

## LIMITED LIABILITY COMPANIES



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**A BILL INTITULED**

An Act to provide for the establishment and administration of limited liability companies

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

1. Short Title - This Act may be cited as the Limited Liability Companies Act 2008.
2. Interpretation - In this Act, unless the context otherwise requires -

“articles of organisation” means the articles of organisation filed with the Registrar for the purpose of forming a limited liability company as specified in section 11;

“Board” means the Board appointed pursuant to section 4 of the Financial Supervisory Commission Act 2003;

“business” means any lawful activity, including ownership of real or personal property, whether or not engaged in for profit;

“contribution” means anything of value which a person may contribute to a limited liability company as a prerequisite for or in connection with membership, including cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services;

“Court” means the High Court of the Cook Islands;

“foreign limited liability company” means a limited liability company of similar nature to that herein defined, formed under the laws of any jurisdiction other than the Cook Islands;

“general partner” means a partner in a partnership and a general partner in a limited partnership;

“limited liability company” or “company” means a limited liability company organised and existing under this Act;

“manager” means the person or persons entitled to manage a limited liability company pursuant to section 26;

“member” means a person with an ownership interest in a limited liability company with the rights and obligations specified under this Act;

“membership interest” means a member’s share of the profits and losses of a limited liability company and the right to receive distributions of the limited liability company’s assets;

“membership rights” means all of the rights of a member in a company including membership interest, voting rights and any other right or interest arising from or incidental to being a member whether prescribed in this Act or in an operating agreement or otherwise at law;

“operating agreement” means any valid agreement of all of the members as to the affairs of a limited liability company and the conduct of its business. Except as otherwise provided in this Act, the operating agreement need not be in writing. An operating agreement includes amendments agreed to by all of the members or adopted in such other manner as may be provided in a written operating agreement;

“person” means any natural person, partnership, limited partnership, company, limited liability company, trust, estate, custodian, nominee, trustee, executor, administrator, fiduciary, or any other individual or entity in

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its own or any representative capacity;

“registered office” means the business address of the registered agent on file with the Registrar;

“Registrar” means the Registrar of Limited Liability Companies appointed under section 3.

“trustee company” means a company registered pursuant to the Trustee Companies Act 1981 to carry on business as a trustee company in the Cook Islands and includes a wholly owned subsidiary thereof;

### PART I PRELIMINARY

3. Office and Registrar of Limited Liability Companies - (1) There is hereby established a Limited Liability Companies Office.

(2) The Board shall –

- (a) appoint a Registrar of Limited Liability Companies to carry out the duties and functions vested in the Registrar by or under this or any other Act;
- (b) appoint such Deputy Registrars of Limited Liability Companies and other officers as are required for the purposes of this Act.

(3) The Registrar shall carry out the duties and functions vested in the Registrar by or under this or any other Act.

(4) Any thing by this Act appointed or authorised or required to be done by the Registrar may be done by any Deputy Registrar and shall be as valid and effectual as if done by the Registrar.

(5) All courts, judges and persons acting judicially shall take judicial notice of the signature and seal of the Registrar and of any Deputy Registrar.

(6) For the purpose of ascertaining whether a limited liability company is complying with the provisions of this Act the Registrar may inspect any book, minute book, register or record required by or under this Act to be kept by the limited liability company.

(7) Any person appointed under the terms of subsection (2) who, except for the purposes of this or any other Act, or except in the course of criminal or civil proceedings pursuant to an order of the Court makes a record of, divulges or communicates to any other person any information which he or she possesses or has acquired –

- (a) by reason of carrying out the duties and functions of his or her office; or
- (b) by reason of access afforded or obtained by him or her to any document or register kept by the Registrar or book, minute book, register or record kept by any limited liability company;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding two years in respect of each such offence.

(8) A limited liability company or any manager or registered agent thereof shall, on being required by the Registrar or any person authorised by the Registrar, produce any book, register or record.

(9) No limited liability company or any manager, member or registered agent thereof shall obstruct or hinder the Registrar or any person authorised by the Registrar while exercising any of the powers referred to in subsection (6).

4. Powers of Registrar - The Registrar shall have the powers reasonably necessary to perform the duties required of the Registrar under the provisions of this Act.

5. Lodging documents - (1) Every document required or permitted to be lodged with the Registrar under the provisions of this Act shall be lodged with the Registrar by a trustee company.

(2) Every application to the Registrar for any certificate issued under this Act or for any extract or copy of any document filed by the Registrar shall be made by or through a trustee company.

6. Nature of business - (1) A limited liability company may be organised under this Act for any lawful business in any part of the world.

(2) Without limiting the generality of subsection (1) every limited liability company organised and existing under this Act may –

- (a) sue and be sued, complain and defend, and participate in administrative or other proceedings, in its name;
- (b) purchase, take, receive, lease or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or an interest in it, wherever situated;
- (c) sell, convey, assign, encumber, mortgage, pledge, lease, exchange, transfer, gift directly or in trust as the settlor or otherwise, and otherwise dispose of all or any part of its property and assets;
- (d) lend money to and otherwise assist its property and assets;
- (e) purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in or obligations of other limited liability companies, corporations, associations, general or limited partnerships, or individuals or direct or indirect obligations of any government, state, territory, governmental district, or municipality or of any instrumentality of any of them;
- (f) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;
- (g) lend money for its proper purposes, invest and reinvest its funds, and take and hold real property and personal property for the payment of funds so loaned or invested;
- (h) conduct its business, carry on its operations, and have and exercise the powers granted by this article in any country, state, territory, district, or possession in any part of the world;
- (i) elect managers and appoint agents of the limited liability company and define their duties and fix their compensation;

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- (j) make and alter operating agreements consistent with its articles of organisation or with law for the administration and regulation of the affairs of the limited liability company;
- (k) indemnify a member or manager or former member or manager of the limited liability company as provided in section 31;
- (l) cease its activities and surrender its certificate of organisation;
- (m) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organised;
- (n) become a member of a general partnership, limited partnership, joint venture, company, or similar association or any other limited liability company.

(3) Subject to the limitations provided in this Act and its articles of organisation and operating agreement, every limited liability company shall have the same powers as an individual to do all things necessary or convenient in furtherance of its objectives.

7. Unauthorized Assumption of Powers - Every person who assumes to act on behalf of a limited liability company without authority to do so and without good faith and belief that they have such authority shall be personally liable (if there is more than one such person, jointly and severally liable) for all debts and liabilities incurred by that person whilst so acting.

8. Effect of operating agreement non-waivable provisions - (1) The operating agreement may contain any provisions for the affairs of the limited liability company and the conduct of its business to the extent such provisions are consistent with law. Except as otherwise provided in subsections (2) or (3), an operating agreement shall govern the rights, duties, limitations, qualifications, and relations among the managers, the members, the members' assignees and transferees, and the limited liability company. Such provisions shall prevail over any provision of this Act to the contrary except as set forth in subsection (2).

(2) An operating agreement may not –

- (a) unreasonably restrict a member's right of access to books and records under section 32 or section 48;
- (b) reduce the duty of care under section 27(1);
- (c) amend the obligation to perform duties in good faith under section 27(1); except that the members by agreement may determine the standards by which the performance of the obligation is to be measured, if such standards are not manifestly unreasonable;
- (d) vary any filing requirement under this Act; or
- (e) restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, and the limited liability company without the consent of such persons;
- (f) affect the application to the limited liability company of the provisions of section 34(2);
- (g) be altered in any manner that will affect the applicability of the provisions of section 45 to the limited liability company.

(3) Unless contained in a written operating agreement or other writing approved in accordance with a written operating agreement, no provision of an operating agreement may vary any requirement under this Act that a particular action or provision be reflected in writing.

**PART II**  
**FORMATION**

9. Name - (1) The words “limited liability company” or the abbreviation “LLC” or “L.L.C.” shall be included in the name of every limited liability company formed under the provisions of this Act.

(2) The name of a limited liability company shall not contain any word or phrase which indicates or implies that it is organised for any purposes other than those permitted by this Act and as limited by its articles of organisation.

(3) The name of a limited liability company shall not be the same as or deceptively similar to the name of any of the following -

- (a) any limited liability company which has articles of organisation filed with the Registrar pursuant to section 13;
- (b) any name for which an exclusive right has been reserved in the office of the Registrar pursuant this Act.

(4) This section is not intended to derogate from, or limit the application of, section 52 of the Banking Act 2003.

(5) The name of a limited liability company shall not include the word “insurance”, “assurance” or “annuity” or any other name similar or otherwise that might imply the limited liability company is authorised to carry on any kind of insurance business unless the prior written permission of the Registrar has been obtained.

(6) The provisions of subsection (3) shall not apply if the trustee company files with the Registrar a certified copy of an order of the Court establishing the prior right of the applicant to the use of such name.

(7) A limited liability company which acquires upon a sale, lease, or other disposition to or exchange with another limited liability company, all or substantially all of the assets of that other limited liability company, including its name, may have the name of that limited liability company with one or more words added, altered, or deleted to make such name distinguishable from the name as used by the other limited liability company if that other limited liability company was organised under this Act.

10. Reservation of Name - (1) The exclusive right to the use of a name may be reserved by –

- (a) any person intending to organise a limited liability company under this Act and to adopt that name;
- (b) any foreign limited liability company intending to register in the Cook Islands and adopt that name;
- (c) any person intending to register a foreign limited liability company in the Cook Islands and adopt that name.

(2) To reserve a specified name, a trustee company shall submit an application to the Registrar together with the prescribed fee. If the Registrar finds that the name is available for use the Registrar shall reserve the name for the exclusive use of the

applicant for a period of 3 months. On the payment of the fee such reservation may be renewed for additional periods not to exceed 3 months from the date of such renewal. The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the office of the Registrar a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

11. Formation - (1) A trustee company acting on behalf of one or more persons (and if natural persons 18 years of age or older) who do not reside in the Cook Islands may organise a limited liability company by executing and delivering articles of organisation to the Registrar as specified in section 13. The person or persons on whose behalf the trustee company is acting need not be members of the limited liability company after formation has occurred.

(2) Notwithstanding subsection (1), a trustee company may be a member of a limited liability company including in a trustee capacity or as agent.

(3) A limited liability company shall be a legal entity with separate rights and liabilities distinct from its members and managers. Any estate or interest in property may be acquired, held or conveyed in the name of the limited liability company and title to any estate or interest so acquired shall vest in the limited liability company.

12. Articles of organization - The articles of organisation shall set forth –

- (a) the name of the limited liability company;
- (b) the name and business address of the registered agent for service of process as required by section 18;
- (c) the period of the duration of the limited liability company, which may be perpetual.

13. Effect of filing of articles of organization - (1) A limited liability company is formed upon the filing of articles of organization, or, as specified in such articles, upon a later date, not more than 90 days after the date of filing with the Registrar, provided the Registrar receives the prescribed fee and finds the articles of organisation as delivered conform to this Act. The date of filing shall relate back to the date of delivery, unless the said articles specify a later date. If, for any reason, the Registrar finds that the delivered articles do not conform to this Act, including, but not limited to a failure to enclose the filing fee, there shall be no relation back to the date of delivery. The earliest filing date shall be the date that the articles are delivered to the Registrar in a form which conforms to this Act.

(2) Nothing in this section shall affect the right of the Registrar to institute proceedings to cancel or revoke the articles of organisation or for the involuntary dissolution of the limited liability company, or the right of any aggrieved person to maintain an action to enjoin or obtain other relief for a violation of or failure to comply with the provisions of section 9.

14. Appeal from Registrar - (1) If the Registrar fails to approve any articles of organisation, amendment, or dissolution or any other document required by this Act and declines to file it, he or she shall, within 10 days of its delivery to him or her, give written notice of his or her disapproval to the person or limited liability company delivering the same, specifying the reasons therefor.

(2) Such person or limited liability company may appeal the disapproval to the Court and by filing with such Court an application setting forth a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the Registrar whereupon the matter shall be tried de novo and in camera by the Court, and the Court shall either sustain the action of the Registrar or direct the Registrar to take such



action as the Court deems proper.

(3) Appeals from all final orders and judgments entered by the Court pursuant to this section in review of any ruling or decision of the Registrar may be taken as in other civil actions.

15. Certificate of organisation of limited liability company - Upon being satisfied that articles of organisation conform with this Act and upon receipt of the filing fee, the Registrar shall issue a certificate of organisation of the limited liability company. The fact that the certificate of organisation has been issued by the Registrar is conclusive evidence that the limited liability company is a limited liability company. The articles of organisation filed in respect of that limited liability company shall be evidence of all other facts set forth therein which are required to be set forth in the articles of organisation.

16. Term and renewal of certificate of organization - (1) The first certificate of organisation shall be valid for 12 months from the date of filing and shall be renewable thereafter for further periods of 12 months from each anniversary of the date of filing, upon due lodgment of the report required by section 20 and payment of the prescribed fee, and a renewal certificate shall be issued by the Registrar within 14 days after lodgment of the said report and fee.

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

17. Amendment of articles of organization - (1) The articles of organisation shall be amended when –

- (a) there is a change in the name of the limited liability company;
- (b) there is a false or erroneous statement in the articles of organisation.

(2) Unless otherwise provided in a written operating agreement, an amendment to the articles of organisation is invalid unless approved by written consent of all members.

(3) An amendment to the articles of organisation of a limited liability company shall be signed and verified by a manager and may be signed on behalf of a manager by an attorney-in-fact, and duly authorized by a written power of attorney. Duplicate originals of the amendment shall be delivered to the Registrar for filing accompanied by the prescribed fee.

(4) Unless the Registrar finds that any amendment does not conform to this Act, upon receipt of all prescribed filing fees, the articles of organisation shall be amended effective the date of filing.

(5) At any time after its articles of organisation have been amended a limited liability company may by action of its managers, without necessity of vote of the members, cause to be prepared a document entitled “Restated Articles of Organisation”, which integrates into one document its original articles of organisation and all amendments thereto, and a copy of the restated articles may be filed with the Register in the manner provided for

in section 13.

### **PART III** **ADMINISTRATION**

18. Registered agent to be maintained - (1) Each limited liability company shall appoint and continuously maintain in the Cook Islands a registered agent which shall be a trustee company, for service of process on the limited liability company. The name and business address of the registered agent shall be filed by the registered agent with the Registrar.

(2) If at any time a limited liability company does not have a registered agent in the Cook Islands it shall be deemed suspended and inoperative and subject to the provisions of section 19(5) and section 22.

19. Change of name or business address of registered agent - (1) Within 30 days of any change in the name or business address of the registered agent, a limited liability company shall file a report of such change with the Registrar.

(2) Such report shall be executed by a manager and delivered to the Registrar. If the Registrar finds that the report conforms to the provisions of this Act and if the prescribed filing fee is paid, the Registrar shall file the report in the office of the Registrar, and, upon such filing, any change specified in the report shall become effective.

(3) Any registered agent of a limited liability company may resign as agent by delivering an original and one copy of a written notice thereof to the Registrar and, a copy to the manager. The appointment of the agent shall terminate upon the expiration of 30 days after receipt of the notice by the Registrar. Upon the expiration of such 30 days a limited liability company that has not filed a report replacing the registered agent who resigned shall be deemed suspended and inoperative and subject to the provisions of subsection (4) and section 22. In addition to any other obligations under this Act, reinstatement after action under this section shall include filing such a report to designate a new registered agent.

(4) If a registered agent changes its registered business address, it shall, within 15 days of such change, file a report with the Registrar. The registered agent shall submit such a report for each limited liability company for which it is a registered agent and shall send a copy of the notice given pursuant to subsection (2) to each limited liability company so affected.

(5) Limited liability companies which have been suspended for the preceding 1 year period under the provisions of this section, section 18(2) or section 22 shall be dissolved by operation of law without the necessity of any other action.

20. Limited liability company reports - (1) Each limited liability company shall file at the time of its annual renewal of registration as prescribed by this section, a limited liability company report setting forth -

- (a) the name of the limited liability company and, the place where it is organised;
- (b) the name and business address of the registered agent of the limited liability company.

(2) The information required shall be given as of the date of the execution of the report, and it shall be executed by a manager or registered agent of the limited liability company, or, if the limited liability company is in the hands of a receiver or trustee, by the receiver or trustee on behalf of the limited liability company.

21. Filing of report - If the Registrar finds that a report conforms to the requirements of this Act, the Registrar shall receive and file the same. If the Registrar finds that it does not so conform, he or she shall promptly return the same to the limited liability company for any necessary corrections. No penalty fee for late filing shall be assessed if such report was timely delivered, is corrected to conform to the requirements of this Act, and is returned to the Registrar no later than 30 days from the date the report was delivered or mailed back to the limited liability company.

22. Failure to pay fees and file appropriate reports - suspended limited liability companies - (1) If a limited liability company has failed to pay the fees required by this Act or to file any report or statement required by this Act, the Registrar shall give notice to the limited liability company of such failure to pay or file, or both. Thirty (30) days after the giving of such notice, unless the report or statement with the fee and penalty, if due, has been delivered and paid to the Registrar, such limited liability company shall be suspended.

(2) A limited liability company which is suspended under the provisions of this section, section 18(2), or section 19(3) shall be inoperative and no longer competent to transact business; except that the members of such limited liability company may hold their annual or special meetings of members for the election of managers, and such limited liability company may hold or continue to hold, encumber, sell, or convey real estate and make such reports as are required by this Act. The suspension of such limited liability company shall not take away any remedy against such limited liability company, its members, or its managers for any liability incurred prior thereto.

(3) Until dissolved pursuant to section 19(5) or otherwise, any suspended limited liability company may become reinstated, revived, and operative by –

- (a) paying a prescribed reinstatement fee;
- (b) making and delivering a limited liability company report for the year in which it is to be reinstated and for any prior years for which a report has not been filed;
- (c) paying the late filing penalty; and
- (d) if the limited liability company has been suspended under section 18(2) or section 19(3), making and delivering the report replacing a registered agent and paying the prescribed fee due upon filing such report.

(4) Upon the filing of any such required report and the payment of all such sums due, such suspended and inoperative limited liability company shall thereupon become reinstated, revived, and operative.

23. Service of process - (1) Any process, notice, or demand required or permitted by law may be served upon any limited liability company by delivering a copy thereof to the registered agent of that limited liability company.

(2) Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon the limited liability company in any other manner now or hereafter permitted by law or applicable rules of procedure.

24. Filing, service, and copying fees - The Registrar shall charge and collect fees and other charges which shall be determined and collected pursuant to this Act.

25. Forms to be prescribed by the Registrar - Forms required by this Act shall be prescribed by the Registrar and any document, report or form that must be copied to or filed with the Registrar as required by this Act shall be in electronic form or hardcopy as directed by the Registrar.

#### **PART IV** **MANAGEMENT**

26. Management of limited liability company - (1) Unless otherwise provided in writing in the operating agreement, the management of a limited liability company shall be vested in its members in proportion to their contributions to the capital of the company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members.

(2) If the operating agreement vests management in a manager or managers -

- (a) the operating agreement of the limited liability company may apportion management responsibility or voting power among the several managers, if there are 2 or more, in any manner or upon any basis not inconsistent with this Act;
- (b) the manager or managers, if they are natural persons, shall be 21 years of age or older;
- (c) the manager or managers need not be members of the limited liability company unless the articles of organisation or the operating agreement so require.
- (d) The articles of organisation or the operating agreement may prescribe other qualifications for managers. Nothing in this Act shall prohibit members who are natural persons 21 years of age or older or other persons from serving as managers.

(3) If management is reserved to the members, management of the limited liability company's business and affairs shall be vested in the members, and any reference in this Act to managers shall be deemed to refer to members.

(4) Except as otherwise provided in the operating agreement, a person who is both a manager and a member of a limited liability company has the rights and powers of a manager, is subject to the restrictions and liabilities of a manager, and, to the extent of his membership interest, has the rights and powers of a member and is subject to the restrictions and liabilities of a member.

27. Duties of Manager - (1) A manager of a limited liability company shall perform his duties as a manager in good faith, in a manner he reasonably believes to be in the best interests of the limited liability company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs his duties shall not have any personal liability by reason of being or having been a manager of the limited liability company.

(2) In performing his duties, a manager shall be entitled to rely on information, opinions, reports, or statements of the following persons or groups unless he

has knowledge concerning the matter in question that would cause such reliance to be unwarranted –

- (a) one or more employees or other agents of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented;
- (b) any attorney, public accountant, or other person as to matters which the manager reasonably believes to be within such person's professional or expert competence; or
- (c) a committee upon which he does not serve, duly designated in accordance with a provision of the articles of organisation or the operating agreement, as to a matter within its designated authority, which committee the manager reasonably believes to merit confidence.

28. Manager as agent - (1) A manager shall have no authority to do any act in contravention of either the articles of organisation or the operating agreement.

(2) Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for carrying on in the usual way the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting otherwise lacks the authority to act for the limited liability company and the person with whom he is dealing has knowledge of the fact that he has no such authority.

29. Limited liability company property - Real and personal property owned or purchased by a limited liability company shall be held and owned, and conveyance made, in the limited liability company name. Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more managers of a limited liability company.

30. Business transactions of member or manager with the limited liability company - A member or a manager may lend money to, act as surety for, and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member or manager; except that this section shall not be construed to relieve a manager from any of a manager's duties as specified in section 27.

31. Indemnification of members, managers, employees, and agents - (1) A limited liability company shall indemnify every member and manager in respect of payments made and personal liabilities reasonably incurred by that member or manager in the ordinary and proper conduct of the limited liability company's business or for the preservation of the limited liability company's business or property.

(2) A limited liability company may –

- (a) indemnify and advance expenses pursuant to subsection (1) to an employee or agent of the limited liability company who is not a manager to the same extent as a manager;
- (b) indemnify and advance expenses to an employee or agent of the limited liability company who is not a manager to a greater extent than a manager if consistent with this Act and

if provided for by its articles of organisation, its operating agreement, or in an agreement with that person.

(3) Subject to any provision in an operating agreement to the contrary, a limited liability company may purchase and maintain insurance on behalf of a person who is or was a manager, employee, fiduciary, or agent of the limited liability company or who, while a manager, employee, fiduciary, or agent of the limited liability company, is or was serving at the request of the limited liability company as manager, officer, partner, trustee, employee, fiduciary, or agent of any other limited liability company or any corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the limited liability company would have the power to indemnify such person against such liability under the provisions of this section. Any such insurance may be procured from any insurance company designated by the members of the limited liability company.

32. Records - (1) Every limited liability company shall keep at its registered office –

- (a) a current list of the full name and business, residence, or mailing address of each member and manager;
- (b) a copy of the articles of organisation and all amendments thereto;
- (c) a copy of any operating agreement.

(2) Such records are subject to inspection and copying at the reasonable request, and at the expense, of any member, and shall be maintained for 6 years following the dissolution of the limited liability company.

## **PART V** **DISTRIBUTIONS AND RESIGNATION**

33. Form of contribution - The contribution of a member may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

34. Liability for contributions - (1) A member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if that member is unable to contribute that property or perform those services because of death, disability, or any other reason. If a member does not make the required contribution of property or services, that member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of such contribution that has not been made. This right of the limited liability company is in addition to and not in lieu of any other rights that the limited liability company may have against the member under the operating agreement or applicable law.

(2) The obligation of a member to make a contribution or return money or other property paid or distributed contrary to the provisions of this Act may be compromised only by consent in writing of all the members. Notwithstanding the compromise, a creditor of a limited liability company which extends credit or otherwise acts in reliance on the

original obligation by the limited liability company may enforce the original obligation against the member as an additional principal obligor to the value of the property improperly received by that member or the value of the property, or any property derived from that property, to the member at the time of enforcement of the obligation, whichever is the greater.

(3) No promise by a member to contribute to the limited liability company is enforceable unless set out in writing signed by the member.

35. Sharing of profits, losses and distributions - (1) The profits and losses of a limited liability company shall be allocated among the members and among classes of members on the basis of the value of the contributions made by each member to the extent they have been received by the company and have not been returned.

(2) Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members on the basis of the value of the contributions made by each member to the extent they have been received by the company and have not been returned.

36. Interim distributions - Except as provided in this Part, a member is entitled to receive distributions from a limited liability company before his resignation from the limited liability company and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the operating agreement.

37. Resignation of member - Unless prohibited in a written operating agreement, a member may resign from a limited liability company at any time by giving written notice to all the managers, but, if the resignation violates the operating agreement, the limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to him.

38. Interest of member upon resignation or withdrawal - A member who has resigned or withdrawn shall have no right to participate in the management of the business and affairs of the limited liability company and is entitled only to receive the share of the profits or other compensation by way of income and the return of contributions, to which such member would have been entitled if the member had not resigned or withdrawn.

39. Distribution in kind - A member, regardless of the nature of that member's contributions has no right to demand and receive any distribution from a limited liability company in any form other than cash. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent the asset distributed to him is as a percentage of all the assets distributed to members less than the percentage in which he shares in distributions from the limited liability company.

40. Right to distribution - At the time a member becomes entitled to receive a distribution, that member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

41. Limitation on distribution - A member may not receive a distribution from a limited liability company to the extent that, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their membership interest, would exceed the fair value of the limited liability company assets.

42. Liability upon return of contribution - (1) If a member has received the return of any part of his contribution in violation of the operating agreement or this Act, that

member is liable to the limited liability company for a period of two years thereafter for the amount of the contribution wrongfully returned.

(2) A member receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited liability company below the value of his contribution which has not been distributed to him.

43. Admission of additional members - After the filing of a limited liability company's original articles of organisation, a person may be admitted as an additional member in either of the following ways –

- (a) If he acquires an interest directly from the limited liability company, upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the written consent of all members;
- (b) If he is an assignee of the interest of a member who has the power as provided in a written operating agreement to grant the assignee the right to become a member, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

44. Interest in limited liability company - transferability of interest - The interest of each member in a limited liability company constitutes the personal property of the member. Subject to section 45 and except as otherwise provided in the operating agreement, membership rights in a limited liability company may be transferred or assigned in whole or in part. Subject to section 45 and except as otherwise provided in the operating agreement, an assignor ceases to be a member upon assignment of any of the assignor's membership rights.

45. Rights of Creditor against a member - (1) In this section "Creditor" means any person –

- (a) in whose favour a judgment is issued or recognised by the Court against a member of a limited liability company; or
- (b) who claims to have a general assignment of a member's property whether arising from the intestacy of a member, the bankruptcy of a member or otherwise.

(2) No membership rights, including any membership interest, and any distribution, return of capital or other payment to a member arising from that member's membership rights, shall be capable of being seized, charged or levied upon or taken in execution by or under any form of judicial process or otherwise rendered available for the payment of a member's debts or liabilities, nor shall any membership rights, including any membership interest –

- (a) pass under a general assignment of the member's property;
- (b) become available for the payment of debts of a member under an intestacy; or
- (c) pass to a trustee in bankruptcy upon the bankruptcy of a member.

(3) A Creditor may apply to the Court for a charging order in respect of any membership interest held by member.



(4) Subject to subsection (5) a charging order shall entitle the Creditor to receive any distributions, in relation to that membership interest, in lieu of the member, whether of income or capital, as and when made by the limited liability company.

(5) For the purposes of assessing the sum which may be subject to, and recoverable pursuant to, a charging order the Court shall disregard and exclude any amount which constitutes an award of exemplary, vindictive, retributory or punitive damages (by whatever name), or is an amount of damages arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for loss or damage.

(6) The charging order remedy given by this section shall be the sole and exclusive remedy available to a Creditor in respect of a member's membership rights.

(7) For the avoidance of doubt and without limiting the generality of subsection (6) –

- (a) a charging order shall not be construed to constitute a lien on a member's interest in a limited liability company;
- (b) the Creditor in whose favour a charging order is issued pursuant to this section shall not thereby become an assignee of any membership interest or any part thereof, nor shall that Creditor hold or be entitled to exercise any membership rights in relation to that interest;
- (c) any member holding any membership interest subject to a charging order shall continue to exercise all his membership rights, and obligations in relation to those rights, in all respects as if the charging order had not been issued;
- (d) subsection (6) shall apply whether the limited liability company has a single member or multiple members.

(8) For the avoidance of doubt and without limiting the generality of subsection (6) and subsection (7), a person in whose favour a charging order has been issued shall have no right to –

- (a) interfere in the manager's management of the limited liability company including any sale of its assets;
- (b) liquidate or seize the assets of the limited liability company;
- (c) restrict the business of the limited liability company; or
- (d) dissolve, or cause the dissolution of, the limited liability company.

(9) Except as provided in subsection (10) no interlocutory order including any injunction, or interrogatories, shall be issued, by the Court. against a limited liability company in relation to a claim by a Creditor against a member.

(10) An interim charging order may be made *ex parte* provided however any such order shall be effective for a term not exceeding 30 days from the date it is made. On application to the Court prior to the expiration date of an interim charging order the term of the charging order may be extended on notice for further periods not exceeding 30 days from the date the order is made.

(11) For such period an interim charging order is in place any distributions

made in respect of the membership interest subject to the interim charging order shall be paid into the Court and shall be used to satisfy or partially satisfy any debt owed to a Creditor in whose favour a charging order has been issued pursuant to this section, but otherwise shall be paid out to the member entitled thereto.

(12) Subject to subsection (10) in respect of an interim charging order a charging order shall be non-renewable and shall expire 5 years after the date of its making.

(13) No foreign interlocutory order (including any injunction, or order for discovery or interrogatories) against a limited liability company relating to a claim by a Creditor against a member shall be recognized or given effect by the Court.

(14) Notwithstanding the provisions of any statute, or any rule of law to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than the Cook Islands against a member's membership rights or any part thereof, including a membership interest, shall be in any way entertained, recognised or enforced by the Court to the extent the judgment purports to deprive a member of any membership rights or to charge, mortgage, levy, attach, assign or in any other way to affect that member's enjoyment of those membership rights.

(15) Any member may apply for the discharge of a charging order and the Court –

- (a) shall discharge the charging order where it is satisfied the Creditor has been paid all sums payable under the charging order; and
- (b) may discharge the charging order where it is satisfied the circumstances giving rise to the charging order have changed such that it is just and proper to discharge the charging order.

(16) Where in any proceedings filed by a Creditor in the Court a valuation of a member's membership interest may be relevant to the determination of any matter or issue before the Court –

- (a) the value attributable to that membership interest shall for all purposes be the same as the value of the membership rights of that limited liability company to that member; and
- (b) no regard shall be had to the restrictions contained in subsection (2).

(17) Where a Creditor in whose favour a charging order has been issued pursuant to this section has received a distribution payable to the member whose membership interest has been charged, and an order is made for repayment of that distribution to the limited liability company, the Creditor and not the member shall be liable to make that payment to the limited liability company in the same proportion the repayment required bears to the amount of the distribution the Creditor received.

(18) Nothing in this section shall affect the limited liability company's ability to make calls upon its members where its operating agreement so provides and for the limited liability company to meet that call from a distribution otherwise payable to a member.

46. Deceased or incompetent members who are individuals - dissolved or terminated members who are legal entities - (1) If a member who is an individual dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or property, the member's executor, administrator, guardian, or other legal

representative may exercise all the powers of an assignee or transferee of the member.

(2) If a member is a corporation, trust, or other entity and is dissolved or terminated, the legal representative or successor of the member may exercise all of the powers of an assignee or transferee of the member.

(3) Upon death, incompetency, dissolution, or termination as contemplated in subsections (1) or (2), the member's interest shall be deemed transferred or assigned for purposes of section 44.

47. Liability of members and managers - Members and managers of a limited liability company shall not be personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company.

48. Information and Accounting - A member, but not a creditor of a member of a limited liability company shall have the right to –

- (a) inspect and copy limited liability company records, as provided by section 32;
- (b) obtain from the manager or managers from time to time, subject to such reasonable standards as may be set forth in the operating agreement or otherwise established by the manager or managers, upon reasonable demand for any purpose reasonably related to the member's interest as a member –
  - (i) true and full information regarding the state of the business and financial condition of the limited liability company and any other information regarding the affairs of the limited liability company; and
  - (ii) promptly after becoming available, a copy of the limited liability company's income tax returns for each year; and
- (c) have an accounting of limited liability company affairs whenever circumstances render it just and reasonable.

## **PART VI** **DISSOLUTION**

49. Dissolution - (1) A limited liability company organised under this Act shall be dissolved upon the occurrence of any of the following events –

- (a) by the unanimous written agreement of all members and managers; or
- (b) at the time or upon the occurrence of events specified in writing in the articles of organisation or operating agreement of the limited liability company.

(2) As soon as possible following the occurrence of any of the events specified in this section effecting the dissolution of the limited liability company, the limited liability company shall execute a statement of intent to dissolve in such form as shall be prescribed by the Registrar. The statement of intent to dissolve shall be executed by a

manager of the limited liability company.

50. Execution by judicial act - Any person who is adversely affected by the failure or refusal of any limited liability company to execute and file any amendment, statement of intent to dissolve, or other document to be filed under this Act may petition the Court to direct the execution and filing of the amendment, statement of intent to dissolve, or other document. If the Court finds that it is proper for the amendment, statement of intent to dissolve, or other document to be executed and filed and that there has been a failure or refusal to execute and file such document, it shall order the Registrar to record an appropriate amendment, statement of intent to dissolve, or other document.

51. Filing of statement of intent to dissolve - (1) The statement of intent to dissolve shall be delivered to the Registrar.

(2) The filing of the statement of intent to dissolve shall not affect the limited liability of the members.

52. Effect of filing a statement of intent to dissolve - Upon the filing with the Registrar of a statement of intent to dissolve, the limited liability company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until articles of dissolution have been filed with the Registrar or until a decree dissolving the limited liability company has been entered by the Court.

53. Distribution of assets upon dissolution - In settling accounts after dissolution, the assets of the limited liability company shall be distributed –

- (a) to creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members under section 36 or 38;
- (b) to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 36 or 38; and
- (c) to members of the limited liability company for the return of their contributions and respecting their membership interests in the proportions in which the members share in distributions.

54. Articles of dissolution - When all debts, liabilities, and obligations have been paid and discharged or adequate provision has been made therefor and all the remaining property and assets have been distributed to the members, articles of dissolution shall be executed in duplicate and verified by the person signing the statement, which statement shall set forth –

- (a) the name of the limited liability company;
- (b) that a statement of intent to dissolve the company has been filed with the Registrar and the date on which such statement was filed;

- (c) that all debts, obligations, and liabilities have been paid and discharged or that adequate provision has been made therefor;
- (d) that all the remaining property and assets have been distributed among its members in accordance with their respective rights and interests; and
- (e) that there are no suits pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

55. Filing of articles of dissolution - (1) Articles of dissolution shall be delivered to the Registrar.

(2) Upon the filing of such articles of dissolution, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in this Act. The manager or managers in office at the time of dissolution, of those which remain, shall thereafter be trustees for the members and creditors of the dissolved limited liability company and as such shall have authority to distribute any company property discovered after dissolution, convey real estate, and take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

56. Involuntary dissolution - (1) A limited liability company may be dissolved involuntarily by a decree of the Court in an action filed by the Registrar when he or she believes that –

- (a) the limited liability company procured its articles of organisation through fraud; or
- (b) the limited liability company has continued to exceed or abuse the authority conferred upon it by law.

(2) The Court shall have full power to liquidate the assets and business of a limited liability company -

- (a) in an action by a creditor of the limited liability company –
  - (i) when the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the limited liability company is insolvent; or
  - (ii) when the limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is insolvent;
- (b) upon application by a limited liability company which has filed a statement of intent to dissolve as provided in this Act, to have its liquidation continued under the supervision of the Court;
- (c) when an action has been filed by the Registrar to dissolve a limited liability company and it is established that liquidation of its business and affairs should precede the entry of a

decree of dissolution.

57. Notification of dissolution - (1) When the Registrar believes that a limited liability company has given any cause for dissolution, the Registrar shall concurrently give notice to the limited liability company at its registered office setting out his or her grounds for such belief and the action he or she proposes to take.

(2) If, before action is filed by the Registrar pursuant to section 56(1)(c) or (d), the limited liability company appoints or maintains a registered agent as provided in this Act and files with the Registrar the required statement of change of registered office or registered agent, together with any fees payable, the Registrar shall not file an action against the limited liability company for such cause.

(3) If, after action is filed pursuant to section 56(1)(c) or (d), the limited liability company appoints or maintains a registered agent as provided in this Act and files with the Registrar the required statement of change of registered office and pays all outstanding fees and the Registrar's costs in the action as determined by the Court, the Court shall dismiss the action filed by the Registrar.

58. Venue and process - (1) Every action for the involuntary dissolution of a limited liability company brought by or on behalf of the Registrar shall be commenced and be served as in other civil actions.

(2) If process is returned addressee not found, the Registrar shall cause publication to be made as directed by the Court.

## **PART VII** **TRANSFER OF DOMICILE TO COOK ISLANDS**

59. Definitions - As used in this Part and Part VIII, unless the context otherwise requires, the term -

“foreign domicile” means a jurisdiction other than the Cook Islands in which a limited liability company has been formed;

“articles of organisation” means such document filed in the foreign domicile that serves the same purposes as do articles of organisation in the Cook Islands.

60. When transfer of domicile permitted - Any foreign limited liability company may, subject to and upon compliance with the further provisions of this Part, transfer its domicile into the Cook Islands and may perform the acts described in the provision of this Part, so long as the laws of the foreign domicile do not expressly prohibit such transfer.

61. Application to transfer domicile - Any foreign limited liability company may apply for permission to transfer its domicile to the Cook Islands by filing with the Registrar an application to transfer domicile which shall be executed in accordance with section 63 and filed with the Registrar, together with –

- (a) a certificate evidencing its existence issued by an authorised officer of the foreign domicile; and
- (b) a copy of the articles of organisation, with amendments, if any, certified as a true and correct copy of the original by a

manager of the limited liability company, and if said documents are not in English, a translation thereof under oath of the translator.

62. Contents of application to transfer domicile - An application to transfer domicile must be made through a trustee company and must contain –

- (a) the date on which, and the jurisdiction where, the foreign limited liability company was formed, organised, created or otherwise came into existence;
- (b) the name of the foreign limited liability company;
- (c) the name the foreign limited liability company will be adopting upon being re-domiciled in the Cook Islands;
- (d) a declaration by a manager that the transfer of domicile has been approved by all necessary action required by law and by the limited liability company's articles of organization and operating agreement;
- (e) a declaration by a manager that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing members, creditors, claimants, law enforcement agencies, or other interested parties;
- (f) the name and address of the limited liability company's intended registered agent in the Cook Islands; and
- (g) the amendments of its articles of organisation or their equivalent, that are to be effective upon filing the application to transfer domicile.

63. Execution of application to transfer domicile - The application to transfer domicile shall be in English and shall be signed by a manager or the proposed registered agent in the Cook Islands of the limited liability company or any other person performing functions equivalent to those of a manager, however named or described and who is authorised to sign such application to transfer domicile on behalf of the limited liability company.

64. Transfer and certificate of transfer of domicile - Upon the filing of the application to transfer domicile and the documents referred to in sections 61 and 62, together with the fees prescribed, if the Registrar shall find that such documents are in proper form and satisfy the requirements of this part, and if the name of the limited liability company meets the requirements of section 9, then the Registrar shall deliver to the limited liability company a certificate of transfer of domicile and the limited liability company shall become domiciled in the Cook Islands as a limited liability company of the Cook Islands and shall thereafter be subject to all provisions of this Act and the limited liability company shall be deemed to have commenced its existence on the date the limited liability company was first formed, organised, created or otherwise came into existence. The limited liability company shall promptly adapt its operating agreement, its registration, management and records to comply with this Act.

65. Prior obligations and liabilities - (1) A foreign limited liability company that has been re-domiciled pursuant to this Part is for all purposes the same entity that existed before being re-domiciled.

(2) Upon a limited liability company being re-domiciled in the Cook Islands

- (a) all property owned by the re-domiciling foreign limited liability company is vested in the limited liability company without further act or deed. If deeds or other documents evidencing ownership or title must be filed in any jurisdiction, such document shall be filed only to give notice that the name and form of owner of such property has been changed, and not to evidence or record a change of owner or title holder;
- (b) all debts, liabilities and other obligations of the re-domiciling foreign limited liability company continue as obligations of the limited liability company;
- (c) an action or proceeding pending by or against the re-domiciling foreign limited liability company may be continued as if the company had not re-domiciled and any judgment shall be enforceable against the limited liability company in the Cook Islands;
- (d) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of the re-domiciling foreign limited liability company are vested in the limited liability company; and
- (e) all of the members of the re-domiciling foreign limited liability company continue as members of the limited liability company.

(3) The transfer of domicile of any foreign limited liability company to the Cook Islands shall not be deemed to affect any obligations or liabilities of the foreign limited liability company incurred prior to such transfer.

66. Applicable law - The filing of an application to transfer domicile shall not affect the choice of law applicable to prior obligations and rights of the limited liability company, except that from the date the application to transfer domicile is filed, the laws of the Cook Islands, subject to and including the provisions of this Act, shall apply to the limited liability company to the same extent as if the limited liability company had been originally organised as a Cook Islands limited liability company on that date and title to the limited liability company's assets shall also be governed by Cook Islands law.

### **PART VIII** **TRANSFER OF DOMICILE FROM THE COOK ISLANDS**

67. Departure - Any limited liability company formed, organised, created, or otherwise existing under or subject to this Act may become domiciled in any foreign jurisdiction upon compliance with this Act and the laws of the jurisdiction into which the limited liability company seeks to become domiciled.

68. Certificate of departure - Any limited liability company wishing to domicile in a foreign jurisdiction shall submit for filing with the Registrar a certificate of departure



which shall be executed in the same manner as an application to transfer domicile. The certificate of departure shall set forth –

- (a) the names and addresses of the limited liability company's creditors and the total amount of its indebtedness to such creditors, and the names and addresses of all persons or entities which have notified the limited liability company in writing of a claim in excess of \$1,000 and the total amount of such claims;
- (b) that the intended departure from the Cook Islands and transfer of domicile to a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the limited liability company;
- (c) that the limited liability company at the time of application to the foreign jurisdiction is not in breach of any duty or obligation imposed upon it by this Act or any other law of the Cook Islands;
- (d) that the transfer of domicile to the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing members, law enforcement agencies or other interested parties;
- (e) a consent and agreement by the limited liability company that it may be served with process in the Cook Islands in any proceeding arising out of actions or omissions occurring prior to its departure from the Cook Islands which agreement shall include the appointment of the Registrar as the agent of the limited liability company to accept such service of process and shall set forth an address to which a copy of such process shall be forwarded by mail.

69. Effective date of departure - Upon payment of all fees outstanding in the Cook Islands and upon proper compliance with this Act for transfer of domicile to the foreign jurisdiction, the departing limited liability company shall notify the Registrar as to the effective date of the transfer of domicile outside of the Cook Islands. As of the date of such transfer to the foreign jurisdiction, the limited liability company shall be deemed to have ceased to be a limited liability company domiciled in the Cook Islands.

70. Jurisdiction of Court after departure - Nothing in this Part shall obviate, diminish or affect the jurisdiction of the Court to hear and determine any proceeding commenced therein by or against the limited liability company arising out of actions or omissions which occurred before the limited liability company ceased to be domiciled in the Cook Islands.

#### **PART IX** **MISCELLANEOUS**

71. No action to lie against certain persons - No action shall lie against the Government or any statutory body or authority of the Cook Islands, the Queen's Representative, any Minister, judge or any public official in respect of anything done or

omitted in exercise or purported exercise in good faith by the Queen's Representative, Minister, judge or any public official of his or her functions or duties under this Act.

72. Confidentiality - (1) All proceedings other than criminal proceedings, relating to limited liability companies commenced in the Court either under the provisions of this Act or for the purpose solely of determining the rights or obligations of members, managers or registered agents and any appeal from a decision therein shall be heard *in camera* and except as provided in subsection (2), no details of the proceedings shall be published by any person.

(2) Every decision of the Court in respect of proceedings concerning the application or interpretation of this Act shall be published or reported for the purpose of affording a record of those proceedings, provided that in every case –

- (a) the decision of the Court shall be edited to such extent as shall be necessary to preserve confidentiality in respect of the identity of the limited liability company and every member, manager, registered agent and registered office thereof;
- (b) no such report shall be reported or published unless and until the Court shall have ascertained the views of the parties to the proceedings as to the adequacy of the editing undertaken and has certified to the Registrar of the Court that the decision as edited may be released for publication or reporting.

(3) Where –

- (a) in any proceedings for dissolving a limited liability company the Court is satisfied that the company or any member or manager thereof has failed to comply with any provision of this Act; or
- (b) a limited liability company or any member or manager thereof is convicted by the Court of any offence under this Act,

the Court may, if it thinks fit, order that the records and registers of that company are to be deposited with the Registrar and that such records, books and registers and the entries in the Registrar's registers and records relating to that company are to be opened to public inspection.

(4) Any person or entity who whether in or beyond the Cook Islands with respect to a limited liability company –

- (a) divulges;
- (b) attempts, offers or threatens to divulge;
- (c) incites, abets, counsels or procures any person to divulge; or
- (d) is a party to the divulging of any information or communication in respect of, in relation to or concerning –
  - (i) the membership of or beneficial ownership of any interest in a limited liability company;

- (ii) the identity of any member of a limited liability company or the interest (legal or beneficial) of any such member in such a company;
- (iii) the management of a limited liability company;
- (iv) any of the business, financial or other affairs or transactions of a limited liability company;
- (v) the assets or liabilities of a limited liability company;
- (vi) the existence of, or the contents of any documentation held by the limited liability company, shall be guilty of an offence against this Act.

(5) Notwithstanding subsection (4), an offence shall not be committed where information is divulged or made available to the extent reasonably required in the circumstances –

- (a) by a manager or registered agent of a limited liability company to the Registrar or the Minister for the purpose of complying with, or facilitating the giving effect to of the provisions of this Act;
- (b) by any person making disclosure for the purpose of discharging any duty, performing any function or exercising any power under any Act or regulation;
- (c) by a manager or registered agent of a limited liability company to any person for the purpose of carrying on the business of the company or is otherwise in the best interests of members; or
- (d) by any person to a member, manager or registered agent of a limited liability company or to a trustee company in the course of the performance of the duties of that member, manager or registered agent;
- (e) by a manager or registered agent of a limited liability company to any other person where all of the members of that company consent to such disclosure;
- (f) by a manager or registered agent of a limited liability company to a legal practitioner, accountant, auditor or other advisor for the purpose of obtaining advice for the benefit of the company, that manager or registered agent.

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

(7) In recognition of the desirability of maintaining confidentiality in respect of the activities of all limited liability companies organised under this Act, the Minister shall be obliged to do all things which in his or her opinion are necessary to give full effect to the provisions of this section.

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

73. Guarantee by Crown - The Crown guarantees to every limited liability company that there shall be no compulsory acquisition or expropriation of the property of a limited liability company, or its members, managers, registered agent or investors situated in the Cook Islands except –

- (a) in accordance with the due process of law; and
- (b) for a public purpose defined by law; and
- (c) subject to payment of compensation as defined by law.

74. Form of company registers and records - Any register, records, accounts or documents required to be kept by a limited liability company pursuant to this Act may be kept in written, magnetic, electronic or any other data storage form, provided that the limited liability company can readily produce legible printed evidence of its contents.

75. Registered auditors – (1) The Registrar may appoint any person firm or company to be a registered auditor of limited liability companies.

(2) Except as provided by subsection (3), no person or company shall perform the duties of auditor of a limited liability company unless registered pursuant to subsection (1).

(3) Notwithstanding subsection (2), every person who is approved as an auditor pursuant to section 10 of the International Companies Act 1981-82 shall be deemed to have been appointed as an auditor pursuant to subsection (1).

(4) The Registrar may revoke any appointment made under subsection (1).

(5) The Registrar shall keep a register of registered auditors of limited liability companies.

(6) The annual fee for registration as a registered auditor of limited liability companies shall be prescribed by Order in Executive Council.

(7) No limited liability company or person shall appoint a person or company as auditor of a limited liability company unless the person or company to be appointed auditor has prior to such appointment consented in writing to act as an auditor.

76. Application of other Acts to limited liability companies - (1) Subject to subsection (2), no enactment of the Cook Islands other than this Act and the enactments set out in the First Schedule to this Act, or any regulation, by-law or rule made thereunder shall -

- (a) impose –
  - (i) any liability, duty, responsibility, obligation or restriction;
  - (ii) any fee, impost, tax, levy, dues, duty or excise; or
  - (iii) any fine or penalty on a limited liability company; or
- (b) require –
  - (i) the deposit of any moneys in any public account by;
  - (ii) the filing of any accounts, returns, reports or records by; or
  - (iii) the licensing or registration of a limited

liability company.

(2) Notwithstanding subsection (1), a limited liability company shall not be required to register as a foreign enterprise pursuant to the provisions of the Development Investment Act 1995-96 and shall not be subject to that Act by reason only that it –

- (a) carries on business with another limited liability company;
- (b) carries on business with an international company incorporated pursuant to the International Companies Act 1981-82;
- (c) carries on business with a foreign company registered pursuant to the International Companies Act 1981-82;
- (d) carries on business with an international partnership formed pursuant to the International Partnership Act 1984;
- (e) carries on business with an international trust registered pursuant the International Trusts Act 1984;
- (f) obtains legal or other professional or specialist advice or services;
- (g) obtains accounting advice or has its accounts audited;
- (h) operates a bank account for the purposes of investment or depositing, receiving or transmitting money due or owing by the company, or undertakes transactions with a bank for purposes associated with the company;
- (i) utilises the services of a trustee company;
- (j) undertakes such other activity as may be prescribed by regulation.

(3) Every limited liability company may sue and be sued in the Court and except as provided by this Act, shall be subject to the Judicature Act 1980-81 and to every regulation or rule made under that Act and to all other rules of procedure of the Court whether provided for under or by virtue of enactment or made by the Court in its inherent jurisdiction.

77. Construction and application - (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this Act.

(2) It is the policy of this Act to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) Unless the context otherwise requires, as used herein, the singular shall include the plural and the plural may refer to the singular. The use of any gender shall be applicable to all genders. The captions contained herein are for the purposes of convenience only and shall not control or affect the construction of this Act.

78. Offences and penalty - Every person who –

- (a) does any thing which is prohibited by this Act; or
- (b) omits to do any thing that is required by or directed by this Act; or
- (c) knows or ought to have known he or she was making or who without due inquiry at the relevant time makes any material misrepresentation in any document required to be filed with the Registrar under this Act

commits an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 1 year, or to both such fine and imprisonment.

79. Regulations - Without limiting the power of the Registrar to prescribe forms the Queen's Representative may by Order in Executive Council promulgate regulations in respect of any matter contemplated by this Act or for the due administration thereof, including the fees and charges to be paid under this Act.

80. Consequential Amendments – The Acts set out in the Second Schedule are amended in the manner set out therein.

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This Act is administered by the Financial Supervisory Commission

**RAROTONGA, COOK ISLANDS:** Printed under the authority of the Cook Islands Government – 2008

**FIRST SCHEDULE**

(Enactments applying) [s.76]

Trustee Companies Act 1981-82  
 Development Investment Act 1995-96  
 International Companies Act 1981-82  
 International Partnership Act 1984  
 International Trusts Act 1984  
 Financial Supervisory Commission Act 2003  
 Criminal Procedure Act 1980-81  
 Proceeds of Crime Act 2003  
 Banking Act 2003  
 Mutual Assistance in Criminal Matters Act 2003  
 Extradition Act 2003  
 Financial Transactions Reporting Act 2004  
 Terrorism Suppression Act 2004  
 Crimes Act 1969  
 Shipping Act 1998

**SECOND SCHEDULE**

(Enactments amended) [s.80]

International Trusts Act 1984	By inserting after clause (d) of subsection (2) of section 27B- “(dd) carries on business with a limited liability company under the provisions of the Limited Liability Companies Act 2008”
Financial Supervisory Commission Act 2003	By adding “Limited Liability Companies Act 2008” to the First Schedule
Financial Transactions Reporting Act 2004	By inserting the words “or the Limited Liability Companies Act 2008” immediately after the words “International Companies Act 1981-82” in paragraph (y) of the definition of Reporting Institution in Section 2.
	By adding sub-paragraph (g) to Section 36 as follows:

“(g) Limited Liability Companies Act 2008”

International Companies Act 1981-82

By inserting the words “or the Limited Liability Companies Act 2008” immediately after the words “or the International Partnership Act 1984” in sub-paragraph (a)(iv) of the definition of Local Entity in section 249A (1).

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