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#### An Act to amend the Companies Act 2017 to—

- (a) improve the workability of provisions about financial statements, disclaimer of property by the Crown, and the re-registration of companies; and
- (b) make other minor and technical changes.

#### The Parliament of the Cook Islands enacts as follows—

(26 November 2021)

#### 1 Title

This Act is the Companies Amendment Act 2021.

#### 2 Commencement

This Act comes into force on the day after the date on which it is assented to by the Queen's Representative.

#### 3 Principal Act

This Act amends the Companies Act 2017.

## Part 1

### Amendments to principal Act

#### 4 Section 157 amended (Other updating notices for information events)

Replace section 157(2)(k) with:

“(k) the resignation or removal of the auditor (*see section 165A*):”

#### 5 Section 160 repealed (Companies that must prepare financial statements)

Repeal section 160.

#### 6 Section 161 replaced (Financial statements)

Replace section 161 with:

##### “161 Financial statements

“(1) A company that has 10 or more shareholders must prepare financial statements in accordance with **subsections (2) to (4)**.

“(2) The company must ensure that, within 4 months after the company's balance date, financial statements are prepared for the company with respect to that balance date.

“(3) 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.
- “(4) The following periods must not exceed 15 months:
  - “(a) the period between the date of the company’s incorporation and its first balance date;
  - “(b) the period between any 2 balance dates of the company.
- “(5) 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.”

**7 Section 163 replaced (Company may opt out of preparing financial statements)**

Replace section 163 with:

- “163 Company with fewer than 10 shareholders may opt in to requirement to prepare financial statements**
- “(1) This section applies to a company with fewer than 10 shareholders.
  - “(2) A shareholder of the company who holds, or shareholders of the company who together hold, not less than 10% of the voting shares in the company may, by written notice, require the company to prepare financial statements for an accounting period.
  - “(3) If a notice is given under **subsection (2)** in relation to an accounting period, the company must prepare financial statements in accordance with **section 161(2) to (4)** for that accounting period.
  - “(4) If a notice is not given under **subsection (2)**, the company must include in any balance sheet prepared for that accounting period, a statement that the accounting records used to prepare the balance sheet have not been audited.
  - “(5) In **subsection (2)**, **written notice** means written notice given to the company within the period commencing at the start of the relevant accounting period and ending on the close of the date that is 3 months after the end of that accounting period.”

**8 Section 165 replaced (Registrar may appoint auditor)**

Replace section 165 with:

- “165 Registrar may appoint auditor**
- “(1) This section applies if a qualified auditor is required to be appointed for a company under section 164.
  - “(2) The Registrar may appoint an auditor if—
    - “(a) no qualified auditor is appointed at an annual meeting of the company; or
    - “(b) the qualified auditor appointed at an annual meeting of the company does not take up that office within 1 month after being appointed; or
    - “(c) a casual vacancy in the office of auditor is not filled within 1 month after the vacancy occurs.

“(3) An auditor appointed by the Registrar under **subsection (2)** must be a qualified auditor.”

**9 New section 165A inserted (Company must notify Registrar of resignation or removal of auditor)**

After section 165, insert:

**“165A Company must notify Registrar of resignation or removal of auditor**

“(1) This section applies if a qualified auditor is required to be appointed for a company under section 164.

“(2) The company must give written notice to the Registrar of the resignation or removal of the qualified auditor within 10 working days after the auditor’s resignation or removal.”

**10 Section 166 amended (Resignation and casual vacancy)**

After section 166(2), insert:

“(3) The auditor must be a qualified auditor if the company is required to prepare financial statements for the accounting period underway at the time the resignation occurs or the vacancy arises.”

**11 Section 167 amended (Replacement of auditor)**

After section 167(1), insert:

“(1A) The auditor must be a qualified auditor if the company is required to prepare financial statements for the accounting period underway at the time of the auditor’s removal.”

**12 Section 168 amended (Statement by auditor on resignation)**

In section 168, replace “an auditor” with “a qualified auditor”.

**13 Section 169 replaced (Qualifications of auditor)**

Replace section 169 with:

**“169 Qualifications of auditor**

“(1) A person (whether an individual or a company) is a qualified auditor if—

“(a) the Registrar has, in writing, recognised the person as a qualified auditor for the purposes of this Act; and

“(b) the person is not disqualified from being or acting as an auditor under **subsection (2)**.

“(2) The following persons must not be appointed or act as auditor of a company:

“(a) a director or employee of the company, or any person responsible for keeping the company’s accounting records:

“(b) a person who is a business partner or employee of a person referred to in **paragraph (a)**:

“(c) a liquidator, or a person who is a receiver in respect of the property of the company:

“(d) a person who, by virtue of **paragraph (a) or (b)**, may not be appointed or act as auditor of a related company.

“(3) The Registrar must not recognise a person as a qualified auditor unless—

- “(a) the person meets the experience and qualifications requirements specified in regulations (if any); or
- “(b) if no regulations are made, the Registrar is satisfied that the person’s experience and qualifications make it appropriate for the person to be an auditor.
- “(4) The Registrar may revoke a recognition given under **subsection (1)(a)**.
- “(5) The Registrar must keep a register of auditors recognised as qualified auditors under **subsection (1)(a)**.
- “(6) The Director is a qualified auditor of a company for the purposes of this Act.
- “(7) In **subsection (6)**, **Director** means the Director of the Office of the Public Expenditure Review Committee and Audit appointed under the Public Expenditure Review Committee and Audit Act 1995-96.”
- 14 Section 293 amended (Liability if proper accounting records not kept)**  
Replace section 293(1)(b)(ii) with:
- “(i) section 161 (which relates to the preparation of financial statements); and”
- 15 Section 344 amended (Property of company vests in Crown)**  
(1) Replace section 344(1) with:
- “(1) Property of a company that, immediately before the company’s removal from the register, had not been distributed vests in the Crown on removal from the register.”
- (2) Repeal section 344(3).
- 16 Section 345 amended (Person claiming property may apply to Court)**  
Replace section 345(2)(b) with:
- “(b) in any case where the Minister has notified the Court and the applicant that the Crown elects to retain the property for itself, order the Crown to pay the applicant compensation, which must not be greater than the value of the property.”
- 17 Section 347 replaced (Crown may disclaim onerous property)**  
Replace section 347 with:
- “347 Crown may disclaim property vesting on removal from register**
- “(1) The Minister may, in writing, disclaim any property vesting in the Crown under section 344 and the property is then treated as not having vested in the Crown.
- “(2) The Minister must, without delay after disclaiming the property, give public notice that it has been disclaimed.
- “(3) A failure to give public notice of a disclaimer without delay does not invalidate the disclaimer.”
- 18 Section 348 replaced (Restrictions on Crown’s disclaimer)**  
Replace section 348 with:
- “348 Restrictions on Crown’s disclaimer**
- “(1) Subject to any order of the Court, the Minister may not disclaim under **section 347—**

- “(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; and
- “(b) in any event, after 12 months from the date when the Minister receives notice of the vesting of the property.
- “(2) A statement in the Minister’s notice of disclaimer that the Minister received notice of the vesting of the property on a specified date is evidence of that fact in the absence of proof to the contrary.
- “(3) In this section, **notice of the vesting** means written notice in a form approved from time to time by the Registrar.”

**19 Section 349 replaced (Effect of Crown’s disclaimer)**

Replace section 349 with:

**“349 Effect of Crown’s disclaimer**

- “(1) A disclaimer by the Crown under **section 347**—
  - “(a) applies as if the property had been disclaimed immediately before the company was removed from the register; and
  - “(b) brings to an end the company’s rights, interest, and liabilities in relation to the property disclaimed, with effect immediately before the company was removed from the register.
- “(2) However, a disclaimer does not affect—
  - “(a) the rights or liabilities of any other person in respect of disclaimed property or any other property of the company; or
  - “(b) the right of a person to apply under this Act to restore the company to the register and the revival of the company’s rights, interest, and liabilities in the disclaimed property if the company is restored to the register.
- “(3) A person suffering loss or damage as a result of a disclaimer under section 347 may apply for restoration of the company to the register under section 351(1)(a)(iv) and then—
  - “(a) claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of any order made by the Court under **paragraph (b)**;
  - “(b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- “(4) The Court may make an order under **subsection (3)(b)** if it is satisfied that it is just that the property should be vested in the applicant.
- “(5) To avoid doubt, the Crown has no liability for disclaimed property or for having disclaimed any property.”

**20 Section 351 amended (Court may order restoration)**

Replace section 351(2)(b) with:

- “(b) a person specified in section 349(3) or 350(3).”

**21 Section 368 replaced (Registrar)**

Replace section 368 with:

**“368 Registrar**

There must be a Registrar of Companies appointed from time to time under the Public Service Act 2009.”

**22 Section 369 amended (Deputy Registrars)**

Replace section 369(1) with:

“(1) There must be as many Deputy Registrars of Companies appointed from time to time under the Public Service Act 2009 as may be necessary for the purposes of this Act.”

**23 Section 405 amended (Regulations)**

(1) After section 405(1)(i), insert:

“(ia) prescribing requirements for the form or content of registries under the Act and other administrative requirements relating to registries;”

(2) After section 405(1)(k), insert:

“(ka) specifying experience and qualifications requirements for a person to be a qualified auditor (*see* section 169(3)(a));”

**24 Section 407 amended (Application for re-registration of existing company)**

(1) Replace the heading to section 407 with “**Application for re-registration**”.

(2) Replace subsection (1) with:

“(1) An applicable company may apply for re-registration under this Act.”

(3) Replace subsection (2)(c) with:

“(c) if the company is the subject of a Court order made under **section 411B(2)**, filed with the Registrar within 12 months after the date of the order; and

“(d) in any other case, filed with the Registrar before the close of 31 March 2022.”

(4) After subsection (5), insert:

“(6) In this section and sections 408 and 410, **applicable company** has the meaning given in **section 411A**.”

**25 Section 408 replaced (Failure to apply for re-registration)**

Replace section 408 with:

**“408 Failure to apply for re-registration**

“(1) An applicable company that does not apply for re-registration in accordance with section 407 must be treated as if it had been removed from the register of companies maintained under the 1970-71 Act immediately before the repeal of that Act.

“(2) **Subsection (1)** does not affect the rights of persons specified in **section 411B(5)** to make an application under that section.”

**26 Section 409 repealed (Application for re-registration of existing overseas company)**

Repeal section 409.

**27 Section 410 amended (Re-registration)**

(1) Replace subsection (1) with:

“(1) The Registrar must, without delay after receiving a re-registration application that complies with **section 407** for an applicable company,—

“(a) enter the company in the register; and

- “(b) issue to the company a certificate for its re-registration in the prescribed form.”
- (2) In subsection (3), replace “existing company or existing overseas company” with “applicable company”.

**28 New subpart 4A of Part 20 inserted**

After section 411, insert:

“Subpart 4A—Transitional provisions relating to re-registration”

**“411A Interpretation**

In this subpart,—

**1970-71 Act register** means the register of companies maintained under the 1970-71 Act

**applicable company** means—

- “(a) an existing company (as defined in section 411) that did not apply for re-registration under this Act before the 1970-71 Act was repealed; or
- “(b) an existing overseas company, (as defined in section 411) that did not apply for re-registration under this Act before the 1970-71 Act was repealed; or
- “(c) a company restored to the 1970-71 Act register after this Act commenced and before the 1970-71 Act was repealed; or
- “(d) a company that is the subject of a Court order made under **section 411B(2)** treating it as restored to the 1970-71 register before that Act was repealed.

**“411B Court order for company to be treated as restored to 1970-71 Act register**

- “(1) This section applies to a company—
- “(a) that was struck off the 1970-71 Act register and remained struck off when that Act was repealed and an application for re-registration has been made under **section 410**; or
- “(b) to which **section 408(1)** applies and an application for re-registration has been made under **section 410**.
- “(2) The Court may, on the application of a person specified in **subsection (6)**, make an order directing that the company must be treated as if it had been restored to the 1970-71 Act register immediately before that Act was repealed.
- “(3) The effect of an order under **subsection (2)** is that the company must be treated as continuing in existence as if it had not been struck off or removed from the register.
- “(4) The Court may make an order if it is satisfied that,—
- “(a) at the time of the striking off or removal, the company was still carrying on business or there was another reason for it to continue in existence; or
- “(b) for any other reason, it is just and equitable to treat the company as if it were not struck off or removed from the register.
- “(5) The Court may also give any directions or make any order that may be necessary or desirable for any or all of the following purposes:



- “(a) treating the company as if it had been restored to the 1970-71 Act register:
  - “(b) assisting the Registrar, by considering the application for re-registration under **section 410**:
  - “(c) ensuring that the re-registration process occurs at a time and in a manner that is reasonably manageable for the Registrar.
- “(6) Any of the following persons may apply:
- “(a) the Registrar:
  - “(b) a person who, at the time the company was struck off or removed, was a director, member, or creditor of the company.
- “(7) No application for an order may be made under this section after 31 December 2041.

*“Transitional provisions for applicable companies*

**“411C Applicable company not nullity**

- “(1) An applicable company must not be treated as a nullity or as ever having been a nullity.
- “(2) **Subsection (1)** applies despite sections 408(1) and 409(3), as those subsections read before commencement of the Companies Amendment Act 2021.

**“411D Applicable company treated as struck off**

An applicable company must be treated as if it had been struck off the 1970-71 Act register immediately before that Act was repealed.

**“411E Property of applicable company vests in Crown**

- “(1) Property of an applicable company that had not been distributed immediately before the company was treated as struck off vests in the Crown.
- “(2) For the purposes of this section, property of an applicable company—
  - “(a) includes leasehold property and all other rights vested in or held on trust for the applicable company; but
  - “(b) does not include property held by the applicable company on trust for any other person.
- “(3) The Minister is not required to give notice that the property has vested in the Crown.
- “(4) Sections 347 to 349 apply with any necessary modifications.

**“411F Property of applicable company re-vests in company after company re-registered**

- “(1) This section applies when an applicable company is re-registered under section 410.
- “(2) Any property of the company that has vested in the Crown under **section 411E** re-vests in the company as at the date it was treated as struck off.

*“Other transitional provision relating to re-registration*

**“411G Company restored to register by Court order**

- “(1) This section applies to a company that—

- “(a) was struck off the 1970-71 Act register and remained struck off when that Act was repealed; but
- “(b) was purportedly restored to the register by Court order after the 1970-71 Act was repealed but before the commencement of this section.
- “(2) The company must be treated as validly re-registered under this Act on and from the date of the relevant Court order and subject to the terms of that order.”

**29 New section 412A inserted (Financial statements for particular accounting period)**

After section 412, insert:

**“412A Financial statements for particular accounting period**

- “(1) This section applies to an accounting period for a company with fewer than 10 shareholders if the accounting period is underway on the commencement of the Companies Amendment Act 2021.
- “(2) In section 163(2), **written notice** means written notice given to the company before the close of 31 March 2022.
- “(3) This section overrides section 163(5).”

**30 Schedule 9 amended**

In Schedule 9, replace clause 22(2)(a) with:

- “(a) have priority over the claims of any person under a security interest to the extent that the security interest is not a security interest that, at the commencement of the liquidation, has been—
  - “(i) perfected under the Personal Property Securities Act 2017; or
  - “(ii) registered under section 72 of the International Companies Act 1981-82; and”

## Part 2 Transitional provision

**31 Transitional provision for financial statement requirements**

- (1) A company is not required to have audited financial statements for an accounting period that ended before the commencement of this Act, unless **subsection (2)** applies.
- (2) A company must have audited financial statements for an accounting period that ended before the commencement of this Act if the shareholders holding not less than 50% of the voting shares in the company, by written notice, require audited financial statements for that period.
- (3) This section applies despite section 162 (as it read before the commencement of this Act).

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This Act is administered by the Ministry of Justice.

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