### Division 5 – Company may acquire its own shares

#### 33 Company may acquire its own shares

- (1) A company may acquire its own shares if—
- (a) the company complies with section 29; and

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- (b) the acquisition is an approved acquisition.
- (2) An approved acquisition is—
  - (a) an acquisition made by agreement with a shareholder in accordance with the constitution or with the approval of all shareholders under [section 62]; or
  - (b) the acquisition of a dissenter's shares under [section 65].

### 34 Notice of company's acquisition of its own shares

- (1) A company that acquires its own shares must, within 14 days after the acquisition, file with the Registrar for registration a notice in the approved form of the acquisition.
- (2) The company must also send the notice required under subsection (1) to each shareholder within 28 days after the acquisition unless the acquisition results from an offer made to all shareholders that—
  - (a) would, if accepted, leave unaffected relative voting and distribution rights; and
  - (b) affords a reasonable time for acceptance of the offer.
- (3) If a company fails to comply with subsection (1) or (2), every director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 35 Cancellation of shares acquired by company

- (1) If a company acquires its own shares, the shares must be treated as immediately cancelled on acquisition unless section 37 applies.
- (2) For the purposes of this section, a company acquires a share at the time when it would, apart from this section, become entitled to—
  - (a) exercise the rights attached to that share; or
  - (b) give directions to the shareholder as to the manner in which any of those rights should be exercised.

### 36 Enforceability of contract to repurchase shares

- (1) A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that performance would breach section 29.
- (2) The company has the onus of proving that performance of the contract would breach section 29.
- (3) Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled—
  - (a) to be paid as soon as the company is lawfully able to do so; or

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- (b) before removal of the company from Kiribati register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

### Division 6 – Treasury stock

#### 37 Company may hold its own shares

- (1) Shares that are acquired by a company under section 33 are not treated as immediately cancelled on acquisition if—
  - (a) the constitution of the company expressly permits the company to hold its own shares; and
  - (b) the directors resolve that the shares in question not be cancelled.
- (2) Shares referred to in subsection (1) (“treasury stock”) are held by the company itself.

#### 38 Rights and obligations of treasury stock suspended

- (1) The rights and obligations attaching to a share that a company holds in itself must not be exercised by or against the company while it holds the share.
- (2) Without limiting subsection (1), while a company holds a share in itself, the company must not—
  - (a) exercise any voting rights attaching to the share; and
  - (b) make or receive any distribution in respect of the share.

#### 39 Company may transfer treasury stock

- (1) A company may transfer a share that it holds in itself as if the transfer were the issue of the share.
- (2) However, the transfer of a share by a company in itself is not subject to any provision in this Act or the company’s constitution relating to the issue of shares, except to the extent that the company’s constitution expressly applies that provision.

### Division 7 – Redeemable shares

#### 40 Meaning of redeemable

For the purposes of this Act, a share is redeemable if the constitution makes provision for the issue of redeemable shares and under the constitution or the terms of issue—

- (a) the share is redeemable—
  - (i) at the option of the company; or
  - (ii) at the option of the holder of the share; or
  - (iii) on a date specified in the constitution or the terms of issue; and
- (b) the share is redeemable for a consideration that is—

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- (i) specified; or
- (ii) to be calculated by reference to a formula; or
- (iii) required to be fixed by a suitably qualified person who is not associated with or interested in the company.

### 41 Redemption of redeemable shares

- (1) A company may redeem a redeemable share if the company complies with section 29.
- (2) The company has the onus of proving that redemption of the share would breach section 29.
- (3) Until the company has fully redeemed a share in accordance with the constitution or the terms of issue, the former holder of the share retains the status of a claimant entitled—
  - (a) to be paid as soon as the company is lawfully able to do so; or
  - (b) before removal of the company from the Kiribati register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

### 42 Cancellation of redeemed shares

- (1) Shares that are redeemed must be treated as cancelled immediately on redemption, unless the constitution or the terms of issue provide otherwise.
- (2) On the cancellation of a redeemed share under subsection (1)—
  - (a) the rights attached to that share expire; but
  - (b) the company may re-issue the share.

### 43 Notice of redemption of redeemable shares

- (1) A company that redeems redeemable shares must, within 14 days after the redemption, file with the Registrar for registration a notice of redemption in the approved form.
- (2) If a company fails to comply with this subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

## Division 8 – Assistance by company for purchase of its own shares

### 44 Financial assistance

- (1) A company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company if—
  - (a) the assistance meets the requirements set out in subsection (3); and
  - (b) the company has made the disclosure required by subsection (4).

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- (2) The assistance may be direct or indirect.
- (3) The requirements for financial assistance are the following—
  - (a) the company gives the assistance in the normal course of business and on usual terms and conditions; and
  - (b) the assistance is authorised by the directors or by all the shareholders under [section 62]; and
  - (c) there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test; and
  - (d) the company complies with any conditions or restrictions on giving assistance contained in the constitution.
- (4) Before making an offer of financial assistance, the company must send to each shareholder a disclosure document that contains the following information—
  - (a) the nature and terms of the financial assistance;
  - (b) the name of the person to whom it will be offered;
  - (c) the nature and extent of any relevant interest of a director of the company in the financial assistance;
  - (d) if the directors authorise the financial assistance, the text of that resolution;
  - (e) such further information and explanation as is necessary for a reasonable shareholder to understand the nature of the financial assistance and its implications for the company and the shareholders.
- (5) A disclosure document is not required if the assistance is authorised by all the shareholders under [section 62].

### Division 9 – Cross-holdings

#### 45 **Subsidiary may not hold shares in holding company**

- (1) Subject to this section, a subsidiary must not hold shares in its holding company.
- (2) An issue of shares by a holding company to its subsidiary is void and of no effect.
- (3) A transfer of shares in a holding company to its subsidiary is void and of no effect.
- (4) Nothing in this section or [section 39] prevents a subsidiary from holding shares in its holding company in its capacity as a personal representative or a trustee unless the holding company or another company has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.
- (5) This section and section 46 apply to a nominee for a subsidiary in the same way as they apply to the subsidiary.

#### 46 **Exception for company that subsequently becomes subsidiary**

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If a company that holds shares in another company becomes a subsidiary of that other company, the subsidiary—

- (a) may, despite section 45(1), continue to hold those shares; but
- (b) may not exercise any voting rights attaching to those shares.

### Division 10 – Transfer of shares

#### 47 Transfer of shares

- (1) A share in a company is transferable subject to any limitation or restriction on the transfer of shares in the constitution.
- (2) A share is transferred by entry in the share register in accordance with section 49.
- (3) For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or the shareholder's personal representative must be delivered to—
  - (a) the company; or
  - (b) an agent of the company who maintains the register of the company.
- (4) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

#### 48 Transfer of shares by operation of law

Shares in a company may pass by operation of law despite anything in the constitution.

### Division 11 – Share register

#### 49 Company must maintain share register

- (1) A company must maintain a share register that records the shares issued by the company and states the following—
  - (a) the names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder;
  - (b) the number of shares of each class held by each shareholder within the last 7 years;
  - (c) the date of each of the following transactions within the last 7 years—
    - (i) the issue of shares to a shareholder;
    - (ii) the repurchase or redemption of shares from a shareholder;
    - (iii) the transfer of shares by or to a shareholder;
  - (d) in relation to the transfer of shares by or to a shareholder, the name of the person to or from whom the shares were transferred.
- (2) The share register must be kept—

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- (a) in written form or in a form that is readily accessible and convertible into written form; and
  - (b) at the registered office of the company.
- (3) The share register may be maintained by an agent on behalf of the company.
- (4) If a company fails to comply with the requirements of this section, the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 50 Share register as evidence of legal title

- (1) Subject to section 51, the entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person.
- (2) A company must treat the registered holder of a share as the only person entitled to—
- (a) exercise the right to vote attaching to the share; and
  - (b) receive notices; and
  - (c) receive a distribution in respect of the share; and
  - (d) exercise the other rights and powers attaching to the share.

### 51 Power of Court to rectify share register

- (1) If the name of a person is wrongly entered in, or omitted from, the share register of a company, the Court may, on the application of the person aggrieved or a shareholder, order—
- (a) rectification of the share register; or
  - (b) payment of compensation by the company for any loss sustained; or
  - (c) both rectification and payment of compensation.
- (2) On an application under subsection (1), the Court may decide—
- (a) a question relating to the entitlement of a person who is a party to the application to have that person's name entered in, or omitted from, the register; and
  - (b) a question necessary or expedient to be decided for rectification of the register.

### 52 Beneficial ownership of shares

- (1) No notice of a trust, whether express, implied or constructive, may be entered on the share register.
- (2) However, a company must—
- (a) obtain and maintain sufficient information to identify the beneficial owner of a share issued by the company; and

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- (b) disclose that information in a written notice to the Registrar on the written request of the Registrar without the necessity for a Court order requiring disclosure.
- (3) For the purposes of subsection (2), beneficial owner means the person who ultimately owns or controls the share.
- (4) If a company fails to comply with subsection (2)(b)—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$10,000; and
  - (b) every director commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 12 months, or both.

### **53 Personal representative of deceased shareholder or assignee of bankrupt may be registered**

- (1) Despite section 52(1), a personal representative of a deceased person whose name is registered in the share register as the holder of a share in a company is entitled to be registered as holder of that share as personal representative.
- (2) Despite section 52(1), the assignee of the property of a bankrupt whose name is registered in the share register as the holder of a share in a company is entitled to be registered as holder of that share as the assignee of the property of the bankrupt.
- (3) The registration under this section of a trustee, an executor or administrator, or an assignee in bankruptcy does not constitute notice of a trust.

### **Division 12 – Share certificates**

#### **54 Share certificates**

- (1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- (2) On receipt of an application under subsection (1), the company must, within 20 working days after receiving the application—
  - (a) if the application relates to all of the shares, send to the shareholder a certificate stating—
    - (i) the name of the company; and
    - (ii) the class of shares held by the shareholder; and
    - (iii) the number of shares held by the shareholder to which the certificate relates; or
  - (b) if the application relates to some but not all of the shares—
    - (i) separate the shares entered in the register in the name of the applicant into separate parcels (one being the shares to which the

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- application relates, and the other parcel being the remaining shares); and
- (ii) send to the shareholder a certificate that complies with paragraph (a) in respect of each parcel.
- (3) On the application of a shareholder whose share certificate is lost or destroyed, the company must, on payment of a reasonable fee, issue a replacement certificate.
  - (4) A shareholder's application for a replacement certificate must be accompanied by—
    - (a) a statutory declaration by the shareholder that—
      - (i) the share certificate has been lost or destroyed; and
      - (ii) if lost, a proper search has been made for it; and
      - (iii) the share certificate has not been sold, pledged, or otherwise disposed of; and
    - (b) an undertaking by the shareholder to return the share certificate to the company if it is found or recovered.

### 55 Registration of share transfer

- (1) A company must not register a transfer of shares to which a share certificate relates unless the form of transfer required by section 47(3) is accompanied by—
  - (a) the share certificate; or
  - (b) evidence as to its loss or destruction and, if required, an appropriate indemnity.
- (2) A company—
  - (a) must cancel a share certificate sent to the company to enable registration of the transfer of the shares to which it relates; and
  - (b) must not issue a further share certificate in relation to those shares except at the request of the transferee.
- (3) A company must, within 14 days after registering a transfer of its shares, file with the Registrar for registration a notice of transfer of shares in the approved form.
- (4) If a company fails to comply with subsection (2), the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

## PART VI – SHAREHOLDERS

### Division 1 – General

#### 56 Company must have at least 1 shareholder

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A company must, at all times, have at least 1 shareholder.

## 57 Liability of shareholders

- (1) A shareholder is not liable for an obligation of the company by reason only of being a shareholder.
- (2) The liability of a shareholder to the company is limited to—
  - (a) any liability to repay a distribution that is recoverable under section 35; and
  - (b) any liability under [section 85].

## Division 2 – Powers of shareholders

## 58 Decisions reserved for shareholders only

- (1) The following powers may be exercised by the shareholders only and may not be delegated under the constitution or otherwise—
  - (a) the power to substitute or adopt a new constitution, or to amend the company's existing constitution or default constitution, under section 16;
  - (b) the power to approve a major transaction under section 61;
  - (c) the power to resolve that the company be dissolved.
- (2) The following powers may be exercised by the shareholders only unless the constitution provides otherwise—
  - (a) the power to appoint or remove a director;
  - (b) the power to appoint an auditor.
- (3) The constitution may provide for other matters to be decided by shareholders or approved by shareholders.

## 59 How shareholder power may be exercised

- (1) A power referred to in section 58(1)(a) or (c) must be exercised by special resolution.
- (2) A power referred to in section 58(1)(b) must be exercised—
  - (a) by special resolution; or
  - (b) in accordance with section 62.
- (3) A power referred to in section 58(2) and (3) may, unless the constitution provides otherwise, be exercised—
  - (a) by ordinary resolution; or
  - (b) in accordance with section 62.

## 60 Types of shareholder resolution

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- (1) An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.
- (2) A special resolution is a resolution approved by a majority of 75% (or, if a higher majority is required by the constitution, that higher majority) of the votes of those shareholders entitled to vote and voting on the question.

### 61 Shareholder approval of major transaction

- (1) A company must not enter into a major transaction unless the transaction is—
  - (a) approved by the shareholders by special resolution;
  - (b) approved by unanimous shareholder approval under section 62; or
  - (c) conditional on approval under paragraph (a) or (b).
- (2) In this section, —

“*assets*” includes property of any kind, whether tangible or intangible;

“*major transaction*”, in relation to a company, means—

  - (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half of the company’s assets before the acquisition; or
  - (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company’s assets before the disposition; or
  - (c) a transaction that has, or is likely to have, the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company’s assets before the transaction.
- (3) Nothing in paragraph (b) or (c) of the definition of major transaction in subsection (2) applies by reason only of the company granting, or agreeing to grant, a security interest in assets of the company, the value of which is more than half the value of the company’s assets, for the purpose of securing the repayment of money or the performance of an obligation.
- (4) Nothing in this section applies to a major transaction entered into by a receiver appointed under a document granting a security interest in property of a company.

### 62 Unanimous assent to certain types of action

- (1) If all the shareholders of a company consent to, or concur in, any action taken by the company or a director, the taking of that action must be treated as validly authorised by the company despite—
  - (a) anything to the contrary in the constitution; or
  - (b) the absence of express authority to take that action in the constitution.

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- (2) The matters that may be authorised in accordance with subsection (1) include, but are not limited to, the following—
- (a) the issue of shares;
  - (b) the making of a distribution (but see subsection (3));
  - (c) the repurchase of shares;
  - (d) giving financial assistance for the purpose of, or in connection with, the purchase of shares in the company;
  - (e) the payment of remuneration to a director, or the making of a loan to a director, or the conferral of any other benefit on a director;
  - (f) the making of a contract between the company and a director, or of any other contract in which a director has an interest;
  - (g) entry into a major transaction;
  - (h) the alteration of shareholder rights:
  - (i) the ratification after the event of any action that could have been authorised under this section.
- (3) A company must not authorise a distribution under this section unless there are reasonable grounds for believing that, after the distribution is made, the company will satisfy the solvency test.
- (4) Section 31 applies to a distribution made in breach of subsection (3) as if—
- (a) the distribution had been made in breach of section 29; and
  - (b) the distribution was authorised by all the shareholders.

### Division 3 – Alteration of shareholder rights

#### 63 Alteration of shareholder rights

- (1) A company must not take action that affects the rights attached to shares unless that action has been approved by—
- (a) a special resolution of each interest group; or
  - (b) unanimous shareholder approval under section 64.
- (2) For the purposes of subsection (1), the rights attached to a share include—
- (a) the rights, privileges, limitations, and conditions attached to the share by this Act or the constitution, including voting rights and rights to distributions; and
  - (b) the right that the company comply with any provisions of the constitution in relation to the issue of further shares; and
  - (c) the right that the company comply with subsection (1) and any further procedure required by the constitution for the amendment or alteration of rights; and

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- (d) the right that a procedure required by the constitution for the amendment or alteration of rights not be amended or altered.

### 64 Meaning of class and interest group

- (1) For the purposes of section 63—
  - “*class*” means a class of shares having attached to them identical rights, privileges, limitations, and conditions;
  - “*interest group*”, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders—
    - (a) whose affected rights are identical; and
    - (b) whose rights are affected by the action or the proposal in the same way; and
    - (c) subject to subsection (2)(b), who comprise the holders of 1 or more classes of shares in the company.
- (2) For the purposes of section 63 and the definition in subsection (1) of interest group—
  - (a) 1 or more interest groups may exist in relation to any action or proposal; and
  - (b) holders of shares in the same class may fall into 2 or more interest groups if—
    - (i) action is taken in relation to some holders of shares in a class and not others; or
    - (ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class.

### 65 Dissenting shareholder may require company to purchase shares

- (1) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 4 if the shareholder is a dissenting shareholder under subsection (2) or (3).
- (2) A shareholder (S) is a dissenting shareholder for the purposes of subsection (1) if—
  - (a) S was entitled to vote on the exercise of 1 or more of the following powers—
    - (i) the power to substitute or adopt a new constitution, or to amend the existing constitution or default constitution, and the change imposes or removes a restriction on the activities of the company; or
    - (ii) the power to approve a major transaction; or
  - (b) the shareholders resolved to exercise the power; and
  - (c) S dissented.

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- (3) A shareholder (S) is also a dissenting shareholder for the purposes of subsection (1) if—
- (a) S was a member of an interest group that has, under section 63(1)(a), by special resolution approved an action that affects the rights attached to S's shares; and
  - (b) the company becomes entitled to take the action; and
  - (c) S dissented.

### 66 Meaning of dissent

For the purposes of section 65(2)(c) and (3)(c), a shareholder dissents if—

- (a) the shareholder casts all the votes attached to the shares registered in the shareholder's name and having the same beneficial owner against the resolution in question; or
- (b) in the case of a written resolution in lieu of a meeting (see section 72), the shareholder does not sign or assent to the resolution.]

## Division 4 – Meetings of shareholders

### 67 Shareholder meetings

- (1) Meetings of the shareholders of a company must be held in accordance with the constitution, and the constitution must include provisions for—
- (a) holding those meetings; and
  - (b) the procedure governing those meetings.
- (2) The constitution does not need to provide for shareholder meetings if the company has only 1 shareholder.

### 68 Annual meeting of shareholders

- (1) A company must hold an annual meeting of shareholders—
- (a) not later than 6 months after the balance date of the company; and
  - (b) not later than 15 months after the previous annual meeting.
- (2) However—
- (a) a company does not have to hold its first annual meeting in the calendar year of its registration must hold that meeting within 18 months after its registration; and
  - (b) the company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with section 70.

### 69 Special meeting of shareholders

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

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- (a) may be called at any time by a director; and
- (b) must be called by the directors on the written request of the shareholders carrying together not less than 10% of the votes that may be cast on the issue.

### **70 Written resolution in lieu of meeting**

- (1) Subject to subsection (3), a resolution in writing signed or assented to by or on behalf of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of those shareholders.
- (2) A resolution in writing is made in accordance with this Act or the constitution of the company, as the case may be, if the resolution—
  - (a) relates to a matter that is required by this Act or the constitution to be decided at a meeting of the shareholders of a company; and
  - (b) the resolution is signed or assented to by or on behalf of the shareholders referred to in subsection (1).
- (3) If, in respect of any matter, the constitution of a company requires approval by a greater majority than 75% of the votes entitled to be cast, the reference in subsection (1) to 75% is taken to be that greater majority.

### **71 Procedure for written resolution in lieu of meeting**

- (1) Any resolution made under section 70 may consist of 1 or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail or other similar means of communication) each signed or assented to by or on behalf of 1 or more of the shareholders specified in section 58(1).
- (2) A resolution made under section 70 may be made without any prior notice being given to shareholders.
- (3) Within 7 days after a resolution is made under section 70, the company must send a copy of the resolution to every shareholder who did not sign or assent to the resolution.
- (4) If a company fails to comply with subsection (3), the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### **72 Court may call meeting of shareholders**

- (1) On the application of a director, shareholder or creditor of a company, the Court may order a meeting of the shareholders of the company to be held or conducted in such manner as the Court directs.
- (2) The grounds on which the Court may make the order include the following—
  - (a) it is impracticable to call or conduct a meeting of shareholders in the manner required by this Act or the constitution; or

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- (b) it is in the interests of a company that a meeting of the shareholders be held.

## PART VII – DIRECTORS

### Division 1 – Appointment and removal of directors

#### 73 Meaning of director

In this Act, “*director*”, in relation to a company—

- (a) includes a person occupying the position of director of the company by whatever name called; and
- (b) for purposes of liability, has the extended meaning set out in section 96; but
- (c) does not include a receiver.

#### 74 Number of directors

A company must have 1 or more directors.

#### 75 Qualification of directors

- (1) A natural person who is not disqualified by subsection (2) may be appointed as a director of a company.
- (2) The following persons are disqualified from being appointed or holding office as a director of a company—
  - (a) a person who is under 18 years of age;
  - (b) a person who is an undischarged bankrupt in any jurisdiction;
  - (c) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 106 or 108;
  - (d) a person in respect of whom an order is in force under Kiribati mental health legislation;
  - (e) in relation to any particular company, a person who does not comply with any qualifications for directors contained in the constitution of the company.
- (3) A person that is not a natural person cannot be a director of a company.
- (4) A person who is disqualified from being a director but who acts as a director is taken to be a director for the purposes of a provision of this Act that imposes a duty or an obligation on a director of a company.

#### 76 Director’s consent required

- (1) A person must not be appointed a director of a company unless he or she has consented in writing to be a director.

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- (2) The company must, if required to do so by the Registrar, produce any consent specified in subsection (1).

### **77 Appointment of first and subsequent directors**

- (1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.
- (2) All subsequent directors of a company must, unless the constitution of the company provides otherwise, be appointed by ordinary resolution.

### **78 Removal of directors**

Subject to the constitution of a company, a director may be removed by ordinary resolution.

### **79 Director ceasing to hold office**

- (1) A director ceases to hold office if he or she—
  - (a) resigns; or
  - (b) is removed from office in accordance with this Act or the constitution of the company; or
  - (c) becomes disqualified from being a director under section 75(2); or
  - (d) dies; or
  - (e) otherwise vacates office in accordance with the constitution of the company.
- (2) Despite ceasing to hold office, a former director remains liable under the director liability provisions of this Act for his or her conduct while a director.

### **80 Resignation by director**

- (1) A director resigns if he or she signs a written notice of resignation and delivers it to the registered office of the company.
- (2) Subject to section 81, the notice is effective when it is received at that address or at a later time specified in the notice.

### **81 Restrictions on resignation by sole director**

- (1) The sole director of a company may not resign—
  - (a) unless the director has called a meeting of shareholders to appoint a new director; or
  - (b) if the company has only 1 shareholder, unless the director has—
    - (i) given the shareholder notice of the director's resignation; and
    - (ii) given that notice at least 14 days before resigning.

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- (2) The resignation of the sole director of a company does not take effect until the earlier of the appointment of another director or—
  - (a) the time and date when the shareholders meet to appoint a new director; or
  - (b) if the company has only 1 shareholder, 14 days after notice of the director's resignation has been given to that shareholder.

### 82 Notice of change of directors or details of directors

- (1) A company must ensure that the following notices in the approved form are filed with the Registrar for registration—
  - (a) notice of a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
  - (b) notice of a change in the name of a director;
  - (c) notice of a change in the residential address or postal address of a director.
- (2) A notice under subsection (1) must—
  - (a) specify the date of the change; and
  - (b) include the full name, residential address, and postal address of every person who is a director of the company from the date of the notice (including continuing directors); and
  - (c) be filed with the Registrar within 28 days after—
    - (i) the change occurring, in the case of the appointment or resignation of a director; or
    - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or postal address of a director.
- (3) If a company fails to comply with this section—
  - (a) the company must pay a late filing fee to the Registrar; and
  - (b) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 83 Remuneration of directors

Directors may receive remuneration and other benefits from the company—

- (a) in accordance with its constitution; or
- (b) with unanimous shareholder approval under section 62.

### 84 Proceedings of directors

The constitution of a company must include provisions—

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- (a) for holding meetings of directors of the company; and
- (b) that govern proceedings at those meetings.

### Division 2 – Management of company

#### 85 Management of company

- (1) The business and affairs of a company must be managed by, or under the direction or supervision of, the directors of the company.
- (2) The directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.
- (3) Subject to any restrictions in the constitution of the company, the directors may delegate to a committee of directors, a director or employee of the company, or any other person, any 1 or more of their powers other than a power relating to any of the following—
  - (a) approval of the issue of shares;
  - (b) determination of the consideration for the issue of shares;
  - (c) authorisation of distributions;
  - (d) authorisation of financial assistance for the purchase of the company's shares.
- (4) The directors are responsible for the exercise of a power by a delegate as if the power had been exercised by the directors, unless the directors—
  - (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors of the company by this Act and the company's constitution; and
  - (b) have monitored, by means of reasonable methods properly used, the delegate's exercise of the power.
- (5) Subsections (1) and (2) apply except to the extent that this Act or the constitution provides otherwise.

### Division 3 – Directors' duties

#### 86 Duties under other statutes

- (1) This section applies if a person holds office as director of a company incorporated under another written law of Kiribati.
- (2) The duties of a director under this Act apply to that person to the extent that that they do not conflict with the duties of a director under the other written law.

[Q: or should this be the other way round?]

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## 87 Director's fundamental duties

A director of a company must, when exercising powers or performing duties as a director, act—

- (a) in good faith; and
- (b) in what the director believes to be the best interests of the company.

## 88 Director must comply with Act and constitution

A director of a company must not act, or agree to the company acting, in a manner that contravenes this Act or the constitution of the company.

## 89 Reckless trading

A director of a company must not—

- (a) agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or
- (b) cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

## 90 Duty in relation to obligations

A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so.

## 91 Duty in relation to self-interest

- (1) A director must not exercise any power as a director if he or she is materially interested, whether directly or indirectly, in the exercise of the power.
- (2) However, subsection (1) does not apply if, before the exercise of the power—
  - (a) the director makes full disclosure of the interest; and
  - (b) there are reasonable grounds for believing that the company will satisfy the solvency test after the power is exercised; and
  - (c) either—
    - (i) the constitution expressly permits the exercise of the power despite the interest of a director in its exercise; or
    - (ii) the exercise of the power is approved by unanimous shareholder approval under section 62.
- (3) For the purposes of subsection (2)(a), a director makes full disclosure of the interest if he or she discloses the nature and extent of the interest in writing to—
  - (a) all the shareholders, in the case of unanimous shareholder approval; or

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- (b) the other directors or directors, provided that they are not also interested in the exercise of the power.

### 92 Duty in relation to company information

- (1) A director must not disclose, use, or act upon company information except—
  - (a) in the interests of the company; or
  - (b) as required by law; or
  - (c) in accordance with subsection (2).
- (2) A director may disclose, use, or act upon company information if—
  - (a) the disclosure or other use of the information is authorised by the constitution or approved by unanimous shareholder approval under section 62; and
  - (b) there are reasonable grounds for believing that the company will satisfy the solvency test after the disclosure or other use of the information.
- (3) In this section, company information means information that—
  - (a) the director has in his or her capacity as director or employee of the company; and
  - (b) would not otherwise be available to him or her.

### 93 Director's duty of care

A director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation—

- (a) the nature of the company; and
- (b) the nature of the decision; and
- (c) the position of the director and the responsibilities undertaken by him or her.

### 94 Reliance on information and advice

- (1) A director of a company may rely on information (reports, statements, and financial data and other information) prepared or supplied, and on professional or expert advice given, by a third party if the director—
  - (a) acts in good faith; and
  - (b) believes on reasonable grounds that the information or advice is within the competence of the third party to prepare, supply, or give; and
  - (c) makes proper inquiry where the need for inquiry is indicated by the circumstances.
- (2) In subsection (1), third party means an employee of the company, a professional adviser or expert, or another director.

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### 95 Offence of serious breach of duty to act in good faith etc

- (1) A director of a company commits an offence if he or she exercises powers or performs duties as a director of the company—
  - (a) in bad faith towards the company and believing that the conduct is not in the best interests of the company; and
  - (b) knowing that the conduct will cause serious loss to the company.
- (2) A person who commits an offence under this section is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

### 96 Effect of unanimous shareholder approval on certain duties of directors

- (1) This section applies if a director of a company exercises any power or takes any other action in his or her capacity as a director of the company with the unanimous shareholder approval under section 62.
- (2) In any case to which this section applies—
  - (a) the director is taken to comply with the constitution of the company; and
  - (b) if, at the time the director acts, there are reasonable grounds for believing that the company is able to meet its debts as they fall due, the director is taken to act—
    - (i) in good faith and in the best interests of the company; and
    - (ii) in accordance with his or her duty of care as a director.

## Division 4 – Liability of directors

### 97 Extended meaning of director for purposes of liability

- (1) A person who is not otherwise a director of a company may be liable as a director of the company if the person is 1 of the following—
  - (a) a shadow director;
  - (b) a controller of director powers;
  - (c) a delegate of director powers.
- (2) A person does not fall into any of the categories set out in subsection (1) to the extent that the person acts only in a professional category.

### 98 Liability of shadow director

- (1) A shadow director is a person in accordance with whose directions or instructions a director (the director) is required or is accustomed to act.
- (2) Subject to subsection (3), a shadow director is liable under Division 3 of this Part to the same extent as the director.
- (3) It is a defence to liability on the part of a shadow director if the shadow director shows that the director was not in fact acting in accordance with the shadow

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director's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the director.

### 99 Liability of controller of director powers

- (1) A controller of director powers is a person who exercises, or who is entitled to exercise, or who controls or is entitled to control the exercise, of powers that, apart from the constitution of the company, would be powers exercised by the directors.
- (2) A controller of director powers is liable under Division 3 of this Part in connection with the exercise of those powers as if that person were a director.
- (3) Without limiting subsections (1) and (2), if the constitution of a company confers a power on shareholders that would otherwise be exercised by directors under this Act, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is liable under Division 3 of this Part in connection with the exercise of that power as if that person were a director.

### 100 Liability of delegate of director power

- (1) A delegate of a director power is a person—
  - (a) to whom the directors of a company have directly delegated a power or duty of the directors with the delegate's consent or acquiescence; or
  - (b) who exercises a power or duty of the directors with their consent or acquiescence.
- (2) A delegate of a director power is liable under Division 3 of this Part in connection with the exercise of the power or duty in question as if that person were a director.

### 101 Exclusion of shareholder liability

To avoid doubt, if any action is approved by unanimous shareholder approval under section 62—

- (a) no shareholder is liable under section 88 as a deemed director in respect of that action; and
- (b) if there are reasonable grounds for believing that the company is able to meet its debts as they fall due, no shareholder is liable under section 87, 91, 92 or 93 as a deemed director in respect of that action.

### 102 Certain indemnities prohibited

- (1) A company must not indemnify a director of the company or of any related company in respect of any criminal liability.
- (2) Unless section 103 applies, a company must not indemnify a director of the company or of any related company in respect of—

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- (a) any liability to the company or a related company for any act or omission in his or her capacity as a director of the company or of the related company, as the case may be; or
  - (b) any liability to any person arising out of a breach of duty to the company or related company, as the case may be, under any of Division 3 of this Part.
- (3) An indemnity given in breach of this section is void.
- (4) In this section—
- “*director*” includes—
- (a) a person specified in section 97 who is liable under any of Division 3 of this Part; and
  - (b) a former director;
- “*indemnify*” includes relieve or excuse from liability, whether before or after the liability arises, and indemnity has a corresponding meaning.

### 103 When company may indemnify or insure director

Subject to section 102(1), a company may provide an indemnity or purchase insurance for a director of the company or of a related company—

- (a) in accordance with the constitution; or
- (b) with the unanimous approval of shareholders under section 53.

### 104 Defences to criminal liability

- (1) It is a defence for a director (D) charged with an offence in relation to a duty imposed on the directors of a company if D proves that—
- (a) the directors took all reasonable and proper steps to ensure that the requirements of this Act would be complied with;
  - (b) D took all reasonable and proper steps to ensure that the directors complied with the requirements of this Act; or
  - (c) in the circumstances D could not reasonably have been expected to take steps to ensure that the directors complied with the requirements of the Act.
- (2) It is a defence for a director (D) charged with an offence in relation to a duty imposed on the company if D proves that—
- (a) the company took all reasonable and proper steps to ensure that the requirements of this Act would be complied with;
  - (b) D took all reasonable and proper steps to ensure that the company complied with the requirements of this Act; or
  - (c) in the circumstances D could not reasonably have been expected to take steps to ensure that the company complied with the requirements of the Act.

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## Division 5 – Prohibition and disqualification of directors

### 105 Persons prohibited from managing companies

- (1) This section applies if a person has been convicted of an offence specified in subsection (3) (a relevant offence).
- (2) A person who has been convicted of a relevant offence must not, during the period of 3 years after the conviction, be or do any of the following—
  - (a) be a director of a company;
  - (b) be a promoter of a company;
  - (c) in any way, whether directly or indirectly, be concerned in or take part in the management of a company.
- (3) For the purposes of this section and section 107(2), a relevant offence is—
  - (a) an offence in connection with the promotion, formation, or management of a company punishable by a term of imprisonment of not less than 3 months, whether or not a sentence of imprisonment was imposed;
  - (b) an offence under any of [Q: sections 391 to 396 (dishonesty offences)];
  - (c) any crime involving dishonesty as defined in section 2(1) of the [Q; Crimes Act 000]; or
  - (d) an offence of a kind that is referred to in Article 5 or 6 of the United Nations Convention against Transnational Organized Crime.
- (4) In this section, “*company*” includes an overseas company that carries on business in Kiribati.
- (5) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

### 106 Prohibited person may apply for leave to be director, etc

- (1) The prohibition in section 105(2) does not apply if a person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.
- (2) Any person that the Court thinks fit may attend and be heard at the hearing of an application for leave under this section.
- (3) A person who contravenes an order granting leave under this section commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

### 107 Court may disqualify directors

- (1) The Court may order that a person must not, without the leave of the Court, be or do any of the following for the period specified by the Court (which must not be more than 5 years)—

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- (a) be a director of a company;
  - (b) be a promoter of a company;
  - (c) in any way, whether directly or indirectly, be concerned in or take part in the management of a company.
- (2) The Court may make the order if the person has—
- (a) been convicted of a relevant offence (see section 105(3)); or
  - (b) been convicted of an offence under this Part; or
  - (c) been convicted of fraud committed in relation to a company while a director of the company; or
  - (d) found liable for a breach of duty to a company or a shareholder while a director of the company; or
  - (e) been convicted of an offence in any other jurisdiction that corresponds to any of the offences referred to in paragraphs (a) to (c); or
  - (f) been prohibited under the law of any other jurisdiction from acting as a director of a company or being concerned or taking part in the management of a company; or
  - (g) become of unsound mind.
- (3) An order may be made under this section even though the person concerned may be liable in respect of the matters that are the grounds for making the order.
- (4) The Registrar of the Court must, as soon as practicable after an order has been made under this section, give notice of the order to the Registrar of Companies.
- (5) A person who fails to comply with an order under this section commits an offence and is liable on conviction to the a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.
- (6) In this section and in section 108, company includes an overseas company.

### **108 Who may apply for disqualification order**

- (1) Any of the following persons may apply for a disqualification order under section 94—
- (a) the liquidator of the company;
  - (b) a shareholder or former shareholder of the company;
  - (c) a creditor or former creditor of the company.
- (2) If the liquidator applies for a disqualification order, or a person applies for leave under section 107(1) in respect of a disqualification order that was made on the liquidator's application, the liquidator—
- (a) must attend the hearing; and
  - (b) must bring to the Court's attention any matters that seem to the liquidator to be relevant; and

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- (c) may give evidence or call witnesses.

## **109 Notice of application for disqualification order**

- (1) An applicant for a disqualification order under section 107 must give not less than 14 days notice of the intention to apply to the person against whom the order is sought.
- (2) The person against whom the order is sought may attend the hearing and give evidence or call witnesses.

## **PART VIII – ENFORCEMENT**

### **Division 1 – Maladministration proceeding**

## **110 Nature of maladministration proceeding**

- (1) This Division provides for a general proceeding that may be brought to remedy company maladministration.
- (2) The company is the defendant to the proceeding but other parties may be joined at the commencement of the proceeding or subsequently, depending on the maladministration that is alleged.

## **111 Who may bring maladministration proceeding**

- (1) Any of the following persons may bring a maladministration proceeding—
  - (a) a shareholder;
  - (b) a former shareholder;
  - (c) a shareholder suing on behalf of the shareholder and other shareholders;
  - (d) a director;
  - (e) a liquidator;
  - (f) the Registrar.
- (2) However, the leave of the Court is required before a person may bring a maladministration proceeding for an order authorising a person to commence or continue a proceeding in the name of the company.
- (3) If the Court grants leave for the proceeding to be brought, it may also make such orders as to the funding of the proceeding as it considers necessary or expedient, including an order that the company pay all or some of the costs of the proceeding.

## **112 Grounds for bringing maladministration proceeding**

The grounds for bringing a maladministration proceeding are—

- (a) a director or the directors have breached, are breaching or are likely to breach their duties or responsibilities under this Act or the constitution of the company;

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- (b) the affairs of the company have been or are being conducted in a manner that is or likely to be unfairly prejudicial to a shareholder or shareholders;
- (c) the company has breached or is in breach of the Act or the constitution;
- (d) the company is prevented by the directors from commencing or continuing a legal proceeding that it is in best the interests of the company to commence or continue;
- (e) [to come].

### 113 Conduct that is unfairly prejudicial

Failure to comply with any of the following sections of this Act is conduct that is unfairly prejudicial for the purposes of section 112(b)—

- (a) section 24 (which relates to the issue of shares);
- (b) section 26 (which relates to pre-emptive rights on the issue of shares);
- (c) section 32 (which relates to dividends);
- (d) section 61 (which relates to major transactions);
- (e) section 63 (which relates to the alteration of shareholder rights).

### 114 Remedy for company maladministration

- (1) In a proceeding for company maladministration, the Court may order such remedy as it considers just and equitable, including—
- (a) requiring the company or any other person to purchase a shareholder's shares;
  - (b) requiring a director or former director to pay damages or other compensation to the company;
  - (c) requiring the company or any other person to pay compensation to a person;
  - (d) requiring the company to take any action that is required to be taken by the company under the constitution of the company or under this Act;
  - (e) requiring the director to take any action that is required to be taken by the director under the constitution of the company or under this Act; and
  - (f) injuncting the company or a director of a company from conduct that would contravene this Act or the constitution of the company.
  - (g) removing a director from office;
  - (h) requiring the company to take steps to appoint a director in place of a director removed under paragraph (g);
  - (i) requiring the company to commence or continue a proceeding;
  - (j) authorising a person to commence or continue a proceeding in the name of the company;
  - (k) regulating the future conduct of the company's affairs;

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- (l) altering or adding to the company's constitution;
  - (m) appointing a receiver of the company;
  - (n) directing the rectification of the records of the company;
  - (o) appointing an investigator to investigate the affairs of the company and report to the Court;
  - (p) appointing a liquidator; or
  - (q) setting aside action taken by the company or the directors in breach of this Act or the constitution of the company.
- (2) In making an order under this section, the Court may give any directions that it considers necessary for the effective implementation of the order.
- (3) The Court may grant any interim relief (for example, an interim injunction) as it considers appropriate.

### 115 Alteration to constitution

- (1) Despite anything in this Act, but subject to the order, if the Court makes an order under section 114 altering or adding to the constitution of a company, the constitution must not, to the extent that it has been altered or added to by the Court, again be altered or added to without the leave of the Court.
- (2) Any alteration or addition to the constitution of a company by the Court under section 114 has the same effect as if it has been made by the shareholders under section 16 and this Act applies to the constitution as altered or added to.
- (3) Within 14 days after the Court makes an order under section 114 altering or adding to the constitution of a company, the company must ensure that a copy of the order and a copy of the constitution as altered or added to are filed with the Registrar for registration.
- (4) If the company fails to comply with subsection (3)—
- (a) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000; and
  - (b) every director of the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

## Division 5 – Investigation

### 116 Investigation initiated by shareholder

- (1) On the application of a shareholder, creditor or entitled person of a company, the Court may make—
- (a) an order authorising a person named in the order, at a time specified in the order, to inspect and make copies of, or to take extracts from, the company records and other documents of the company, or of the company records and documents that are specified in the order; and

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- (b) any ancillary order that the Court thinks fit, including an order that the accounts of the company be audited by the named person.
- (2) The Court must not make an order under subsection (1) unless it is satisfied that—
  - (a) the applicant is acting in good faith; and
  - (b) the inspection is for a proper purpose; and
  - (c) the person appointed is a proper person for the task.
- (3) The reasonable costs of the investigation must be paid by the company unless the Court orders otherwise.

### 117 Report to Court following investigation

- (1) The person appointed by an order under section 116(1)(a) must diligently carry out the inspection and then make a report to the Court.
- (2) On the basis of the report, the Court may—
  - (a) make any order it thinks fit for disclosure and use of the records and documents obtained in the inspection; and
  - (b) vary that order from time to time.
- (3) A person may not disclose or use records or documents obtained in the inspection except in accordance with an order under subsection (2).
- (4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

## PART IX – ADMINISTRATION OF COMPANIES

### Division 1 – Company transactions

### 118 Requirements for company obligation

- (1) For a company to enter into an obligation that, if it were a natural person obligation, must by law be in a deed, the obligation must be—
  - (a) in writing; and
  - (b) signed in writing under the name of the company by—
    - (i) 2 or more directors of the company; or
    - (ii) if the company has only 1 director, that director; or
    - (iii) if the constitution so provides, a director or other person or class of persons; or
    - (iv) 1 or more attorneys appointed by the company in accordance with section 119.
- (2) For a company to enter into an obligation that, if it were a natural person obligation, must by law be in writing, the obligation must be—

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- (a) in writing; and
  - (b) entered into on the company's behalf by a person acting under the company's express or implied authority.
- (3) For a company to enter into an obligation that, if it were a natural person obligation, is not required by law to be in writing, the obligation must be entered into on the company's behalf by a person acting under the company's express or implied authority.
- (4) A company may affix its common seal, if it has one, to an obligation in writing, but, even though the constitution may require it, the absence of the seal does not affect the enforceability of the obligation.
- (5) This section applies to a contract or other obligation whether or not—
- (a) that contract or obligation was entered into in Kiribati; and
  - (b) the law governing the contract or obligation is the law of Kiribati.

### 119 Attorneys

- (1) Subject to its constitution, a company may appoint a person as an attorney, either generally or in relation to a specified matter.
- (2) The appointment must be in writing and signed in accordance with section 118(1)(b).
- (3) An act of the attorney in accordance with the written appointment binds the company.

### 120 Validity of company transaction

- (1) Subject to sections 121 and 122, the validity of a transaction entered into by a company is not affected by—
  - (a) a failure to comply with this Act (except if the failure is a breach of section 118); or
  - (b) a failure to comply with the company's constitution; or
  - (c) the absence of express authority in the company's constitution to enter into the transaction; or
  - (d) a failure by the company or its directors to take any steps required by the constitution to authorise entry into the transaction; or
  - (e) that fact that the transaction is not in the best interests of the company; or
  - (f) a breach of a duty by a director in connection with entry of the company into the transaction.
- (2) Subsection (1) does not limit—
  - (a) sections 110 to 115 (which relate to a maladministration proceeding); or

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- (b) the obligations and liabilities of directors of a company in respect of any contract or other obligation, or transfer of property to or by the company.
- (3) In this section and sections 124 to 126, “*transaction*”—
  - (a) includes any contract or other obligation entered into by a company, or any transfer of property to or by a company; but
  - (b) does not include—
    - (i) a distribution to shareholders; or
    - (ii) an indemnity provided to a director under section 103; or
    - (iii) remuneration or other benefits given to a director under section 83.

### 121 Person dealing with company may make certain assumptions

- (1) A person who deals with a company (the company) may assume that—
  - (a) the company has complied with this Act and its constitution; and
  - (b) a person named as a director of the company in the most recent notice filed with the Registrar under section 82 or in the most recent annual return filed with the Registrar—
    - (i) is a director of the company; and
    - (ii) has been properly appointed; and
    - (iii) has the usual authority of a director of a company carrying on the same kind of business as the company; and
  - (c) a person held out by the company as a director, employee, or agent of the company—
    - (i) has been properly appointed; and
    - (ii) has the usual authority of a director, employee, or agent of a company carrying on the same kind of business as the company; and
  - (d) a person held out by the company as a director, employee, or agent having unusual authority (that is, authority that a director, employee, or agent of a company carrying on the same kind of business as the company does not usually have) does have that authority; and
  - (e) a document issued on behalf of a company by a director, employee, or agent of the company with actual or usual authority to issue the document is valid and genuine.
- (2) However, a person who deals with a company may not make an assumption specified in subsection (1) if that person—
  - (a) knows the contrary; or

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- (b) ought to know the contrary through the person's position with, or relationship to, the company.
- (3) Subsection (1) applies even though a person referred to in subsection (1)(b) to (e) acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company has actual knowledge of the fraud or forgery.
- (4) In this section and section 122, a person dealing with a company includes a person who acquires property, rights or interests from a company.

### **122 Effect of assumptions by person dealing with company**

A company, a person claiming through a company, or a guarantor of a company's obligation may not assert against a person dealing with the company that an assumption specified in section 121(1) is incorrect, unless—

- (a) section 121(2) applies; or
- (b) in the case of fraud or forgery, the person has actual knowledge of it (see section 121(3)).

### **123 No constructive notice**

A person is not affected by, and is not taken to have notice or knowledge of the contents of, the constitution of the company or of other documents relating to the company merely because the constitution or documents are—

- (a) registered on the Kiribati register; or
- (b) available for inspection at an office of the company.

### **124 Company may cancel transaction in which director interested**

- (1) If a director of a company is interested in a company transaction, the company may cancel the transaction at any time within 3 months after the transaction is disclosed to the shareholders, whether by means of the company's annual report or otherwise.
- (2) A transaction cannot be cancelled where the company receives fair value under it.
- (3) For the purposes of subsection (2), the question whether a company receives fair value must be determined on the basis of the information known to the company and to the interested director at the time when the transaction is entered into.
- (4) A company is presumed to receive fair value under a transaction in which a director is interested if the company in good faith enters into the transaction in the ordinary course of the company's business and on usual terms and conditions.
- (5) For the purposes of this Act—

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- (a) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time when the transaction was entered into has the onus of establishing fair value; and
  - (b) in any other case the company has the onus of establishing that it did not receive fair value.
- (6) A transaction in which a director is interested can only be cancelled on the ground of the director's interest in accordance with this section or the company's constitution.

### 125 Company may cancel transaction for breach of director duty

- (1) A company may cancel a transaction that it entered into as the result of the action of a director in breach of section 87 (Director's fundamental duties) or section 88 (Director must comply with Act and constitution) if—
- (a) the director or a person associated with him or her is the other party to the transaction; or
  - (b) the other party to the transaction knew of the circumstances giving rise to the breach of duty and the company did not receive fair value under the transaction.
- (2) A company is presumed to receive fair value under the transaction in which a director is interested if the company in good faith enters into the transaction in the ordinary course of the company's business and on usual terms and conditions.
- (3) In this section, a person is associated with a director if the director—
- (a) is the spouse, parent, or child of that person; or
  - (b) is a director, employee, or trustee, of that person; or
  - (c) has a material financial interest in that person.

### 126 Effect of cancellation on third parties

The cancellation of a transaction under section 124 or 125 does not affect the title or interest of a person in or to property that that person has acquired if the property was acquired—

- (a) from a person other than the company; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances that entitled the company to cancel the transaction under which the property was acquired from the company.

## Division 2 – Pre-incorporation contracts

### 127 Meaning of pre-incorporation contract

In sections 128 to 131, "*pre-incorporation contract*" means—

- (a) a contract purporting to be made by a company before its incorporation; or

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- (b) a contract made by a person on behalf of a company before, and in contemplation, of its incorporation.

### 128 Company may ratify pre-incorporation contract

- (1) A company may ratify a pre-incorporation contract and the contract once ratified is as valid and enforceable as if the company had been a party to the contract when it was made.
- (2) The contract may be ratified—
  - (a) within the period specified in the contract or, if no period is specified, within a reasonable time after the company's incorporation; and
  - (b) in accordance with the requirements for a company obligation (see section 141).
- (3) Despite any other enactment, a company may not enforce a pre-incorporation contract or take the benefit of it unless the company has ratified it or the Court has validated it under section 131.

### 129 Warranties implied in pre-incorporation contract

- (1) There are implied in a pre-incorporation contract the following warranties by the person who purports to make the contract in the name of the company or on its behalf—
  - (a) a warranty that the company will be incorporated within the period specified in the contract or, if no period is specified, within a reasonable time after the contract is made; and
  - (b) a warranty that the company will ratify the contract within the period specified in the contract or, if no period is specified, within a reasonable time after the company's incorporation.
- (2) A person's liability under subsection (1) is discharged if, after incorporation, the company enters into a contract in the same terms as, or in substitution for, the pre-incorporation contract.
- (3) Subsections (1) and (2) apply unless and to the extent that a contrary intention is expressed in the pre-incorporation contract.

### 130 Damages for breach of implied warranty

Breach of an implied warranty under section 116 entitles a plaintiff to the same amount of damages that the plaintiff could have obtained from the company for any unperformed obligation under the contract, had the contract been ratified.

### 131 Failure to ratify

- (1) If a company does not ratify a pre-incorporation contract after its incorporation, a party to the contract may apply to the Court for an order—
  - (a) directing the company to return to the applicant any property that the company has acquired from the applicant under the contract; or

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- (b) for any other relief in favour of the applicant relating to that property; or
  - (c) validating the contract whether in whole or in part.
- (2) The Court may, if it is just and equitable to do so, make any order or grant any relief it thinks fit, and may do so whether or not an order has been made for damages for breach of an implied warranty under section 129.

### **Division 3 – Registered office**

#### **132 Registered office and postal address**

- (1) A company must always have a registered office and postal address in Kiribati.
- (2) Subject to section 133—
  - (a) the registered office of a company at a particular time is the place entered as its registered office on the Kiribati register at that time; and
  - (b) the postal address of a company at a particular time is the address entered as its postal address on the Kiribati register at that time.

#### **133 Change of registered office or postal address**

- (1) Subject to the company's constitution and subsection (3), a company may change its registered office or postal address at any time.
- (2) The company must file a notice of the change with Register which must be:
  - (a) in the approved form; and
  - (b) accompanied by the prescribed fee (if any); and
  - (b) filed within 14 days after the company's change of office or postal address.
- (3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than 7 days after the notice is registered.

### **Division 4 – Company records**

#### **134 Company records**

- (1) A company must keep the following records (the company records)—
  - (a) category A records, which are—
    - (i) the company's certificate of incorporation;
    - (ii) if the company has been re-registered, its certificate of re-registration;
    - (iii) the company's constitution or default constitution, as the case may be;
    - (iv) the share register;

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- (v) the full names and residential and postal addresses of the current directors;
  - (vi) details of the company's registered office and postal address; and
- (b) category B records, which are—
- (i) the minutes of all meetings and resolutions of shareholders within the last 7 years;
  - (ii) copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;
  - (iii) copies of all financial statements required to be prepared under section 150 for the last 7 completed accounting periods of the company; and
- (c) category C records, which are—
- (i) minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
  - (ii) a consent in the approved form by each past and current director within the last 7 years to act as a director of the company;
  - (iii) the accounting records required by section 148 for the current accounting period and for the last 7 completed accounting periods of the company.
- (2) The Registrar may approve by notice in writing to the company a shorter period than 7 years or 7 completed accounting periods for the purposes of category B or category C records.
- (3) If the company fails to comply with subsection (1), it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 135 Place where company records must be kept

- (1) A company must keep the company records at—
- (a) its registered office; or
  - (b) another place in Kiribati that is not its registered office, provided the company has given the Registrar notice under subsection (2).
- (2) If a company keeps the company records at a place that is not its registered office, it must file with the Registrar for registration a notice of the location of the records within 14 days after the records are first kept there.
- (3) If the company changes the place where it keeps the company records, it must file with the Registrar for registration a notice of the new location of the records within 14 days after their relocation.
- (4) If the company fails to comply with subsection (2) or (3), it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

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### 136 Form of company records

- (1) A company must keep the company records—
  - (a) in written form in English; or
  - (b) in a form or in a manner in which they are easily accessible and convertible into written form in English.
- (2) The company must ensure that adequate measures exist to—
  - (a) prevent the company records being falsified; and
  - (b) detect any falsification of them.

### 137 Inspection of company records

- (1) Any person may inspect category A records under section 138.
- (2) Any shareholder or authorised person may inspect category A, B and C records under section 138.
- (3) A director may inspect the documents of the company generally (which include but are not limited to category A, B and C records) unless an order is made under section 139 refusing or limiting inspection by a director.

### 138 Inspection of company records by public

- (1) Any person may inspect the category A records of a company if the person gives written notice to the company of intention to inspect.
- (2) The company must keep those records available for inspection in accordance with section 139.
- (3) If a company fails to comply with this section, it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 139 Inspection of company records by shareholder

- (1) Subject to subsection (3), any shareholder of a company, or any person authorised by a shareholder for the purpose of inspection, may inspect the category A, B and C records of a company if the shareholder or authorised person gives written notice to the company of intention to inspect.
- (2) The company must keep those records available for inspection in accordance with section 140.
- (3) If a company considers that category C records are confidential or contain confidential information, the company may refuse inspection of those records or, if appropriate, allow inspection of redacted records only.
- (4) On the application of the company or a shareholder, the Court may give directions for the inspection or redaction of records to which subsection (3) applies.
- (5) If a company fails to comply with this section, it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

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## 140 Manner of inspection

- (1) Records that may be inspected under section 138 or 139 must be available for inspection at the place where the company's records are kept between the hours of 9 am and 5 pm on each working day during the inspection period.
- (2) In this section, "*inspection period*" means the period of 5 working days beginning on the third working day after notice of intention to inspect is served on the company.

## 141 Copies of records

- (1) A person may give a company written notice requiring the company to provide a copy of, or extract from, a record of the company that is available for inspection by that person under section 138 or 139.
- (2) The company—
  - (a) may specify a reasonable copying and administration fee for providing the copy or extract; and
  - (b) if the fee has been paid, must provide the copy or extract within 7 days after it receives the notice.
- (3) If a company fails to comply with subsection (2)(b), it commits an offence and is liable on conviction to a fine not exceeding \$4,000.

## 142 Inspection of company documents by directors

- (1) A director of a company is entitled to inspect the documents of the company—
  - (a) in written form; and
  - (b) without charge; and
  - (c) at a reasonable time specified by the director.
- (2) On the application of the company, the Court may authorise the company to refuse or limit inspection of the company records by a director as the Court thinks fit if the Court is satisfied that the inspection—
  - (a) would not be in the company's interests; or
  - (b) is intended for a purpose unconnected with the director's duties.

## Division 5 – Annual return

### 143 Annual return

- (1) Each year in its allocated month, a company must file with the Registrar for registration an annual return that—
  - (a) is in the approved form; and
  - (b) contains the prescribed information; and

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- (c) is signed by a director of the company or by a legal practitioner or chartered accountant who is authorised to sign it; and
  - (d) is accompanied by the prescribed fee.
- (2) The annual return must be dated as at a date within the allocated month and the information contained in it must be compiled as at that date.
- (3) Despite subsection (1)—
- (a) a company need not file an annual return in the calendar year of its incorporation; and
  - (b) a subsidiary may, with the written approval of the Registrar, file an annual return its holding company's allocated month rather than its own.
- (4) In this section and sections 144 and 145, "*allocated month*" means the month allocated to the company under section 144.

### **144 Time for filing annual return**

- (1) A company must file its annual return in the month allocated to the company for that purpose.
- (2) On registration or re-registration of a company, the Registrar must allocate a month to a company for filing its annual return.
- (3) The Registrar may, by written notice to a company, alter its allocated month and a company may, by written request to the Registrar, apply for allocation of a different month.

### **145 Annual return pre-filled by Registrar**

- (1) The Registrar may send or otherwise provide to a company an annual return form pre-filled with the prescribed information as it appears on the Kiribati register.
- (2) The form complies with section 143(1)(a) and (b) if the pre-filled form, as amended as necessary by the company, is current as at a date in the company's allocated month.

### **146 Registrar may alter Kiribati register to correct company's address**

The Registrar may amend the Kiribati register to correspond with the information given in a company's annual return as to the address of its registered office or its postal address if the address given differs from the address entered in the register.

### **147 Other updating notices for information events**

- (1) A company or overseas company must file with the Registrar for registration the notices required under the provisions relating to the information events listed in subsection (2).
- (2) The information events requiring a notice to be filed with the Registrar are the following—

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- (a) the substitution, adoption, or amendment of the constitution (see [section 16(2)]);
- (b) the issue of shares by the company (see [section 24(2)]);
- (c) the acquisition by the company of its own shares (see [section 34(1)]);
- (d) the redemption of a share by the company (see [section 43(1)]);
- (e) the registration of a transfer of shares (see [section 55(3)]);
- (f) a change in the directors of the company, or a change in the name, residential address, or other details of a director (see [section 82(1)]);
- (g) the making of an order under [section 124] altering or adding to the constitution (see [section 125(2)]);
- (h) a change in the company's registered office or postal address (see [section 143(2)]);
- (i) location of company records away from registered office (see [section 145(2)]);
- (j) a change in the location of company records (see [section 145(3)]);
- (k) a change in the name of an overseas company (see [section 356(3)]);
- (l) a change in the directors of an overseas company, or a change in the name, residential address, or other details of a director (see [section 364(1)]);
- (m) a overseas company ceasing to carry on business in Kiribati (see [section 365(1)(b)]).

### PART X – ACCOUNTING RECORDS AND FINANCIAL REPORTING

#### Division 1 – Accounting records

##### 148 Company must keep accounting records

- (1) The directors of a company must ensure that ensure that accounting records are kept that comply with section 149.
- (2) If the directors of a company fail to comply with subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 3 months, or both.

##### 149 Form and content of accounting records

- (1) The accounting records must—
  - (a) correctly record the company's transactions; and
  - (b) at any time enable the company's financial position to be determined with reasonable accuracy; and

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- (c) enable the directors to ensure that the company's financial statements comply with section 151 and with any regulations made under this Act; and
  - (d) enable the company's financial statements to be readily and properly audited.
- (2) Without limiting subsection (1), the accounting records must contain—
- (a) entries of money received and spent each day and the matters to which the money relates; and
  - (b) a record of the company's assets and liabilities; and
  - (c) if the company's business involves dealing in goods—
    - (i) a record of goods bought and sold; and
    - (ii) invoices for goods bought and sold; and
    - (iii) a record of stock held at the end of the financial year together with records of any stocktaking during the year; and
  - (d) if the company's business involves providing services—
    - (i) a record of services provided; and
    - (ii) invoices for those services.
- (3) However, if a company sells goods or provides services for cash in the ordinary course of carrying on a retail business—
- (a) the company need not keep invoices for each retail transaction; and
  - (b) in respect of those retail transactions, a record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient compliance with subsection (2).
- (4) The accounting records must be kept—
- (a) in written form in English; or
  - (b) in a form or manner in which they are easily accessible and convertible into written form in English.

### Division 2 – Financial statements

#### 150 Companies that must prepare financial statements

- (1) A company whose shareholders number more than the prescribed threshold must ensure that financial statements are prepared in accordance with section 151.
- (2) However, subsection (1) does not apply if the company has opted out under section 153.
- (3) If a company fails to comply with subsection (1)—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000; and

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- (b) every director commits an offence and is liable on conviction to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 3 months, or both.

### 151 Financial statements

- (1) A company to which this section applies must ensure that, within 4 months after the company's balance date, financial statements that comply with subsection (2) are prepared in relation to the company and that balance date.
- (2) The financial statements must—
  - (a) give a true and fair view of the matters to which the statements relate; and
  - (b) comply with any applicable regulations made under this Act; and
  - (c) be dated and signed on behalf of the company by the directors of the company or, if the company has only 1 director, by that director.
- (3) The following periods must not exceed 15 months—
  - (a) the period between the date of incorporation of a company and its first balance date;
  - (b) the period between any 2 balance dates of a company.

### 152 Financial statements must be audited

- (1) A company that is required to prepare financial statements must ensure that the financial statements are audited by a qualified auditor appointed in accordance with its constitution.
- (2) If a company fails to comply with subsection (1)—
  - (a) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000; and
  - (b) every director commits an offence and is liable on conviction to a fine not exceeding \$4,000 or to a term of imprisonment not exceeding 3 months, or both.

### 153 Company may opt out of preparing financial statements

A company may opt out of preparing financial statements for an accounting period if—

- (a) the constitution provides for opting out; and
- (b) opting out is approved by all the shareholders entitled to vote and voting at the annual meeting of the company held in the accounting period.

## Division 3 – Auditors

### 154 Appointment of auditor

- (1) A company that is required under section 150 to prepare financial statements must ensure that those financial statements are audited.

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- (2) For the purpose of the audit of financial statements, regulations may be made governing the appointment of auditors and all matters relating to the functioning of the auditor in carrying out the audit.
- (3) Without limiting subsection (2), regulations may be made prescribing the following matters—
  - (a) who is qualified to be appointed an auditor;
  - (b) the procedure for appointing the auditor;
  - (c) the procedure for replacing the auditor;
  - (d) the procedure for filling a casual vacancy in the office of auditor;
  - (e) reporting by the auditor to the shareholders;
  - (f) the auditor's right to attend shareholder meetings;
  - (g) the auditor's right to access to company information;
  - (h) the auditor's right to make a statement to shareholders on resignation;
  - (i) the duty of an auditor to avoid conflicts of interest;
  - (j) any other matter necessary or expedient for the proper audit of financial statements.

### 155 Registrar may appoint auditor

- (1) The Registrar may appoint an auditor to audit the financial statements of a company if the Registrar is satisfied on reasonable grounds that—
  - (a) the company is required to audit its financial statements; and
  - (a) has failed to appoint a qualified auditor for that purpose.
- (2) A company must give notice to the Registrar of the resignation or removal of its auditor.
- (3) The notice must be—
  - (a) in the approved form; and
  - (b) given within 14 days after the auditor's resignation or removal.

## PART XI – DISCLOSURE TO SHAREHOLDERS

### Division 1 – Annual report

### 156 Annual report to shareholders

- (1) This section applies if a company must prepare financial statements in accordance with section 150.
- (2) Subject to subsection (3), the directors of a company must, within 28 days after the date on which the company is required to complete its financial statements under section 150(1)—

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- (a) prepare an annual report on the affairs of the company for the accounting period ending on the balance date; and
  - (b) send the report to each shareholder.
- (3) The constitution of a company may provide that the directors are not required to provide an annual report for an accounting period unless—
- (a) a shareholder has given written notice to the company requiring an annual report; and
  - (b) the company has received the notice before the end of the accounting period.
- (4) If the directors of a company fail to comply with subsection (2), each director commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 157 Contents of annual report

A company's annual report must—

- (a) be in writing and dated; and
- (b) include financial statements for the accounting period that comply with section 151; and
- (c) include the auditor's report, if an auditor's report is required for the financial statements included in the report; and
- (d) state—
  - (i) the names of the directors in office at the end of the accounting period; and
  - (ii) the name of any person who ceased to be a director during the accounting period; and
- (e) contain any other information that may be required by—
  - (i) regulations made under this Act; and
  - (ii) the constitution; and
- (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

### Division 2 – Shareholder request for information

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

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

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## 159 Company must respond to request

- (1) A company must, within 14 days after receiving a request under section 158—
  - (a) provide the information; or
  - (b) undertake to provide the information within a specified period; or
  - (c) refuse to provide the information and specify the reason for the refusal.
- (2) An undertaking to provide the information within a specified period may be subject to payment of a reasonable fee, as specified and explained by the company, to meet the cost of providing the information.

## 160 Reasons for refusing information

Without limiting the reasons for which a company may refuse to provide information under section 159, the company may refuse to provide information if—

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

## 161 Withdrawal of request

- (1) A shareholder is taken to have withdrawn a request for information under section 158 if, after notification of the fee that may be required, the shareholder has not paid the fee within 14 days after receiving the notification.
- (2) Subsection (1) does not apply if the shareholder—
  - (a) undertakes to pay the fee; or
  - (b) disputes that the fee is reasonable.

## 162 Court may order company to provide requested information

- (1) A shareholder of a company who has requested information under section 158 may apply to the Court for an order requiring the company to provide the information requested.
- (2) The Court may order the company to provide the information within the time and on payment of the fee that the Court thinks fit if it is satisfied that—
  - (a) the company does not have sufficient reason to refuse the information; or
  - (b) the period specified for providing the information is unreasonable; or
  - (c) the fee required by the company is unreasonable.

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- (3) An order under subsection (2) may specify the use that may be made of the information and the persons to whom it may be disclosed.

### **PART XII DISSOLUTION**

#### **163 Solvent company may dissolve**

- (1) This Part sets out the procedure for a company that is solvent to dissolve without a liquidation under [Part 00 of the Company Insolvency Act 2019].
- (2) However, nothing in this Part prevents a person from making at any time an application to the Court for the liquidation of a company under [Part 00 of that Act].

#### **164 Commencement of dissolution**

- (1) The dissolution is commenced by—
- (a) the directors recommending to the shareholders that the company be dissolved; and
  - (b) the shareholders, after considering the recommendation of the directors, resolving by special resolution that the company be dissolved.
- (2) The directors' recommendation must—
- (a) be in writing;
  - (b) be signed by each director;
  - (c) set out the reasons for the recommendation;
  - (d) state that the company is able to pay in full all its known liabilities to creditors; and
  - (e) be given to all shareholders not less than 14 days before any meeting of shareholders at which the recommendation is first considered.

#### **165 Notice of dissolution**

- (1) The company must, within 14 days after the resolution for dissolution is passed—
- (a) file a notice of dissolution with the Registrar that complies with subsection (2); and
  - (b) if a newspaper circulating generally in Kiribati is available, publish in that newspaper a notice that complies with subsection (3);
  - (c) send each known creditor a notice that complies with subsection (3).
- (2) The notice filed with the Registrar must be—
- (a) in the approved form; and
  - (b) accompanied by the prescribed fee (if any).

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- (3) The notice published in a newspaper must—
- (a) state the full name of the company;
  - (b) state its postal, email and business addresses;
  - (c) state that the shareholders have resolved to dissolve the company;
  - (d) state the date of the dissolution resolution;
  - (e) require all creditors of the company to make a claim for payment;
  - (f) describe the information that must be provided in support of the claim; and
  - (g) state that a claim that exists at the date of dissolution resolution and that is received by the company more than 6 months after that date will be barred.

### 166 Effect of dissolution resolution

- (1) A company that has passed a dissolution resolution continues in existence but must not carry on any activity or business except that which is necessary for concluding its affairs, including—
- (a) collecting its assets;
  - (b) disposing of its assets that will not be distributed in kind to its shareholders;
  - (c) discharging or making provision for discharging its liabilities;
  - (d) distributing its remaining assets among its shareholders according to their interests; and
  - (e) doing every other thing necessary for concluding its affairs.
- (2) If, in the course of concluding the company's affair, it appears to the directors that the company is insolvent, the company must without delay apply for the appointment of a liquidator under [Part IV of the Company Insolvency Act 2019].
- (3) If the company fails to apply for the appointment of a liquidator as required by subsection (2), each director commits an offence and is liable on conviction to a fine not exceeding \$000 or a term of imprisonment not exceeding 00 years, or both.

### 167 Company must accept or reject claims

- (1) The company must without delay—
- (a) accept or reject each claim by a creditor that is notified to it within 6 months of the date of the dissolution resolution; and
  - (b) give the creditor in question written notice of its decision.
- (2) A claim that is rejected is barred if the creditor does not within 6 months after notice of rejection bring a proceeding to enforce the claim.

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- (3) A claim that is not notified within 6 months of the date of the dissolution resolution is barred.

### 168 Company must file request for removal from register

- (1) On completion of its dissolution, the company must file a request with the Registrar for the removal of the company from the Kiribati register.
- (2) If the company fails to apply for the appointment of a liquidator as required by subsection (2), each director commits an offence and is liable on conviction to a fine not exceeding \$000 or a term of imprisonment not exceeding 00 years, or both.
- (3) The dissolution of a company is complete when—
  - (a) it has discharged all liabilities and claims that are not barred; and
  - (b) it has disposed of all its assets.

## PART XIII – COMPANY REORGANSIATIONS

### Division 1 – Amalgamations

### 169 Amalgamations

Any 2 or more companies may amalgamate, and continue as 1 company, in accordance with Schedule 5.

### Division 2 – Court approved reorganisations

### 170 Meaning of arrangement and company

In this Division—

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

*“company”* includes an overseas company that is registered on the Kiribati register.

### 171 Application to Court for order approving amalgamation, arrangement, or compromise

- (1) A company or any shareholder or creditor of a company may apply to the Court for an order under section 172 approving an amalgamation, arrangement, or compromise.
- (2) Before making an order under section 172, the Court may make any 1 or more of the following interim orders—
  - (a) an order that notice of the application, together with any information relating to it that the Court thinks fit, must be in the form and manner and given to any persons or classes of persons that the Court thinks fit;

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- (b) an order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or class of creditors of a company to consider and, if thought fit, approve, in the manner specified by the Court, the proposed amalgamation, arrangement, or compromise;
  - (c) for the purposes of an order under paragraph (b), an order determining the shareholders or creditors that constitute a class of shareholders or creditors;
  - (d) an order requiring that a report on the proposed amalgamation, arrangement, or compromise be prepared for the Court by a person specified by the Court;
  - (e) an order that the report referred to in paragraph (d) be provided to the shareholders, class of shareholders, creditors, or class of creditors of a company, or to any other person that the Court considers has an interest;
  - (f) an order as to the payment of the costs incurred in preparing the report;
  - (g) an order specifying the persons who are entitled to appear and be heard on the application to approve the amalgamation, arrangement, or compromise.
- (3) In making an order under subsection (2), the Court must have regard to the procedures for amalgamations under Schedule 5 and for arrangements and compromises under [Part II of the Company Insolvency Act 2019].

### **172 Court may approve amalgamation, arrangement, or compromise**

- (1) On an application under section 171(1), the Court may order that an amalgamation, arrangement, or compromise is binding on the company and on any other person or classes of person specified by the Court.
- (2) The Court must not make an order under this section in relation to an amalgamation or compromise unless it is impracticable to effect an amalgamation under Schedule 5 or a compromise under [Part II of the Company Insolvency Act 2019] or both.
- (3) To avoid doubt, it is not impracticable to effect an amalgamation under Schedule 5 or a compromise under [Part II of the Company Insolvency Act 2019] by reason only that the amalgamation or compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in Schedule 5 or Part II of the Company Insolvency Act 2019], as the case may be.
- (4) The Court may make an order under subsection (1) on any conditions that the Court thinks fit, and the order has effect in and from the date specified in the order.
- (5) [Section 00 of the Company Insolvency Act 2019 (Effect of compromise on liquidation of company)] applies, with all necessary modifications, to a compromise approved under this section.

### **173 Additional orders**

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Without limiting section 174(1), the Court may, for the purpose of giving effect to any amalgamation, arrangement, or compromise approved under that section, provide for, and prescribe terms and conditions relating to, the following—

- (a) the transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts and engagements;
- (b) the issue of shares, securities or policies of any kind;
- (c) the liquidation of any company;
- (d) the provision to be made for persons who voted against the amalgamation, arrangement, or compromise at a meeting ordered to be held under section 171(2)(b), or who appeared before the Court in opposition to the application for approval;
- (e) any other matter that is necessary or desirable to give effect to the amalgamation, arrangement, or compromise.

### **174 Copies of orders must be filed with Registrar**

- (1) A company that is the subject to an order under this Division must ensure that, within 14 days after the order is made, a copy of the order is filed (using the approved form) with the Registrar for registration.
- (2) If a company fails to comply with subsection (1), each director of the company commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

## **PART XIV— REMOVAL FROM KIRIBATI REGISTER**

### **Division 1 – Removal from register**

#### **175 Removal from register**

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

#### **176 Grounds for removal**

Subject to section 178, the Registrar must remove a company from the Kiribati register if—

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

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- (d) the company is in liquidation and the Registrar receives the prescribed documents confirming completion of liquidation; or
- (e) there is filed with the Registrar a request under section 177 for the company's removal.

### **177 Request for removal**

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

### **Division 2 – Procedure for removal from register**

### **178 When notice of removal required**

- (1) The Registrar must not remove a company from the Kiribati register unless—
  - (a) public notice of the removal has first been given—
    - (i) for removal under section 176(b) or (c), by the Registrar;
    - (ii) for removal under section 176(d), by the liquidator;
    - (iii) for removal under section 176(e), by the person requesting removal; and
  - (b) the deadline date has passed without an application for an order under section 181.
- (2) Public notice is not required for removal under section 176(a).
- (3) The notice of removal must specify a date that is the deadline for a person who objects to the removal to apply for an order under section 181.

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### 179 Objection to removal

- (1) No person may object to the removal of a company from the Kiribati register under section 176(a).
- (2) Any person may object to the removal of a company from the Kiribati register under any of section 176(b) to (e).
- (3) A person may object to removal on any 1 or more of the following grounds—
  - (a) the company is still carrying on business or there is other reason for it to continue in existence;
  - (b) the company is a party to a legal proceeding;
  - (c) the company is in receivership or liquidation;
  - (d) the person objecting is a creditor, shareholder or other person having an undischarged claim against the company;
  - (e) the person objecting believes that there exists, and intends to pursue, a right of action on the part of the company under [Part VIII];
  - (f) for any other reason, removal would not be just and equitable.

### 180 Meaning of undischarged claim

- (1) For the purposes of section 179(3)(d), a claim by a creditor against the company is not an undischarged claim if—
  - (a) the claim has been paid in full; or
  - (b) the claim has been compounded to the reasonable satisfaction of the creditor; or
  - (c) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or
  - (d) a receiver or liquidator has notified the creditor that the assets of the company are not sufficient for any payment to be made to the creditor.
- (2) For the purposes of section 179(3)(d), a claim by a shareholder or other person against the company is not an undischarged claim if—
  - (a) the shareholder or other person has been paid in accordance with a right under the constitution to receive or share in the company's surplus assets; or
  - (b) a receiver or liquidator has notified the shareholder or other person that the company has no surplus assets.

### 181 Procedure for objection

- (1) A person objects to the removal of a company from the Kiribati register by applying to the Court for an order that the company not be removed.
- (2) The application must be made on or before the date specified in the public notice of the removal.

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- (3) The Court may order that the company not be removed if the Court is satisfied, on 1 or more of the grounds specified in section 179(3), that the company should not be removed.

### Division 3 – Effect of removal from register

#### 182 Property of company vests in State

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

#### 183 Person claiming property may apply to Court

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

#### 184 Liability of directors, shareholders and others continues

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

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

### **Division 4 – State’s disclaimer of property vesting on removal from register**

#### **185 State may disclaim onerous property**

- (1) The Minister may, by notice in writing, disclaim onerous property vesting in the State under section 182 and the property is then treated as not having vested in the State.
- (2) The Minister must without delay give public notice of the disclaimer
- (3) In this section, onerous property means—
  - (a) an unprofitable contract; or
  - (b) company property that—
    - (i) is unsaleable; or
    - (ii) is not readily saleable; or
    - (iii) may give rise to a liability on the part of the State.

#### **186 Restrictions on State’s disclaimer**

- (1) Subject to any order of the Court, the Minister may not disclaim under section 185—
  - (a) after a date specified in a notice in writing to the Minister to elect whether to disclaim, provided that date is not less than 60 working days after the Minister receives the notice;
  - (b) in any event, after 12 months from the date when the Minister first became aware of the vesting of the property.
- (2) A statement in the Minister’s notice of disclaimer that the Minister first became aware of the vesting of the property on a specified date is evidence of that fact in the absence of proof to the contrary.

#### **187 Effect of State’s disclaimer**

- (1) The State’s disclaimer under section 185—
  - (a) terminates, on and from the date of the disclaimer, the State’s rights, interest and liabilities in relation to the property; and
  - (b) does not affect the rights and liabilities of any other person (except to the extent necessary to release the State from a liability).
- (2) A person who suffers loss or damage as the result of disclaimer by the State under section 185 may—
  - (a) claim as a creditor of the company for the amount of the loss or damage, taking account of an order under paragraph (b); or

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- (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.

### **Division 5 – Restoration of company to register**

#### **188 When Registrar must restore company to Kiribati register**

- (1) Subject to subsection (2), the Registrar must, on the application of a person specified in subsection (3), restore to the register a company that has been removed from the Kiribati register under section 176(a) for failing to file an annual return.
- (2) The application must be—
  - (a) filed with the Registrar within 2 years after removal from the register; and
  - (b) in the approved form (if any); and
  - (c) accompanied by—
    - (i) all outstanding annual returns; and
    - (ii) the associated filing fees; and
    - (iii) a late filing fee for each outstanding annual return.
- (3) A person may apply if the person was any of the following at the time the company was removed from the register—
  - (a) a shareholder, director, creditor, or entitled person of the company;
  - (b) a party to any legal proceedings against the company;
  - (c) a person with an undischarged claim against the company;
  - (d) the liquidator;
  - (e) a receiver of property of the company.
- (4) The Registrar may—
  - (a) waive the requirement in subsection (2)(c)(i) of all outstanding annual returns, or accept 1 or more partially completed annual returns, if the Registrar is satisfied that it is not practical for the applicant to fulfil the requirement;
  - (b) waive the requirement in subsection (2)(c)(iii) of payment of a late filing fee.

#### **189 Court may order restoration**

- (1) The Court may, on the application of a person specified in subsection (2), order restoration to the register of a company that has been removed from the Kiribati register under section 176 if the Court is satisfied that—
  - (a) at the time of removal—

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- (i) the company was still carrying on business or there was other reason for it to continue in existence; or
  - (ii) the company was a party to a legal proceeding; or
  - (iii) the company was in receivership or liquidation; or
  - (iv) the applicant was a creditor, shareholder, entitled person or other person having an undischarged claim against the company; or
  - (v) the applicant believed that there existed, and intended to pursue, a right of action on the part of the company under [Part VIII]; or
- (b) for any other reason it is just and equitable to restore the company to the register.
- (2) Any of the following persons may apply—
- (a) the Registrar;
  - (b) a person specified in section 188(3);
  - (c) any other person who has the leave of the Court to apply.
- (3) The Court may make restoration conditional on compliance with any provisions of this Act or of regulations made under this Act if the company had failed to comply with those provisions before it was removed from the register.
- (4) The Court may give any directions or make any order that may be necessary or desirable for the purpose of restoration to the register.

### **190 Restoration to register**

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

### **191 Property re-vests in company on restoration to register**

- (1) Property of a company that has vested in the State under section 182(1) re-vests in the company on its restoration to the register as if the company had not been removed from the register.
- (2) However, subsection (1) does not apply to—
  - (a) property for which the Court has ordered the State to pay compensation under section 192(1)(b); or
  - (b) land or any estate or interest in land that has vested in the State under section 182(1) if transmission of the land or estate or interest in land to the State has been registered under any enactment relating to the registration of an estate or interest in land.

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

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- (1) On the application of a company that has been restored to the Kiribati register, the Court may make an order for—
  - (a) the re-transfer to the company of property referred to in section 191(2)(b); or
  - (b) payment of compensation by the State to the company.
- (2) Compensation by the State under subsection (1)(b) must be an amount—
  - (a) that does not exceed the value of the property as at the date of registration of the transmission to the State; or
  - (b) if the property has been sold or contracted to be sold, that is equal to the proceeds of the sale.
- (3) On an application under this section, the Court may decide any issue of the value of the property.
- (4) Compensation by the State under subsection (1)(b) must be paid out of the Consolidated Fund without further authorisation than this section.

### **PART XV – OVERSEAS COMPANIES**

#### **Division 1 – Preliminary**

##### **193 Meaning of carrying on business**

- (1) For the purposes of this Part, a reference to an overseas company carrying on business in Kiribati includes a reference to the overseas company—
  - (a) subject to subsection (3), establishing or using a share transfer office or a share registration office in Kiribati; or
  - (b) administering, managing, or dealing with property in Kiribati as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner.
- (2) For the purposes of this Part, an overseas company does not carry on business in Kiribati merely because in Kiribati it—
  - (a) is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
  - (b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
  - (c) maintains a bank account; or
  - (d) effects a sale of property through an independent contractor; or
  - (e) [Q: solicits or procures an order that becomes a binding contract only if the order is accepted outside Kiribati; or]
  - (f) creates evidence of a debt or creates a charge over property or gives a security interest in property; or

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- (g) secures or collects any of its debtor or enforces its rights in relation to securities relating to those debts; or
  - (h) conducts an isolated transaction that is completed with a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or
  - (i) invests in funds or holds property.
- (3) An overseas company does not carry on business in Kiribati by reason only of transactions effected through an offshore register that is authorised, required or established by or for the purposes of an offshore Act.

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

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

### **195 Use of name by overseas company**

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

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

## **Division 2 – Registration**

### **196 Overseas company must register under this Act**

- (1) An overseas company that, on or after the commencement of this Act, commences to carry on business in Kiribati, must apply for registration under this Part in accordance with section 198 within 28 days after commencing to carry on business.
- (2) An overseas company that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### **197 Validity of transactions not affected**

A contravention by an overseas company of section 196 or 199 does not affect the validity or enforceability of any transaction entered into by the overseas company.

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### **198 Application for registration**

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

### **Division 3 – Administration of overseas company**

### **199 Annual return by overseas company**

- (1) Each year in its allocated month, an overseas company that carries on business in Kiribati must file with the Registrar for registration an annual return that—
  - (a) is in the approved form; and
  - (b) confirms that the information on the Kiribati register in respect of the company is correct at the date of the return; and
  - (c) is signed by or on behalf of the company; and
  - (d) is accompanied by the prescribed annual return fee.
- (2) The return must be dated as at a date within the allocated month.
- (3) Despite subsection (1), an overseas company need not file an annual return in the calendar year of its registration under this Act.
- (4) In this section, allocated month means the month allocated to the company under section 252.

### **200 Allocated month**

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

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

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- (1) If an overseas company fails to comply with section 199, and 6 months have elapsed without the company filing a late return that otherwise complies, the Registrar must remove the company from the Kiribati register.
- (2) However, on the application of a director or shareholder that complies with subsection (3), the Registrar must restore to the register a company that has been removed under subsection (1).
- (3) The application must be—
  - (a) filed with the Registrar within 2 years after removal; and
  - (b) in the approved form; and
  - (c) accompanied by—
    - (i) all outstanding annual returns and associated filing fees; and
    - (ii) a late filing fee for each outstanding annual return.

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

- (1) An overseas company must ensure that the following notices in the approved form are filed with the Registrar for registration—
  - (a) notice of a change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;
  - (b) notice of a change in the name of a director;
  - (c) notice of a change in the residential address or postal address of a director.
- (2) A notice under subsection (1) must—
  - (a) specify the date of the change; and
  - (b) include the full name, residential address, and postal address of every person who is a director of the company from the date of the notice (including continuing directors); and
  - (c) be filed with the Registrar within 28 days after—
    - (i) the change occurring, in the case of the appointment or resignation of a director; or
    - (ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or postal address of a director.
- (3) If an overseas company fails to comply with this section—
  - (a) the company must pay a late filing fee to the Registrar; and
  - (b) the company commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### **203 Overseas company ceasing to carry on business in Kiribati**

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

### 204 Exemption from requirements of this Part

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

## PART XVI – REGISTRAR OF COMPANIES

### Division 1 – Registrar

#### 205 Registrar

There must be a Registrar of Companies appointed under the [Q: [Public Service Act](#)].

#### 206 Deputy Registrars

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

#### 207 First appointment of Registrar under this Act

The person holding office as Registrar of Companies under the Companies Ordinance 1970 immediately before the commencement of this Act continues in office and is the first person appointed under section 205.

### Division 2 – Kiribati register

#### 208 Register

- (1) The Registrar must ensure that a register of companies (the register) is kept and maintained.

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- (2) The register may be kept in the manner that the Registrar thinks fit including, either wholly or in part, by means of a digital register.

### 209 Registration of documents

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

- (a) register the document in the register (unless the Registrar rejects the document under section 211); and
- (b) in the case of a document that is not an annual return, in writing notify the registration to the person from whom the document was received.

### 210 When document registered

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

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

### 211 When Registrar may reject document for registration

(1) The Registrar may refuse to register a document that—

- (a) is not in the approved form (if any); or
- (b) does not comply with this Act or regulations made under this Act; or
- (c) is not printed or typewritten; or
- (d) if the register is a digital register, is in a format that does not enable it be registered; or
- (e) has not been fully and properly completed; or
- (f) contains material that is not clearly legible; or
- (g) is not accompanied by the prescribed fee.

(2) If subsection (1) applies, the Registrar may require that—

- (a) the document is submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
- (b) a fresh document is submitted in its place.

### 212 No presumption of validity or invalidity

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

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

### 213 Inspection of register

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

### **214 Copies and certified copies of documents**

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

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

### **Division 3 – Changes to register**

### **215 Rectification or correction of register**

- (1) The Registrar may—
  - (a) rectify the register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register; or
  - (b) correct any particulars that appear to the Registrar to have been incorrectly entered in the register.
- (2) Unless the rectification or correction relates solely to the person who provided it, the Registrar must not rectify or correct the register without first—
  - (a) giving notice of the rectification or correction to the company and to persons whom the Registrar considers will be materially affected by it; and
  - (b) allowing a person to whom notice is given a reasonable opportunity to object.
- (3) This section does not limit the Registrar's power of amendment under section 217.

### **216 Registrar may require information from company**

- (1) The Registrar may give notice to a company requiring it to provide—
  - (a) corrected or updated details on any matter entered in the register for that company; and

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- (b) a certified copy of any document that has been or ought to have been filed with the Registrar for registration under this Act.
- (2) The company must provide the information or certified copy within the time specified by the Registrar's notice, and that time must not be less than 14 days after the date on which the Registrar sends the notice.
- (3) A company that fails to comply with a notice under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$4,000.
- (4) In this section and in section 217, company includes an overseas company.

### **217 Registrar may amend register**

If information provided to the Registrar under section 216 differs from the information shown in the register for the company, the Registrar may amend the register accordingly.

## **Division 4 – Inspection by Registrar**

### **218 Registrar may require production of documents and confirmation of information**

- (1) For a purpose specified in subsection (2), the Registrar or a person authorised by the Registrar may—
  - (a) require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; and
  - (b) inspect and take copies of relevant documents; and
  - (c) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; and
  - (d) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of an offence; and
  - (e) require a person, in relation to information provided to the Registrar, to—
    - (i) confirm that the information is correct; or
    - (ii) correct the information.
- (2) The purposes for which the Registrar or a person authorised by the Registrar may act under subsection (1) are to—
  - (a) ascertain whether a company or a director of a company is complying with this Act; or
  - (b) ascertain whether the Registrar should exercise any of his or her powers under this Act; or
  - (c) detect offences against this Act; or

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- (d) ascertain whether information provided to the Registrar is correct.
- (3) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power under subsection (2).
- (4) A person who fails to comply with a requirement under subsection (1)(a) or (e) or contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$4,000.
- (5) In this section—
  - “*company*” includes an overseas company
  - “*relevant document*”, in relation to a company, means a document that contains information relating to—
    - (a) the company; or
    - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the company.

### 219 Disclosure of information and reports

- (1) The Registrar may require a person authorised under section 218 to give any document or information obtained, or report prepared, by that person in acting under section 218—
  - (a) as required by the Registrar or a Deputy Registrar, to the Registrar or a Deputy Registrar; or
  - (b) as required by the Registrar, to the persons specified in subsection (2).
- (2) As required by the Registrar, the person authorised must give the document, information, or report to—
  - (a) the Minister [[Q: or the Solicitor-General](#)]; or
  - (b) any person authorised to receive it for the purposes of, or in connection with, the exercise of a power under this Act; or
  - (c) a liquidator for the purposes of the liquidation of the company; or
  - (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$4,000.

### 220 Restrictions on disclosing information

- (1) A person authorised under section 218 must not disclose any document or information obtained, or report prepared, by that person in acting under section 381 except—
  - (a) as required under section 219; or

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

### **221 Report admissible in liquidation proceedings**

Despite any other enactment or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 218 is admissible in evidence in an application to the Court to appoint a liquidator.

## Division 5 – Appeals

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

- (1) A person who is aggrieved by an act or decision of the Registrar under this Act may apply to the Court within 21 days after notification of the act or decision, or within any further time that the Court may allow.
- (2) The Court may—
  - (a) approve the Registrar's act or decision; or
  - (b) give any direction that the Court thinks fit; or
  - (c) make any determination in the matter that the Court thinks fit.

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

Despite any other enactment or rule of law, on an appeal or application to the Court in relation to the exercise of a power under section 218, and until the appeal or application is determined—

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

### **224 Destruction of documents on successful appeal against inspection power**

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- (1) This section applies if an appeal or application in relation to an act done or decision taken in the exercise of a power under section 218 is allowed or granted.
- (2) The Registrar must ensure that, without delay after the Court gives its decision, any copy of a document taken or retained by the Registrar or authorised person in the exercise of the power is destroyed.
- (3) Any information acquired under the exercise of the power is inadmissible in any proceeding unless the court hearing the proceeding is satisfied that it was not unfairly obtained.

### Division 6 – Registrar’s notices and forms

#### 225 Notices generally

Clause 8 (Additional provisions relating to service) of [Schedule 00] applies, with the necessary modifications, to the giving of notices by the Registrar.

#### 226 Notice to individuals

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

#### 227 Admissibility of copy of Registrar’s notice

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

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

#### 228 Registrar may approve forms

The Registrar may approve forms for the purposes of this Act.

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## PART XVII – OFFENCES

### Division 1 – Dishonesty offences

#### 229 False statements in documents

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

#### 230 Fraudulent use or destruction of company property

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

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### 231 Falsification of records

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

### 232 Carrying on business fraudulently

- (1) A person commits an offence who is knowingly a party to a company carrying on business—
  - (a) with intent to defraud creditors of the company or any other person; or
  - (b) for a fraudulent purpose.
- (2) A director of a company commits an offence who—
  - (a) by false pretences or other fraud induces a person to give credit to the company; or
  - (b) with intent to defraud creditors of the company—
    - (i) gives, transfers, or causes a charge or security interest to be given on or in property of the company to any person; or
    - (ii) causes property to be given or transferred to any person; or
    - (iii) causes or is party to execution being levied against property of the company.

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- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

### 233 Causing material loss to creditors

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

### 234 Dishonestly incurring debt

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

## Division 2 – Offence in relation to offer of securities to public

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

- (1) A person must not engage in conduct that is—
- (a) reckless conduct in relation to—
    - (i) any advertisement; or
    - (ii) the offer of debt or equity securities generally; or
    - (iii) any dealing (including trading) in debt or equity securities; and

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- (b) misleading or deceptive or likely to mislead or deceive.
- (2) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or both.
- (3) A person who suffers loss as a result of contravention of this section may claim damages or other relief or both against—
  - (a) the issuer of the debt or equity security; and
  - (b) if the issuer is a company, the directors of the company at the time of contravention.
- (4) A director of an issuer who is liable under subsection (3)(b) is jointly and severally liable with the issuer and the other liable directors.

### 236 Definitions for purposes of section 235

For the purposes of section 235—

*“advertisement”* means a form of communication—

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

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

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

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

*“debt security”*—

- (a) means any interest in or right to be paid money that is, or is to be deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a security interest in any property); and
- (b) includes—

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- (i) a debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
  - (ii) an interest or right that is declared by regulations made under this Act to be a debt security for the purposes of this Act; and
  - (iii) a renewal or variation of the terms or conditions of any interest or right of a security referred to in subparagraph (i) or (ii); but
- (c) does not include any interest or right or a security referred to in paragraph (b)(i) or (iii) that is declared by regulations made under this Act not to be a debt security for the purposes of this Act;

*“distribute”* includes—

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

*“equity security”*—

- (a) means any interest in, or a right to share in, the share capital of a company; and
- (b) includes—
  - (i) a preference share, and company stock;
  - (ii) a security that is declared by regulations made under this Act to be an equity security for the purposes of this Act; and
  - (iii) a renewal or variation of the terms or conditions of any interest or right or a security referred to in subparagraph (i) or (ii); but
- (c) does not include any interest or right or a security referred to in paragraph (b)(i) or (iii) that is declared by regulations made under this Act not to be an equity security for the purposes of this Act;

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

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

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

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

### Division 3 – Liquidation offences

#### 237 Conduct hindering liquidation

- (1) If a company is in liquidation, or an application has been made to the Court for the appointment of a liquidator, a person must not—

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- (a) leave Kiribati with the intention of—
    - (i) avoiding payment of money due to the company;
    - (ii) avoiding questioning in relation to the affairs of the company; or
    - (iii) avoiding compliance with an order of the Court or some other obligation under [Part III of the Company Insolvency Act 2019] in relation to the affairs of the company; or
  - (b) conceal or remove property of the company with the intention of preventing or delaying the liquidator from taking custody or control of it; or
  - (c) destroy, conceal, or remove company records or documents.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

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

- (1) A person commits an offence who—
- (a) makes, or authorises the making of, a claim under [Schedule 00 of the Company Insolvency Act 2019] (Creditors' claims) that is false or misleading in a material particular knowing it to be false or misleading; or
  - (b) omits, or authorises the omission, from a claim under that schedule of any matter knowing that the omission makes the claim false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or both.

## **Division 4 – Procedure**

### **239 Proceedings for offences**

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

## **PART XVIII – MISCELLANEOUS**

### **Division 1 – Service and communication of documents**

### **240 Service of documents**

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

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

### 241 Company communication with shareholders

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

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

### Division 2 – Privileged communications

#### 242 Privileged communications

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

### Division 3 – Regulations

#### 243 Regulations

- (1) The Beretitenti, acting on the advice of the Cabinet, may make regulations to give effect to the provisions of this Act and in particular for all or any of the following purposes—
  - (a) amending this Act by prescribing any amendment to, or modification or substitution of, the default constitution set out in Schedule 2 or 3;
  - (b) prescribing forms (including Court forms in respect of any Court proceedings under this Act); and those regulations may require—
    - (i) the inclusion in, or attachment to, forms of specified information or documents; and
    - (ii) forms to be signed by specified persons;
  - (c) prescribing the information that must be provided for the proper completion of an approved form;

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- (d) prescribing requirements with which documents delivered for registration must comply;
  - (e) prescribing when a fee, penalty, or other sum is payable under this Act;
  - (f) prescribing the amount of any fee, penalty or other sum payable under this Act;
  - (g) prescribing the circumstances in which the Registrar may waive, or exempt a person or class of persons from liability to pay, a fee, penalty or other sum payable under this Act, whether in whole or in part;
  - (h) prescribing the threshold number of shareholders for the requirement that a company must prepare financial statements (see section 150(1));
  - (i) prescribing requirements, in relation to the form or content of financial statements, or any other matters in respect of financial statements, including (without limitation)—
    - (i) prescribing different requirements in respect of different classes of company; and
    - (ii) requiring compliance with standards issued or published by a specified body or bodies, with or without modification;
  - (j) regulating the financial reporting of a company, overseas company, or class of companies of overseas companies, including (without limitation)—
    - (i) prescribing requirements in respect of the adoption by directors of a balance date for a company; and
    - (ii) regulating changes to the balance date of a company;
  - (k) exempting a class or classes of overseas companies from the requirements of Part XVI, or modifying the application of Part XVI to those overseas companies;
  - (l) declaring that a right, interest, or security, for the purposes of this Act—
    - (i) is a debt security or an equity security; or
    - (ii) is not a debt security or an equity security;
  - (m) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.
- (2) Without limiting subsection (1)(c), a provision of this Act requiring or contemplating prescribed information for the purposes of completing a approved form is satisfied if the information necessary for the proper completion of the form appears from the face of the form or from the content of the form.

### 244 Regulations providing for transitional matters, etc

The Beretitenti, acting on the advice of the Cabinet, may make regulations—

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

### Division 4 – Re-registration

#### 245 Application for re-registration of existing company

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

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- (4) The application for re-registration must be accompanied by—
  - (a) the prescribed fee; and
  - (b) a copy of the constitution to the extent that the company elects not to use the appropriate default constitution or to modify it.
- (5) If the constitution with which the company proposes to be re-registered adversely affects shareholder rights and obligations, the application must be accompanied by the written consent of each shareholder to re-registration.

### 246 Failure to apply for re-registration

- (1) An existing company that has not applied for re-registration in accordance with section 245 is a nullity.
- (2) For the purposes of subsection (1), Divisions 3 and 4 (but not Division 5) of Part 16 apply as if the former company were a company that had been removed from the Kiribati register under Division 2 of Part 16.
- (3) On the application of a director, shareholder, or creditor of an existing company, the Court may—
  - (a) direct the Registrar to make an application for re-registration on behalf of the company; and
  - (b) make any other orders necessary to effect the re-registration of the company.

### 247 Application for re-registration of existing overseas company

- (1) An existing overseas company may apply for re-registration under this Act.
- (2) An application for re-registration of an existing overseas company must be—
  - (a) filed by the Registrar within 1 year after the commencement of this Act; and
  - (b) in the approved form.
- (3) The registration under the Companies Ordinance 1979 of an existing overseas company that has not applied for re-registration in accordance with subsection (2) is a nullity.

### 248 Re-registration

- (1) The Registrar must, without delay on receiving an application for re-registration of an existing company or existing overseas company that complies with section 245 or 247, as the case may be—
  - (a) enter the company on the Kiribati register; and
  - (b) issue to the company a certificate in the approved form of its re-registration.
- (2) A certificate of re-registration issued under subsection (1) is conclusive evidence that—

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

### 249 Meaning of existing company, etc

For the purposes of this Division—

*“existing company”* —

- (a) means a company registered under the Companies Ordinance 1979 that, immediately before the commencement of this Act, was entered in the register of companies maintained under the Companies Ordinance 1979; but
- (b) does not include a company that is in liquidation

*“existing overseas company”* means an overseas company registered under the Companies Ordinance 1979 that, immediately before the commencement of this Act, was entered in the register of companies maintained under the Companies Ordinance 1979;

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

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

### Division 5 – Transitional provisions

### 250 Amalgamation or other proceeding that is incomplete on commencement of this Act

- (1) This section applies to an amalgamation or other proceeding by a company (the proceeding) that is incomplete on the commencement of this Act.

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- (2) The balance of the proceeding must be conducted in accordance with the law in force immediately after the commencement of this Act with all necessary modifications.
- (3) If necessary, the Court on the application of the company, a creditor, a liquidator, or a receiver may give directions as the Court thinks fit for the conduct of the proceeding.

### Division 6 – Repeal and revocation

#### 251 Companies Ordinance 1979 repealed

- (1) The Companies Ordinance 1979 is repealed 1 year after the commencement of this Act.
- (2) There must be no company incorporated under the Companies Ordinance 1979 after the commencement of this Act.
- (3) Any regulations made under the Companies Ordinance 1979 Act are revoked except to the extent that they affect [Part 00 of the Companies Ordinance 1979](#) and for so long as [Part 00 continues in force](#).

### Division 7 – Amendments to other enactments

#### 252 Other enactments: consequential amendments and references updated

Schedule 7 effects the consequential amendment of other enactments and the updating of references in other enactments to legislation repealed by this Act.

### Division 8 – Company charges

#### 253 Part 00 Companies Ordinance 1979 continues to apply

- (1) Despite the repeal of the Companies Ordinance 1979, [Part 00 of the Companies Ordinance 1979](#) continues to apply with all necessary modifications as if the Companies Ordinance 1979 had not been repealed.
- (2) This Division is repealed on the coming into force of the [Q: personal property legislation] or equivalent legislation providing for the registration of personal property securities.

**SCHEDULE 1**  
**Interpretation**

**1. Interpretation**

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

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

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

*“annual meeting”* means a meeting required to be held by [section 68];

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

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

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

*“category A records”* means the company records specified in [section 144(1)(a)];

*“category B records”* means the company records specified in [section 144(1)(b)];

*“category C records”* means the company records specified in [section 144(1)(c)];

*“company”* means a company registered or re-registered under this Act;

*“company”* records means the records that must be kept under [section 144(1)];

*“Court”* means the High Court of Kiribati;

*“default constitution”* means the default constitution set out in Schedule 2 or 3, as applicable;

*“digital format”*—

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

*“digital register”* means a register in digital format;

*“director”* has the meaning set out in [section 73];

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*“distribution”*, in relation to a distribution by a company to a shareholder, has the meaning set out in [section 30];

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

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

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

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

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

*“entitled person”* means a person upon whom the constitution confers any of the rights and powers of a shareholder;

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

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

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

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

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

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

“*Kiribati register*” or “*register*” means the register of companies kept by the Registrar under section 371;

“*liquidator*” means the person appointed under [section 000 of the Company Insolvency Act 2019];

“*major transaction*” has the meaning set out in [section 61(2)];

“*Minister*” means the Minister responsible for the administration of this Act;

“*ordinary resolution*” has the meaning set out in [section 60(1)];

“*overseas company*” means a company that is incorporated outside Kiribati, whether or not it is registered under this Act;

“*person*” includes a corporation sole, a company or other body corporate (whether incorporated in Kiribati or elsewhere), an unincorporated body of person, a public body and a Government department;

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

“*prescribed*” means prescribed by regulations made under this Act;

“*prescribed form*” means a form or format prescribed by regulations or, if no form or format is prescribed by regulations, a form approved by the Registrar;

“*property*” includes—

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

“*public notice*” means notice by publication in [to come];

“*registered office*” means the place referred to in [section 142(2(a))];

“*Registrar*” means the Registrar of Companies appointed under [section 368];

“*regulations*” means regulations made under this Act;

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

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

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

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

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

“*share register*” means the share register that is required to be kept under [section 49];

“*signature*” means—

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

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

“*special resolution*” has the meaning set out in [section 60(2)];

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

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

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

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

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

## 2. Meaning of holding company

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

## 3. Meaning of related company

- (1) For the purposes of this Act, a company is related to another company (and “related company” has a corresponding meaning) if—
  - (a) the other company is its holding company or subsidiary; or
  - (b) more than half the issued shares of the company (other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital) is held by the other company and companies related

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to that company (whether directly or indirectly, but other than in a fiduciary capacity); or

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

### 4. Meaning of subsidiary

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

### 5. Meaning of solvency test

- (1) For the purposes of this Act, a company satisfies the solvency test if—
- (a) the company is able to pay its debts as they become due in the normal course of business; and
  - (b) the value of the company’s assets is not less than the value of its liabilities..
- (2) A person required to consider whether a company satisfies the solvency test in subclause (1) may have regard to—

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- (a) financial statement prepared on the basis of accounting practices and principles that are reasonable in the circumstances; and
- (b) the valuations of assets or liabilities; and
- (c) such other information in relation to the financial position of the company as is reasonable in all the circumstances.

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## Schedule 2 Default constitution for company with 1 shareholder

### PART I – GENERAL PROVISIONS

#### 1. Constitution supplements provisions of Act

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

#### 2. Interpretation

- (1) This constitution must be read in conjunction with, and subject to, the Act.
- (2) In this constitution, **Act** means the Companies Act 2019.

#### 3. Name of company

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

### PART II – SHARES AND SHARE REGISTER

#### 4. Company has single shareholder only

The company—

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

#### 5. Number of shares

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

#### 6. Share register

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

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

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

### 8. Status of registered shareholder

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

### 9. Transfer of shares

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

### 10. Procedure for transfer of shares

- (1) For the transfer of shares a form of transfer signed by the shareholder or the shareholder's agent or attorney must be delivered to the company.
- (2) If a share certificate has been issued, the company must not register a transfer of shares unless the transfer form is accompanied by—
  - (a) the share certificate relating to the shares; or

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- (b) the evidence as to its loss of destruction and, if required, an indemnity in a form determined by the directors.
- (3) Subject to subclause (4), the company must without delay on receiving a properly executed transfer form that complies with subclause (2) enter the name of the transferee in the share register as the holder of the shares.
- (4) If any amount is due and payable by the transferring shareholder to the company, the directors may, within 42 days after receiving the transfer, resolve to refuse to register the transfer.
- (5) If the directors resolve under subclause (4) to refuse to register a transfer, they must give the transferor notice of the refusal within 5 working days after the date of the resolution.
- (6) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

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

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

### **12. Distributions**

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

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

- (1) Subject to [section 00] of the Act, the company may agree to acquire its own shares from the shareholder.
- (2) If the company acquires its own shares, those shares are cancelled immediately on acquisition.

### **14. Annual report to shareholder**

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

## PART III – DIRECTORS

### **15. Number of directors**

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

### **16. Appointment and removal of directors**

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

### 17. When director vacates office

A director vacates office if he or she—

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

### 18. Powers and duties of directors

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

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

### 19. Delegation by directors

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

(2) The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(3) The provisions of this constitution relating to proceedings of directors also apply to proceedings of any committee of directors, except to the extent that the directors determine otherwise.

### 20. Interested directors

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

### 21. Use of company information

(1) This clause authorises the use of company information for the purpose of section 91(2)(a) of the Act.

(2) A director may disclose (including disclose to the shareholder), use, or act upon company information—

(a) if such disclosure or use is approved by the shareholder; or

(b) if—

(i) such disclosure or use is authorised by any contract of employment entered into between that director and the company; and

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- (ii) the relevant terms of the contract have been approved by the shareholder.

### 22. Indemnity and insurance

- (1) Subject to section 101 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or a related company with the approval of the shareholder.
- (2) In subclause (1),—  
**director** includes—
  - (a) a person referred to in section 96(1) of the Act (Extended meaning of director for purposes of liability); and
  - (b) a former director**indemnify** includes relieve or exclude from liability, whether before or after the liability arises; and **indemnity** has a corresponding meaning.

### 23. Remuneration of directors

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

#### *Directors' meetings*

### 24. Procedure at meetings of directors

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

### 25. Chairperson

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

### 26. Notice of meeting

- (1) A director or, on the request of a director, an employee may convene a meeting of directors by giving notice in accordance with this clause.
- (2) Not less than 24 hours' notice of a meeting of directors must be given to every director who is in Kiribati or who may be readily contacted outside Kiribati.
- (3) An irregularity in the notice of a meeting is waived if—

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- (a) all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity; or
- (b) all directors entitled to receive notice of the meeting agree to the waiver.

### 27. Methods of holding meeting

A meeting of directors may be held either—

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

### 28. Quorum

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

### 29. Voting

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

### 30. Minutes

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

### 31. Unanimous resolution of directors

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

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## *Managing director*

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

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

### **33. Delegation to managing director**

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

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

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

## *Company records and auditor*

### **35. Access to company records**

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

### **36. Appointment of auditor**

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

## **PART 4 – LIQUIDATION**

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### 37. Distribution of surplus assets

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

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## SCHEDULE 2

### Default constitution for company having 2 or more shareholders

#### PART I — GENERAL PROVISIONS

**1. Constitution supplements provisions of Act**

- (1) This constitution supplements certain provisions of the Act.
- (2) This is the default constitution for a company that otherwise has no constitution.

**2. Interpretation**

- (1) This constitution must be read in conjunction with, and subject to, the Act.
- (2) In this constitution, “Act” means the Companies Act 2019.
- (3) If the company has only 1 shareholder, the reference to “the shareholders” is a reference to the only shareholder.

**3. Name of company**

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

#### PART II —SHARES AND SHARE REGISTER

**5. Number and classes of shares**

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

**6. Share register**

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

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

- (1) The share register must be kept—
  - (a) in written form; or

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

### 8. Status of registered shareholder

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

### *Issue of shares*

### 9. Issue of shares

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

### 10. Procedure for issue of shares

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

### *Transfer of shares*

#### **11. Transfer of shares**

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

#### **12. Procedure for transfer of shares**

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

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

### *Shareholders*

#### **13. Shareholders entitled to receive distributions**

- (1) The shareholders who are entitled to receive distributions are—
  - (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date; or
  - (b) if the directors do not fix a date, those shareholders whose names are registered in the share register on the day on which the dividend is approved.
- (2) A date fixed under subclause (1)(a) must not be more than 20 working days before the date on which it is proposed to pay the dividend.

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

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

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

- (1) The shareholders who are entitled to receive notice of a meeting of shareholders are—
  - (a) if the directors fix a date for this purpose, those shareholders whose names are registered in the register on that date; or
  - (b) if the directors do not fix a date, those shareholders are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- (2) A date fixed under subclause (1)(a) must not be more than 30 working days before the date on which the meeting is to be held.
- (3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting that—

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

### 16. Dividends

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

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

#### *Pre-emptive rights*

### 17. Restrictions on selling shares

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

### 18. Selling shareholder must notify company

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

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

### 19. Company must notify shareholders

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

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

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

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

### 21. Contract concluded on advice of acceptance

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

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

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

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### 23. Shares offered without any acceptance

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

### 24. Selling shareholder not obliged to sell

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

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

### 25. Approval of all shareholders required for company acquisition of own shares

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

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

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

#### *Deemed shareholder approval*

### 27. Deemed approval by all shareholders for certain purposes

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

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

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

### PART III — SHAREHOLDER MEETINGS

#### 28. Shareholder meetings

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

#### 29. Notice of meeting

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

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

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

#### 31. Methods of holding meetings

A meeting of shareholders may be held either—

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

### 32. Quorum

- (1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.
- (2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes of the votes to be cast on the business to be transacted at the meeting.
- (3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time or place, or to such other date, time, and place as the directors may appoint.
- (4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

### 33. Chairperson

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

### 34. Voting

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

### 35. Poll

- (1) At a meeting of shareholders, a poll may be demanded by—

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

### 36. Votes of joint shareholders

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

### 37. Proxies

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

### 38. Corporations may act by representatives

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

### 39. Minutes

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

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## 40. Written resolution of shareholders

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

## 41. Special meeting of shareholders

A special meeting of shareholders entitled to vote on an issue<sup>2</sup>

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

## PART IV—DIRECTORS

### *Directors*

## 42. Number of directors

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

## 43. Appointment and removal of directors

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

## 44. Term of office

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

## 45. When director vacates office

A director vacates office if he or she—

- (a) is removed from office in accordance with clause 43; or

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

### 46. Casual vacancies

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

### 47. Delegation by directors

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

### 48. Indemnity and insurance

- (1) Subject to section 101 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or a related company with the approval of—
  - (a) the directors, but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
  - (b) the shareholders by ordinary resolution, but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or
  - (c) all shareholders under section 62.
- (2) In subclause (1)—
  - “*director*” includes—
    - (a) a person referred to in section 96(1) of the Act (Extended meaning of director for purposes of liability); and
    - (b) a former director
  - “*indemnify*” includes relieve or exclude from liability, whether before or after the liability arises; and “*indemnity*” has a corresponding meaning.

### 49. Remuneration of directors

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

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

### 50. Use of company information

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

### *Directors' meetings*

### 51. Procedure at meetings of directors

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

### 52. Chairperson

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

### 53. Notice of meeting

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

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### 54. Methods of holding meeting

A meeting of directors may be held either—

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

### 55. Quorum

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

### 56. Voting

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

### 57. Minutes

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

### 58. Unanimous resolution of directors

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

*Managing director*

### 59. Directors may appoint managing director

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

### 60. Delegation to managing director

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

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

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

## PART V—LIQUIDATION

### 62. Distribution of surplus assets

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

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## PART VI—MISCELLANEOUS

**63. Service of documents on shareholder**

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

**65. Company may opt out of preparing financial statements**

In accordance with section 00, the company may opt out of preparing annual financial statements for an accounting period.

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## SCHEDULE 4

### Procedure for minority buy-out

#### 1. Buy-out notice

A shareholder (**S**) who is entitled to require the company to buy S's shares under [section 65] may give the company a buy-out notice (the **buy-out notice**) requiring it to do so.

#### 2. Time for giving buy-out notice

S must give the buy-out notice—

- (a) if the resolution triggering the buy-out right was passed at a meeting of shareholders, within 14 days after the meeting; or
- (b) if the resolution was passed in lieu of a meeting, within 14 days after the date on which the company gave notice of the resolution to S.

#### 4. How company must respond to buy-out notice

Within 28 days after receiving the buy-out notice, the company must—

- (a) do 1 of the following:
  - (i) agree to buy the shares; or
  - (ii) arrange for some other person to buy them; or
  - (iii) arrange for the shareholders' resolution triggering the buy-out to be rescinded; or
  - (iv) decide not to take the action concerned; and
- (b) give S written notice of the decision (the **decision notice**).

#### 5. Decision notice must nominate buy-out date and price

- (1) If the company agrees to buy the shares, the decision notice must nominate—
  - (a) the buy-out date; and
  - (b) the buy-out price.
- (2) The buy-out date must not be earlier than 14 days, nor later than 28 days, after the company gives S the decision notice.
- (3) The buy-out price must be fair and reasonable, that is, a fair and reasonable price for a share in the company as at the buy-out date, disregarding—
  - (a) any premium or discount in respect of the number of shares to be bought; and
  - (b) the fact that the shares are being bought under [section 65]; and
  - (c) the effect or likely effect on the company and the value of its shares of the resolution triggering the buy-out right.

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### 6. Transfer of shares on buy-out date if no objection

Unless S objects to the nominated buy-out price, on the buy-out date—

- (a) the shares are transferred to the company; and
- (b) subject to compliance with the solvency test, the company must pay the nominated buy-out price.

### 7. Objection to nominated buy-out price

- (1) S may object that the nominated buy-out price is not fair and reasonable by giving the company a notice of objection (the **objection notice**).
- (2) S must give the objection notice to the company within 14 days after the company gives S the decision notice.
- (3) The company must—
  - (a) on the nominated buy-out date, pay S a provisional price for each share that is the nominated buy-out price; and
  - (b) refer the question of what is a fair and reasonable price for determination by an expert in accordance with clause 8.

### 8. Company must nominate expert to determine buy-out price

- (1) Within 14 days after receiving the objection notice, the company must give S a notice (the **nomination notice**) nominating an independent expert to determine the buy-out price.
- (2) If S does not object to the expert nominated, that person must as expeditiously as possible determine a fair and reasonable price for the shares.

### 9. Objection to nominated expert

- (1) S may object to the nominated expert on the grounds that he or she—
  - (a) is not independent; or
  - (b) does not have the appropriate expertise.
- (2) To object to the nominated expert, S must give the company a notice within 14 days after receiving the nomination notice.

### 10. Court must appoint expert in case of objection

- (1) If S objects to the nominated expert, the company must without delay apply to the Court for an order appointing an expert.
- (2) The Court may appoint—
  - (a) the nominated expert; or
  - (b) an expert nominated by S; or
  - (c) any other independent person with the appropriate expertise as the Court thinks fit.

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- (3) On appointment by the Court, the person appointed must as expeditiously as possible determine a fair and reasonable price for the shares.

### **11. Expert's determination of buy-out price is final**

The expert's determination is final and is made by the expert as an expert, not as an arbitrator.

### **12. Adjustment for provisional buy-out price**

- (1) If the price determined by the expert—
  - (a) exceeds the provisional buy-out price already paid, the company must, subject to satisfying the solvency test, without delay pay the balance owing to S:
  - (b) is less than the provisional buy-out price already paid, the company may recover the excess paid from the shareholder.
- (2) The expert may award interest on any balance payable or excess to be repaid at the rate that he or she thinks fit.

### **13. Purchase of shares by third party**

- (1) Clauses 4 to 11 apply, with all necessary modifications, to a buy-out by a third party arranged by the company as if references in those clauses were references to the third party.
- (2) The company indemnifies a shareholder whose shares are bought by a third party arranged by the company in respect of any loss suffered because of the third party's failure to buy the shares or to buy them at the nominated price or the price determined by an expert, as the case may be.

### **14. Inability of company to pay buy-out price**

[Section 33] applies to the purchase of shares under this Schedule as if there were a contract between the shareholder and the company for the purchase of the shares in accordance with this Schedule.

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## SCHEDULE 5 Amalgamations

### 1. Companies may amalgamate

Two or more companies may amalgamate, and continue as 1 company, in accordance with this Schedule.

### 2. Notice of proposed amalgamation

- (1) Each amalgamating company must—
  - (a) send a copy of the amalgamation proposal to every secured creditor of the company; and
  - (b) give public notice of the proposed amalgamation that complies with clause 3.
- (2) The steps set out in subclause (1) must be taken not less than 28 days before the amalgamation is proposed to take effect.

### 3. Content of public notice

The public notice required under clause 2(1)(b) must—

- (a) state that any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation—
  - (i) may inspect the amalgamation proposal; and
  - (ii) is entitled to be supplied on request with a free copy of the amalgamation proposal; and
- (b) state that inspection of the amalgamation proposal is available at the registered offices of the amalgamating companies and any other specified places, during normal business hours.

### 4. Registration of amalgamation proposal

For amalgamation, the following documents must be delivered to the Registrar for registration:

- (c) the amalgamation proposal;
- (d) in respect of each amalgamating company, a certificate signed by the directors certifying that the amalgamation proposal has been approved in accordance with this Act and the company's constitution;
- (e) a consent to be a director of the amalgamated company that is—
  - (i) in the prescribed form; and
  - (ii) signed by each person named in the amalgamation proposal as a director of the amalgamated company.

### 5. Certificate of amalgamation

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- (1) Without delay after receiving the documents specified in clause 4, the Registrar must issue a certificate of amalgamation in the prescribed form.
- (2) If the amalgamation proposal specifies a date on which the amalgamation is intended to become effective, the certificate of amalgamation must be expressed to have effect on the specified date, and it does not matter that the Registrar has received the documents on or before that date.

### 6. Effect of certificate of amalgamation

On the date shown in a certificate of amalgamation,—

- (a) the amalgamation is effective; and
- (b) subject to section 11 (Name of company), the amalgamated company has the name specified in the amalgamation proposal; and
- (c) the amalgamated company is entitled to all of the property, rights, powers, and privileges of each of the amalgamating companies; and
- (d) the amalgamated company is subject to all the liabilities and obligations of each of the amalgamating companies; and
- (e) any proceeding already commenced by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and
- (f) a conviction, ruling, order or judgment in favour of, or against, an amalgamating company may be enforced by or against the amalgamated company; and
- (g) any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect as proposed.

### 7. Registers

- (1) [Q: The Registrar of Land Titles] or any other person with the function of maintaining books or records, is not obliged, solely because an amalgamation becomes effective, to change the name of an amalgamating company to that of an amalgamated company in those books or register or in any documents.
- (2) An instrument (whether or not it is an instrument of transfer) is, in the absence of evidence to the contrary, sufficient evidence that the property to which it relates (**the property**) has become the property of an amalgamated company if the instrument—
  - (a) is executed or purports to be executed by the amalgamated company; and
  - (b) relates to property that was held immediately before the amalgamation by an amalgamating company; and
  - (c) states that the property has become the property of the amalgamated company by virtue of this Schedule.

### 8. Certificate by amalgamated company as to property

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- (1) Without limiting clause 7, this clause applies if—
  - (a) any security issued by a person (an **issuer**) or any rights or interests in property of any person (an **owner**) become, by virtue of this Schedule, the property of an amalgamated company; and
  - (b) there is presented to the issuer or owner a certificate signed on behalf of the amalgamated company stating that the security or the rights or interests have, by virtue of this Schedule, become the property of the amalgamated company.
- (2) On presentation of the certificate referred to in subclause (1)(b), the issuer or the owner, as the case may be, must register the amalgamated company as the holder of the security or as the person entitled to the rights or interests in the property.
- (3) Subclause (2) has effect despite any other enactment or rule of law or the provisions of any instrument.

### **9. No derogation from provisions of enactment relating to transfer of estate or interest in land**

Except as expressly provided, nothing in this Schedule derogates from the provisions of any enactment relating to the transfer of an estate or interest in land.

### **10. Power of Court in relation to amalgamations**

- (1) A shareholder or creditor of an amalgamating company, or a person to whom an amalgamating company is under an obligation, may apply to the Court for an order under subclause (2) on the ground that giving effect to the amalgamation proposal would unfairly prejudice the applicant.
- (2) On an application under subclause (1), the Court may make an order—
  - (a) directing that effect must not be given to the proposal; or
  - (b) modifying the proposal in the manner specified in the order; or
  - (c) directing the company or its directors to reconsider the proposal or any part of it.
- (3) An order under subclause (2) may be made on any conditions that the Court thinks fit.

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## SCHEDULE 6

### Service of documents

#### 1. Service on company of documents in legal proceeding

A document in any legal proceeding may be served on a company as follows:

- (a) by delivery to a person named as a director of the company on the Kiribati register; or
- (b) by delivery to an employee of the company at the company's head office or principal place of business; or
- (c) by leaving the document at the company's registered office or address for service; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the company; or
- (f) by serving the document at an address for service given in accordance with the rules of the court having jurisdiction in the proceeding or by such means as a legal practitioner has, in accordance with those rules, stated that the legal practitioner will accept service.

#### 2. Service of other documents on companies

A document that is not a document in a legal proceeding may be served on a company as follows:

- (a) by any of the methods set out in clause 1(a), (b), (c) or (e); or
- (b) by posting it to the company's postal address or address for service; or
- (c) by emailing it to an electronic address used by the company; or
- (d) by faxing it to a fax number used by the company.

#### 3. Service on overseas company of documents in legal proceeding

A document in any legal proceeding may be served on an overseas company as follows:

- (a) by delivery to a person named as a director of the overseas company on the Kiribati register and who is resident in Kiribati; or
- (b) by delivery to a person named on the Kiribati register as being authorised to accept service in Kiribati of documents on behalf of the overseas company; or
- (c) by delivery to an employee of the overseas company at the overseas company's place of business (or principal place of business if more than 1) in Kiribati; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the overseas company.

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## 4. Service of other documents on overseas company

A document that is not a document in a legal proceeding may be served on an overseas company as follows:

- (a) by any of the methods set out in clause 3(a), (b), (c) (e); or
- (b) by posting it to the overseas company's address for service or postal address in Kiribati; or
- (c) by posting it to a person named on the Kiribati register as being authorised to accept service in Kiribati of documents on behalf of the overseas company; or
- (d) by emailing it to an electronic address used by the overseas company.

## 5. Service of documents on directors in legal proceeding

A document in any legal proceeding involving a director in his or her capacity as director may be served on the director as follows:

- (a) by delivery to the director; or
- (b) by leaving the document at the director's residential address (as that address is shown in the register); or
- (c) by leaving the document at the company's registered office or address for service; or
- (d) by serving the document in accordance with any direction as to service given by a court having jurisdiction in the proceeding; or
- (e) in accordance with an agreement made with the director; or
- (f) by serving the document at an address for service given in accordance with the rules of the court having jurisdiction in the proceeding or by such means as a legal practitioner has, in accordance with those rules, stated that the legal practitioner will accept service.

## 6. Service of other documents on directors

A document that is not a document in a legal proceeding may be served on a director as follows:

- (a) by any of the methods set out in clause 5(a), (b), (c) or (e); or
- (b) by posting it to the director at the director's residential address (as that address is shown in the register); or
- (c) by posting it to the company's postal address or address for service; or
- (d) by emailing it to an electronic address used by the director; or
- (e) by emailing it to an electronic address used by the company.

## 7. Service of documents on shareholders and creditors

- (1) A notice, statement, report, accounts or other document to be sent or given to a shareholder or a creditor who is a natural person may be—

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- (a) delivered to that person; or
  - (b) posted to that person's postal address; or
  - (c) subject to [section 252], emailed to an electronic address used by that person.
- (2) A notice, statement, report, accounts or other document to be sent or given to a shareholder or a creditor that is a company or an overseas company may be sent or given by any of the methods of serving documents referred to in clause 2 or 4.
- (3) A notice, statement, report, accounts or other document to be sent or given to a shareholder or a creditor that is a body corporate but not a company or an overseas company may be—
- (a) delivered to a person who is a principal officer of the body corporate; or
  - (b) delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
  - (c) delivered in the manner that the Court directs; or
  - (d) delivered in accordance with an agreement made with the body corporate; or
  - (e) posted to the postal address of the body corporate; or
  - (f) emailed to an electronic address used by the body corporate.

### 8. Additional provisions relating to service

- (1) Subject to subclause (2), for the purposes of clauses 1 to 7,—
- (a) service of a document by delivery to a natural person is made—
    - (i) by handing the document to the person; or
    - (ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person:
  - (b) a document that is posted is treated as received 5 working days after it is posted:
  - (c) for proving service of a document by post, it is sufficient to prove that—
    - (i) the document was properly addressed; and
    - (ii) all postal or delivery charges were paid; and
    - (iii) the document was posted.
- (2) A document is not treated as having been served or sent, given, or delivered to a person if the person proves that, through no fault of the person, the document was not received within the time specified.

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