NIUE LAWS

TAU FAKATUFONO-TOHI A NIUE

LEGISLATION AS AT DECEMBER 2006

VOLUME 1

TOHI 1

CONSTITUTION

STATUTES
A – COMPANIES

GOVERNMENT OF NIUE, ALOFI
2006

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by Professor AH Angelo with the assistance of Nicola Scott

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FAKATUFONO NIUE

FOREWORD

It is with considerable pride that I present this consolidated collection of the laws of Niue to the Speaker and Members of the Assembly, to the members of the Niue Public Service, to my colleagues in Government, and to the people of Niue.

This is the first ever statement of Niue's identity through a collection of its contemporary law. Following the enactment of the Constitution in 1974, most of our laws continued in their pre-1974 form without adaptation to the changed status of Niue. The passage of time has shown many of those laws to be irrelevant, inappropriate or difficult of interpretation.

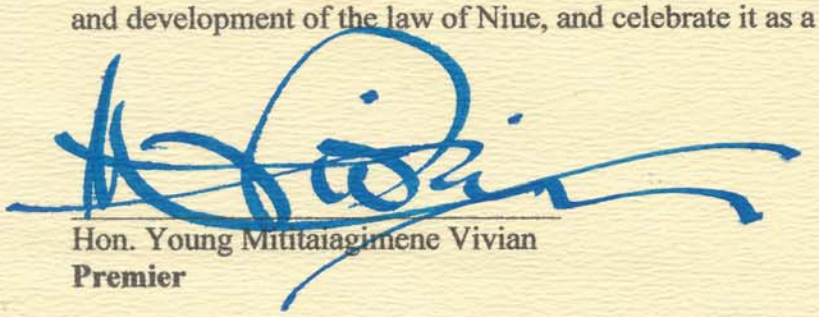
We now have in these volumes a statement which reflects our current situation: the references are to Niue officials and to Niue institutions. We now have a clear basis from which to move for reform of our laws.

Members of the Assembly need no longer be in doubt as to what is the law of Niue and what is not. To the extent that what is in these volumes is considered inappropriate to Niue in the 21st century, it is for Government, the Members of Assembly, and the nation as a whole to make reforms to reflect what is appropriate.

Getting to this stage has been made possible by grants of assistance from NZAID and by the volunteer effort of many people both in Niue and in New Zealand. I wish to record our sincere thanks to those who have participated in this project and contributed to its success. To name a few: Togia Sioneholo who oversaw the initiation of the Niue Legislation Review, to Peleni Talagi who guided the major law revision Bills through the legislative process, to Sinahemana Hekau who has managed the project through to its completion, and to Professor Angelo and his team.

The laws in these volumes have been prepared and printed under the Reprint of Statutes Act 1991 and, consistent with Cabinet decision, have the status accorded by that Act.

I commend this collection of laws of Niue to all concerned with the administration and development of the law of Niue, and celebrate it as a signal of our nationhood.



Hon. Young Mitiataiagimene Vivian
Premier

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EDITORIAL NOTE

This is the first ever presentation of the law of Niue in a consolidated form. There have been earlier collections of the legislation of Niue, but most have been partial in the sense that they did not include all of the legislation. Even the major collection of 1990 was a reproduction of texts rather than an edited contemporary statement of the Niue law. None of the earlier collections had statutory authority.

Since 1990, the occasional collections of enacted legislation have enabled reasonable access to the law of Niue. What has been lacking has been a post-self-determination statement of the law of Niue in a consolidated and up-to-date form with all the editing necessary to take account of the separation from the Cook Islands, the impact of the 1974 Constitution, and the post-1974 devolutions of authority and changes in the names of public service positions.

The groundwork for an official statement of the law of Niue was laid in 1991 with the passing of the Reprint of Statutes Act 1991. Further action, however, was not taken until 2001 with the establishment of a Legislation Review Project. This review had the task of addressing those areas of Niue law where the ordinary legislation was incompatible with the Constitution, where regulations were ultra vires current statutes, and where existing law had ceased to be relevant because of changes of circumstance in Niue.

The review priority was to establish a clear statement of the existing operative law. To that end, a new Interpretation Act was prepared and passed by the Niue Assembly in 2004 and, reflecting the initial results of the review, the Legislation (Correction of Errors and Minor Amendments) Act 2004 was also promulgated. These Acts were followed by the Minor Amendments No 2 Act 2006.

The support of the Assembly, by its clearing away of the incorrect, the obsolete, and the removal of ambiguities, meant an accessible set of the laws could be published. The present volumes are the result. They provide the basis for a thorough-going reform of the legislation of Niue in areas given priority by the Government.

The research done for the review disclosed a number of anomalies which have mostly been attended to by amending legislation or reform legislation since 2003. Some anomalies remain and these are under active consideration by the Government as part of its legislation programme.

Of particular historical interest in Niue law has been the interrelationship of the law of Niue and the law of New Zealand. Until 1974, much of the legislation for Niue came in the form of Acts of the New Zealand Parliament. Most of those Acts were either not adapted to the Niue circumstance, or were inadequately adapted. The result was a system of some awkwardness and uncertainty. Most of the uncertainties have now been resolved by Niue legislative action: In some cases by adapting the law to the Niue administrative structures, in other cases by making clear whether the legislation was a long arm jurisdiction of New Zealand or whether the statute was a law of Niue. Additionally, there were a number of examples of New Zealand statutes being extended to Niue as Niue law by way of subsidiary enactment. The Marine Pollution Act 1974 and the Sea Carriage of Goods Act 1940 are examples of this pattern. They both now appear as subsidiary

legislation made under the Niue Act 1966. This is apparently anomalous because it is subsidiary legislation which is designated as an Act and which, in the case of the Marine Pollution Act 1974, is legislation which has subsidiary legislation of its own. For the future therefore, the Niue Government may alter these laws by way of regulation or, alternatively, the Assembly may repeal them and replace them with a new statute. The matter was complicated between 1974 and 2004 by the fact that the general regulation-making power in the Niue Act 1966 was abrogated at the time of self-government. It was therefore necessary to amend the Niue Act 1966 to insert a new regulation-making power.

Exceptionally, some legislation has not been reproduced in these volumes. Where that is the case, the text is annotated at the appropriate page. The prime examples of omissions are Acts which deal with treaty arrangements. In such cases, the texts are not of everyday relevance to the operation of the legal system and are readily available for public access on the internet. Other examples of omissions are those substantial bodies of law which deal in detail with particular areas of administration: The National Building Code (available from the Director of Works), the Customs Tariff (available from the Revenue Manager, Customs) and the Sanitary Regulations of the WHO (available in their latest form on the internet).

In former times, a number of laws of Niue included the word 'Niue' in their title, presumably to distinguish that piece of legislation from similar legislation in another part of the Realm of New Zealand. In this collection, the word 'Niue' has usually been omitted and each of the Acts affected now appears under its key word in the appropriate alphabetical place eg the Dogs Act, the Fireworks Act, the General Laws Act, the Inquest Act, the Manufactured Goods Tax Act, the Public Health Act, the Transport Act, and the Village Councils Act.

This collection has been prepared under the Reprint of Statutes Act 1991 and aims to present the law using a uniform layout and uniform formulae.

Reform of the law of Niue and improvements for its accessibility will build on this publication and continue in the context of the Legislation Review Project.

AH Angelo
NM Scott

PART 1

LEGISLATION TABLES

TABLE OF CONSTITUTIONAL INSTRUMENTS

This table lists the key texts of the Niue Constitution as at 1 December 2006.

Title	Instrument Amendment
Constitution of Niue	**Schedule to 1974/42 (NZ)** 1992/162
Niue Constitution Act 1974	**1974/42 (NZ)**
Letters Patent constituting the Office of Governor-General of New Zealand	**SR 1983/225** SR 1987/8 SR 2006/224
Seal of New Zealand Proclamation	SR 1977/29

TABLE OF ACTS IN FORCE

This table lists the statutes in force in Niue as at December 2006.

Unless indicated by 'G', '(NZ)', 'SR', or otherwise, references are to Niue statutes.'' G 1970, III, 2318' indicates the *New Zealand Gazette*, 1970, vol III, p 2318.

Title	**Main Instrument** Amendments
Administration Act 1969	**1969/52 (NZ)** 1970/45 (NZ) 1972/43 (NZ) 1972/130 (NZ) 1973/47 (NZ) 2004/270
Adoption Act 1955 (ss 16(1), 16(2), 20(6) only) [Niue Amendment Act (No 2) 1968 (NZ), ss 99, 100]	**1955/93 (NZ)**
Agriculture Quarantine Act 1984	**1984/99** 1989/136 2004/270
Appropriation (Annual) Act 2006	**2006/277**
Arbitration Act 1908	**1908/8 (NZ)** 1915/13 (NZ) 1952/27 (NZ) 2004/270
Arbitration Amendment Act 1938	**1938/6 (NZ)** 2004/270
Arbitration Clauses (Protocol) and the Arbitration Foreign Awards) Act 1933	**1933/4 (NZ)** 1957/44 (NZ) 2004/270
Archives Act 1992	**1992/166**
Arms Act 1975	**1975/4** 1998/234 cp reg 2005/1

Assembly Members' Superannuation Act 1984 **1984/96**

Atomic Energy Act 1945 **1945/41 (NZ)**
[s 3] 1957/12 (NZ)
1957/87 (NZ)
1961/54 (NZ)
1961/68 (NZ)
1964/27 (NZ)
1971/25 (NZ)
1976/26
1977/30
2004/270

Aviation Crimes Act 1973 **1973/82**
1993/173
1999/250
2004/270

Bills of Exchange Act 1908 **1908/15 (NZ)**
1946/40 (NZ)
1960/17 (NZ)
1963/75 (NZ)
1971/21 (NZ)
2004/270

Broadcasting Act 1989 **1989/132**
1997/225
2004/270
2006/279

Building Code Act 1992 **1992/165**
2006/279

Business Licence Act 1997 **1997/216**

Carriage by Air Act 1967 **1967/151 (NZ)**
[s 3(2)] 1968/39 (NZ)
1971/52 (NZ)
1972/43 (NZ)
1973/6 (NZ)
1974/43 (NZ)
2004/270
2006/279

Census Act 1971 **1971/68**
1976/21
2004/270
2006/279

Chattels Transfer Act 1924 **1924/49 (NZ)**
G 1925 II 1517
G 1925 III 3055
G 1925 III 3353
1925/21 (NZ)
G 1926 II 1805
G 1928 II 2465
G 1930 II 1509
1931/34 (NZ)
G 1933 III 2734
G 1935 III 2275
1936/58 (NZ)
SR 1938/49
1939/39 (NZ)
1940/18 (NZ)
SR 1940/311
1943/20 (NZ)
1945/40 (NZ)
SR 1950/68
1952/25 (NZ)
SR 1953/45
1953/79 (NZ)
SR 1953/149
1954/50 (NZ)
SR 1954/78
SR 1955/148
SR 1956/146
SR 1957/33
SR 1960/85
1961/75 (NZ)
SR 1962/7
SR 1962/47
1963/78 (NZ)
1964/27 (NZ)
SR 1965/26
1967/60 (NZ)
SR 1968/87
1969/71 (NZ)
SR 1969/110
SR 1969/253
1970/29 (NZ)
SR 1970/244
1971/147 (NZ)
1972/130 (NZ)
1973/52 (NZ)
2004/270
2006/279

Cheques Act 1960 **1960/17 (NZ)**
2004/270

Child Allowance Act 1995 **1995/203**
2004/272

Citizenship Act 1977 **1977/61 (NZ)**
[s 29; art 36 Constitution]

Civil Aviation Act 1999 **1999/250**
2006/279

Civil List Act 1999 **1999/248**
2001/255
2004/265

Communications Act 1989 **1989/131**
2000/251

Commissions of Inquiry Act 1968 **1968/50**
2004/270

Companies Act 2006 **2006/275**
Reg 2006/2

Constitutional Polls Act 1977 **1977/28**
1992/161

Consular Privileges and Immunities Act 1971 **1971/11 (NZ)**
[s 12] 1974/43 (NZ)
2004/270

Continental Shelf Act 1964 **1964/28 (NZ)**
[s 9] 1964/27 (NZ)
1965/11 (NZ)
1972/4 (NZ)
1974/43 (NZ)
2004/270

Crimes against Internationally Protected Persons and Hostages Act 1984 **1984/86**

Crown Proceedings Act 1950	**1950/54 (NZ)**
	1952/35 (NZ)
	1952/51 (NZ)
	1952/56 (NZ)
	1956/47 (NZ)
	1958/61 (NZ)
	1961/68 (NZ)
	1962/19 (NZ)
	1962/120 (NZ)
	1963/38 (NZ)
	1964/27 (NZ)
	1969/74 (NZ)
	1972/130 (NZ)
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Customs Act 1966	**1966/19 (NZ)**
	1964/27 (NZ)
	1967/1 (NZ)
	1967/137 (NZ)
	1968/31 (NZ)
	1968/39 (NZ)
	1969/137 (NZ)
	1970/28 (NZ)
	1970/137 (NZ)
	1971/38 (NZ)
	1971/42 (NZ)
	1972/7 (NZ)
	1973/6 (NZ)
	1973/110 (NZ)
	1974/4 (NZ)
	1974/18 (NZ)
	1982/77
	2004/270
	2006/279
Customs Tariff Act 1982	**1982/77**
	1988/129
	1992/164/s4
Deaths by Accidents Compensation Act 1952	**1952/35 (NZ)**
	1961/6 (NZ)
	1964/40 (NZ)
	1969/18 (NZ)
	1972/43 (NZ)
	2004/270

Departure Tax Act 1996 **1996/212**

Development Investment Act 1992 **1992/164**

Diplomatic Privileges and Immunities Act 1968 **1968/36 (NZ)**
[s 25(1)] 1969/78 (NZ)
1971/11 (NZ)
1971/96 (NZ)
1974/43 (NZ)
2004/270

Dogs Act 1966 **1966/35**
1966/39
1982/79
1974/93
2004/270

Domestic Fishing Act 1995 **1995/199**

Education Act 1989 **1989/130**
1997/229

Electric Power Supply Act 1960 **1960/6**
2004/270

Entry, Residence and Departure Act 1985 **1985/106**
1989/142
1995/201

Environment Act 2003 **2003/264**
2006/279

Extradition Act 1965 **1965/44 (NZ)**
[Niue Act, s 320] 1964/27 (NZ)
1966/39 (NZ)
1967/54 (NZ)
1967/75 (NZ)
1969/17 (NZ)
1969/76 (NZ)
1969/78 (NZ)
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1973/82
1975/116 (NZ)
1984/86
1998/242

Film and Public Entertainment Act 1979	**1979/45** 1984/95 1992/169 2004/270
Financial Transactions Reporting Act 2006	**2006/278**
Fireworks Act 1958	**1958/56**
Food Control Act 1981	**1981/70**
Fugitive Offenders Act 1881 [Crimes against Internationally Protected Persons and Hostages Act 1984, s 16]	**44 & 45 Vict, c 69 (UK)** 5 & 6 Geo 5, c 39 (UK) SR & O 1922/77 (UK) 1976/2 (NZ)
General Agreement on Tariffs and Trade Act 1948	**1948/1 (NZ)** 1961/57 (NZ) 1966/19 (NZ)
General Laws Act 1968	**1968/52** 2004/267
Geneva Conventions Act 1958 [s 10]	**1958/19 (NZ)** 1961/68 (NZ) 1964/27 (NZ) 1964/70 (NZ) 1965/1 (NZ) 1969/78 (NZ) 1971/53 (NZ) 1974/43 (NZ)
Government Loans Act 1980	**1980/56**
Guardianship Act 1968	**1968/63** 2004/270 2006/279
Income Tax Act 1961	**1961/9** 1964/20 1965/29 1967/46 1977/31 1978/41 1984/83 1987/118 1988/126 1992/164/s4

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	1994/181/s7
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	2004/270
Incorporated Societies Act 1908	**1908/212 (NZ)**
	1920/50 (NZ)
	1922/27 (NZ)
	1930/17 (NZ)
	1951/38 (NZ)
	1953/80 (NZ)
	1964/27 (NZ)
	1965/88 (NZ)
	1971/43 (NZ)
	1971/51 (NZ)
	2004/270
International Finance Agreements Act 1961	**1961/3 (NZ)**
	1966/25 (NZ)
Interpretation Act 2004	**2004/269**
Inquest Act 1964	**1964/23**
	1975/13
Land Act 1969	**1969/57**
	1977/30
	1984/94
	2004/269
	2004/270
Liquor Act 1975	**1975/2**
	1980/53
	1991/150
	1997/226
	1998/239
Manufactured Goods Tax Act 1964	**1964/21**
	1967/47
	1969/58
	1971/69
	1981/69
	2004/270
Marine Insurance Act 1908	**1908/112 (NZ)**
	1960/11 (NZ)

Mercantile Law Act 1908 **1908/117 (NZ)**
1922/25 (NZ)
1938/6 (NZ)
1948/66 (NZ)
1950/65 (NZ)
2004/270

Merchandise Marks Act 1954 **1954/43 (NZ)**
1954/76 (NZ)
SR 1955/101
1961/68 (NZ)
1961/123 (NZ)
1964/27 (NZ)
1972/107 (NZ)
2004/270

Mining Act 1977 **1977/30**

Minors' Contracts Act 1969 **1969/41 (NZ)**
1970/88 (NZ)
1970/137 (NZ)
1971/111 (NZ)
1972/95 (NZ)
2004/270

Misuse of Drugs Act 1975 **1975/116 (NZ)**
[s 41; Niue Act, s 689A]

Misuse of Drugs Act 1998 **1998/243**

Mosquito Control Act 1980 **1980/63**
2004/270

Mutual Assistance in Criminal Matters Act 1998 **1998/244**
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National Disaster Relief Fund Act 1980 **1980/61**

New Zealand Representative Act 1981 **1981/69**

Niue Act 1966 **1966/38 (NZ)**
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1964/27 (NZ)
1967/38 (NZ)
1968/15 (NZ)
1968/132 (NZ)
1969/16 (NZ)
1969/17 (NZ)

1969/205 (NZ)
1969/232 (NZ)
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Niue Certification Authority Act 1978	**1978/36**
Niue Cultural Council Act 1986	**1986/109**
Niue Development Bank Act 1993	**1993/189** 1996/208
Niue Development Bonds Act 1994	**1994/181** 1994/194 2006/279
Niue Flag Act 1975	**1975/16** 2006/279
Niue Philatelic and Numismatic Act 1996	**1996/206** 2003/262
Niue Trust Fund Act 2004	**2004/266**
Occupiers Liability Act 1962	**1962/31 (NZ)** 2004/270
Partnership Act 1908	**1908/139 (NZ)** 1947/60 (NZ) 1965/124 (NZ) 2004/270 2006/279
Partnership Application Act 1994	**1994/180**
Pensions and Benefits Act 1991	**1991/157** 1995/202 2001/256 2004/271
Pesticides Act 1991	**1991/158**
Pig Control Act 1998	**1998/231**
Price Control on Imported Goods for Resale in Niue Act 1975	**1975/5** 1991/152 2004/270

Proceeds of Crime Act 1998 **1998/245**

Property Law Act 1952 **1952/51 (NZ)**
1953/4 (NZ)
1955/94 (NZ)
1956/61 (NZ)
1957/39 (NZ)
1958/37 (NZ)
1959/31 (NZ)
1963/60 (NZ)
1964/27 (NZ)
1965/16 (NZ)
1967/111 (NZ)
1968/101 (NZ)
1969/16 (NZ)
1969/52 (NZ)
1970/137 (NZ)
1971/51 (NZ)
1971/121 (NZ)
2004/270

Public Emergency Act 1979 **1979/51**

Public Health Act 1965 **1965/24**
1980/63
1980/64
1996/209
2004/270

Public Notaries Act 1998 **1998/236**

Public Revenues Act 1959 **1959/1**
1974/89
1989/138
1989/144
1990/144
1991/159
2004/269
2004/270
2006/279

Public Service Savings and Loan Society Act 1980 **1980/55**
2004/270

Race Relations Act 1972 **1972/77**
2004/270
2006/279

Reprint of Statutes Act 1991	**1991/154** 2004/270
Royal Titles Act 1974 [s 3]	**1974/1 (NZ)**
Sale of Goods Act 1908	**1908/168 (NZ)** 1956/23 (NZ) 1961/98 (NZ) 1969/41 (NZ) 1971/80 (NZ)
Seal of New Zealand Act 1977 [s 7]	**1977/1 (NZ)**
Territorial Sea and Exclusive Economic Zone Act 1997	**1997/220** 2006/279 2006/281
Terrorism Suppression and Transnational Crimes Act 2006	**2006/280**
Tourist Authority Act 1995	**1995/200** 1997/224 2003/263
Transport Act 1965	**1965/30** 1976/24 1977/33 1982/79 1990/148 1990/149 1996/213 1997/221 2004/270
Trustee Act 1956	**1956/61 (NZ)** 1956/63 (NZ) 1957/36 (NZ) 1957/37 (NZ) 1960/101 (NZ) 1962/107 (NZ) 1963/21 (NZ) 1963/46 (NZ) 1964/9 (NZ) 1964/27 (NZ) 1964/74 (NZ)

	1965/22 (NZ) 1965/7 (NZ) 1968/24 (NZ) 1968/43 (NZ) 1969/16 (NZ) 1969/52 (NZ) 1969/110 (NZ) 1970/5 (NZ) 1971/51 (NZ) 1971/137 (NZ) 1974/8 (NZ) 1974/15 (NZ) 1974/19 (NZ) SR 1974/109 2004/270
Trustee Companies Act 1994	**1994/183**
Trusts Act 1994	**1994/182** 1994/194
United Nations Act 1946 [s 4]	**1946/7 (NZ)** 1961/68 (NZ) 1964/27 (NZ) 2001/257 2004/270
Village Councils Act 1967	**1967/41** 2004/270
Visiting Forces Act 1939 [s 7]	**1939/36 (NZ)** 1957/32 (NZ) 1961/68 (NZ) 1961/107 (NZ) 1971/52 (NZ) 2004/270
Water Resources Act 1996	**1996/209** 2006/279
Wildlife Act 1972	**1972/74**
Wills Act 1837	**1 Will IV (UK)**
Wills Act Amendment Act 1852	**15 & 16 Vict, c 24 (UK)**
Wreck and Salvage Act 1968	**1968/53** 2004/270

CHRONOLOGICAL TABLE OF STATUTES

This table lists the statutes enacted by the Island Council of Niue from 1916 to 1959, by the Niue Island Assembly from 1959 to 1974, and by the Niue Assembly from 19 October 1974 to 1 December 2006. It records how the enactments have been affected by subsequent legislation and lapse of time.

All references are to Acts of the Niue Assembly unless indicated by (NZ).

Year No.	Title	Status
1916		
1	Copra	Repealed by 1969/60
2	Traders' Hours of Business	Repealed by 1958/55
3	Fish Protection	Repealed by 1965/32
4	Traffic Regulation	Repealed by 1950/41
5	Dog Registration	Repealed by 1966/35
6	Aid to Revenue	Repealed by 1945/36
1917		
7	Aid to Revenue	Amended 1916/6
8	Road-Cleaning	Repealed by 1965/30
9	Coconut Plantations	Repealed by 1926/27
1918		
10	Sales of Coconuts Prohibition	Repealed by 1969/60
11	Emigration	Repealed by 1923/19
12	Sanitation	Repealed by 1965/24
1919		
13	Education Regulations Extension	Disallowed[1]
14	Suppression of Immorality	Repealed by 1968/52
15	Public Health	Repealed by 1965/24
1920		
16	Aid to Revenue Continuance	Repealed by 1945/36
17	Traders' Hours of Business	Amended 1916/2

[1]Disallowed by the Governor-General pursuant to the Cook Islands Act 1915 (NZ), s 88, by notice published in the *New Zealand Gazette* 20 May 1920, 1567.

1923		
18	Aid to Revenue Continuance	Repealed by 1945/36
19	Emigration Repeal	Spent
20	Water-Supply	Repealed by 1965/24
21	Fish Protection	Disallowed[2]
22	Debt Limitation	Repealed by 1967/43
1924		
23	Daylight-Saving	Repealed by 1926/25
1926		
24	Aid to Revenue Continuance	Repealed by 1945/36
25	Daylight-Saving Repeal	Spent
26	Water-Supply	Amended 1923/20
27	Planting of Lands	Repealed by 1963/18
1927		
28	Traders' Hours of Business	Amended 1916/2
29	Permit	Repealed by 1969/55
30	Traffic Regulation	Amended 1916/4
1931		
31	Aid to Revenue Continuance	Repealed by 1945/36
1936		
32	Aid to Revenue Continuance	Repealed by 1945/36
1941		
33	Aid to Revenue Continuance	Repealed by 1945/36
1943		
34	Fish Protection	Amended 1916/3
35	Fish Protection (No 2)	Amended 1916/3
1945		
36	Aid to Revenue	Repealed by 1956/52
1949		
37	Cinematograph	Repealed by 1979/45
38	Traders' Hours of Business	Amended 1916/2
1950		
39	Curfew	Repealed by 1950/40
40	Curfew	Repealed by 1968/52
41	Motor Vehicles	Repealed by 1965/30

[2]Disallowed by the Governor-General pursuant to the Cook Islands Act 1915 (NZ), s 88, by notice published in the *New Zealand Gazette* 27 September 1923, 2516.

42	Bicycle Traffic	Repealed by 1965/30
43	Methylated Spirits	Repealed by 1965/24
44	Mosquito Control	Repealed by 1965/24
1955		
45	Copra	Amended 1916/1
46	Contagious and Infectious Diseases	Repealed by 1965/24
47	Manufacture and Sale of Food	Repealed by 1965/24
1956		
48	Permit	Amended 1927/29
49	Motor Vehicles	Amended 1950/44
50	Livestock	Repealed by 1967/44
51	Bicycle Traffic	Amended 1950/42
52	Aid to Revenue	Repealed by 1965/25
53	Manufacture and Sale of Food	Amended 1955/47
1958		
54	Public Holidays	Repealed by 1961/11
55	Traders' Hours of Business	Repealed by 1965/27
56	Fireworks	
57	Dog Registration	Amended 1916/5
58	Aid to Elderly People	Repealed by 1965/25
1959		
59	Building Permits	Repealed by 1992/165
60	Motor Vehicles	Amended 1950/41
1	Public Revenues	
2	Appropriation	Repealed by 1959/5
3	Public Entertainments	Repealed by 1960/8
4	Building Permits	Amended 1959/59
5	Appropriation	Expired
1960		
6	Electric Power Supply	
7	Appropriation	Expired
8	Public Entertainments	Repealed by 1979/45
1961		
9	Income Tax	
10	Aid to Revenue	Amended 1957/52
11	Public Holidays	Repealed by 2004/269
12	Appropriation	Expired
1962		
13	Liquor Control	Repealed by 1975/2
14	Appropriation	Expired
14A	Supplementary Appropriation	Expired

15	Purchase Tax	Repealed by 1964/21
16	Export Duty	Repealed by 1971/71
1963		
17	(Bill not passed)	
18	Planting of Land	Repealed by 2004/270
19	Appropriation	Expired
19A	Supplementary Appropriation	Expired
1964		
20	Income Tax	Amended 1961/9
21	Manufactured Goods Tax	
22	Appropriation	Expired
23	Inquest	
1965		
24	Public Health	
25	Aid to Revenue Tax	Repealed by 1984/83
26	Appropriation	Expired
27	Hours of Business	Repealed by 1997/216
28	Immigration	Repealed by 1985/106
29	Income Tax	Amended 1961/9
30	Transport	
31	Cinematograph	Amended 1949/37
32	Fish Protection	Repealed by 1995/199
1966		
33	Assembly	
34	Civil List	Repealed by 1968/51
35	Dogs	
36	Development	Repealed by 1984/94
37	Appropriation	Expired
38	Development	Amended 1966/69
39	Dogs	Amended 1966/35
1967		
40	Regulations	Repealed by 2004/269
41	Village Councils	
42	Immigration	Amended 1965/28
43	Debt Limitation	Repealed by 1971/65
44	Impounding	Repealed by 1998/233
45	Aid to Revenue Tax	Amended 1965/25
46	Income Tax	Amended 1961/9
47	Manufactured Goods Tax	Amended 1964/21
48	Appropriation	Expired

1968		
49	Appropriation	Expired
50	Commissions of Inquiry	
51	Civil List	Repealed by 1972/79
52	General Laws	
53	Wreck and Salvage	
1969		
54	Supplementary Appropriation	Expired
55	Departure	Repealed by 1985/106
56	Appropriation	Expired
57	Land	
58	Manufactured Goods Tax	Amended 1964/21
59	Development	Amended 1966/36
60	Copra	Repealed by 2006/279
1970		
61	Supplementary Appropriation	Expired
62	Tourist Board	Repealed by 1995/200
63	Appropriation	Expired
1971		
64	Business Licences	Repealed by 1997/216
65	Credit Restriction	Repealed by 2004/270
66	Housing	Repealed by 1993/189
67	Supplementary Appropriation	Expired
68	Census	
69	Manufactured Goods Tax	Amended 1964/21
70	Appropriation	Expired
71	Export Duty Repeal	Spent
72	Copra	Amended 1969/60
1972		
73	Supplementary Appropriation	Expired
74	Wildlife	
75	Appropriation	Expired
76	Copra	Amended 1969/60
77	Race Relations	
78	Appropriation	Expired
79	Civil List Repeal	Spent
80	Appropriation	Expired
1973		
81	Appropriation Order	Expired
82	Aviation Crimes	
83	Appropriation	Expired

1974

84	Appropriation	Expired
85	Referendum	Spent
86	Appropriation	Expired
87	Pensions and Benefits	Repealed by 1985/102
88	(Bill not passed)	
89	Public Revenues	Amended 1959/1
90	Polynesian Airlines Shareholding	Repealed by 2004/270
91	Airlines Agency Corporation	Repealed by 1996/212
92	Hurricane Housing Forgiveness of Debt	Spent
93	Animal Importation	Repealed by 1984/99
1	Honey Company Dissolution	Spent

1975

2	Liquor	
3	Supplementary Appropriation	Expired
4	Arms	
5	Price Control on Imported Goods for Resale in Niue	
6	Civil List	Repealed by 1975/17
7	Niue Assembly	Amended 1966/33
8	Aid to Revenue Tax	Repealed by 1984/83
9	Niue	Amended 1966/38 (NZ)
10	Supplementary Appropriation	Expired
11	Housing	Repealed by 1993/189
12	Appropriation	Expired
13	Inquest	Amended 1964/23
14	Public Holidays	Amended 1961/11
15	Aid to Revenue Tax	Repealed by 1984/83
16	Niue Flag	
17	Civil List	Repealed by 1975/18
18	Civil List	Repealed by 1980/65
19	Pensions and Benefits	Repealed by 1985/102

1976

20	Supplementary Appropriation	Expired
21	Assembly Census	Amended 1971/68
22	Pensions and Benefits	Repealed by 1985/102
23	Appropriation	Expired
24	Transport	Amended 1965/30
25	Civil List	Repealed by 1980/65
26	Atomic Energy	Amended 1945/41 (NZ)

1977

27	Supplementary Appropriation	Expired
28	Constitutional Polls	
29	Territorial Sea and Fishing Zone	Repealed by 1978/38

30	Mining	
31	Income Tax	Amended 1961/9
32	Appropriation	Expired
33	Transport	Amended 1965/30
34	Pensions and Benefits	Repealed by 1985/102
35	Civil List	Repealed by 1980/65

1978

36	Niue Certification Authority	
37	Supplementary Appropriation	Expired
38	Territorial Sea and Exclusive Economic Zone	Repealed by 1997/220
39	Aid to Revenue Tax	Repealed by 1984/83
40	Appropriation	Expired
41	Income Tax	Amended 1961/9
42	Civil List	Repealed by 1975/18

1979

43	Supplementary Appropriation	Expired
44	Appropriation	Expired
45	Film and Public Entertainment	
46	Appropriation	Expired
47	Civil List	Repealed by 1975/18
48	Pensions and Benefits	Amended 1974/87
49	New Zealand Laws	
50	Air Travel Tax	Repealed by 1996/212
51	Public Emergency	

1980

52	Appropriation	Expired
53	Liquor	Amended 1975/2
54	Sunday Fishing Prohibition	Repealed by 1995/199
55	Public Service Savings and Loan Society	
56	Government Loans	
57	Appropriation (No 2)	Expired
58	Supplementary Appropriation	Expired
59	Niue	Amended 1966/38(NZ)
60	Housing	Repealed by 1993/189
61	National Disaster Relief Fund	
62	Civil List	Repealed by 1980/65
63	Mosquito Control	
64	Public Health	Amended 1965/24
65	Civil List	Repealed by 1997/228
66	Safety at Sea	Repealed by 1995/199

1981

67	Supplementary Appropriation	Expired
68	Appropriation	Expired

69	New Zealand Representative	
70	Food Control	
71	Pensions and Benefits	Repealed by 1985/102
72	Civil List	Amended 1980/65
73	Supplementary Appropriation	Expired

1982

74	Credit Restriction	Amended 1971/65
75	Appropriation	Expired
76	Niue	Amended 1966/38 (NZ)
77	Customs Tariff	
78	Pensions and Benefits	Repealed by 1985/102
79	Statutes	Spent
80	Civil List	Amended 1980/65
81	Constitutional Provisions	Repealed by 2004/270

1983

82	Development Fund	Repealed by 1993/189
83	Income Tax	Amended 1961/9
84	Appropriation	Expired
85	Air Travel Tax	Amended 1980/50
86	Crimes against Internationally Protected Persons and Hostages	
87	Appropriation (No 2)	Expired
88	Pensions and Benefits	Repealed by 1985/102
89	Appropriation (No 3)	Expired

1984

90	Territorial Sea and Exclusive Economic Zone	Amended 1978/38
91	Niue	Amended 1966/38 (NZ)
92	Civil List	Amended 1980/65
93	Development Fund	Amended 1983/82
94	Niue Development Board Dissolution	Spent
95	Film and Public Entertainment	Amended 1979/45
96	Assembly Members Superannuation	
97	Appropriation	Expired
98	Niue (No 2)	Amended 1966/38 (NZ)
99	Agriculture Quarantine	
100	Appropriation	Expired

1985

101	Supplementary Appropriation	Expired
102	Pensions and Benefits	Repealed by 1991/157
103	Civil List	Amended 1980/65
104	Appropriation	Expired
105	Fish Protection	Amended 1916/3
106	Entry, Residence and Departure	

107	Supplementary Appropriation	Expired
108	Civil List Amendment (No 2)	Amended 1980/65

1986

109	Niue Cultural Council	
110	Appropriation	Expired
111	Civil List	Amended 1980/65
112	Appropriations (No 2)	Expired
113	Pensions and Benefits	Amended 1985/102
114	Civil List (No 2)	Amended 1980/65
115	Banking	
116	(Bill not passed)	
117	Supplementary Appropriation	Expired
118	Income Tax	Amended 1961/9

1987

119	Appropriation	Expired
120	Decimal Currency	Amended 1964/27 (NZ)
121	Civil List	Amended 1980/65
122	Credit Restriction	Amended 1971/65
123	Territorial Sea and Exclusive Economic Zone	Amended 1978/38

1988

124	Unauthorised Expenditure	Spent
125	Supplementary Appropriation	Expired
126	Income Tax	Amended 1961/9
127	Civil List	Amended 1980/65
128	Appropriation	Expired
129	Niue Customs Tariff	Amended 1982/77

1989

130	Education	
131	Communications	
132	Broadcasting	
133	Niue	Amended 1966/38 (NZ)
134	Niue	Amended 1966/38 (NZ)
135	Supplementary Appropriation	Expired
136	Agriculture Quarantine	Amended 1984/99
137	Appropriation	Expired
138	Public Revenues	Amended 1959/1
139	Public Revenues (Write Offs)	Spent
140	(Bill not passed)	
141	Civil List	Amended 1980/65
142	Entry, Residence and Departure	Amended 1985/106

1990

143	Supplementary Appropriation	Spent
144	Public Revenues	Amended 1959/1
145	Public Revenues (Validation of Unappropriated Expenditure)	Spent
146	Appropriation (Annual)	Expired
147	Civil List	Amended 1980/65
148	Transport	Amended 1965/30
149	Transport (No 2)	Amended 1965/30

1991

150	Liquor	Amended 1975/2
151	Development Fund	Amended 1983/82
152	Price Control of Imported Goods	Amended 1795/5
153	Niue	Amended 1966/38 (NZ)
154	Reprint of Statutes	
155	Appropriations (Validation of Unauthorised Expenditure)	Expired
156	Appropriation (Annual)	Expired
157	Pensions and Benefits	
158	Pesticides	
159	Public Reserves	Amended 1959/1

1992

160	Niue Fish Protection	Repealed by 1995/199
161	Constitutional Polls	Amended 1977/28
162	Constitutional (No 1)	Amended 1974/42 (NZ)
163	Appropriation (Annual)	Expired
164	Development Investment	
165	Building Code	
166	Archives	
167	Appropriation (Validation of Unappropriated Expenditure)	Expired
168	Niue Assembly	Amended 1966/30
169	Film and Public Entertainment	Amended 1979/45
170	International Air Services Licensing	Repealed by 1992/171
171	Air Services Licensing	Repealed by 2004/270

1993

172	Air Travel Tax	Amended 1980/50
173	Aviation Crimes	Amended 1973/82
174	Appropriation (Annual)	Expired
175	Appropriation (Validation of Unappropriated Expenditure)	Expired
176	Civil List	Amended 1980/65

1994

177	Niue Bank	
178	Off-Shore Insurance	Repealed 2006/275
179	Off-Shore Banking	Repealed by 1997/227
180	Partnership	Amended 1908/139 (NZ)
181	Niue Development Bonds	
182	Trusts	
183	Trustee Companies	
184	International Business Companies	
185	Off-Shore Centre (Miscellaneous Provisions)	Repealed by 2006/275
186	Public Notaries	Repealed by 1998/236
187	International Business Companies	Amended 1994/184
188	Off-Shore Centre (Miscellaneous Provisions)	Amended 1994/185
189	Niue Development Bank	
190	Appropriation (Annual)	Expired
191	Civil List	Amended 1980/65
192	Supplementary Appropriation	Spent
193	Off-Shore Centre (Miscellaneous Provisions) (No 2)	Amended 1994/185
194	Niue Development Bonds Amendment and Ancillary Provisions	Amended 1994/181
195	Off-Shore Insurance	Amended 1994/178
196	Off-Shore Banking	Amended 1994/179

1995

197	Appropriation (Validation of Unappropriated Expenditure)	Expired
198	Appropriation (Annual)	Expired
199	Domestic Fishing	
200	Tourist Authority	
201	Entry, Residence and Departure	Amended 1985/106
202	Pensions and Benefits	Amended 1985/102
203	Child Allowance	

1996

204	Supplementary Appropriation	
205	Civil List	Amended 1980/65
206	Niue Philatelic and Numismatic	
207	Niue	Amended 1966/38 (NZ)
208	Niue Development Bank	Amended 1994/189
209	Water Resources	
210	Appropriation (Annual)	Expired
211	Appropriation (Annual)	Expired
212	Departure Tax	
213	Niue Transport	Amended 1965/30
214	Niue	Amended 1966/38 (NZ)
215	International Business Companies	Amended 1994/184

1997

216	Business Licence	
217	Public Revenues (Write Off)	Spent
218	Supplementary Appropriation	Spent
219	Niue (No 2)	Amended 1968/132 (NZ)
220	Territorial Sea and Exclusive Economic Zone	
221	Niue Transport	Amended 1965/30
222	Appropriation (Validation of Unappropriated Expenditure)	Expired
223	Appropriation (Annual)	Expired
224	Niue Tourist Authority	Amended 1995/200
225	Broadcasting	Amended 1989/132
226	Liquor	Amended 1975/2
227	International Banking	Repealed by 2002/258
228	Civil List	Repealed by 1998/230
229	Education	Amended 1989/130

1998

230	Civil List	Repealed by 1999/248
231	Pig Control	
232	Niue (Animals)	Amended 1966/38 (NZ)
233	Niue Island Impounding (Repeal)	Spent
234	Arms	Amended 1975/4
235	International Business Companies	Amended 1994/184
236	Public Notaries	
237	Appropriation (Annual)	Expired
238	Income Tax	Amended 1969/9
239	Liquor	Amended 1975/2
240	Appropriation (Validation of Unappropriated Expenditure)	Expired
241	International Business Companies (No 2)	Amended 1994/184
242	Extradition	Amended 1965/44 (NZ)
243	Misuse of Drugs	
244	Mutual Assistance in Criminal Matters	
245	Proceeds of Crime	

1999

246	Niue	Amended 1966/38 (NZ)
247	Income Tax	Amended 1961/9
248	Civil List	
249	Appropriation (Annual)	Expired
250	Civil Aviation	Amended 1973/82

2000

251	Communications	Amended 1989/131
252	Appropriation (Annual)	Expired
253	Financial Transactions Reporting	Repealed by 2006/278

2001		
254	Appropriation (Annual)	Expired
255	Civil List	Amended 1999/248
256	Pensions and Benefits	Repealed by 2004/271
257	United Nations	Amended 1946/7 (NZ)
2002		
258	International Banking Repeal	Spent
259	Appropriation (Annual)	Expired
2003		
260	Appropriation (Annual)	Expired
261	Appropriation (Validation of Unappropriated Expenditure)	Expired
262	Niue Philatelic and Numismatic	Amended 1996/206
263	Niue Tourist Authority	Amended 1995/200
264	Environment	
2004		
265	Civil List	Amended 1999/248
266	Niue Trust Fund	
267	Niue Island General Laws	Amended 1968/52
268	Appropriation (Annual)	Expired
269	Interpretation	
270	Legislation (Correction of Errors and Minor Amendments)	Spent
271	Pensions and Benefits	Amended 1991/157
272	Child Allowance	Amended 1995/203
2005		
273	Niue	Amended 1966/38 (NZ)
274	Appropriation (Annual)	
2006		
275	Companies	
276	Mutual Assistance	Amended 1998/244
277	Appropriation (Annual)	
278	Financial Transactions Reporting	
279	Minor Amendments	Spent
280	Terrorism Suppression and Transnational Crime	
281	Territorial Sea	Amended 1997/220

TABLE OF SUBSIDIARY LEGISLATION IN FORCE

This table lists the subsidiary legislation in force in Niue as at December 2006.

Unless otherwise indicated by 'G', '(NZ)', or 'SR', references are to Niue statutes and subsidiary legislation. 'G 1970, III, 2318' indicates the *New Zealand Gazette*, 1970, vol III, p 2318.

EMPOWERING INSTRUMENT Title	Main Instrument	Amendments
CONSTITUTION OF NIUE		
Niue Assembly Standing Orders	1998	2004
Public Service Regulations	2004/4	
AGRICULTURE QUARANTINE ACT 1985		
Agricultural Quarantine (Prevention of Animal Disease) Regulations	1991/4	
Agricultural Quarantine Phytosanitary Certificates (Fees) Regulations	1993/1	
Animal Quarantine (Disease Control) Regulations	1991/2	
Animal Quarantine (Fees) Regulations	1991/3	
Plant Quarantine Regulations	1985	
ARMS ACT 1974		
Arms Registration (Fees) Regulations	2005/1	
BROADCASTING ACT 1989		
Broadcasting Regulations	1989/1	
BUILDING CODE ACT 1992		
National Building Code	1990	
BUSINESS LICENCE ACT 1997		
Business Licence Regulations	1997/5	

CHATTELS TRANSFER ACT 1924

Chattels Transfer (Customary Hire Purchase) Orders[1]	G 1925, II, 1517 G 1925, III, 3055 G 1925, III, 3353 G 1926, II, 1805 G 1928, II, 2465 G 1930, II, 1509 G 1933, III, 2734 G 1935, II, 2273 SR 1938/49 SR 1940/311 SR 1950/68 SR 1953/45 SR 1954/78 SR 1955/148 SR 1956/146 SR 1957/33 SR 1960/85 SR 1962/7 SR 1962/47 SR 1965/26 SR 1968/87 SR 1969/110 SR 1969/253
Chattels Transfer Fees Regulations	SR 1967/270

CHILD ALLOWANCE ACT 1995

Child Allowance (Fees) Regulations	2004/3

CIVIL AVIATION ACT 1999

Civil Aviation Rules	1999/250/s52

COMMUNICATIONS ACT 1989

Radio Regulations	SR 1972/128
Telephone Regulations	SR 1968/25

CUSTOMS ACT 1966

Customs Regulations	SR 1968/169	SR 1969/196 SR 1970/189 SR 1970/241 SR 1971/258 SR 1972/238 SR 1973/66 SR 1974/154

[1]Seventh Schedule of the Chattels Transfer Act 1924 (NZ) incorporates all Orders made up until this consolidation.

Export Licences Regulations	SR 1966/90	SR 1972/239
Export Prohibition Regulations	SR 1953/179	
Import Prohibition (Insecticides) Order	SR 1964/188	
Import Prohibition (Offensive Weapons) Order	SR 1972/223	SR 1973/175
Niue Port of Entry Order 1995	SR 1960/129	1974/80 (NZ) 1995/4
Port and Service Tax Regulations	SR 1952/177	
CUSTOMS TARIFF ACT 1982		
Customs Tariff Regulations	1988/2	1996/2 2006/1
Customs Tariff (Cigarettes and Tobacco) Regulations	1991/5	
Customs Tariff (General Amendments) Regulations	1996/2	1997/3
DEPARTURE TAX ACT 1996		
Departure Travel Tax Regulations	2002/1	
DIPLOMATIC PRIVILEGES AND IMMUNITIES ACT 1968 (NZ)		
Diplomatic Privileges Consular Immunities Regulations	SR 1969/136	1974/43 (NZ)
Diplomatic Immunities (Western Samoan Trade and Development Commissioner) Order	SR 1967/110	1974/43 (NZ)
Diplomatic Privileges (Commonwealth Secretariat) Order	SR 1973/99	
Diplomatic Privileges (Customs Co-operation) Council) Order	SR 1963/69	
Diplomatic Privileges (FAO) Order	SR 1959/52	SR 1961/14 SR 1967/96
Diplomatic Privileges (IAEA) Order	SR 1960/162	

Diplomatic Privileges (ICAO) Order	SR 1959/53	
Diplomatic Privileges (ICJ) Order	SR 1959/61	
Diplomatic Privileges (ILO) Order	SR 1959/54	
Diplomatic Privileges (IMCO) Order	SR 1960/141	SR 1961/67 SR 1969/66
Diplomatic Privileges (INTELSAT) Order	SR 1972/10	
Diplomatic Privileges (ITU) Order	SR 1959/55	
Diplomatic Privileges (New Zealand-United States Educational Foundation) Order	SR 1970/45	
Diplomatic Privileges (SEATO) Order	SR 1961/18	
Diplomatic Privileges (South Pacific Bureau for Economic Cooperation) Order	SR 1973/34	
Diplomatic Privileges (South Pacific Commission) Order	SR 1959/56	
Diplomatic Privileges (UNESCO) Order	SR 1959/57	
Diplomatic Privileges (United Nations) Order	SR 1959/51	SR 1965/18
Diplomatic Privileges (UPU) Order	SR 1959/58	
Diplomatic Privileges (WHO) Order	SR 1959/59	SR 1961/66
Diplomatic Privileges (WMO) Order	SR 1959/60	
DOGS ACT 1966		
Dog Registration (Fees) Regulations	2005/2	
DOMESTIC FISHING ACT 1995		
Domestic Fishing Regulations	1996/1	
ENTRY, RESIDENCE AND DEPARTURE TAX ACT 1985		
Entry, Residence and Departure Regulations	1997/2	
ENVIRONMENT ACT		
Biosafety (Genetically Modified Organisms) Regulations	2006/4	–

EXTRADITION ACT 1965
Extradition and Fugitive Offenders Orders[3]

Albania	G 1927, III, 2874	G 1928, II,1433
Argentina	G 1894, I, 669	
Australia	G 1926, I, 77	
Austria	G 1874, 416	G 1902, II,2633 G 1935, III, 2845
Belgium	G 1902, I, 1158	G 1907, II, 2924 G 1911, II, 3406
Bolivia	G 1899, I, 11	
Brazil	G 1874, 175	
British Solomon Islands	G 1926, I, 77	
Chile	G 1898, II, 1669	
Colombia	G 1890, I, 351	
Cuba	G 1905, II, 1898	
Czechoslovakia	G 1927, I, 359	G 1927, III, 2915
Ecuador	G 1886, II, 1248	
Estonia	G 1926, II, 2602	G 1927, II, 1455
Fiji	G 1926, I, 77	
Finland	G 1925, II, 2176	G 1925, III, 3411
France	G 1878, II, 1137	G 1910, I, 749
German Colonies	G 1895, I, 772	
Germany	G 1872, 739	G 1920, III, 3059
Gilbert and Ellice Islands (Kiribati and Tuvalu)	G 1926, I, 77	

[3]These Orders were made under the Extradition Act 1965 (NZ) before 19 October 1974. In respect of possible extradition involving any of the countries listed it is necessary to check both whether the relevant treaty applies to Niue and whether extradition is available in respect of the particular offence.

Greece	G 1912, I, 1418	
Guatemala	G 1887, II, 933	G 1914, II, 4082
Hungary	G 1874, 416	G 1902, II, 2633 G 1938, I, 902 SR 1940/10
Iceland	G 1873, 575	SR 1940/69
India	G 1904, II, 1967	
Iraq	G 1934, III, 3358	
Italy	G 1873, 445, 507	
Latvia	G 1926, I, 429, 610	
Liberia	G 1894, I, 825	
Lithuania	G 1927, II, 2537	G 1928, II, 2485
Luxembourg	G 1881, I, 863	
Mexico	G 1889, II, 810	
Monaco	G 1892, II, 1215	
Nauru	G 1926, I, 77	
Netherlands	G 1899, I, 762	
New Zealand	G 1926, I, 77	SR 1941/185
Nicaragua	G 1906, II, 2099	
Norway	G 1874, I, 8	G 1907, II, 2995, 3138
Panama	G 1907, II, 3136	
Papua	G 1926, I, 77	
Paraguay	G 1911, II, 3158	
Peru	G 1907, II, 2324	

Poland	G 1935, III, 3365	
Portugal	G 1894, I, 822	G 1933, II, 2081 G 1933, III, 2484
Romania	G 1894, II, 1264	
Russia	G 1887, I, 720	
Salvador	G 1883, I, 352	
San Marino	G 1900, II, 1302	
Serbia	G 1901, II, 2036	
Spain	G 1879, I, 324	G 1889, II, 939, 947
Sweden	G 1874, 8	G 1907, II, 3138
Switzerland	G 1881, I, 412	G 1905, II, 1996 G 1936, I, 278
Thailand	G 1912, I, 193	
Tonga	G 1883, I, 352	
Tunis	G 1890, II, 876	
USA	SR 1970/240	
Uruguay	G 1885, I, 724	G 1892, I, 522
Western Samoa	G 1921, I, 92	G 1926, I, 77

FILM AND PUBLIC ENTERTAINMENT ACT 1979

Film and Public Entertainment (Fees) Regulations	2005/3	

GENERAL LAWS ACT 1968

Maritime Security Regulations	2004/2	

INCORPORATED SOCIETIES ACT 1908

Incorporated Societies Regulations	SR 1938/34	SR 1954/41 SR 1957/254 SR 1967/265

LIQUOR ACT 1975		
Liquor (Breweries) Regulations	1992/2	
MISUSE OF DRUGS ACT 1975		
Misuse of Drugs Regulations[4]	SR 1977/37	SR 1977/135
NIUE ACT 1966		
Airport Charges Regulations	1992/1	
Audit Regulations	SR 1970/103	1974/43 (NZ)
Births and Deaths Registration Regulations	1984	1995/5
Co-operative Societies Regulations	SR 1953/106	SR 1957/53 G 1955, II, 1346
Dental Regulations	SR 1970/104	1974/43 (NZ)
Gaming (Fees) Regulations	2005/4	
High Court Rules 1916	SR 1962/204 (Reprint)	1962/72 1975/4 1975/5 1991/8
Land Court Rules	SR 1969/126	SR 1969/205 1974/43 (NZ) 1995/6 2005/273
Land Registration Regulations	SR 1969/169	SR 1969/205 SR 1972/52 2005/273
Marine Pollution Act 1974	SR 1972/143	1974/14 (NZ) SR 1974/142
Oil in Navigable Waters (Prohibited Sea Areas)Regulations	SR 1971/103	1972/4 (NZ)
Oil in Navigable Waters (Records, Transfer and Enforcement of Convention Order) Regulations	SR 1971/104	1972/4 (NZ)

[4]See Cabinet Minutes 204 of 1976 and 70 to 1977.

Oil in Navigable Waters (Ships' Equipment) Regulations	SR 1971/105	1972/4 (NZ)
Marriage Regulations	SR 1970/249	
Penal Manual	2006/3	
Sea Carriage of Goods Act 1940 (in part only) [s 14]	1940/31 (NZ)	SR 1946/19 1961/68 (NZ) 1962/100(NZ) 1964/27(NZ) 1968/17(NZ) 2004/270 2006/279

NIUE BANK ACT 1994

Niue Bank Regulations	1994/1

PARTNERSHIP ACT 1908

Partnership Amendment Fees Regulations	1994/4

PARTNERSHIP APPLICATION ACT 1994

Partnership Amendment Forms Regulations	1995/2

PENSIONS AND BENEFITS ACT 1991

Pensions and Benefits Regulations	1998/7

PUBLIC HEALTH ACT 1965

International Sanitary Regulations	1951
Public Health (Notifiable Diseases) Notice	1991/6

PUBLIC REVENUES ACT 1959

Niue Treasury Rules 1960	1961

TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT 1997

Niue Whale Sanctuary Regulations	2003/1

TRANSPORT ACT 1965

Transport (Fees) Regulations	2005/5

TRUSTEE ACT 1956

Trustees' Commission Rules	SR 1961/81

TRUSTEE COMPANIES ACT 1994

Trustee Companies Regulations	1994/5

UNITED NATIONS ACT 1946

United Nations Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations	2004/5

VISITING FORCES ACT 1939 (NZ)

Visiting Forces (Commonwealth Deserters and Absentees) Order	SR 1969/81
Visiting Forces Order	SR 1966/33
Visiting Forces (Penal Arrangement) Order	SR 1963/61
Visiting Forces (Relative Ranks) Regulations	SR 1971/223

WILDLIFE ACT 1972

Wildlife Protected Species Notice	1991/9

CHRONOLOGICAL TABLE OF SUBSIDIARY LEGISLATION

This table lists the subsidiary legislation made in Niue from 1990 to 1 December 2006.

Year No.	In Force	Title	Status
1990			
1	01.12.90	Pensions and Benefits	Repealed by 1992/4
1991			
1	01.07.91	Niue (Gambling)	Repealed by 2005/4
2	01.09.91	Animal Quarantine (Disease Control)	
3	01.09.91	Animal Quarantine (Fees)	
4	01.09.91	Agriculture Quarantine (Prevention of Animal Disease)	
5	03.09.91	Niue Customs Tariff (Cigarettes and Tobacco)	
6	01.10.91	Public Health (Notifiable Diseases)	
7	02.03.92	Transport (Annual Licence Fees)	Repealed by 2005/5
8	01.12.91	Rules of the High Court	
9	19.11.91	Wildlife Protected Species	
1992			
1	01.04.92	Niue Airport Charges	
2	22.09.92	Liquor (Breweries)	
3	20.08.92	Pensions and Benefits	Repealed by 1993/2
1993			
1	01.07.93	Agricultural Quarantine Phytosanitary Certificate (Fees)	
2	01.11.93	Pensions and Benefits	Repealed by 1998/2
1994			
1	08.06.94	Niue Bank	
2	08.06.94	Off-Shore Banking	Repealed by Act 1997/227
3	08.06.94	Off-Shore Insurance	Repealed by Act 2006/275
4	08.06.94	Partnership Amendment Fees	
5	08.06.94	Trustee Companies	

1995			
1	01.07.95	Off-Shore Banking	Repealed by Act 1997/227
2	01.07.95	Partnership Amendment Forms	
3	19.09.95	Niue Act Revocations	Spent
4	19.09.95	Customs	Spent
5	01.07.95	Births and Deaths	Amended 1984
6	01.07.95	High Court of Niue Land Division (Fees)	
1996			
1	05.03.96	Domestic Fishing	
2	01.01.97	Niue Customs Tariff (General Amendments)	Amended by 1997/3
1997			
1	14.01.97	Departure Travel Tax	Repealed by 2002/1
2	14.01.97	Entry, Residence and Departure	
3	14.01.97	Niue Customs Tariff (General Amendments)	
4	05.12.97	Niue Customs (Temporary Waiver)	Spent
5	04.01.97	Business Licence	
1998			
1	31.12.98	Child Allowance	Repealed by 1998/6
2	01.07.98	Pensions and Benefits	Repealed by 1998/7
3	20.01.98	International Banking (Fees)	
4	01.07.98	Niue Customs (Temporary Waiver)	Spent
5	03.11.98	Niue Customs Tariff (Miscellaneous Transactions and Commodities)	
6	01.01.99	Child Allowance (No 1)	Repealed by 2004/3
7	13.10.98	Pensions and Benefits	
1999			
1	15.06.99	Niue Customs (Temporary Waiver)	Spent
2002			
1	15.10.02	Departure Travel Tax	
2003			
1	14.05.02	Niue Whale Sanctuary	
2004			
1	08.01.04	Public Emergency	Spent
2	01.07.04	Maritime Security	
3	01.07.04	Child Allowance (Fees)	
4	15.07.04	Public Service	

5	23.11.04	UN Sanctions (Terrorism Suppression and Afghanistan Measures)	

2005

1	24.06.03	Arms Registration (Fees)	
2	24.06.03	Dogs (Fees)	
3	24.06.03	Film and Public Entertainment	
4	24.06.03	Gaming (Fees)	
5	24.06.03	Transport (Fees)	

2006

1	01.01.05	Customs Tariff	
2	01.08.06	Companies Act Commencement	Spent
3	26.09.06	Penal Manual	
4	04.07.06	Biosafety	

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THE CONSTITUTION OF NIUE

PART I
THE EXECUTIVE GOVERNMENT OF NIUE

1 Executive authority vested in the Crown

The executive authority of Niue is vested in Her Majesty the Queen in right of New Zealand, and the Governor-General of New Zealand is accordingly the representative of Her Majesty the Queen in relation to Niue.

The Cabinet

2 Cabinet of Ministers of Niue

(1) There shall be a Cabinet of Ministers of Niue (hereinafter referred to as the Cabinet) which shall consist of the Premier of Niue (who shall be a member of the Niue Assembly) and 3 other members of the Niue Assembly.

(2) Subject to this Constitution, the executive authority of Niue may be exercised on behalf of Her Majesty by the Cabinet, which shall have the general direction and control of the executive government of Niue and shall have such other functions and powers as are conferred on it by law.

3 Ministers to be collectively responsible

(1) The members of the Cabinet (hereinafter referred to as Ministers) shall be collectively responsible to the Niue Assembly.

(2) Subject to Article 7 of this Constitution, the Ministers shall continue in office until their successors are appointed pursuant to Article 5(2) of this Constitution.

4 Premier of Niue

(1) There shall be a Premier of Niue, who shall be elected to that office by an absolute majority of the members present and voting at a meeting of the Niue Assembly.

(2) The Niue Assembly shall proceed to elect the Premier at the first meeting of the Assembly after a general election and also in each of the following circumstances –

(a) If the Premier ceases to be a member of the Assembly for any reason other than the dissolution thereof; or

(b) If the Premier tenders his resignation by writing under his hand addressed to the Speaker or is deemed to have tendered his resignation pursuant to Article 6(3) or Article 7(3) of this Constitution.

5 Appointment of Ministers after election of Premier

(1) As soon as practicable after his election to that office, the Premier elect shall nominate to the Speaker, with their consent, 3 other members of the Niue Assembly for appointment as Ministers.

(2) Upon receiving those nominations, the Speaker shall appoint as Ministers the Premier elect and the members so nominated.

(3) Appointment under subclause (2) of this Article shall be made by the Speaker by instrument under the Seal of Niue.

(4) If the Premier elect has not within 7 days after but excluding the date of his election to that office submitted to the Speaker his nominations for appointments to the Cabinet pursuant to this Article, his election to that office shall have no effect, and, subject to Article 26(1)(d) of this Constitution, a meeting of the Niue Assembly shall be held as soon as practicable for the purpose of again electing a Premier.

6 Vote of confidence in Cabinet

(1) At any meeting of the Niue Assembly –

(a) The Premier, or another Minister acting on behalf of the Premier, may give notice of his intention to move a vote of confidence in the Cabinet, either generally or on any measure proposed by the Cabinet for adoption by the Assembly;

(b) Any 4 or more members of the Assembly who are not Ministers may give notice of their intention to move a vote of no confidence in the Cabinet.

(2) Any motion of which notice is given under subclause (1) of this Article shall be voted on at a meeting of the Niue Assembly held not earlier than 5 days nor later than 10 days after but excluding the date of the giving of the notice.

(3) If the motion of confidence is lost, or, as the case may be, the motion of no confidence is carried, the Premier shall be deemed to have tendered his resignation from his office at the expiration of 5 days after but excluding the date of the meeting of the Niue Assembly, unless before the expiration of that period he requests the Speaker to dissolve the Assembly.

7 Vacation of office by Ministers

(1) Any Minister, other than the Premier, shall vacate his office if –

(a) His appointment to that office is revoked by the Speaker, acting on the request of the Premier, by instrument under the Seal of Niue; or

(b) He ceases to be a member of the Niue Assembly for any reason other than the dissolution thereof; or

(c) He resigns his office by writing under his hand delivered to the Speaker.

(2) Within 7 days after the occurrence of any vacancy in the office of Minister, other than the Premier, the Premier shall nominate to the Speaker, with the consent of the member, a member of the Niue Assembly for appointment as a Minister, and the Speaker shall by instrument under the Seal of Niue appoint the member so nominated.

(3) If the Premier does not, within 7 days after but excluding the date of the occurrence of a vacancy in the office of a Minister, other than the Premier, nominate a Minister pursuant to subclause (2) of this Article, he shall be deemed to have tendered his resignation from his office as Premier at the expiration of that period of 7 days.

8 Temporary Ministers

(1) Whenever it appears to the Premier that any Minister will, by reason of illness or absence from Niue, be unable to discharge his functions in Niue for a period of 7 days or longer, the Premier shall nominate to the Speaker, with the consent of the member, a member of the Niue Assembly for appointment as a temporary Minister, and the Speaker shall, by instrument under the Seal of Niue, appoint that member accordingly.

(2) Every such temporary Minister shall be appointed in place of the Minister who is unable to discharge his functions in Niue, and, subject to subclause (3) of this Article, shall hold office, as if he had been appointed under Article 5 of this Constitution.

(3) Every such temporary Minister, unless he sooner vacates his office pursuant to Article 7 of this Constitution, shall remain in office until the Minister in whose place he is appointed is again able to discharge his functions in Niue.

9 Acting Premier

(1) Whenever, by reason of illness or absence from Niue, the Premier is temporarily prevented from discharging his functions in Niue, the Speaker, acting on the request of the Cabinet, may, by instrument under the Seal of Niue, appoint another Minister to discharge the functions of Premier until such time as the Premier is capable of again discharging his functions or has vacated his office.

(2) Where the Premier dies or tenders his resignation to the Speaker after a dissolution of the Niue Assembly and before the appointment of the Ministers after the general election following that dissolution, the Speaker, acting on the request of the Cabinet, shall, by instrument under the Seal of Niue, appoint another Minister to discharge the functions of Premier until the Ministers are appointed after that general election.

10 Official oath

Every Minister shall, before assuming the functions of his office, take and subscribe before the Speaker the following oath –

I,....., being chosen and accepted as Premier of Niue (or a Minister), swear by Almighty God that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice for the good management of the affairs of Niue, and that I will not directly or indirectly reveal such matters as may be debated in the Cabinet or any committee of the Cabinet and committed to my secrecy, but that I will in all such things be a true and faithful Premier of Niue (or Minister). So help me God.

11 Allocation of responsibilities to Ministers

(1) The Premier shall from time to time, by writing under his hand countersigned by the Clerk of the Cabinet and published in the *Niue Gazette*, allocate to any Minister (including himself) the primary responsibility for any Department or function of Government, and may from time to time in like manner vary any such allocation.

(2) The Premier shall have the primary responsibility for any Department or function of Government in respect of which, for the time being, no allocation under subclause (1) of this Article is in effect.

12 Meetings of Cabinet

(1) No business shall be transacted at any meeting of the Cabinet unless at least 3 Ministers are present.

(2) The Cabinet shall not be disqualified for the transaction of business by reason only that there is a vacancy among its members, or that, in any case where Article 8 of this Constitution applies, no appointment has been made pursuant to that Article. No proceedings of the Cabinet shall be questioned on the ground that some person who acted as a Minister in relation to those proceedings was not qualified so to act.

(3) Notice of every meeting of the Cabinet and a copy of every paper to be considered at that meeting shall be given to each Minister, and to the Secretary to the Government.

(4) The Secretary to the Government shall have the right to attend any meeting of the Cabinet and to speak on any matter under consideration by the Cabinet, and he shall so attend if required to do so by the Premier.

(5) The decision of the Cabinet on any matter shall be taken only by the Ministers present at a meeting of the Cabinet.

(6) Subject to this Article, the Cabinet shall regulate its own procedure in such manner as it thinks fit.

13 Rules, other enactments, and decisions of Cabinet

Any rule or other enactment of the Cabinet shall have effect, and any other decision of the Cabinet shall be duly authenticated, when that rule or other enactment, or the record of that decision, has been signed by the Premier, whether or not he was present at the meeting of the Cabinet at which the rule or other enactment or decision was made, and by the Clerk of the Cabinet.

14 Clerk of the Cabinet

There shall be an officer of the Niue Public Service to be called the Clerk of the Cabinet, who shall be responsible for arranging the business for, and keeping the minutes of, meetings of the Cabinet, and for conveying decisions of the Cabinet to the appropriate person or authority, and shall perform with respect to the Cabinet such secretarial and other functions as may be required.

The Seal of Niue

15 Seal of Niue

(1) There shall be a Public Seal of Niue (in this Constitution referred to as the Seal of Niue), to be in such form or forms as the Cabinet from time to time approves.

(2) The Seal of Niue shall be in the custody of the Speaker.

(3) The Seal of Niue may be used by the Speaker for the authentication of any public document in relation to the Government of Niue or for the execution of any document required by law to be executed under the Seal of Niue.

(4) Judicial notice shall be taken of the Seal of Niue in all Courts.

PART II
THE LEGISLATIVE GOVERNMENT OF NIUE
The Niue Assembly

16 Niue Assembly

(1) There shall be in and for Niue a legislative Assembly to be called the Niue Assembly.

(2) The Niue Assembly shall consist of –

(a) The Speaker; and

(b) Twenty members to be elected by secret ballot under a system of universal suffrage in the following manner –

(i) Fourteen members, each of whom shall represent a village constituency, shall be elected by the electors of that constituency;

(ii) Six members shall be elected by the persons qualified to be electors of Niue voting on a common roll, which, for the purpose of electing those members, shall comprise the rolls of the several village constituencies.

(3) Subject to this Article and to Articles 17, 18, 19, 24 and 25 of this Constitution, the boundaries of village constituencies, the qualifications and disqualification of electors and of candidates, the mode of electing members of the Niue Assembly, and the terms and conditions of their membership shall be as prescribed by law:

Provided that –

(a) There shall be 14 village constituencies; and

(b) Every person qualified to be an elector for the election of members of the Niue Assembly shall be entitled to vote in one, and one only, village constituency; and

(c) Any determination or redetermination of the boundaries of any village constituency shall, so far as practicable, having due regard to local community interest, be made in accordance with the principle that the number of electors in that village constituency should not be substantially greater or smaller than the number of electors in any other village constituency.

(4) Unless the context otherwise requires, every reference in this Constitution to a member of the Niue Assembly shall be construed as a reference to a member elected pursuant to subclause (2)(b) of this Article, and shall, in any case where the Assembly has been dissolved, be read as a reference to a person who was a member of the Assembly immediately before that dissolution.

17 Nationality and residential qualifications of electors and candidates

(1) Without limiting the provisions of any law prescribing any additional qualifications, a person shall be qualified to be an elector for the election of members of the Niue Assembly, or to be a candidate at any such election, if, and only if, that person –

(a) Is either –

(i) a New Zealand citizen; or

(ii) a Permanent Resident of Niue as defined by Act; and,

(b) Has at some period resided continuously in Niue for not less than 3 years; and

(c) Has been ordinarily resident in Niue throughout the period of 12 months immediately preceding an application for enrolment as an elector or, as the case may be, nomination as a candidate.

(2) For the purposes of this Article, a person shall be deemed to be ordinarily resident in Niue if, and only if –

(a) He is actually residing in Niue; or

(b) Having been actually resident in Niue with the intention of residing there indefinitely, he is outside Niue but has, and has had ever since he left Niue, an intention to return and reside there indefinitely:

Provided that any person who has been outside Niue continuously for any period of more than 3 years shall be deemed not to have such an intention, unless during the whole or substantially the whole period of that absence he was undergoing a course of education or of technical training or instruction, or was in the service of the Government of Niue.

18 Public servants may become candidates or be elected

(1) Employees of the Niue Public Service who become candidates for election as members of the Niue Assembly shall be granted leave of absence for the purposes of their candidature in accordance with such terms and conditions as may be prescribed by law.

(2) If any such employee is elected as a member of the Assembly, he shall, on being declared so elected, be deemed to have been granted leave of absence without salary from his employment in the Niue Public Service for the period during which he is a member.

19 Members disqualified from becoming public servants or interested in Government contracts

The seat of any member of the Niue Assembly shall become vacant –

(a) If he becomes an employee of the Niue Public Service, or, being an employee of that Service at the time of his election, he accepts paid employment in that Service, or;

(b) If he otherwise becomes interested in the execution or enjoyment of any contract under which any public money is payable, except to such extent as may be permitted by law.

20 Speaker of Niue Assembly

(1) The Speaker of the Niue Assembly shall be elected to that office by an absolute majority of the members present and voting at a meeting of the Niue Assembly.

(2) Only a person who is qualified for election as a member of the Niue Assembly may be elected as Speaker.

(3) If any person elected as Speaker is, at the time of that election, a member of the Niue Assembly, he shall vacate his office as a member when he enters upon the duties of the office of Speaker.

(4) The election of the Speaker shall take place, before the despatch of any other business, at the first meeting of the Assembly after each general election, and, at a meeting of the Assembly called for that purpose, as soon as possible after any vacancy in the office of Speaker has occurred.

(5) Before a person who has been elected Speaker enters upon the duties of his office, he shall take and subscribe before the Clerk of the Niue Assembly at a meeting of the Assembly the Oath of Allegiance prescribed in Article 21 of this Constitution, and the provisions of that Article shall apply with the necessary modifications as if the references therein to a member were a reference to the Speaker.

(6) The Speaker may resign his office by writing under his hand addressed and delivered to the Clerk of the Niue Assembly, and shall vacate his office –

(a) On the entry into office of a new Speaker elected when the Assembly first meets after a general election; or

(b) If he ceases to be qualified for election as a member of the Assembly; or

(c) If he becomes a candidate at any election of a member or members of the Assembly.

(7) If at any meeting of the Assembly the Speaker is absent or the office of Speaker is vacant, the members of the Assembly present at that meeting shall elect one of their number, not being a Minister, to preside over that meeting until the Speaker is again present, or, as the case may be, until a Speaker has been elected and has entered upon the duties of his office.

(8) If, at any time when the Assembly is not meeting, the Speaker is, by reason of illness or absence from Niue, temporarily prevented from performing his functions, or the office of Speaker is vacant, then, until the Assembly again meets, or, as the case may be, the Speaker is again able to perform his functions, those functions shall be performed by a member of the Assembly, not being a

Minister, who has presided over a meeting of the Assembly pursuant to subclause (7) of this Article. If more than one member of the Assembly is so qualified and is available to perform the functions of the Speaker, those functions shall be performed by the member who most recently presided over a meeting of the Assembly, pursuant to that subclause.

(9) If it appears that no person is, for the time being, qualified and available to perform the functions of the Speaker –

(a) A meeting of the Assembly shall be called as soon as possible, and the Clerk of the Niue Assembly shall perform such of the functions of the Speaker as are required to be performed for the purpose of enabling that meeting to be held, and the provisions of Article 22(6) of this Constitution shall not apply to that meeting; or

(b) In any case where the Assembly has been dissolved and the ensuing general election has not taken place, a meeting of those persons who were members of the Assembly immediately before its dissolution shall be called as soon as possible for the purpose of electing one of their number to perform the functions of the Speaker until the Speaker is again able to perform his functions, or, as the case may be, the new Assembly first meets; and the Clerk of the Niue Assembly shall do everything necessary to ensure that the meeting is called and to certify to the result of the election. The person elected shall, for the purpose of subclauses (7) and (8) of this Article, be deemed to be a person who has presided over a meeting of the Assembly.

(10) Every document, including the certificate on any Bill, signed by the Speaker in the performance of his functions shall be countersigned by the Clerk of the Niue Assembly, and, where pursuant to this Article, any such document or certificate is signed by a member performing the functions of the Speaker, it shall be so stated on the document or in that certificate.

21 Members to take Oath of Allegiance

Except for the purpose of enabling this Article to be complied with and for the election of a Speaker, no member of the Niue Assembly shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Speaker namely:

I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her (or His) Majesty *[Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second,* Her (or His) heirs and successors according to law, and that I will justly and faithfully carry out my duties as member of the Niue Assembly. So help me God.

22 Procedure of Niue Assembly

(1) The Niue Assembly shall meet at such places and at such times as the Speaker, acting on the request of the Premier, from time to time appoints in that behalf:

Provided that, if more than 6 weeks has elapsed since the time of the last meeting of the Assembly, any 4 or more members of the Assembly who are not Ministers may request the Speaker to appoint a place and time for a meeting of the Assembly, and the Speaker shall appoint a place and time in that behalf, such time to be not earlier than 5 days nor later than 10 days after but excluding the date of the making of the request.

(2) The Speaker shall preside at every meeting of the Niue Assembly at which he is present.

(3) Except where this Constitution otherwise provides, every question before the Niue Assembly shall be decided by a majority of the votes of the members present.

(4) Subject to any law requiring any member of the Assembly to refrain from voting on any matter concerning a contract in whose execution and enjoyment he is interested, every member present when any question is put to the Niue Assembly shall vote thereon.

(5) The Speaker or other presiding officer shall not have a casting vote and the Speaker shall not have a deliberative vote, but a member presiding in place of the Speaker shall have a deliberative vote.

(6) Subject to Article 20(9)(a) of this Constitution, no business shall be transacted at any meeting of the Niue Assembly if the number of members then present, including any member presiding in place of the Speaker, is less than 10.

(7) The powers of the Niue Assembly shall not be affected by any vacancy in its membership.

(8) No Bill shall be passed unless it has been read 3 times in the Assembly.

(9) Any Bill or other business before the Assembly at its dissolution shall lapse.

(10) Subject to this Constitution, the Niue Assembly may from time to time make Standing Orders for the regulation and orderly conduct of its proceedings and the despatch of business.

23 Languages

(1) The Speaker or any member of the Niue Assembly may speak in the Assembly either in the Niuean language or in the English language:

Provided that the Clerk of the Niue Assembly shall, at the request of the Speaker or of any member made through the Speaker, arrange for the remarks of the Speaker or of any member to be translated into the English language or the Niuean language, as the case may be.

(2) Every Bill introduced into the Niue Assembly and every Act shall be in the Niuean language and also in the English language:

Provided that the Assembly may, by resolution, determine that any Bill or Act shall be in the Niuean language or English language only.

(3) The records of proceedings in the Niue Assembly or in Committees thereof shall be in the Niuean language, and such of those records as are specified in the Standing Orders of the Assembly or as the Assembly may by resolution determine shall also be in the English language.

(4) The Niuean version and the English version of this Constitution and, subject to subclause (5) of this Article, the Niuean version and the English version of any record of proceedings in the Niue Assembly or any Committee thereof and of any enactment shall be equally authentic:

Provided that if in any case there is any apparent discrepancy between any provision of the Niuean version and of the English version of this Constitution or of any such record or of any enactment, then, in construing that provision, regard shall be made to all the circumstances that tend to establish the true intent and meaning of that provision.

(5) In the case of any record of proceedings in the Niue Assembly or any Committee thereof the Assembly may by resolution determine, and in the case of any enactment it may be expressly provided, that where there is any conflict between the Niuean version and the English version of any such record or of any such enactment, one version only, being either the Niuean version or the English version, shall prevail.

24 Privileges of Niue Assembly and its members

(1) The validity of any proceedings in the Niue Assembly or in any Committee thereof, and the validity of any certificate duly given by the Speaker under Article 34 or Article 35 of this Constitution shall not be questioned in any Court.

(2) Neither the Speaker nor any member or officer of the Niue Assembly in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.

(3) Neither the Speaker nor any member of the Niue Assembly nor any person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Assembly or in any Committee thereof.

(4) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of the Niue Assembly of any report, paper, vote, or proceeding.

(5) Subject to this Article, the privileges of the Niue Assembly and of the Committees thereof and the privileges of members and the Speaker of the Assembly and of the persons entitled to speak therein may be determined by Act; and any such Act may define offences relating to breach of privilege or contempt of the Assembly, and may make provision for the trial and punishment of such offences by the High Court, but not otherwise.

25 Remuneration of Premier, other Ministers, other members of the Niue Assembly, and the Speaker

(1) The Niue Public Service Commission may from time to time, and shall when there is a general alteration of the levels of remuneration of employees of the Niue Public Service, report and make recommendations to the Assembly as to the levels of remuneration and other entitlements of the Premier, other Ministers, the members of the Assembly who are not Ministers, and the Speaker.

(2) The Premier, the other Ministers, the members of the Niue Assembly who are not Ministers, and the Speaker may receive such remuneration and allowances and such other benefits as may be prescribed by Act.

(3) If, in the opinion of the Speaker, any Bill, or any amendment to any Bill, deals with a matter to which this Article relates, that Bill or that amendment may not be introduced unless –

(a) There is before the Assembly a report and recommendations made by the Niue Public Service Commission pursuant to this Article; and

(b) The issues raised by that Bill or by that amendment are, in the opinion of the Speaker, substantially similar to those considered in the Commission's report and recommendations.

26 Dissolution of the Niue Assembly

(1) The Speaker shall, by notice in the *Niue Gazette* dissolve the Niue Assembly –

(a) At the expiration of 3 years from the date of the last preceding general election, if it has not been sooner dissolved;

(b) At any time after the expiration of 2 years and 9 months from the date of the last preceding general election, if the Premier so requests;

(c) If, pursuant to Article 6(3) of this Constitution, the Premier requests him to dissolve the Assembly;

(d) If a new election of Premier has been held pursuant to Article 5(4) of this Constitution and that new election has become of no effect pursuant to that subclause.

(2) There shall be a general election of the members of the Niue Assembly at such time, being not less than 4 weeks nor more than 6 weeks after the date of every dissolution of the Assembly, as the Speaker shall, at the request of the Premier, appoint, or, if the Premier makes no such request within 7 days of any dissolution, as the Speaker, acting in his own discretion, shall appoint, by notice in the *Niue Gazette*.

27 Clerk of the Niue Assembly

(1) There shall be an officer of the Niue Public Service to be called the Clerk of the Niue Assembly, who shall be responsible for –

(a) Arranging the business and keeping the records of the proceedings of the Niue Assembly; and

(b) Arranging for the signing of documents and giving of certificates by the Speaker, whenever any signature or certification by the Speaker is required pursuant to this Constitution or to any enactment, and keeping the records of all documents and certificates so signed or given.

(2) The Clerk of the Niue Assembly shall perform with respect to the Speaker and to the members of the Assembly such secretarial and other functions as may be required.

The Making of Laws

28 Power to make laws

(1) Subject to this Constitution, the Niue Assembly may make laws for the peace, order, and good government of Niue.

(2) The powers of the Niue Assembly shall extend to the making, in relation to Niue, of laws having extraterritorial operation, that is to say, affecting or concerning any person or matter or thing outside Niue or any act done or omitted outside Niue.

(3) Without limiting the generality of the powers conferred by this Article, those powers shall include the power to repeal or revoke or amend or modify or extend, in relation to Niue, any law in force in Niue.

(4) Except to the extent to which it is inconsistent with this Constitution, no Act and no provision of any Act shall be deemed to be invalid solely on the ground that it is inconsistent with any law in force in Niue.

29 Introduction of Bills, etc, into Niue Assembly

Subject to this Constitution and to the Standing Orders of the Niue Assembly, any member of the Assembly may introduce any Bill or propose any motion for debate in or present any petition to the Assembly, and the same shall be considered and disposed of in accordance with the Standing Orders.

30 Restrictions with regard to financial measures

Except with the recommendation or consent of the Premier or another Minister acting on behalf of the Premier, the Niue Assembly shall not proceed upon any Bill (including an amendment to any Bill) which, in the opinion of the Speaker, would dispose of or charge any of the public revenues of Niue, or revoke or alter, otherwise than by way of reduction, any disposition thereof or charge thereon, or impose or alter or abolish any toll, rate, due, fee, fine, or tax.

31 [Repealed]

32 Special provisions with regard to measures affecting the Niue Public Service

(1) The Niue Assembly shall not proceed upon any Bill or upon an amendment to any Bill, after its introduction, if, in the opinion of the Speaker, that Bill or that amendment makes provision concerning –

(a) The pay, allowances, discipline, control and management of the Niue Public Service; or

(b) The appointment, promotion, transfer, retirement, removal, suspension, and dismissal of employees of the Niue Public Service, including the review of or appeals against any decisions in relation thereto –

unless the Assembly has before it a report, made by the Niue Public Service Commission pursuant to this Article, on the legal, constitutional, and policy issues raised by that Bill or by that amendment.

(2) If, pursuant to this Article, the Assembly by resolution decides to request the Niue Public Service Commission to report in relation to a Bill or to an amendment, the Speaker shall cause to be sent to the Niue Public Service Commission a copy of that resolution, and an account of the Assembly's discussions thereon, together with a copy of that Bill, or as the case may be, of that amendment and of the Bill to which it relates; but, if the Assembly takes a contrary decision, the Bill or the amendment to which that decision relates shall lapse.

(3) When, pursuant to this Article, the Assembly has received the report of the Niue Public Service Commission in relation to a Bill or an amendment to a Bill, and a new or revised amendment is thereafter introduced, the requirements of this Article shall not apply in relation to that new or revised amendment, unless, in the opinion of the Speaker, it raises legal, constitutional, or policy issues which were not raised by the previous request to that Commission or by its report.

33 Special provisions with regard to measures affecting Niuean land

(1) The Niue Assembly shall not proceed upon any Bill or upon an amendment to any Bill, after its introduction, if in the opinion of the Speaker, that Bill or that amendment makes provision concerning –

(a) The customary title to Niuean land; or

(b) The alienation of Niuean land; or

(c) The purchase, taking, or other acquisition of Niuean land for any public purpose; or

(d) [Repealed]

unless the Assembly has before it a report, made by a Commission of Inquiry, having such powers and authority to summon witnesses and to receive evidence as are conferred on a Commission of Inquiry by law, on the legal, constitutional, and policy issues raised by the Bill or by that amendment.

(2) If the Assembly by resolution decides that any Bill or amendment to which this Article applies is worthy of consideration by a Commission of Inquiry pursuant to this Article, the Cabinet shall as soon as possible consider whether and in what manner it should act to enable effect to be given to the Assembly's decision; but, if the Assembly takes a contrary decision in relation to any such Bill or amendment, that Bill or that amendment shall lapse.

(3) Whenever the Assembly has by resolution decided that any Bill or amendment to which this Article applies is worthy of consideration by a Commission of Inquiry pursuant to this Article –

(a) The Cabinet may establish a Commission of Inquiry with appropriate terms of reference, or may make any necessary alteration in the terms of reference of a Commission of Inquiry already established to inquire into any matter affecting Niuean land; and the Premier shall as soon as possible inform the Assembly of any arrangement that has been made by the Cabinet to enable effect to be given to the Assembly's decision; and

(b) Whenever it appears that such an arrangement has been made by the Cabinet, the Speaker shall cause to be sent to the Commission of Inquiry designated by the Cabinet for the purpose of considering the Bill or the amendment to which the Assembly's resolution relates a copy of that resolution and an account of the Assembly's discussions thereon, together with a copy of the Bill or, as the case may be, a copy of the amendment and of the Bill to which it relates, and the Commission of Inquiry shall, pursuant to this Article, in due course make its report to the Assembly.

(4) When, pursuant to this Article, the Assembly has received the report of a Commission of Inquiry in relation to a Bill or to an amendment to a Bill and a new or revised amendment is thereafter introduced, the requirements of this Article shall not apply in relation to that new or revised amendment, unless, in the opinion of the Speaker, it raises legal, constitutional, or policy issues which were not raised by the previous report of that Commission of Inquiry.

(5) In this Article –

"alienation" in relation to Niuean land, means the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation; and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined;

"customary title" means title in accordance with the customs and usages of Niue;

"Niuean land" means land in Niue vested in the Crown but held by Niueans according to the customs and usages of Niue; and includes any land granted by the Crown in fee simple before the 1st day of April 1916 and any customary land declared to be Niuean freehold land or native freehold land by an order of any Court before the 1st day of November 1969.

34 When Bills become law

(1) Subject to the requirements of Article 35 of this Constitution in those cases to which that Article applies, a Bill shall become law if, and only if –

(a) It has been passed by the Niue Assembly; and

(b) The Speaker, being satisfied that it has been passed in accordance with this Constitution and with the Standing Orders of the Assembly, has endorsed on a copy of the Bill a certificate of compliance with the requirements of this Article, and has, in the presence of the Clerk of the Niue Assembly, signed that certificate and sealed that copy with the Seal of Niue, and inscribed thereon the date of that signing and sealing; and

(c) The Clerk of the Niue Assembly has, in the presence of the Speaker, countersigned the certificate on that copy of the Bill.

(2) A Bill which becomes law in accordance with the requirements of this Article, shall be an Act of the Niue Assembly.

(3) Subject to its provisions, an Act shall come into force on the date of its certification and sealing.

35 Power of the Niue Assembly to repeal or amend this Constitution

(1) A Bill repealing or amending or modifying or extending any of the provisions of the Niue Constitution Act 1974 or of this Constitution or making any provision inconsistent with any of those provisions shall become law if, and only if –

(a) It has been passed by the Niue Assembly in compliance with the following requirements –

(i) On both the final reading, and on the reading which preceded it, the Bill receives the affirmative votes of not less than two-thirds of the total membership of the Assembly, as provided in Article 16(2)(b) of this Constitution; and

(ii) The vote on the final reading takes place at least 13 weeks after but excluding the day of the vote on the reading which preceded it; and

(b) It has thereafter been submitted to a poll, conducted in a manner prescribed by law, of the persons who at the time of that poll were entitled to vote as electors at a general election of members of the Niue Assembly, and has at that poll received the support –

(i) In the case of any Bill repealing or amending or modifying or extending any of the provisions of sections 2 to 9 of the Niue Constitution Act 1974 or of Articles 1 and 69 of this Constitution or of this Article, by two-thirds of the votes validly cast; and

(ii) In any other case, of a majority of the votes validly cast; and

(c) The Speaker, being satisfied that it has been passed in accordance with this Constitution and with the standing Orders of the Assembly, has endorsed on a copy of the Bill a certificate of compliance with the requirements of this Article, and has, in the presence of the Clerk of the Niue Assembly, signed that certificate and sealed that copy with the Seal of Niue, and inscribed thereon the date of that signing and sealing; and

(d) The Clerk of the Niue Assembly has, in the presence of the Speaker, countersigned the certificate on that copy of the Bill.

(2) A Bill which becomes law in accordance with the requirements of this Article shall be part of this Constitution and shall be described as a constitutional amendment.

(3) Subject to its provisions, a constitutional amendment shall come into force on the date of its certification and sealing.

36 New Zealand Parliament not to legislate for Niue, and New Zealand subordinate legislation not to apply to Niue, except with consent

(1) No Act, and no provision of any Act, of the Parliament of New Zealand passed on or after Constitution Day shall extend to Niue as part of the law of Niue, unless –

(a) The passing of that Act or the making of that provision, so far as it extends to Niue, has been requested and consented to by resolution of the Niue Assembly; and

(b) It is expressly declared in that Act that the Niue Assembly has requested and consented to the enactment of that Act or of that provision.

(2) No subordinate legislation made after Constitution Day pursuant to any Act of the Parliament of New Zealand shall extend to Niue as part of the law of Niue unless –

(a) At the date of its making, the Act pursuant to which that subordinate legislation was made extends to Niue as part of the law of Niue; and

(b) The extension to Niue of that subordinate legislation has been requested and consented to by the Cabinet of Ministers of Niue; and

(c) It is expressly declared in that subordinate legislation that the Cabinet of Ministers of Niue has requested and consented to that extension.

(3) Any Act of the Parliament of New Zealand which, pursuant to this Article, extends to Niue as part of the law of Niue, shall have the same force and effect as if it were an Act of the Niue Assembly.

(4) In this Article the term "subordinate legislation" means any Order in Council, Proclamation, regulations, rules, or other subordinate legislation.

PART III
THE JUDICIARY
The High Court of Niue

37 High Court established

(1) There shall be a Court of record, to be called the High Court of Niue, for the administration of justice in Niue.

(2) Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction (both criminal jurisdiction, and civil jurisdiction including jurisdiction in relation to land) as may be necessary to administer the law in force in Niue.

(3) There shall be 3 Divisions of the High Court, namely –

(a) A Civil Division;

(b) A Criminal Division; and

(c) A Land Division.

(4) A Judge of the High Court may exercise any of the jurisdiction and powers of a Judge of any Division.

(5) Subject to the subclauses (1), (2), (3) and (4) of this Article and to Article 38, each Judge of the High Court, or any 2 or more Judges, may, at any time in Niue or beyond Niue, exercise all the powers of the High Court.

38 Jurisdiction of Divisions of the High Court

(1) Each Division of the High Court shall hear and determine –

(a) Such proceedings as are, under or by virtue of any enactment, to be heard and determined by that Division;

(b) Such other proceedings as may from time to time be determined by the Chief Justice, either generally or in any particular proceedings or classes of proceedings.

(2) The Land Division shall have all the jurisdiction and powers in relation to land that immediately before the commencement of this Article were conferred on the Land Court of Niue, and shall have such other jurisdiction as may be conferred on it by enactment.

39 Judges of the High Court

(1) The High Court shall consist of one or more Judges, each of whom shall be appointed under the provisions of this Constitution.

(2) If only one Judge is so appointed, he shall be the Chief Justice of Niue, but if more than one Judge is appointed, one of them shall be appointed as the Chief Justice of Niue.

(3) A person shall not be qualified for appointment as a Judge of the High Court under this Article, unless he possesses such qualifications as may, subject to this Constitution, be prescribed by Act.

40 Acting Chief Justice of the High Court

Where any vacancy exists in the office of Chief Justice, or it appears that the Chief Justice is, for any reason, for the time being unable to perform the functions of his office, those functions may be performed by another Judge of the High Court, and if there is more than one such Judge who is able to perform those functions, then by the Judge who is senior in terms of the date of his appointment to that office, and that Judge may continue to perform those functions until a new Chief Justice is appointed, or, as the case may be, until the Chief Justice is again able to perform the functions of his office.

41 Temporary Judges

The Cabinet may at any time appoint any person of any age who is otherwise qualified for appointment to hold office as Chief Justice or as another Judge for such time, not exceeding one year, as is specified in the warrant of appointment.

Appointment, Tenure of Office, and Salaries of Judges

42 Appointment of Judges

The Chief Justice and other Judges of the High Court shall be appointed as follows –

(a) The Chief Justice of the High Court shall be appointed by the Governor-General, acting on the advice of Cabinet tendered by the Premier;

(b) The other Judges of the High Court shall be appointed by the Governor-General, acting on the advice of Cabinet tendered by the Chief Justice of the High Court and the Minister of Justice.

43 Tenure of office of Judges

(1) Except in the case of an appointment made under Article 41, no person who has attained the age of 68 years shall be appointed to or continue to hold office as the Chief Justice or other Judge of the High Court.

(2) Nothing done by the Chief Justice or other Judge of the High Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire or that his term has expired, as the case may be.

(3) The Chief Justice or any other Judge of the High Court may resign his office in writing under his hand addressed to the Governor-General.

44 Salaries of Judges

(1) The salaries of the Chief Justice and other Judges of the High Court shall be determined by Act and shall be a charge on the Niue Government Account.

(2) The salaries of those Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

45 Removal of Judges from office

(1) The Chief Justice and any other Judge of the High Court shall not be removed from office except by the Governor-General acting on the advice of Cabinet tendered by the Premier and given in accordance with a recommendation contained in a resolution of the Niue Assembly.

(2) The only ground upon which the Chief Justice and any other Judge may be removed from office is that of inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour.

Commissioners of the High Court

46 Commissioners of the High Court

(1) Cabinet may appoint Commissioners of the High Court of Niue, who shall hold office for such time as shall be specified in their warrants of appointment.

(2) No person who has attained the age of 68 years or who is a Member of the Niue Assembly shall be appointed to or continue to hold office as a Commissioner of the High Court.

(3) Subject to subclause (2), the office of Commissioner of the High Court may with the approval of the Public Service Commission be held concurrently with any office in the Niue Public Service, or any other position or employment, but a Commissioner of the High Court who is a member of the Niue Public Service shall not in the exercise of his functions be under the control of the Niue Public Service Commission.

(4) Nothing done by a Commissioner of the High Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire, or that his term of office has expired.

(5) A Commissioner of the High Court may resign by writing under his hand addressed to the Premier.

47 Temporary Commissioners

The Cabinet may at any time appoint any person of any age who is otherwise qualified for appointment to hold office as a Commissioner of the High Court for such time, not exceeding one year, as is specified in his warrant of appointment.

48 Jurisdiction of Commissioners of the High Court

(1) A Commissioner of the High Court shall possess and may exercise such of the functions of a Judge of the High Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Justice) as may be prescribed by Act, either generally or with respect to any particular Commissioner or Commissioners of the High Court, and all references in any enactment to a Judge of the High Court shall be construed as applying to a Commissioner of the High Court within the limits of the jurisdiction conferred on him.

(2) An Act may provide for appeals from a Commissioner of the High Court to a Judge of that Court.

49 Remuneration of Commissioners of the High Court

(1) Commissioners of the High Court shall receive such salaries and allowances as may from time to time be prescribed by enactment; but if any Commissioner is appointed on terms which do not require him to devote the whole of his time to performing the duties of that office, he shall receive by way of salary and allowances, the amount that is appropriate, having regard to the extent of the duties performed by him and to the terms and conditions of his appointment.

(2) The salaries of Commissioners shall be a charge on the Niue Government Account.

(3) During the term of office of any Commissioner, his salary may be increased whether to take account of any increase in general levels of remuneration or for any other reason, but his salary shall not during the term of his office be reduced, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

50 Removal of Commissioners from office

(1) A Commissioner of the High Court shall not be removed from office except by Cabinet, acting in accordance with a recommendation of the Chief Justice.

(2) The only ground upon which a Commissioner may be removed from office is that of inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or of misbehaviour.

Justices of the Peace

51 Justices of the Peace

(1) The Cabinet may appoint Justices of the Peace for Niue, who shall hold office for such time as may be prescribed in their warrants of appointment.

(2) Any two Justices of the Peace for Niue, acting together, shall possess and may exercise in Niue any of the functions that are by law conferred generally on Commissioners of the High Court; and Article 48 of this Constitution, with the necessary modifications shall apply as if references therein to a Commissioner of the High Court were a reference to any two Justices of the Peace for Niue; but this subclause shall not apply in the case of any Justice of the Peace who is a member of the Niue Assembly or who has attained the age of 68 years.

(3) A Justice of the Peace for Niue shall not be removed from office except by Cabinet acting in accordance with a recommendation of the Chief Justice.

(4) Justices of the Peace shall receive, in respect of any duties they perform, such remuneration as may from time to time be prescribed by enactment.

Court of Appeal

52 Court of Appeal established

(1) There shall be a Court of Appeal of Niue, which shall be a superior Court of record.

(2) Subject to articles 53 and 54, the Judges of the Court of Appeal shall be –

(a) The Chief Justice and other Judges of the High Court who shall be a member of the Court by virtue of their office; and

(b) Such other persons, possessing such qualifications as shall be prescribed by Act, as may from time to time be appointed by the Governor-General acting on the advice of the Cabinet tendered to him by the Premier.

(3) The Chief Justice shall be the President of the Court of Appeal, but in his absence the Judge present who is highest in seniority shall preside.

(4) Judges of the Court of Appeal shall take seniority according to their respective dates of their first appointment as Judges whether of the High Court or of the Court of Appeal or of any Court in any place outside Niue.

(5) An appointment under paragraph (b) of subclause (2) of this Article shall be for a period of time or for the trial or hearing of one or more particular causes or matters, as may be specified in the instrument of appointment.

53 Number of Judges

(1) Any three Judges of the Court of Appeal may at any time in Niue or beyond Niue, exercise all the powers of the Court: Provided that the Court may have its judgment delivered by any one of the Court's members who is available, and, if there is no such member, then through the Registrar of the Court of Appeal.

(2) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.

54 Judges not to sit on appeals from own decision

A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or by a Court on which he sat as a member.

55 Determination of Court of Appeal

(1) Except as provided in subclause (2) of this Article, or as may be provided by enactment, the determination of the Court of Appeal shall be final.

(2) Nothing in this Article shall limit the right of Her Majesty in Council, upon the petition of any person aggrieved by any decision of the Court of Appeal to admit that person's appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

55A Jurisdiction of Court of Appeal

(1) Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine any appeal from a judgment of the High Court.

(2) Subject to the provisions of this Constitution, and such time limits as may be prescribed by enactment within which an appeal shall be commenced, and except where under any Act a judgment of the High Court is declared to be final, an appeal shall lie to the Court of Appeal from a judgment of the High Court –

(a) As of right, if the High Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution;

(b) As of right, from any conviction by the High Court in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to death or to imprisonment for life or for such term, or to such fine, and from any such sentence (not being a sentence fixed by law) as shall be prescribed by Act;

(c) As of right, when the matter in dispute on the appeal amounts to not less than such value as shall be prescribed by Act;

(d) With the leave of the High Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interest affected, or for any other reason, ought to be submitted to the Court of Appeal for decision;

(e) In such other cases as may be prescribed by Act.

(3) Notwithstanding anything in subclause (2) of this Article, and except where under any Act a judgment of the High Court is declared to be final, the Court of Appeal may, in any case in which it thinks fit and at any time, grant special leave to appeal to that Court from any judgment of the High Court, subject to such conditions as to security for costs and otherwise as the Court of Appeal thinks fit.

(4) In this Article the term "judgment" includes any judgment, decree, order, writ, declaration, conviction, sentence, or other determination.

55B Transmission of order of Court of Appeal

The determination of the Court of Appeal on any appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Court of Appeal under the seal of the Court of Appeal, and judgment shall thereupon be entered by the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by that determination.

Oath of Allegiance and Judicial Oath

55C Oath of Allegiance and Judicial Oath

(1) The Chief Justice, and other Judges of the High Court, and every Judge of the Court of Appeal, and every Commissioner, and Justice of the Peace for Niue, shall, as soon as may be after his acceptance of office, take and subscribe the following oaths –

(a) An Oath of Allegiance in the following form –

"I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her (or His) Majesty [Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second] as the Head of State of Niue, Her (or His) heirs, and successors, in accordance with the Constitution and the law. So help me God";

(b) The Judicial Oath in the following form –

"I,....., swear by Almighty God that I will well and truly serve Her (or His) Majesty (Specify as above) as the Head of State of Niue, Her (or His) heirs, and successors in accordance with the Constitution and the law, in the office of.....; and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God."

(2) The oaths required to be taken by this Article shall be taken before the following persons –

(a) In the case of the Chief Justice, before the Governor-General;

(b) In the case of any other Judge of the High Court, or any Judge of the Court of Appeal, before the Governor-General or before the Chief Justice;

(c) In the case of the Commissioner of the High Court or a Justice of the Peace, before the Chief Justice or any Judge of the High Court, or the Speaker of the Niue Assembly.

(3) If any person mentioned in this Article declines or neglects, when the oaths required to be taken by him under this Article are duly tendered, to take those oaths, he shall if he has already entered on his office vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled in respect of the same appointment to the same office to take any oath more than once: Provided that no proceedings before any such person may be questioned in any Court solely on the ground that that person failed to take the oaths prescribed by this Article.

PART IV

The Public Revenues of Niue

56 Legislative control of public revenue and expenditure

(1) No taxes shall be imposed except by law.

(2) All revenue received by the Government of Niue shall be paid into an appropriate public fund or account; and every such fund or account, unless established by existing law, shall be established by or pursuant to Act.

(3) All expenditure of public money, unless authorised by existing law, shall be authorised by Act.

57 Niue Government Account

(1) There shall be a Niue Government Account.

(2) All taxes and other revenues and money raised or received by the Government of Niue shall be paid into the Niue Government Account unless required or permitted by law to be paid into any other public fund or account.

58 Annual estimates and appropriations

(1) Except as provided in Article 59(4)(b) of this Constitution or where authorised by a specific appropriation contained in any existing law or in any Act, all expenditure of public money in any financial year shall be charged to votes specified in the Appropriation Act and in accordance with the estimates for that year.

(2) Each Appropriation Act shall relate to one financial year, and shall lapse at the end of that year.

59 Cabinet to supervise expenditure

(1) It shall be the responsibility of the Cabinet to make proposals to the Assembly as to the projected levels of public revenue and of public expenditure in each financial year, and as to all other budgetary matters. In particular, the Premier or another Minister shall introduce or take responsibility in the Assembly for all Bills relating to financial measures, and for the submission of a detailed statement of estimated expenditure in respect of each financial year.

(2) The Cabinet shall also be accountable to the Assembly for all public expenditure, and for relating such expenditure to the appropriations made by the Assembly pursuant to Article 58 of this Constitution, or to any discretion to approve expenditure pursuant to subclause (4) of this Article, and shall lay the accounts for each financial year before the Assembly.

(3) Any delegation by the Cabinet, whether or not to be one or more of its own members, of the power to approve public expenditure shall, subject to existing law, be made by or pursuant to Act, and shall be without prejudice to the generality of the Cabinet's continuing responsibilities under this Article.

(4) Subject to such lower limits and such restrictions as may from time to time be prescribed by any enactment, the Cabinet may approve the expenditure of such sums as it considers necessary –

(a) In anticipation of provision to be made in the Appropriation Act for any financial year; but the total amount issued and paid under this paragraph in relation to any vote in any financial year shall not exceed the unexpended balance of the corresponding vote in the Appropriation Act for the preceding financial year, together with an amount equal to one-fourth of that vote, and all money so spent shall be included in the estimates for that year; or

(b) Where, during the period between the passing of the Appropriation Act for any financial year and the end of that financial year, it is desirable that money should be expended in excess of or without the appropriation of the Niue Assembly, but the total amount of all sums issued and paid under this paragraph in any financial year shall not exceed 1½ percent of the total amount of all sums appropriated by the Appropriation Act for that financial year.

(5) All expenditure made under subclause (4)(b) of this Article shall be charged as unauthorised expenditure to the appropriate fund or account.

(6) A statement of the unauthorised expenditure for any financial year shall be included in the accounts for that year laid before the Assembly.

60 Audit

(1) The Audit Office of New Zealand shall be the auditor of the Niue Government Account and of all other public funds or accounts, and of the accounts of all Departments and Offices of executive government, and of such other public or statutory authorities or bodies as may be provided by law.

(2) The Audit Office shall, at least once annually, prepare and forward to the Speaker of the Niue Assembly for presentation to the Assembly a report containing such information as is required to be submitted by any enactment, together with such other information relating to the Niue Government Account, or to such other funds or accounts which under this Constitution or under any enactment are required to be audited by the Audit Office, as that office considers desirable.

PART V
Health, Education and other Social Services

61 Health, education and other social services

(1) The Cabinet shall be responsible for establishing and maintaining in Niue such hospitals and other institutions and for providing such other services as it considers necessary for the public health.

(2) The Cabinet shall be responsible for establishing and maintaining in Niue such public schools and for making such other provision as it considers necessary to provide educational opportunities for the people of Niue.

(3) The Cabinet shall be responsible for establishing and maintaining such other institutions and services and for making such other provision as it considers necessary to provide a reasonable standard of living for the people of Niue and to secure their economic, social, and cultural welfare.

(4) Nothing in this Article shall be construed as limiting the powers conferred on the Cabinet by Article 2 of this Constitution to exercise on behalf of Her Majesty the executive authority of Niue.

PART VI
The Niue Public Service

62 Niue Public Service

(1) There shall be a Niue Public Service comprising such employees as may be necessary to assist the Cabinet in exercising the executive authority of Niue and to perform such other functions or exercise such powers as may be prescribed by law.

(2) Except as provided in subclause (4) of this Article, no person shall be employed in the service of the Government of Niue unless he is an employee of the Niue Public Service.

(3) Except as may otherwise be provided by Act, employment by a public corporation or other statutory authority or public body constituted under the law of Niue shall, for the purposes of this Article, be considered as employment in the service of the Government of Niue.

(4) Subclause (2) of this Article shall not apply to service remunerated by way of fees or commission only, or honorary service, or service as –

(a) A Judge or Commissioner of the High Court or a Justice of the Peace for Niue, or any other judicial officer appointed by or pursuant to existing law or Act; or

(b) A Minister, or any other member or the Speaker of the Niue Assembly; or

(c) A member of the Niue Public Service Commission.

63 Secretary to the Government

(1) There shall be an officer of the Niue Public Service to be called the Secretary to the Government, who shall be the permanent head of the Niue Public Service and the chief administrative officer of the Government of Niue.

(2) In addition to the other functions and powers conferred upon him by law, the Secretary to the Government shall be responsible to the Cabinet for the general direction of the work of all departments and offices of the executive government. The head of each Department or office shall account for the work of that Department or office to the Secretary to the Government, as well as to the Minister primarily responsible for that Department or office or, as the case may be, for the function performed by that Department or office.

(3) Notwithstanding anything in Article 69(2) of this Constitution, the Niue Public Service Commission shall consult the Premier and shall obtain the concurrence of the Cabinet before it appoints any person to be Secretary to the Government.

(4) Notwithstanding anything in any enactment, no appeal by any employee of the Niue Public Service shall lie against the promotion or appointment of any person to the office of Secretary to the Government.

Niue Public Service Commission

64 Niue Public Service Commission

(1) There shall be a Public Service Commission for Niue, to be called the Niue Public Service Commission.

(2) The Commission shall consist of 3 members who shall be appointed by the Cabinet.

(3) The Chairman of the Commission shall be appointed by the Cabinet from amongst the members of the Commission.

(4) Each member of the Commission, and the Chairman, shall be appointed for a term of 3 years but may from time to time be reappointed.

(5) Each member of the Commission shall receive such salary allowances and benefits as the Cabinet determines from time to time.

(6) A member of the Commission may resign his office at any time by written notice to the Premier, or may be removed from office by the Cabinet on the ground that he is unable to discharge the functions of his office (whether by reason of infirmity of body or mind or from any other cause) or misbehaviour.

65 Acting members of Commission

(1) In the event of the incapacity, by reason of illness or absence or any other cause, of any member of the Commission, the Cabinet may appoint a person to act in place of that member during that incapacity.

(2) Any person acting in place of a member of the Commission pursuant to this Article shall be deemed for all purposes to be a member of the Commission, and no appointment of any such person, and no act done by him in his capacity as a member of the Commission shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

66 Procedure of Commission

(1) At all meetings of the Niue Public Service Commission, 2 members shall form a quorum.

(2) The Commission shall have power to invite such other persons as it thinks fit to assist in its deliberations.

(3) At least 2 members of the Commission shall concur in any decision of the Commission.

(4) Any matter which may be decided by the Commission at a meeting may also be decided by a minute of the Commission signed by all the members.

(5) Subject to this Constitution, the Commission shall regulate its own procedure.

67 Delegation of powers

(1) Without prejudice to its continuing responsibility for the organisation and management of the Niue Public Service, the Commission may from time to time, either generally or particularly, delegate any of its powers in relation to the Niue Public Service (including this power of delegation) to any of its members or any other person or to the Secretary to the Government.

(2) Subject to any general or special directions given by the Commission, a person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by enactment and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this Article shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder for the time being of a specified office.

(5) The delegation of any powers under this section shall not prevent the exercise of those powers by the Commission or by any person making the delegation.

Management of Niue Public Service

68 Functions and powers of Commission

(1) The Niue Public Service Commission shall be the employing authority for the Niue Public Service, and, subject to this Constitution, shall have the general oversight and control of its organisation and management, and shall be responsible for reviewing the efficiency and economy of all departments and offices of the executive government.

(2) Subject to this Constitution and to any enactment, the Commission may prescribe and determine the terms and conditions of employment of members of the Niue Public Service, and may issue such instructions or exercise such other powers as may be necessary to enable it to perform the functions and carry out the duties described in this Constitution or conferred on it by law.

(3) In the performance or exercise of its functions, powers, and duties in relation to the Niue Public Service, the Commission may conduct such inquiries and investigations as it considers necessary, and, for the purpose of conducting any such inquiry or investigation, the Commission shall have such powers and authority to summon witnesses and to receive evidence as are conferred on a Commission of Inquiry by law.

(4) Except as provided in Article 69(2) of this Constitution, the Commission shall be responsible to the Cabinet for the carrying out of its duties and the performance and exercise of its functions and powers, and the Commission shall, as necessary, inform and advise the Cabinet in relation to any matter affecting the Niue Public Service.

(5) The Commission shall as soon as practicable after the 31st day of March in each year furnish to the Cabinet a report on the state of the efficiency and economy of the Niue Public Service and on the work of the Commission for the year ending with that date. A copy of that report shall be laid before the Niue Assembly.

69 Appointments to Niue Public Service

(1) All employees of the Niue Public Service shall be appointed by the Niue Public Service Commission and, subject to this Constitution and to any enactment, shall hold office on such terms and conditions as may from time to time be prescribed or determined by the Commission.

(2) In all matters relating to decisions about individual employees (whether they relate to the appointment, promotion, demotion, transfer, disciplining, or cessation of employment of any employee or any other matter) the Commission shall not receive any direction from the Cabinet, but shall act independently.

(3) In establishing and revising the terms and conditions of employment in the Niue Public Service, the factors to be taken into account shall include –

(a) The need for the Niue Public Service to recruit and retain an efficient staff, and, in particular, to provide varied careers and adequate advancement for Niueans with special skills;

(b) The need to afford reasonable opportunities of employment in Niue for the people of Niue, and in so doing to have regard to the employment opportunities and levels of remuneration available in New Zealand;

(c) The need to act consistently with Government economic and social policy, bearing in mind that the terms and conditions of employment in the Niue Public Service are a major element in the general well-being of Niue.

(4) The pay and allowances of employees of the Niue Public Service shall be paid from the Niue Government Account out of money appropriated by the Niue Assembly.

Reports and Recommendations to Assembly

70 Commission to make certain reports and recommendations to Assembly

(1) Pursuant to Article 25 of this Constitution, the Niue Public Service Commission shall from time to time consider whether circumstances require the making of a report and recommendations to the Assembly as to the levels of remuneration and other entitlements of the Premier, the other Ministers, the members of the Assembly who are not Ministers, and the Speaker, and the Commission shall make such a report and recommendations, whenever there is a general alteration of the levels of remuneration of employees of the Niue Public Service.

(2) The Commission shall send to the Speaker any report and recommendations made under subclause (1) of this Article.

(3) Whenever, pursuant to Article 32 of this Constitution, the Niue Public Service Commission is requested to report on the legal, constitutional, and policy issues raised by any Bill or amendment, it shall as soon as possible, and in any case within one month after receiving the papers relating to the Bill or amendment, respond to that request, either by furnishing its report to the Speaker, or, if it requires further time or information before forming a final opinion, by making that known to the Speaker.

PART VII
Transitional Provisions

71 Existing law to continue

Subject to this Constitution –

(a) The existing law shall, until repealed, and subject to any amendment thereof, continue in force on and after Constitution Day;

(b) All rights, obligations, and liabilities arising under the existing law shall continue to exist on and after Constitution Day, and shall be recognised, exercised, and enforced accordingly.

72-80 [Spent]

81 Seal of Niue

Until the Cabinet approves a different form or forms, the Seal of Niue established by Article 15 of this Constitution shall be in the form or forms approved by the Executive Committee for the Seal of Niue established by section 7 of the Niue Act 1966 (as substituted by section 3 of the Niue Amendment Act 1971).

PART VIII
Interpretation

82 Interpretation

(1) In this Constitution, unless the context otherwise requires –

"Act" means an Act of the Niue Assembly, as that term is used in Article 34 of this Constitution;

"Cabinet" means the Cabinet of Ministers of Niue established by Article 2 of this Constitution;

"Chief Justice" means the Chief Justice of the High Court of Niue appointed under Article 42 of this Constitution; and includes any other Judge of the High Court authorised under Article 40 of this Constitution to perform the office or exercise any function of the Chief Justice;

"Clerk of the Cabinet" means the Clerk of the Cabinet appointed pursuant to Article 14 of this Constitution;

"Clerk of the Niue Assembly" means the Clerk of the Niue Assembly appointed pursuant to Article 27 of this Constitution;

"Constitution" means this Constitution; and includes the Act of the Parliament of New Zealand intituled the Niue Constitution Act 1974; and also includes any constitutional amendment, as that term is used in Article 35 of this Constitution, when that constitutional amendment has come into force;

"Constitution Day" means the date on which this Constitution comes into force;

"Court of Appeal" means the Court of Appeal of Niue established by Article 52 of this Constitution;

"enactment" means –

(a) Any Act of the Niue Assembly and any Ordinance; and any regulation, rule, bylaw, or other instrument of a like nature made pursuant to any such Act or Ordinance;

(b) Any Act of the Parliament of New Zealand which extends to Niue as part of the law of Niue; and any Order in Council, Proclamation, regulation, rule, ministerial warrant, bylaw, or instrument of a like nature, made pursuant to any Act to which this paragraph applies, if that Order in Council, Proclamation, regulation, rule, ministerial

warrant, bylaw, or other instrument extends to Niue as part of the law of Niue;

"existing law" means any law in force in Niue immediately before Constitution Day; and includes any enactment passed or made before Constitution Day and coming into force on or after Constitution Day;

"High Court" means the High Court of Niue established by Article 37 of this Constitution;

"Judge" in relation to the High Court, means any Judge of that Court including the Chief Justice;

"law" means any law for the time being in force in Niue; and includes this Constitution and any enactment;

"Member of the Niue Assembly," or "Member" used in relation to the Niue Assembly, means any person elected as a member of the Assembly pursuant to Article 16 of this Constitution; but does not include the Speaker; and, in any case where the Assembly has been dissolved, shall have the extended meaning given to that term by subclause (4) of that Article;

"Minister" means a member of the Cabinet; and includes the Premier; and also includes any member of the Niue Assembly appointed as a temporary Minister pursuant to Article 8 of this Constitution;

"Niue Assembly" or "Assembly" means the Niue Assembly established by Article 16 of this Constitution;

"Niue Public Service" means the Niue Public Service established by Article 62 of this Constitution;

"Niue Public Service Commission" or "Commission" means the Niue Public Service Commission established by Article 64 of this Constitution;

"Ordinance" means an Ordinance of the Niue Island Assembly or of the Island Council of Niue;

"Premier" means the member of the Niue Assembly elected as Premier pursuant to Article 4 of this Constitution after he has been appointed as a Minister pursuant to Article 5 of this Constitution; and includes the Minister discharging the functions of Premier pursuant to subclause (1) or subclause (2) of Article 9 of this Constitution;

"Secretary to the Government" means the Secretary to the Government of Niue appointed pursuant to Article 63 of this Constitution;

"Speaker" means the Speaker of the Niue Assembly elected pursuant to Article 20 of this Constitution; and includes any member of the Niue Assembly performing the functions of Speaker pursuant to that Article.

(2) Where in this Constitution any person is required to subscribe an oath, he shall be permitted, if he so desires to comply with that requirement by making and subscribing an affirmation, and the form of oath prescribed by this Constitution shall be appropriately modified accordingly.

(3) Where under this Constitution the holder of any office is an employee of the Niue Public Service, any reference to the holder of that office shall be construed as including, to the extent of his authority, a reference to any other employee of the Niue Public Service for the time being authorised to exercise or perform all or any of the powers, duties, and functions of that office.

Ko e Fakatufono -Tohi Fakave A Niue

VEHEVEHEAGA

VALA 1

Ko e Fakatufono Pule Fakatonu A Niue

1 Pule Malolo faka-Fakatufono kua Fakave ki loto he malolo faka-Patuiki

Ko e Fono He Tau Ikipule

2 Ko e Fono He Tau Ikipule a Niue
3 Tau Ikipule kua taha ni e totouaga he ha lautolu a tau malolo kotofa
4 Palemia ha Niue
5 Kotofaaga he tau Ikipule he mole e fifiliaga he Palemia
6 Viliaga falanaki ke he Fono he Tau Ikipule
7 Fakaotiaga he tau Kotofaaga he tau Ikipule
8 Tau Hukui Ikipule
9 Hagai Palemia
10 Omonuo fakamooli
11 Tufatufaaga he tau gahua kotofa ke he tau Ikipule
12 Tau Fonoaga he Fono He Tau Ikipule
13 Tau Poakiaga, falu a la fono mo e tau fifiliaga he Fono He Tau Ikipule
14 Fakamau Kupu he Fono He Tau Ikipule

Fakamailoga a Niue

15 Fakamailoga a Niue

VALA II

Ko e Fono Taute Fakatufono-Tohi A Niue

Ko e Fono Ekepule Niue

16 Fono Ekepule Niue
17 Higoa he motu mo e talahauaga he tau nonofoaga he tau tagata vili mo e tau tagata fakatu ke vili ki ai
18 Tau tagata gahua fakatufono kua maeke ke fakatu vili po ke fifili ki ai
19 Tau Ekepule kua nakai talia ke eke mo tau tagata gahua he Fakatufono po ke fia manako ke he falu gahua Fakatufono
20 Fakatonu Fono he Fono Ekepule
21 Tau Ekepule ke eke e Omonuo he mahani Fakamooli
22 Fakaholoaga gahua he Fono Ekepule Niue
23 Tau vagahau
24 Tau mena ataina ki ai e Fono Ekepule Niue mo e tau Ekepule ha ha i ai
25 Palepale he Palemia, Tau Ikipule, tau Ekepule he Fono Ekepule Niue mo e Fakatonu Fono
26 Tukuaga he Fono Ekepule Niue
27 Fakamau Kupu he Fono Ekepule Niue

Ko e Talagaaga he tau Fakatufono-tohi

28 Malolo Kotofa ke taute fakatufono tohi
29 Tukuaga he tau Fakatufono-tohi Fakalatalata mo e falu a mena kehekehe ki mua he Fono Ekepule Niue
30 Tau fakakaupaaga pauaki ke lata mo e tau vahega fekau faka tupe
31 [Uta kehe]
32 Tau tauteaga fifili hagaao ke he tau mena kua lauia ai e Kau Gahua Fakatufono a Niue
33 Tau tauteaga fifili ma e tau tauteaga kua lauia ai e tau vala kelekele Niue
34 Ko e magaaho ka fakamooli ai e tau Fakatufono-tohi Fakalatalata ke eke mo tau Fakatufono-Tohi
35 Pule Malolo ha ha he Fono Ekepule Niue ke uta kehe po ke fakahui e Fakatufono-tohi Fakave nai
36 Nakai maeke e Fono Ekepule (Palemene) Niu Silani ke talaga e tau fakatufono-tohi ma Niue, mo e nakai maeke ke fakagahua e tau la fono-tohi Niu Silani a to talia ki ai

VALA III

Ko e Faahi Gahua Fakafiliaga

Ko e Fakafiliaga Lahi a Niue

37 Ko e fakatuaga he Fakafiliaga Lahi
38 Tau Fakafili mo e tau Komisina Fakafili he Fakafiliaga Lahi
39 Tau Malolo Fakafili ha ha he tau Komisina Fakafili he Fakafiliaga Lahi

Ko e Fakafiliaga Fonua Niue

40 Fakatuaga he Fakafiliaga Fonua
41 Tau Fakafili mo e tau Komisina Fakafili he Fakafiliaga Fonua

42 Tau malolo Fakafili ha ha he tau Komisina Fakafili he Fakafiliaga Fonua

Ko e Fakafiliaga Fonua Tokoluga a Niue
43 Fakafiliaga Fonua Tokoluga a Niue
44 Tau Fakafili he Fakafiliaga Fonua Tokoluga

Kotofaaga, Magahala he Kotofaaga, mo e tau Palepale he tau Fakafili mo e tau Komisina Fakafili
45 Kotofaaga he tau Fakafili mo e tau Komisina Fakafili
46 Magahala he Kotofaaga he tau Fakafili mo e tau Komisina Fakafili
47 Tau Fakafili mo e tau Komisina Fakafili Hukui
48 Hukui Iki Fakafili Lahi he Fakafiliaga Lahi mo e Hukui Iki Fakafili Lahi he Fakafiliaga Fonua
49 Utakeheaga he tau Fakafili mo e tau Komisina Fakafili mai he tau kotofaaga
50 Tau Palepale he tau Fakafili mo e tau Komisina Fakafili

Tau Ole mai he Fakafiliaga Lahi ke liu Fakafili
51 Ole he Fakafiliaga Lahi ke liu fakafili ke he Fakafiliaga Ole Liu Fakafili a Niu Silani
52 Fakafanoaga he Poakiaga he Fakafiliaga Ole Liu Fakafili ke lata mo e ole liu fakafili

Tau Lagomatai Fakafili
53 Tau Lagomatai Fakafili

Omonuo he Mahani Fakamooli mo e Omonuo
54 Omonuo he Mahani Fakamooli mo e Omonuo Faka-Fakafiliaga

Talahauaga mai he Iki Fakafili Lahi ke lata mo e a falu a Fakatufono-tohi Fakalatalata
55 Iki Fakafili Lahi ke fai talahauaga ke lata mo e falu a Fakatufono-tohi Fakalatalata
55A Malolo Pule Fakafiliaga Liu Fakafili
55E Utaaga he tau Poakiaga Tohi he Fakafiliaga Liu Fakafili
55I Omonuo he Mahani Fakamooli mo e Omonuo Faka-Fakafiliaga

VALA IV
TAU TUPE MOUA HA NIUE
56 Levekiaga Faka-Fakatufono he tau tupe moua mo e tau tupe fakamole
57 Fakaputuaga Tupe he Fakatufono Niue
58 Fakalatalataaga mo e Tufatufaaga he tau tupe ma e tau taha
59 Ko e Fono He Tau Ikipule ke kitekite e fakamoleaga he tau tupe
60 Siviaga he tau tupe

VALA V
FAAHI MALOLO TINO, FAAHI GAHUA FAKAAKO MO E FAAHI FIAFIA TINO
61 Faahi Malolo Tino, Faahi Gahua Fakaako mo e Faahi Fiafia Tino

VALA VI
KO E KAU GAHUA FAKATUFONO NIUE
62 Kau Gahua Fakatufono Niue
63 Tohi Kupu he Fakatufono

Kau Pule Gahua Niue
64 Kau Pule Gahua Niue
65 Tau Tagata Hukui he Kau
66 Puhala Gahua he Kau
67 Ko e foakiaga he tau malolo kotofa

Gahuahuaaga he Kau Gahua Fakatufono Niue
68 Tau gahua mo e tau malolo kotofa he Kau
69 Tau kotofaaga ke he Kau Gahua Fakatufono Niue

Tau Fakailoaaga mo e Pulega atu ke he Fono Ekepule
70 Ko e tau fakailoaaga mo e tau pulega atu he Kau Pule Gahua ke he Fono Ekepuke

VALA VII
TAU FAKATOKATOKAAGA MA E MATUTAKIAGA
71 Ke fakatumau e tau Fakatufono-tohi a Niue
72-80 Ko e falu vala he tohi fakave nei kua nakai tuai fakaaoga
81 Ko e Fakamailoga a Niue

VALA VIII
FAKAMAAMAAGA
82 Fakamaamaaga

FAKATUFONO-TOHI FAKAVE

VALA I
KO E FAKATUFONO PULE FAKATONU A NIUE

1 Pule Malolo faka-fakatufono kua fakave ki loto he malolo faka-Patuiki

Ko e pule malolo faka-fakatufono a Niue kua fakave ke he Patuiki Fifine Lilifu ke he tonuhia a Niu Silani, ti ko e Kovana Lahi Niu Silani ko ia kua talahau ai ko e hukui he Patuiki Fifine Lilifu ke lata ai mo Niue.

Ko e Fono He Tau Ikipule

2 Fono He Tau Ikipule a Niue

(1) To ha ha i ai e taha Fono He Tau Ikipule a Niue, (kua talahau ai pehe ko e Fono He Tau Ikipule) ti ki a ha ha i ai e Palemia a Niue (ko ia ni ko e taha ekepule he Fono Ekepule) mo e toko 3 foki e ekepule mai he Fono Ekepule Niue.

(2) Ke lata mo e Fakatufono-tohi Fakave nai, ko e pule malolo faka-fakatufono a Niue to maeke ke faka-gahua ai he Fono He Tau Ikipule ma e higoa he Patuiki Lilifu, ha kua ha i ai e tau fakatonuaga katoatoa mo e levekiaga pule malolo faka-fakatufono ha Niue mo e taute e falu a gahua mo e tau malolo kotofa, tuga he toka i loto he tau fakatufono-tohi.

3 Tau Ikipule kua taha ni e totouaga he ha lautolu a tau malolo kotofa

(1) Ko lautolu he Fono He Tau Ikipule (kua fakahigoa ai ko e tau Ikipule) to taha ni a lautolu ke he mahani faka-fehagai mo e falanaki atu ke he Fono Ekepule Niue.

(2) A to kehe kaeke ko e muitua ke he Matakupu 7 he Fakatufono-tohi Fakave nai, ko e tau Ikipule ki a fakatumau ai a lautolu he kotofaaga a to kotofa ai e tau hukui ha lautolu ke lata mo e Matakupu 5 (2) he Fakatufono-tohi Fakave nai.

4 Palemia ha Niue

(1) To ha ha i ai e taha Palemia ha Niue, ko ia ne fifili ai ke he numela tokologa he tau Ekepule kua nakai taumaleku e tokologa mai ia lautolu e tau Ekepule kua ha ha i ai ke he fono he Fono Ekepule Niue mo e eke vili ai i loto he fonoaga.

(1) Ko e poakiaga ke he Fono Ekepule Niue ke fifili e Palemia he fonoaga fakamua he Fono Ekepule, he mole e viliaga lahi mo e pihia foki he tau magaaho kehekehe nai.

(a) Ka fakaoti e kotofaaga Ekepule he Palemia he Fono Ekepule, ha ko e taha kakano kehe ka e nakai ko e tukuaga he Fono Ekepule; po ke

(e) Ka eke ke tuku atu he Palemia haana a tohi fakaoti kotofa, kua taute e tohi ia ti tuku atu ai ke he Fakatonu Fono po ke kaeke kua fakaoti tuai ke lata mo e Matakupu 6 (3) po ke Matakupu 7(3) he Fakatufono-tohi Fakave nai.

5 Kotofaaga he tau Ikipule he mole e fifiliaga he Palemia

(1) Ko e magaaho tote ia ni he mole e fifiliaga haana ke he kotofaaga, ko ia e Palemia fifili, kua poaki nei ki a ia ke fakatu higoa ke he Fakatonu Fono, ha kua talia e lautolu, toko 3 e tau ekepule he Fono Ekepule Niue ke lata mo e tau kotofaaga Ikipule.

(1) Ka moua e ia e tau higoa fakatutu na, ko ia e Fakatonu Fono, kua poaki nei kia ia ke kotofa mo tau Ikipule e Palemia fifili mo e tau ekepule ne kua fakatu higoa ki ai.

(2) Ko e tau kotofaaga ne eke ai i lalo he vala kupu (2) he Matakupu nai, to taute ai he Fakatonu Fono ke he mahani he tohi kua taute ai i lalo he Fakamailoga a Niue.

(3) Kaeke ke nakai eke ai he Palemia fifili, ke he tau aho ne 7, ka e nakai totou e aho ne fifili ai a ia ke he kotofaaga, e poaki ke tuku atu e ia ke he Fakatonu Fono e tau higoa fakatutu haana ma e tau kotofaaga ke he Fono He Tau Ikipule ke lata mo e Matakupu nai, ti ko e haana a fifiliaga ke he kotofaaga na to nakai tuai nofo ai ha malolo, ti kia fakahoko vave e taha fono he Fono Ekepule Niue ke liu foki fifili ai e Palemia, mo e onoono atu ke he Matakupu 26 (1) (o) he Fakatufono-tohi Fakave nai.

6 Viliaga falanaki ke he Fono He Tau Ikipule

(1) He ha Fonoaga he Fono Ekepule Niue –

(a) Ko e Palemia po ke taha Ikipule kua eke mo hukui he Palemia, kua maeke ia ia, ke taute taha fakailoaaga hagaao ke he haana manatu ke pulega e taha viliaga falanaki ke he Fono He Tau Ikipule ke taute pauaki po ke taha mena taute kua pulega ki ai e Fono He Tau Ikipule ke talia ki ai e Fono Ekepule;

(e) Ko e toko 4 po ke tokologa atu foki e tau ekepule he Fono Ekepule, ko lautolu nakai ko e tau Ikipule, kua maeke ia lautolu ke taute taha fakailoaaga he ha lautolu a manatu ke pulega e taha viliaga kua faka-hagaao ko e nakai fai falanakiaga e Fono Ekepule ke he Fono He Tau Ikipule.

(2) Ko e ha kupu pulega ne fai fakailoaaga kua eke ai i lalo he vala kupu (1) he Matakupu nai kua poaki ia ke vili ki ai i loto he taha fonoaga he Fono Ekepule Niue ne kua fono ai he vaha loto he nakai tote hifo e 5 a tau aho po ke lakafia e 10 e tau aho he mole, ka e nakai lafi ki ai e aho ne eke ai e fakailoaaga.

(3) Kaeke kua kaumahala e kupu pulega kua fai falanakiaga, po ke tuga ni he pulega ki ai kua kautu tuai e kupu pulega nakai fai falanakiaga, ti ko ia e Palemia kua talahau pehe ai kua fakaoti tuai e ia haana a kotofaaga he mole e 5 e tau aho,ka e nakai lafi ki ai ai e aho ne fono ai e Fono Ekepule Niue, a to kehe ka nakai la katoa e tau aho na ti ko ia e Palemia kua ole atu kehe Fakatonu Fono ke tuku e Fono Ekepule ka e taute e viliaga lahi.

7 Fakaotiaga he tau kotofaaga he tau Ikipule

(1) Ko e taha he tau Ikipule, ka e nakai ko e Palemia, kua poaki nai kia ia ke toka haana a gahua kaeke-

(a) Ko e haana a kotofaaga ke he haana gahua na kua uta ke he tuai he Fakatonu Fono ke he mahani he tohi ha ko e ole atu he Palemia he taha tohi kua fakamailoga aki e Fakamailoga a Niue; po ke

(e) Kua okioki tuai a ia mai he kotofaaga ekepule he Fono Ekepule Niue ha ko e ha kakano kehe ka e nakai ka tuku e Fono Ekepule; po ke

(i) Kua fakaoti tuai e ia haana a gahua ke he taha tohi kua tohi ke he matalima tohi haana mo e tuku atu ke he Fakatonu Fono.

(2) He vaha loto he 7 e aho he mole ne tokanoa ai e taha pu gahua he taha Ikipule, ka e nakai ko e Palemia,ko ia e Palemia he mogoia ke pulega fakatu higoa ekepule ha kua talia he ekepule na, ki a ia e Fakatonu Fono, ko e ekepule mai he Fono Ekepule ke kotofa ai ke eke mo taha Ikipule, ti ko ia e Fakatonu Fono kua poaki ki ai, ke kotofa e ekepule ia ne kua fakatu higoa ki ai ke eke mo Ikipule, ke he taha tohi kua fakamailoga aki e Fakamailoga a Niue.

(3) Kaeke ke nakai fakailoa ai he Palemia he vaha loto he tau aho ne 7 he mole, ka e nakai lafi ki ai e aho ne tokanoa ai e pu gahua he taha Ikipule, ka e nakai ko e Palemia, ke pulega kotofa ai taha mo Ikipule ke lata mo e vala kupu (2) he Matakupu nai, to talahau ai pehe kua fakaoti tuai e ia haana a kotofaaga ko e Palemia he oti e magaaho ko e 7 e tau aho na.

8 Tau Ikipule Hukui

(1) Kaeke kua kitia ai he Palemia kua nakai maeke he ha Ikipule, ha kua gagao po ke fano kehe ai mai i Niue, ke taute ai e haana a tau gahua kotofa i Niue ke he magahala ko e 7 e tau aho po ke leva atu foki, ko e Palemia, kua poaki ki ai ke pulega fakatu higoa atu kehe Fakatonu Fono ke eke mo Ikipule Hukui e taha ekepule he Fono Ekepule Niue, ke he haana taliaaga, ti ka e poaki ai nai ke he Fakatonu Fono ke kotofa ai e ekepule na ke he taha tohi kua eke ai i lalo he Fakamailoga a Niue tuga he pulega ke eke pihia.

(2) Ko e ha Ikipule Hukui leveki pehe na, ki a kotofa ai ke hukui e Ikipule ne kua nakai maeke ke taute e haana a tau gahua kotofa i Niue, ka e muitua ke he vala kupu (3) he Matakupu nei, kia gahua ai a ia tuga mo e mena kua kotofa pauaki ni a ia i lalo he Matakupu 5 he Fakatufono-tohi Fakave nai.

(3) Ko e ha kotofaaga Ikipule Hukui Leveki, a to kehe ai ni kaeke kua toka e ia haana kotofa ke lata mo e Matakupu 7 he Fakatufono-tohi Fakave nai, to tumau a ia ke he kotofaaga a to maeke he Ikipule ne hukui e ia ke liu taute e haana a tau gahua kotofa i Niue.

9 Palemia Hukui Leveki

(1) Ko e ha magaaho ni, ha ko e gagao po ke fano ke he mai i Niue e Palemia, ti nakai maeke ai a ia ke eke ai haana a tau gahua kotofa i Niue, ko e Fakatonu Fono, ha kua ole atu e Fono He Tau Ikipule, to maeke ia ia ke he taha tohi kua tohi ai i lalo he Fakamailoga a Niue, ke kotofa e taha Ikipule ke taute e tau gahua kotofa he Palemia a to hoko mai e magaaho kua maeke ai he Palemia ke liu taute haana a tau gahua kotofa, po ke kua fano kehe tuai a ia mai he haana a kotofaaga.

(2) Ha kua mate tuai e Palemia, po ke kua tuku atu tuai e ia ke he Fakatonu Fono e haana manatu fakaoti e kotofaaga haana he mole atu e tuku he Fono Ekepule Niue ka e fakahoko e viliaga lahi, mo e fakamua to kotofa ai e tau Ikipule he mole e viliaga lahi, mo e fakamua to kotofa ai e tau Ikipule he mole e viliaga lahi ne mui mai he tukuaga na, ko ia e Fakatonu Fono, ha kua ole atu he Fono He Tau Ikipule, kua poaki ai nai ke taute e ia ke ha taha tohi kua eke ai i lalo he Fakamailoga a Niue, ke kotofa e taha Ikipule ke taute e tau gahua kotofa he Palemia a to hoko e magaaho ke kotofa ai e tau Ikipule he mole atu e viliaga lahi na.

10 Omonuo Fakamooli

Ko e tau Ikipule taki tokotaha oti, fakamua to eke ai e tau gahua kotofa he haana a kotofaaga, to taute ai e ia e omonuo nai ki mua he Fakatonu Fono.

Ko au ko,_____kua fifili tuai au mo e talia ai ke eke mo Palemia a Niue (po ke Ikipule) kua omonuo nai au ke he Atua Malolo oti kana to eke e au ke he haaku a fifiliaga tonu kua mua ue atu, ke he tau magaaho oti kua lata ke pihia ai, to foaki mo e fakamakai e au haaku a tau fakatonuaga oti ke moua mai e levekiaga mitaki he tau gahua he motu ko Niue, mo e to nakai fakakite fakatonu e au po ke ha puhala kehe e tau mena kua lata ke tutala galo ki ai i loto he Fono He Tau Ikipule po ke taha Komiti he Fono He Tau Ikipule mo e tuku mai ai ke he haaku a mahani galo, to eke au ke he tau mena oti pehe na mo Palemia mitaki mo e fakamooli ha Niue (po ke Ikipule). Ko e mena ia kia lagomatai mai au ma Atua na e.

11 Tufatufaaga he tau gahua kotofa ke he tau Ikipule

(1) Ko e Palemia kia eke ai, mai he taha magahala ke he taha magahala, ke he taha tohi kua tohia ai he lima haana mo e fakamooli ai e higoa he Fakamau Kupu he Fono He Tau Ikipule mo e lolomi ai i loto he Kasete Niue, e tufatufaaga he tau gahua kotofa ke he ha Ikipule (lafi ki ai foki a ia) e taha levekiaga gahua he ha Faahi Gahua Fakatufono po ke tau gahua he Fakatufono mo e maeke ai ke he puhala taha ia ke fakakehekehe e ha tufatufaaga pehe na.

(2) Ko e Palemia ka ha ha i ai e tonuhia poaki ke taute e ha gahua leveki ke lata mo e ha Faahi Gahua he Fakatufono po ke ha fekau he Fakatufono kaeke ko e tau gahua ia kua nakai tufa po ke nakai la tufa tuga ne talahau ai he vala kupu (1) he Matakupu nai.

12 Tau Fono he Fono He Tau Ikipule

(1) To nakai maeke ke taute ai ha gahua i loto he ha fonoaga he Fono He Tau Ikipule a to ha ha i ai e toko 3 e tau Ikipule i loto he fonoaga.

(2) To nakai maeke ke tiaki po ke uta kehe e ha tauteaga he Fono He Tau Ikipule mai he tau tauteaga he tau gahua ha kua pehe ko e fai taha ia lautolu kua nakai la kotofa, po ke ha mena kua lakafia atu ke he Matakupu 8 he Fakatufono tohi Fakave nei, ti nakai fai kotofaaga kua taute ai ke lata mo e Matakupu na. To nakai fai gahua faka fonoaga he Fono He Tau Ikipule ke huhu hagaao pehe kua nakai aoga ha kua fai tagata hukui i loto he Fono ne gahua tuga ni ko e taha Ikipule ka e nakai lata ke ha ha i ai e talahauaga ko e hukui mooli.

(3) Ko e tau Fakailoaga he tau fonoaga takitaha oti mo e taha lagaki he tau pepa fono oti ka tutala ki ai he fonoaga na, kua poaki ai nei ke tufa atu ke he tau Ikipule takitaha mo e Tohi Kupu he Fakatufono.

(4) Ko e Tohi Kupu he Fakatufono to ha ha ia ia e tonuhia ke fakalataha atu ke he ha fonoaga he Fono He Tau Ikipule mo e maeke ke vagahau ai ke he ha mena kua tutala ki ai e Fono, mo e kua nakai maeke a ia ke noa nakai fakalataha atu a ia kaeke kua manako e Palemia ki ai.

(5) Koe fifiliaga he Fono He Tau Ikipule ke he ha mena tutala to maeke ke taute ni he tau Ikipule kua ha ha i ai he fonoaga he Fono He Tau Ikipule.

(6) Mo e fakatatai atu ke he Matakupu nai, to maeke ni he Fono He Tau Ikipule ke utauta ha lautolu a tau tauteuteaga kupu mo e tau fakatokaaga puhala gahua ke he ha puhala kua manatu a lautolu kua lata.

13 Tau Poakiaga, falu a la fono, mo e tau fifiliaga he Fono He Tau Ikipule

Ko e ha poakiaga po ke ha tauteaga faka fakatufono-tohi kua eke ai he Fono He Tau Ikipule mo e tau fakamauaga he ha fifiliaga he Fono He Tau Ikipule to maeke ni ke fakamau mo e taofi tonu ki ai ka eke kua fakamooli ai he Palemia e ha poakiaga, falu a tauteaga faka fakatufono po ke fakamauaga he fifiliaga na, pete ni po kua ha ha i ai a ia po ke nakai ha ha i ai i loto he fonoaga he Fono He Tau Ikipule ne eke po ke taute ai e poakiaga po ke taha fakatufono po ke fifiliaga, mo e fakamooli ai foki he Fakamau Kupu he Fono He Tau Ikipule.

14 Fakamau Kupu he Fono He Tau Ikipule

Kua poaki ai nei ke ha ha i ai e taha tagata gahua he Kau Gahua Fakatufono Niue ke fakahigoa ai ko e Fakamau Kupu he Fono He Tau Ikipule, ko ia ke lago ki ai e gahua ke fakatokatoka e tau mena taute, mo e fakamau e tau kupu tutala he tau fonoaga he Fono He Tau Ikipule mo e fakafano e tau fifiliaga fakamau he Fono He Tau Ikipule ke he tau tagata kua lata ke fakafano ki ai po ke tau kotofaaga faka fakatufono, mo e maeke foki ke taute mo e mah`fii lilifu atu ke he Fono He Tau Ikipule e tau gahua faka-fakamau kupu mo e falu foki he tau gahua kua lata ke taute ai.

Fakamailoga a Niue

15 Fakamailoga a Niue

(1)To ha ha i ai e taha Fakamailoga faka-Fakatufono Niue (i loto he Fakatufono-tohi Fakave nai kua fakahigoa ai ko e Fakamailoga a Niue), ke he taha talagaaga po ke tau talagaaga kua talia ki ai e Fono He Tau Ikipule mai he taha magahala ke he taha magahala.

(2) To toka ai ke he levekiaga he Fakatonu Fono e Fakamailoga a Niue.

(3) Ko e Fakamailoga a Niue to maeke ke fakaaoga ai he Fakatonu Fono ke lata mo e fakamooliaga tohi matalima he ha tohi faka-fakatufono kua hagaao ke he Fakatufono Niue po ke tauteaga he ha tohi kua taute ai faka-fakatufono tohi ke eke ai i lalo he Fakamailoga a Niue.

(4) Ki a mailoga ai he faka-fakafiliaga e Fakamailoga a Niue i loto he tau Fakafiliaga oti.

VALA II
Koe Fono Taute Fakatufono-Tohi A Niue
Ko e Fono Ekepule Niue

16 Fono Ekepule Niue

(1) Kua poaki ai nei ke ha ha i ai i Niue ma Niue e taha Fono taute fakatufono-tohi ke fakahigoa ai ko e Fono Ekepule Niue.

(2) Kua poaki ai nei ke ha ha he Fono Ekepule Niue –

(a) Ko e Fakatonu Kupu; mo e

(e) Toko uafulu e tau ekepule ke fifili ai he taha vili galo i lalo he puhala viliaga fakalalolagi katoa ke he puhala nai;

(i) Toko hogofulu-ma-fa e tau ekepule, takitaha a lautolu ke eke mo hukui ha tau maaga, ti fifili ni he tau tagata vili he maaga a lautolu takitaha ia;

(ii) Toko ono e tau ekepule ke fifili he tau tagata oti he motu ko Niue kua tonuhia ke vili, ti eke ai ke lata mo e fifiliaga ia lautolu e tau ekepule ia, to vili he tau tagata ne tohia ki loto he tau pepa fakamau higoa tagata vili he tau maaga oti a lautolu na.

(3) Ka e nakai noa mo e muitua atu ke he Matakupu nai, pihia mo e tau Matakupu 17, 18, 19, 24 mo e 25 he Fakatufono-tohi Fakave nai, ko e tau katofia he tau maaga ke lata mo e mahani he viliaga, ko e tonuhia mo e nakai tonuhia he tau tagata vili mo e tau tagata fakatutu ke vili ki ai, ko e puhala ke fifili aki e tau ekepule he Fono Ekepule Niue, mo e fakatokatokaaga mo e tau tauteaga he ha lautolu a tau kotofaaga to tuga ni he fakakite mai ai faka-fakatufono tohi:

Ka e to eke ai pehe –

(a) To ha ha i ai 14 e tau maaga ke lata mo e mahani he viliaga; mo e

(e) Ko e tau tagata takitokotaha oti kua tonuhia ke eke mo tagata vili ma e viliaga he tau ekepule he Fono Ekepule Niue to lata ni ke vili i loto he taha, ti taha maka ni, e maaga; mo e

(i) Ha fifiliaga po ke liu fai fifiliaga ke he tau katofia he ha maaga to maeke ia ke taute ke he mena kua maeke ki ai, mo e kitekiteaga ke lata mo e gahuahuaaga mitaki he tau mena kua aga ki ai e tau tagata vili he ha maaga, mo e kua lata ke onoono atu fakamatafeiga ke he mena ne pehe ki a nakai lakafia atu mamao e tokologa po ke tote hifo lahi e toko gahoa ke he numela tagata vili he ha maaga ke he.

(4) A to kehe ai ni kaeke kua hagaao kehe e kakano kupu, ko e tau talahauaga takitaha he Fakatufono-tohi Fakave nai hagaao ke he taha ekepule he

Fono Ekepule Niue ko e haana kakano ko e fakahagaao ke he taha ekepule ne fifili ke lata mo e vala kupu (2) (e) he Matakupu nai, ti kaeke ko e talahauaga hagaao ke he taha tagata he Fono Ekepule fakamua he nofo ia ti tuku e Fono Ekepule ka e fakahoko e vili, kua hagaao pihia foki e kupu nei.

17 Tohiaaga ke he motu mo e tau talahauaga ke moua e tonuhia ke eke mo tagata vili mo e tagata fakatu mo vili ekepule

(1) To nakai fai fakakaupaaga e tau poakiaga he ha fakatufono ne tohia ai e falu a tonuhia lafi atu ke moua he tagata e fakaataaga ke eke a ia mo tagata vili ke he viliaga he Fono Ekepule ha Niue, po ke ke fakatu ke eke mo tagata ke vili ki ai, he ha viliaga ekepule, to maeke ni kaeke ko e tagata ia –

(a) (i) Ko e tagata Niu Silani; po ke

(ii) Ko e tagata nofomau i Niue ke tuga ne tohia ai he Fakatufono-tohi; mo e

(e) Ko e tagata kua fai magahala ne nofomau ai a ia i Niue ke molea e 3 e tau tau; mo e

(i) Ko e tagata nofo i Niue kua katoa e 12 e mahina kamata mai he aho ne taute ai e tohi ole ke eke mo tagata vili po ke kamata he aho ne fakatu mo tagata ke vili mo ekepule.

(2) Ke lata mo e kakano he Matakupu nai, ko e taha tagata to maeke ke talahau ai ko e tagata nofo mau i Niue kaeke, mo e kaeke hokoia ni –

(a) Ko ia kua nofo mooli i Niue; po ke

(e) Nukua nofo mooli a ia i Niue mo e manatu ke nofo ni mo e ai fai amanakiaga ke nofo he taha motu po ke kautu kehe, po ke kua nofo a ia i tua a Niue ka e kua tali mai he toka e ia a Niue, ko e manatu ke liu mo e nofo ai ke he leva nakai fai amanakiaga ke kehe mai he haana a nofo tumau ai:

Ka e kaeke kua ha ha i ai e ha tagata kua nofo kehe mai i Niue ke he ha magahala kua molea e 3 e tau tau, to talahau ai kua nakai fai manatu pihia (ke nofo i Niue), a to kehe ni kaeke ko e magahala katoa ia po ke katoatoa he magahala ia ne nofo kehe ai pihia ha ko e fano he fakaakoaga po ke falu gahua fakaako, po ke i loto he fekafekauaga he Fakatufono Niue.

18 Tau tagata gahua Fakatufono kua maeke ke fakatu vili po ke fifili ki ai

(1) Ko e ha tagata gahua he kau Gahua Fakatufono Niue kua fakatu higoa vili ke eke mo ekepule he Fono Ekepule Niue, to maeke ke foaki atu ki a ia e magahala ke fano kehe mai he haana a gahua ke he muituaaga kua lata moe haana manako ke he kotofaaga ka e muitua ai ke he tau tauteaga mo e tau fakatokatokaaga faka fakatufono-tohi.

(2) Kaeke ko e ha tagata gahua pehe na kua fifili ai mo ekepule he Fono Ekepule, to maeke ai a ia, ha kua fifili tuai, ke talahau kua foaki atu tuai ki a ia e magahala ke fano kehe ai mai he haana a gahua mo e nakai fai palepale ke moua e ia mai he haana a fekafekauaga i loto he kau Gahua Fakatufono Niue he magahala kua nofo higoa ekepule ai a ia.

19 Tau Ekepule kua nakai talia ki ai ke eke mo tau tagata gahua he Fakatufono po ke fia manako ke he falu a gahua faka-Fakatufono

Ko e nofoa he ha ekepule he Fono Ekepule Niue kua poaki nai ke tokanoa ai –

(a) Kaeke kua eke a ia mo taha tagata gahua he kau Gahua Fakatufono Niue, po ke ko ia ko e taha kua gahua tuai he gahuaaga ia he magaaho ne fifili ai a ia ti talia e ia e fekafeakuaga palepale ia i loto he fekafekauaga ia; po ke

(e) Ka e kaeke foki kua fai mena aoga ke he mahani he tau mena moua ne moua ia ke he tauteaga po ke fakamakai lahi ke he ha gahua kua maeke ke moua palepale mai he tau tupe he Fakatufono, ka e kehe ai kaeke kua hokotia atu pihia ha kua fakaata ai faka Fakatufono-tohi.

20 Fakatonu Fono he Fono Ekepule Niue

(1) Ko e kotofaaga Fakatonu Fono he Fono Ekepule Niue kua poaki pehe ke fifili ai a ia ke he kotofaaga na e lautolu e tau ekepule kua tokologa lahi ha ha he fonoaga mo e taute ai e vili i loto he Fono Ekepule Niue.

(2) Ko e taha tagata ni kua tonuhia ke vili ki ai ke eke mo e ekepule he Fono Ekepule Niue kua lata ke fifili mo Fakatonu Fono.

(3) Kaeke ko e ha tagata kua fifili ai mo Fakatonu Fono, he magaaho ne taute ai e viliaga na, ko e ekepule a ia he Fono Ekepule Niue, ti ko e poaki nai ke toka e ia e haana a kotofa ko e ekepule, he mogo ke hu atu ai a ia ke he tau gahua kua toka ai ke he kotofaaga he Fakatonu Fono.

(4) Ko e fifiliaga he Fakatonu Fono kua poaki ai nai ke taute ai fakamua to taute ai e ha gahua kehe ha fonoaga fakamua he Fono Ekepule he mole e tau viliaga lah¢¸oti, mo e, he taha fonoaga he ha Fono Ekepule kua ui pauaki ma e fekau na he mogo ia ni kua tokanoa ai e kotofaaga Fakatonu Fono.

(5) Ko e tagata kua fifili ai ke eke mo Fakatonu Fono, ko e fakamua to kamata gahua ai a ia he haana a tau gahua kotofa, ko e poakiaga ki a ia ke taute mo e eke ai e ia i mua he Fakamau Kupu he Fono Ekepule Niue i loto he taha fonoaga he Fono Ekepule Niue e Omonuo he Mahani Fakamooli ne fakakite mai he Matakupu 21 he Fakatufono-tohi FakavE nai, mo e tau talahauaga ha ha he Matakupu na to lata ia foki fakalataha mo e tau fakahuihuiaga ke tuga mo e mena ko e tau talahauaga ha ha i ai kua hagaao ia ke he taha ekepule, ka ko e hagaao foki ke he Fakatonu Fono.

(6) To maeke he Fakatonu Fono he ha magaaho ni ke fakaoti e haana a gahua ke he taha tohi he matalima haana mo e tuku atu ke he Fakamau Kupu he Fono Ekepule Niue, ti ki a toka e ia haana a kotofa –

(a) He huaga atu he Fakatonu Fono fifili foou he magaaho ka fono fakamua ai e Fono Ekepule he mole atu taha Viliaga Lahi; po ke

(e) Kaeke kua fakaoti a ia nakai tuai tonuhia ke lata mo e mahani he viliaga ke moua e tau ekepule he Fono Ekepule; po ke

(i) Kaeke kua eke tuai a ia mo taha tagata fakatu higoa ki ai ke he viliaga he taha ekepule po ke tau ekepule ma e Fono Ekepule.

(7) Kaeke kua nakai ha ha i ai e Fakatonu Fono he taha fonoaga he Fono Ekepule, po ke tokanoa ai e kotofaaga he Fakatonu Fono, ko e tau Ekepule he fonoaga na, ke fifili e lautolu e taha mai ia lautolu, ka e nakai ko e taha Ikipule, ke takitaki e fonoaga na, a to maeke he Fakatonu Fono pauaki ke liu fakalataha ai, po ke a to hoko e magaaho ke fifili ai e Fakatonu Fono mo e hu atu ai a ia ke he haana a tau gahua kotofa he haana kotofaaga.

(8) Kaeke he ha magaaho kua nakai fai fono ai e Fono Ekepule, ko e Fakatonu Fono, ha kua gagao po ke fano kehe mai i Niue, mo e nakai maeke fakaku ia ia ke taute e haana a tau gahua, ko e tau gahua ia to maeke ai ke taute ai he taha Ekepule he Fono, nakai ko e taha Ikipule, kua takitaki ai e fonoaga he Fono ke lata mo e Vala Kupu (7) he Matakupu nei. Ka molea e tokotaha e Ekepule kua tutonuhia mo e ataina ke eke e tau gahua he Fakatonu Fono, ko e tau gahua ia to taute ai he Ekepule ne fakamuiaki e takitaki ke he taha Fono he Fono Ekepule ke lata mo e vala kupu na.

(9) Kaeke kua kitia ko e nakai fai tagata kua tonuhia ke taute e gahua he Fakatonu Fono

(a) Kua poaki ai nai ke ui fakamafiti e taha fono he Fono Ekepule, ti ko e Fakamau Kupu he Fono Ekepule Niue, ke taute e ia e tau gahua kotofa he Fakatonu Fono, tuga he manako ke eke ai ke lata ke maeke ai e fonoaga na ke fakahoko, ti ko e tau talahauaga he Matakupu 22(6) he Fakatufono-tohi Fakave, to nakai fakaaoga ai ke he fonoaga na; po ke

(e) Kaeke kua tigahau e Fono Ekepule he tuku ke maeke he taha viliaga lahi ke fakahoko ka e nakai la fakahoko ia e viliaga lahi ia, kua poaki ai nai pehe ke fakahoko fakamafiti ai e taha fono he tau tagata ne talahau ko e tau ekepule he Fono Ekepule fakamua to tuku e Fono Ekepule ke lata mo e viliaga lahi ke fifili taha mai ia lautolu ke taute e tau gahua he kotofaaga Fakatonu Fono ke he tau magahala kua nakai maeke ai he Fakatonu Fono kotofa pauaki ke taute e tau gahua ia, po ke, ke lata mo e magahala tokanoa to liu e Fono Ekepule foou ke fakahoko e fonoaga fakamua, ti ko e Fakamau Kupu he Fono Ekepule Niue ke lago ki ai e tau fekau oti kua hagaao ke he uiaga he taha fono motuhia pihia, mo e ko ia foki ke fakamooli e fakamauaga he fono hagaao ke he fifiliaga he taha ke taute a tau gahua he Fakatonu Fono. Ko e tagata ka fifili ke taute e tau gahua ia to talahau ai pehe, ke lata mo e tau vala kupu (7) mo e (8) he Matakupu nei, ko ia taha he tau tagata ne kua takitaki e taha fonoaga he Fono Ekepule.

(10) Ko e tau pepa oti, fakalataha mo e ha fakamooliaga ke he ha Fakatufono Fakalatalata, ka fakamooli he Fakatonu Fono ke he matalima tohi haana ke lata mo e tauteaga he haana a matagahua, ki a nakai noa mo e fakamooli ai foki he Fakamau Kupu he Fono Ekepule ke he haana matalima tohi, ti kaeke ko e tau pepa kua fakamooli ai he taha Ekepule ne taute e kotofaaga he Fakatonu Fono, ki a tohi ai fakalataha he fakamooliaga he tau pepa ia ko e pihia e tauteaga.

21 Tau Ekepule ke taute e Omonuo he Mahani Fakamooli

A to kehe ni ke lata mo e gahua ke maeke ai e Matakupu nai ke fakatatai mo e fifiliaga he Fakatonu Fono, to nakai fai ekepule he Fono Ekepule Niue kua maeke ke fakaata ke nofo po ke vili ai i loto he Fono Ekepule a to taute fakamua e ia e omonuo na i lalo ki mua he Fakatonu Fono pehe:

Ko au ko,…….kua omonuo nai au ke he Higoa he Atua Malolo Ue Atu pehe, to mahani fakamooli au mo e fua e mahani pipiki mau mooli ke he Patuiki Fifine (po ke Taane) Lilifu
[talahau e higoa he Patuiki kua pule ai, tuga he pehe Patuiki Fifine ko Elisapeta ke Uaaki] mo e Haana a tau hukui mo e tau ohi, ke lata mo e fakatufono-tohi, mo e to taute e au haaku a tau gahua kotofa ko e taha Ekepule he Fono Ekepule Niue mo e mahani tonu mo e fakamooli. Ko e mena ia ki a lagomatai mai au, ma Atua na e.

22 Fakaholoaga Gahua he Fono Ekepule Niue

(1) Ko e Fono Ekepule Niue kua poaki nai ke fakalataha ai ke fono ke he ha mena mo e he ha magaaho kua fifili ki ai he Fakatonu Fono ke lata mo e ole atu he Palemia ki a ia ke eke pihia mai he taha magaaho kua fifili ke lata mo e mena ia:

Ka e kaeke kua mole atu e 6 e tau faahi tapu mai he fonoaga fakahiku he Fono Ekepule, ti ko e toko 4 po ke tokologa atu foki e tau ekepule he Fono Ekepule,

nakai ko lautolu ko e tau Ikipule, to maeke ke ole atu ke he Fakatonu Fono ke kotofa e taha mena mo e magaaho ke fai fono ai e Fono Ekepule, ti ko e Fakatonu Fono to maeke ia ia ke kotofa e mena mo e magaaho ke lata mo e ole ia, ko e magaaho ke nakai tote hifo he 5 e tau aho po ke nakai leva ke molea e 10 e tau aho ka e ai totou e aho ne taute ai e ole.

(2) Ko e Fakatonu Fono kua poaki nai ke takitaki e ia e tau fonoaga takitaha oti he Fono Ekepule ne kua ha ha i ai a ia.

(3) A to kehe ai ni kaeke kua fakatoka kehe pauaki he Fakatufono-tohi Fakave nai, ko e tau kupu huhu po ke tau fekau oti kua tuku ki mua he Fono Ekepule Niue ke fifili ki ai kua poaki ai nai ko e fakamau ke he mena ne fifili ki ai ke he loga he tau vili he tau Ekepule kua ha ha he fonoaga mo e vili ki ai.

(4) Ka e kehe ni kaeke ko e muitua atu ke he ha fakatufono-tohi, kaeke ko e fai fakatufono-tohi hagaao ke he fakakaupaaga ke he ha ekepule ke nakai fakaata ke fai vili kaeke ko e fekau ke he taha mena taute ke he puhala taute maveheaga tohi ne kua ha ha i ai ko ia ko e ekepule ne fai mena aoga ke moua e ia ha ko e tauteaga pihia, ko e poaki ha nai ke taute vili e tau ekepule oti ne ha ha i loto he ha fonoaga he Fono Ekepule ke lata mo e tau fekau oti ne tuku ke vili ki ai.

(5) Ko e Fakatonu Fono po ke taha tagata kua takitaki e fono to nakai fai vili fakaoti fekau ke eke e ia, ti nakai fai vili pauaki e Fakatonu Fono, ka ko e ekepule kua takitaki e fono ma e higoa he Fakatonu Fono to fai vili pauaki ke eke e ia.

(6) A to kehe ke lata mo e Matakupu 20(9) (a) he Fakatufono-tohi Fakave nai, to nakai fai gahua ke taute ai he ha fonoaga he Fono Ekepule Niue kaeke kua ha ha i ai e tau ekepule ne fakalataha atu ke he fonoaga ko e tote hifo he toko 10 a lautolu, totou ki ai foki he numela ia e ha ekepule kua takitaki e fono ma e higoa he Fakatonu Fono.

(7) Ko e tau malolo pule he Fono Ekepule Niue to nakai lauia ai ha kua pehe ko e taha nofoa ekepule kua tokanoa.

(8) To nakai maeke e ha Fakatufono Fakalatalata ke fakamooli ai, a to totou laga 3 ai i loto he Fono Ekepule.

(9) Ko e ha Fakatufono Fakalatalata po ke ha fekau ne kua ha ha i mua he Fono Ekepule he magaaho ka tuku ai e Fono Ekepule ke lata mo e fakahokoaga he taha viliaga lahi kua pehe ke fakaoti noa mo e tiaki ai.

(10) Mo e muitua atu ke he Fakatufono-tohi Fakave nai, ko e Fono Ekepule to maeke ai mai he taha magahala ke he taha magahala ke taute e taha Tohi He Tau Poakiaga Fakaholoaga Fono ke lata mo e fakatokatokaaga mo e fakahakohakoaga mitaki he tau fakaholoaga he tau gahua po ke tau fono.

23 Tau Vagahau

(1) Ko e Fakatonu Fono po ke ha ekepule he Fono Ekepule Niue to maeke ke vagahau ai ke he vagahau faka-niue po ke vagahau faka-Peritania :
Ka e ko e poakiaga ke he Fakamau Kupu he Fono Ekepule ke taute e tau fakatokaaga kua lata, ka ole he Fakatonu Fono, po ke he ha ekepule kua ole ai ke he Fakatonu Fono, ke fakatoka pehe ko e tau vagahau he Fakatonu Fono po ke ha vagahau he ha ekepule ke liliu ke he vagahau faka-Peritania po ke liliu ke he vagahau faka-Niue, ko e mena fe ni kua lauia ai.

(2) Ko e tau Fakatufono Fakalatalata oti kua tuku ki mua he Fono Ekepule Niue mo e tau Fakatufono-tohi oti kua poaki nai ke tohia ai ke he vagahau faka-Niue mo e pihia foki ke he vagahau faka-Peritania.
Ka e maeke kaeke ko e Fono Ekepule ne manako, ha ko e taha kupu pulega kua fakamau, ke fakatoka ni pehe ko e ha Fakatufono Fakalatalata po ke Fakatufono-tohi to maeke ke tohia ai ke he vagahau faka-Niue hokoia po ke vagahau faka-Peritania hokoia ni.

(3) Ko e fakamauaga he tau kupu fono i loto he Fono Ekepule po ke i loto he tau Komiti ha ha i ai, kua poaki nai ai ke tohia ai ke he vagahau faka-Niue ti ko e tau fakamauaga pehe na tuga he fakakite mai ai he Tohi He Tau Poakiaga Fakaholoaga Fono he Fono Ekepule po ke ha kua maeke ha ko e taha kupu pulega he Fono Ekepule ke fakatoka ke maeke foki ke tohia ke he vagahau faka-Peritania.

(4) Ko e liliuaga ke he vagahau faka-Niue mo e liliuaga ke he vagahau faka-Peritania he Fakatufono-tohi Fakave nai, a to kehe kaeke ko e muitua ke he vala kupu (5) he Matakupu nai, ko e liliuaga ke he vagahau faka-Niue mo e liliuaga ke he vagahau faka-Peritania he ha fakamauaga he tau kupu fono i loto he Fono Ekepule po ke ha Komiti ha ha i ai mo e ha fakatufono-tohi to maeke ke tatai ni e aoga ha laua :

Ka e, kaeke kua pehe, he ha mena kua kitia tonu ai e nakai fetataiaki he vaha loto he ha talahauaga ha ha he liliuaga ke he vagahau faka-Niue mo e liliuaga ke he vagahau faka-Peritania he Fakatufono-tohi Fakave nai, po ke he ha fakamauaga po ke he ha fakatufono-tohi ne kua ha ha i ai kua tauteute e talahauaga na, to fai kitekiteaga ke he tau mena oti kua pehe to fakatupu ai e manatu mooli mo e kakano he talahauaga na.

(5) Ko e ha mena kua lauia ai e ha fakamauaga he tau kupu tutala he Fono ekepule Niue po ke he ha Komiti kua ha ha i ai, ko e Fono Ekepule to maeke, ha ko e taha kupu pulega ke fakatoka ai mo e kaeke ko e ha fakatufono-tohi to taute fakamooli pehe, kaeke kua ha ha i ai e ha fekehekeheaki he vaha loto he liliuaga ke he vagahau faka-Niue mo e liliuaga ke he vagahau faka-Peritania he ha fakamauaga pehe na po ke ha fakatufono-tohi, to taha ni e liliuaga ka talahau ko e mooli mo e tonu, ko e vagahau faka-Niue po ke liliuaga ke he vagahau faka-Peritania ke maeke ke fakatumau ki ai.

24 Tau mena ataina ki ai e Fono Ekepule Niue mo e tau ekepule ha ha i ai

(1) Ko e malolo mo e tonu ha ha i ai he ha tauteaga i loto he Fono Ekepule Niue, po ke i loto he ha Komiti ha ha i ai, mo e malolo he ha tohi fakamooli kua foaki atu he Fakatonu Fono i lalo he Matakupu 34 po ke Matakupu 35 ha ha he Fakatufono-tohi Fakave nai, to nakai maeke ke fai kupu huhu ki ai e ha Fakafiliaga.

(2) To nakai maeke he Fakatonu Fono, po ke ha ekepule, po ke ha tagata gahua he Fono Ekepule Niue kua tuku atu ki ai e tau malolo pule ke fakatonutonu e fakaholoaga po ke mahani he tauteaga he tau gahua, po ke levekiaga he puhala hako, to nakai lauia ai, ha ko e tauteaga e ia he tau malolo pule na, ke he ha Fakafiliaga.

(3) To nakai maeke he Fakatonu Fono, po ke ha ekepule he Fono Ekepule Niue ne kua ha ha i ai e tonuhia ke vagahau ai i loto he fono ke lata mo e ha tauteaga he fono, ke lauia he ha Fakafiliaga hagaao ke he ha mena kua talahau ai po ke ha viliaga kua taute e ia i loto he Fono Ekepule po ke ha Komiti ha ha i ai.

(4) To nakai fai tagata ke lauia ai he ha tauteaga i loto he ha Fakafiliaga kaeke ko e taha mena kua hagaao ke he ha fakailoaga lolomi he lomiaga fakapuloa i lalo he malolo pule he Fono Ekepule Niue he ha fakailoaga, he ha pepa, he viliaga po ke ha tutalaaga ke he mahani he fono.

(5) Mo e muitua atu ke he Matakupu nai, ko e tau mena ataina ki ai e Fono Ekepule Niue mo e tau Komiti ha ha i ai mo e tau mena ataina ki ai e tau ekepule mo e Fakatonu Fono he Fono Ekepule mo e tau tagata kua fakaataina ke vagahau i loto he tau Fonoaga, to fakamau ia ke he taha Fakatufono-tohi, ti ko e ha Fakatufono-tohi pihia to maeke ai, ka e kehe ai ni ka lauia ai ha mena he Matakupu 31 he Fakatufono Fakave nai, ke fakakite fakatonu e tau holifono hagaao ke he holia he ataina po ke ai fakalilifu ke he Fono Ekepule, mo e maeke ai ke taute e tau fakatokaaga ke lata mo e fakalilifuaga mo e fakahala he tau holifono pehe na i loto he Fakafiliaga Lahi ka e nakai ko e ha puhala kehe.

25 Palepale he Palemia, Tau Ikipule ne toe tau tau ekepule ne toe he Fono Ekepule Niue mo e Fakatonu Fono

(1) Ko e kau pule gahua Fakatufono Niue to maeke, mai he taha magahala ke he taha magahala, mo e kua poaki ai ke, kaeke kua ha ha i ai e taha hikihikiaga he tau tutuaga he tau palepale he Kau Gahua Fakatufono Niue, ke fakailoa mo e fai talahauaga pulega ke he Fono Ekepule ke lata mo e tau tutuaga he tau palepale mo e falu a palepale kua lata ke moua ai he Palemia, tau Ikipule ne toe, tau ekepule he Fono Ekepule ka e nakai ko e tau Ikipule, mo e Fakatonu Fono.

(2) Ko e Palemia mo e tau Ikipule ne toe, tau ekepule he Fono Ekepule Niue ne nakai ko e tau Ikipule, mo e Fakatonu Fono kua pehe to maeke ke moua e lautolu e tau palepale, tau palepale lafi ki luga mo e falu a mena kehekehe ne kua lata ke moua ha ko e tau kotofaaga ia ke tuga ka fakakite mai ai he taha Fakatufono-tohi.

(3) Kaeke, ha ko e manatu he Fakatonu Fono, ko e ha Fakatufono Fakalatalata, po ke ha fakahuiaga ke he ha Fakatufono Fakalatalata, kua hagaao ke he taha mena kua hagaao ki ai e Matakupu nai, ti ko e Fakatufono Fakalatalata na, po ke fakahuiaga na, to nakai maeke ke tuku ki mua he fono a to-

(a) Ha ha i ai i mua he Fono Ekepule e taha fakailoaaga mo e talahauaga pulega mai he Kau Pule Gahua Fakatufono Niue ke lata mo e Matakupu nai, mo e

(e) Ko e kakano he kupu ne talahau ai i loto he Fakatufono Fakalatalata na, po ke fakahuiaga na, ke he manatu he Fakatonu Fono, kua hagaao tatai ni mo e tau mena kua fifili ki ai he fakailoaaga he Kau Pule Gahua mo e tau talahauaga pulega he Kau ha ha i ai.

26 Tukuaga he Fono Ekepule Niue

(1) Ko e Fakatonu Fono kua poaki nai ki a ia, ke he taha fakailoaga i loto he Kasete Niue, ke tuku e Fono Ekepule Niue ka e fakahoko taha viliaga lahi kaeke –

(a) Kua katoa ai e 3 e tau tau mai he aho ne taute ai e viliaga lahi, kaeke kua nakai la tuku ai fakamua to hoko ke he 3 e tau tau ia;

(e) mai he aho ne hoko ai e viliaga lahi kua mole ki tua, kaeke kua manako pihia ki ai e Palemia;

(i) Kaeke, ha ko e muitua ke he Matakupu 6 (3) he Fakatufono-tohi Fakave nai, ko e Palemia ne ole ki a ia ke tuku e Fono Ekepule ka e fakahoko taha viliaga lahi;

(o) Kua taute ai e taha viliaga foou he Palemia ke lata mo e Matakupu 5 (4) he Fakatufono-tohi Fakave nai, ti nakai moua mai he viliaga foou na, e tuaga aoga po ke fai kakano ke lata mo e vala kupu na.

(2) Ko e poaki a nai ke eke ai e taha viliaga lahi ke lata mo e mouaaga he tau ekepule he Fono Ekepule Niue he ha magaaho, ke nakai tote hifo ai he 4 e tau faahi tapu po ke molea ai e 6 e tau faahi tapu he mole atu e aho ne tuku ai e Fono Ekepule, tuga he poaki ai nei ke he Fakatonu Fono, ha ko e ole he Palemia, ke kotofa, po ke kaeke ko e Palemia kua nakai taute ai e ia e ha ole pehe na he ha magaaho to molea ai ko e 7 e tau aho mai he aho ne tuku ai e Fono Ekepule, tuga he taute ai he Fakatonu Fono ke he haana ni a manatu, ke kotofa ai, ke he taha fakailoaaga i loto he Kasete Niue.

27 Fakamau Kupu he Fono Ekepule Niue

(1) To ha ha i ai e taha tagata gahua he kau Gahua Fakatufono Niue ke fakahigoa ai ko e Fakamau Kupu he Fono Ekepule Niue, ko ia kua poaki nai ki ai ke leveki mo e fua e tau gahua ke –

(a) Fakatokatoka e tau gahua mo e leveki e tau fakamauaga he tau tutalaaga mo e toka e tau fakamauaga he tau mena tutala he Fono Ekepule Niue; mo e

(e) Fakatokatoka, ke lata mo e fakamooli matalima tohi he tau tohi mo e tuku atu e tau tohi fakamooli mai he Fakatonu Fono kaeke ko e ha magaaho kua lata ke fai higoa fakamooli po ke ha fakamooliaga kua lata ke eke he Fakatonu Fono ke lata mo e ha talahauaga he Fakatufono-tohi Fakave nai po ke ha fakatufono-tohi, mo e leveki e tau pepa oti mo e tau tohi fakamooli kua fakamooli ai po ke foaki.

(2) Ko e Fakamau Kupu he Fono Ekepule Niue kua poaki nai ki a ia ke eke mo e mahani kua tonu ki mua he Fakatonu Fono mo e ke he tau ekepule he Fono Ekepule e tau gahua fakamau mena oti mo e falu a gahua ke tuga ka manako ki ai.

Ko e Talagaaga he Tau Fakatufono-tohi

28 Malolo kotofa ke taute fakatufono-tohi

(1) Ka e muitua ke he Fakatufono-tohi Fakave nei, maeke e Fono Ekepule Niue ke taute Fakatufono-tohi ma e fakatupuaga he mafola, holo tonuhia mo e mitaki he Fakatufono ma Niue.

(2) Ko e malolo kotofa he Fono Ekepule Niue kua maeke ke hokotia ia foki ke fakaholo atu e taute fakatufono-tohi ke lata mo e falu a mena i fafo ha Niue; pehe e mena ia, ko e tau fakatufono-tohi ke lauia po ke hagaao atu ke he ha tagata po ke ha mena i fafo ha Niue po ke ha mena kua taute i fafo ha Niue.

(3) Mo e nakai fakakaupa e tau malolo kotofa katoa ne toka i loto he Matakupu nei, ko e tau malolo kotofa ia to hokotia atu foki ke he malolo ke moumou po ke utakehe, po ke fakahui po ke fakafoou po ke lalafi ki luga, ke lata mo Niue, e ha Fakatufono-tohi ha ne fakagahua ai i Niue po kua hagaao tonu ki Niue.

(4) A to kehe ai ni kaeke ko e nakai muitua ke he taha mena he Fakatufono-tohi Fakave nai, nakai maeke e ha Fakatufono-tohi ke pehe kua nakai aoga ha ko e nakai o tatai mo e tau fakatufono-tohi ne fakagahua i Niue.

29 Tukuaga he tau Fakatufono Fakalatalata mo e falu mena kehekehe ki loto he Fono Ekepule Niue

Ka nakai kehe mai mo e Fakatufono-tohi Fakave nei po ke tau Poakiaga Fakaholoaga Fono he Fono Ekepule Niue, maeke e ha Ekepule he Fono Ekepule ke tuku e ha Fakatufono Fakalatalata po ke ha tohi kupu pulega ke fakatutala fetoko ki ai, po ke tuku e ha ole ke he Fono Ekepule, ko e tau mena ia to pulega ni ki ai mo e taute ai e taha fakaotiaga ke lata mo e tau Poakiaga Fakaholoaga Fono.

30 Tau fakakaupaaga pauaki ke lata mo e tau vahega fekau faka Tupe

A to kehe ai ni kaeke ko e moua mai ha ko e pulega po ke taliaaga he Palemia, po ke taha Ikipule ne eke pihia ha ko e taute ma e higoa he kotofaaga he Palemia, to nakai maeke e Fono Ekepule Niue ke fai fifiliaga ke he ha Fakatufono Fakalatalata (lafi ki ai e ha fakahuiaga ke he ha Fakatufono Fakalatalata) kaeke, kua kitia he Fakatonu Fono kua lauia ai ha fakaaoga unuhake ki luga he ha tupe he tau tupe fafati ke totogi i Niue po ke utakehe, po ke hiki, po ke ka pehE ai ko e tau fafati tukuhau, fakahala tupe, po ke ha tupe tukuhau fafati ke totogi he tau vahega kehekehe a to kehe ni kaeke ko e tukuhifo ki lalo he ha mena totogi he tau mena kehekehe.

31 (Uta Kehe)

32 Tau fakatokaaga fifili pauaki hagaao ke he tau mena kua lauia ai e Kau Gahua Fakatufono Niue

(1) To nakai maeke he Fono Ekepule Niue ke fakatutala e ha Fakatufono Fakalatalata po ke ha fakahuiaga fakalatalata ke he ha Fakatufono Fakalatalata he mole e tukuatuaga fakamua ke he Fono kaeke, ke he manatu he Fakatonu Fono, ko e Fakatufono Fakalatalata na po ke fakahuiaga na, kua fai fakatokaaga ke lauia ai e tau mena nai –

(a) Tau totogi, tau tupe lafi ki luga, tau hatakiaga, tau puhala ke takitaki aki, po ke tau puhala ke lata mo e fakaholoaga he gahua he Kau Gahua Fakatufono Niue, po ke

(e) Tau kotofaaga, fakaholo hake he tau kotofaaga, hikihikiaga he tau kotofaaga, faka okioki mo e gahua, utakehe e gahua, fakaoti fakaku e gahua, mo e fakaotiaga he kotofaaga ha lautolu mai he Kau Gahua Fakatufono Niue, lafi ki ai e liu kikite, po ke tau ole liu fifili, hagaao ia ke he mena kua lauia ai a to moua ki mua he Fono Ekepule e taha fakailoaaga talahauaga, mai he Kau Pule Gahua Fakatufono Niue ha ko e muitua ke he Matakupu nei, hagaao ke he tonuhia he mahani faka-fakatufono, tonuhia he mahani faka-fakatufono-tohi fakave po ke ha fakatokaaga faka fakatufono kua lauia ai he Fakatufono Fakalatalata, po ke ha fakahuiaga fakalatalata.

(2) Kaeke, ha ko e muitua ke he Matakupu nai, kua fifili e Fono Ekepule ha ko e tauteaga ke he taha kupu pulega kua talia ke ole ke he Kau Pule Gahua Fakatufono Niue ke fai fakailoaaga talahauaga hagaao ke he taha Fakatufono Fakalatalata, po ke taha fakahuiaga fakalatalata, ko e poaki nai ke he Fakatonu Fono ke kitia kua fakafano ke he Kau Pule Gahua Fakatufono Niue e taha lagaki he kupu pulega na, fakalataha mo e taha talahauaga fakamaamaaga he tutalaaga he Fono Ekepule he mena na, fakalataha mo e taha lagaki he Fakatufono Fakalatalata na, po ke ha fakahuiaga fakalatalata ke he Fakatufono Fakalatalata kua hagaao ki ai; ka e kaeke kua nakai pihia e fifiliaga he Fono Ekepule, ko e Fakatufono Fakalatalata po ke fakahuiaga fakalatalata na, kua pehe ai kua nakai fai aoga ti ki a tiaki ai.

(3) Kaeke, ha ko e muitua ke he Matakupu nei, ke moua he Fono Ekepule e fakailoaaga mai he kau Pule Gahua Fakatufono Niue hagaao ke he Fakatufono Fakalatalata, po ke ha fakahuiaga fakalatalata ke he he Fakatufono Fakalatalata, ti moua mai ai ha ko e mena ia e ha fakafoouaga he ha Fakatufono Fakalatalata kua tuku atu, ko e talahauaga he Matakupu nai kua nakai lata ke liu ui atu foki ke he kau Pule Gahua ke liu fai talahauaga foki, a to kehe ni ka manatu e Fakatonu Fono kua lauia ai e talahauaga tonuhia ke he mahani faka-fakatufono, tonuhia he mahani faka fakatufono-tohi fakave, po ke ha fakatokaaga faka fakatufono ka e nakai la moua mai he oleaga fakamua ke he Kau ia e taha fakailoaaga kua hagaao tonu ke he taha lauiaaga kua laga mai he fakafoouaga ia.

33 Tau tauteaga fifili pauaki ma e tau tauteaga kua lauia ai e tau vala kelekele Niue

(1) Ko e Fono Ekepule Niue to nakai maeke ke fakatutala e ha Fakatufono Fakalatalata, po ke ha fakahuiaga fakalatalata ke he ha Fakatufono Fakalatalata ka mole e tukuaga fakamua ke he Fono kaeke kua manatu e Fakatonu Fono pehe ko e Fakatufono Fakalatalata, po ke fakahuiaga fakalatalata kua lauia ai e tau fakatokatokaaga ke he tau mena nai –

(a) Ko e fakaveaga he tonuhia ke he ha kelekele Niue; po ke

(e) Ko e foakiaga kua kehe he ha kelekele Niue; po ke

(i) Ko e fakatauaga, uta, po ke ha puhala kehe foki ke moua ai ha kelekele Niue ke lata mo e ha fakaaogaaga ma e tau tagata oti

a to moua ki mua he Fono Ekepule e ha fakailoaaga ne taute ai he taha Kau Kumikumi ne ha ha i ai e tau malolo kotofa ke ui atu ke he tau fakamooli mo e ke moua e tau talahauaga tuga kua ha ha i ai ke he Kau Kumikumi ha ko e tau fakamauaga fakatufono-tohi ke lata mo e talahauaga faka fakatufono, po ke tonuhia he mahani faka fakatufono-tohi fakaveaga, po ke ha fakatokaaga faka fakatufono, kaeke kua fai lauiaaga e tau vahega mena pihia i loto he Fakatufono Fakalatalata, po ke fakahuiaga fakalatalata na.

(2) Kaeke, ke he taha kupu fakamau he Fono Ekepule kua fifili, hagaao ke he ha Fakatufono Fakalatalata po ke ha fakahuiaga fakalatalata kua lauia ai e Matakupu nei, kua lata ke fai kumikumi ki ai e taha Kau Kumikumi ke lata mo e Matakupu nei, ko e poaki nai ke he Fono he tau Ikipule ke fakamafiti ke fifili ko e lata nakai, ti taute e puhala ke gahua ai ke lata mo e manako he Fono Ekepule kua fakamau ki ai; ka e kaeke kua nakai muitua e Fono Ekepule ke he puhala ia hagaao ke he ha Fakatufono Fakalatalata po ke ha fakahuiaga, to tiaki ai e Fakatufono Fakalatalata po ke fakahuiaga na mo e talahau ai kua nakai aoga e mena ia.

(3) Ko e ha magaaho kua fai talahauaga fakamau ai e Fono Ekepule ke lata mo e ha Fakatufono Fakalatalata po ke ha fakahuiaga fakalatalata, ha ko e muitua ke he Matakupu nei, kua lata ke pulega po ke kua pehe e hagaaoaga ke kumikumi ki ai e taha Kau Kumikumi ke lata mo e Matakupu nei –

(a) To maeke ke he fifiliaga he Fono he tau Ikipule ke fakatu e taha Kau Kumikumi mo e tuku atu ke he kau ia e tau talahauaga fakave ke lata mo e gahua, po ke taute e falu a hikihikiaga kua tonuhia ki ai ke he tau fakaveaga ke lata mo e gahua he Kau Kumikumi ne fakatu tuai ke lata mo e kumikumiaga ke he mena kua lauia ai e ha fakaveaga he tau kelekele Niue; ti ko e poakiaga nai kua lago ke he Palemia ke fakailoa atu mafiti ke he Fono Ekepule e ha fakatokatokaaga ne taute he Fono he tau Ikipule ke fakatautonu aki e tau talahauaga fakamau ke he fifiliaga he Fono Ekepule; mo e

(e) Ka moua mai e talahauaga ia mai he Fono he tau Ekepule, ko e poaki nai kua lago ke he Fakatonu Fono ke fakafano ke he Kau Kumikumi ne fakatu he Fono he tau Ikipule ke lata mo e gahua kua poaki ki ai ke maeke ke moua mai e taha talahauaga ke he Fakatufono Fakalatalata po ke he fakahuiaga fakalatalata hagaao ke he talahauaga fakamau he Fono Ekepule, e taha lagaki he talahauaga fakamau he Fono Ekepule, lafi ki ai e taha lagaki he Fakatufono Fakalatalata po ke he lagaki he fakahuiaga fakalatalata ke he Fakatufono Fakalatalata kua lauia ai, ti ko e Kau Kumikumi, ke lata mo e Matakupu nei, ne kua poaki nai ke taute e fakailoaaga mo e tuku atu ai ke he Fono Ekepule.

(4) Kaeke, ha ko e muitua ke he Matakupu nei, kua moua ai he Fono Ekepule e fakailoaaga mai he Kau Kumikumi hagaao ke he ha Fakatufono Fakalatalata po ke ha fakahuiaga fakalatalata ke he ha Fakatufono Fakalatalata ti pehe kua moua mai ai e taha fakafoouaga po ke ha fakahuiaga fakafoou, ti pehe ai kua nakai lauia ke he kupu poaki ne pehe ke moua mai taha talahauaga he Kau Kumikumi, a to kehe ni ka manatu e Fakatonu Fono kua lauia ai e ha talahauaga kua tonuhia ke he mahani hako faka-fakatufono, tonuhia ke he mahani hako faka fakatufono-tohi fakave po ke ha fakatokaaga faka fakatufono, kaeke kua nakai hokotia e talahauaga fakamua he fakailoaaga mai he Kau Kumikumi ke he mena ia ne manatu e Fakatonu Fono ki ai.

(5) Ha he Matakupu nei ko e –

"Foakiaga kua Kehe", hagaao ke he tau kelekele Niue, ko e haana kakano ko e ha vala fonua fakatoka kehe ha ko e foakiaga hiki, fakafua tupe, foaki fakalofa, foaki nofo totogi, foaki laiseni, foaki ha ko e tonuhia ke fakaaoga he falu, foaki ke moua e polofita, foaki fakamaveheaga kaitalofa, foaki faka totogi kaitalofa, lauia ha kua nakai tokanoa e kelekele, foaki fai falanakiaga ke leveki ma e taha po ke ha puhala foaki kehe foki ni ko e katoatoa po ke fai fakakaupa, ha ko e faka –fakatufono po ke talahau ko e tonuhia; lafi ai foki pihia kaeke ko e pulega faka-konotuleke ke foaki kua kehe; mo e lafi ki ai e ha liuakiaga po ke hikihikiaga he ha vala kelekele po ke fakakehekeheaga he ha foaki totogi, foaki laiseni, foaki ma e kaitalofa po ke foaki moua polofita po ke ha foaki fakakehe ke lata mo e foakiaga he ha vala kelekele ke he ha puhala kua fakakite ai nei:

"Fakaveaga he tau vala kelekele ke he mahani fakamotu" ko e kakano ko e fakamauaga ke lata ia mo e mahani fakamotu ke he tonuhia he fonua pihia mo e fakaaogaaga he tau vala kelekele i Niue:

"Tau Kelekele Niue", kakano ko e tau vala kelekele Niue ne fakave ke he Foufou he Patuiki kua talahau ko e Fakatufono ka e toka ke he pule he tau Niue ke lata mo e mahani mo e fakaaogaaga fakamotu; lafi ki ai e ha fonua kua tonuhia mai he foakiaga he Fakatufono to hoko e aho 1 ia Apelila 1916 mo e ha fonua Niue kua fakahigoa ai ko e tau fonua kua tohi ke he higoa tagata kua ha ha i ai e poakiaga he ha Fakafiliaga to hoko e aho 1 ia Novema 1969.

34 Ko e magaaho ka fakamooli ai e tau Fakatufono Fakalatalata ke eke mo tau Fakatufono-tohi

(1) A to kehe ni kaeke ko e talahauaga he Matakupu 35 he Fakatufono-tohi Fakave nei, hagaao ke he tau mena kua tonuhia ke he Matakupu ia, to maeke ni e tau Fakatufono Fakalatalata ke eke mo Fakatufono-tohi, kaeke, mo e kaeke ni –

(a) Kua talia ai he Fono Ekepule Niue; mo e

(e) Kua tonuhia ke he manatu he Fakatonu Fono kua talia mo e muitua ke he tau fakatokaaga he Fakatufono-tohi Fakave nei mo e tau Poakiaga Fakave ma e Fakaholoaga Fono he Fono Ekepule, ti kua fakamooli ai ke he matalima tohi haana i mua he Fakamau Kupu he Fono Ekepule Niue, e taha fakamooliaga ki loto he taha lagaki he Fakatufono Fakalatalata mo e fakamailoga aki e Fakamailoga a Niue, mo e pehe kua muitua e tauteaga ke he puhala ne talahau he Matakupu nei ke muitua ki ai ti tohia ai e aho ne fakamooli mo e fakamailoga ai; mo e

(i) Kua fakamooli foki he Fakamau Kupu he Fono Ekepule Niue ke he matalima tohi haana i mua he Fakatonu Fono e lagaki he Fakatufono Fakalatalata na ne fakamooli he Fakatonu Fono ne toka ai e fakamooliaga kua talahau ai.

(2) Ko e ha Fakatufono Fakalatalata kua eke mo fakatufono-tohi ke tuga mo e tau talahauaga he Matakupu nei, to eke ia mo Fakatufono-tohi he Fono Ekepule Niue.

(3) A to kehe ni ka fakakite tonu i loto he ha Fakatufono-tohi, ko e tau Fakatufono-tohi oti ke kamata fakagahua ai Niue he aho ne fakamooli matalima ai mo e tuku aki ai e fakamailoga a Niue.

35 Malolo kotofa he Fono Ekepule Niue ke uta kehe po ke fakahui e Fakatufono-tohi Fakave nei

(1) Ko e ha Fakatufono Fakalatalata ke uta kehe po ke fakahui, po ke fakafoou, po ke fakalaulahi, e ha Matakupu po ke ha vala kupu he Matapatu Fakatufono-tohi Fakave a Niue 1974, po ke Fakatufono-tohi Fakave nei, po ke taute ai ha fakatokaaga kua nakai fetataiaki mo e ha talahauaga na, to maeke ni ke eke ai mo fakatufono-tohi, ka eke, mo e ka eke hokoia ni –

(a) Kua talia ai he Fono Ekepule ke he puhala kua muitua ke he tau fakatokaaga nai;

(i) He totouaga fakahiku mo e totouaga to hoko e totouaga ia he ha Fakatufono Fakalatalata, kua moua e tau vili talia ke he numela katoa kua nakai tote hifo he ua e mena ke tolu aki he tau numela Ekepule katoatoa he Fono Ekepule tuga ne talahau ai he Matakupu 16(2) (b) he Fakatufono-tohi Fakave nei; mo e

(ii) Ko e vili ke eke ke lata mo e totou fakahiku ki a nakai taute a to Katoa e 13 e tau faahi tapu he mole, ka e nakai lafi ki ai e aho ne eke ai ke he vili ke lata mo e aho totouaga ne taute to hoko e totouaga fakahiku; mo e

(e) Kua oti ia ti kua tuku atu ai ke he viliaga, kua taute ai ke he puhala fakatoka faka-fakatufono-tohi, he tau tagata he magaaho he viliaga na kua tonuhia ke vili, ko e tau tagata vili he viliaga lahi he tau Ekepule he Fono Ekepule Niue, ti ha ha he viliaga na e omoiaga talia

(i) Kaeke ko e ha Fakatufono Fakalatalata kua utakehe po ke fakahui po ke fakafoou po ke fakalaulahi e taha he tau fakaveaga he tau Matakupu 2 ke he 9 he Matapatu Fakatufono-tohi Fakave a Niue 1974 po ke tau Matakupu 1 mo e 69 he Fakatufono-tohi Fakave nei, po ke Matakupu nei, kua lata ke hokotia ke he ua e mena ke tolu aki e loga he tau vili hako ne vili; mo e

(ii) Kaeke ko e tau mena ke he ne nakai talahau he vala kupu 35(1) (b) (i) ti muitua ni ke he loga he tau vili hako ne moua; mo e

(i) Kaeke kua talia he Fakatonu Fono pehe kua fakamooli tuai ke he tau puhala kua muitua ke lata mo e Fakatufono-tohi Fakave nei mo e Tau Poakiaga Fakave ma e Fakaholoaga Fono he Fono Ekepule Niue, ti fakamooli he Fakatonu Fono taha lagaki he Fakatufono Fakalatalata e taha talahauaga fakamooli kua talahau ai pehe kua muitua e tauteaga ke he talahauaga he Matakupu nei, mo e kua eke ai e ia pihia ki mua he Fakamau Kupu he Fono Ekepule Niue ke he matalima tohi haana e tohi fakamooli na, ti fakamau fakamailoga e lagaki na aki e Fakamailoga a Niue mo e tohi ai i luga e aho ne fakamooli mo e fakamau fakamailoga ai; mo e

(o) Ko e Fakamau Kupu he Fono Ekepule Niue, kua eke, i mua he Fakatonu Fono, e fakamooli foki ke he matalima tohi haana e talahauaga fakamooli i loto he lagaki na he Fakatufono Fakalatalata.

(2) Ko e ha Fakatufono Fakalatalata kua eke mo fakatufono-tohi ke lata mo e tau talahauaga he Matakupu nai to talahau mo e totou ai ko e taha vala he Fakatufono-tohi Fakave nei mo e maeke ai ke talahau ko e fakahuiaga faka fakatufono-tohi fakave.

(3) A to ke he ni ka talahau pauaki i loto, ko e fakahuiaga faka fakatufono-tohi fakave to kamata fakagahua ai he aho ne taute ai e talahauaga fakamooli mo e fakamau fakamailoga ai.

36 Nakai maeke e Fono Ekepule (Palemene) Niu Silani ke talaga e tau fakatufono-tohi ma Niue, mo e nakai maeke ke fakagahua e ha la fono Niu Silani a to moua e talia ki ai

(1) To nakai maeke e ha Fakatufono-tohi, po ke ha fakatokaaga he ha Fakatufono-tohi he Fono Ekepule (Palemene) Niu Silani ne fakamooli ai he aho, po ke he ha aho kua mole e Aho Fakatokatokaaga he Pule Fakamotu, ke pehe kua maeke ke hokotia e fakaaogaaga ki Niue, po ke pehe kua eke ko e taha vala he fakatufono-tohi a Niue, a to pehe ai –

(a) Ko e fakamooliaga he Fakatufono-tohi po ke taha tauteaga he ha fakatokaaga na , ke lata ke hokotia e fakaaogaaga ki Niue, kua oti tuai he ole fakamua atu ki ai mo e talia ha ko e taha kupu pulega fakamau he Fono Ekepule Niue ke eke pihia; mo e

(e) Kua oti tuai he talahau fakamahino i loto he ha Fakatufono-tohi pihia kua pehe ko e Fono Ekepule Niue kua ole atu tuai mo e talia ki ai ke eke pihia ke lata mo e talagaaga he Fakatufono-tohi na po ke he fakatokaaga kua ha ha i ai.

(2) To nakai fai fakatufono lafi ne kua taute ai he mole e Aho Fakakatoatoaaga he Pule Fakamotu, ha ko e muitua ke he Fakatufono-tohi he Fono Ekepule (Palemene) a Niu Silani, kua maeke ke fakaaoga ki Niue, po ke eke mo taha vala he tau Fakatufono-tohi a Niue, a to pehe ai –

(a) He aho ka taute ai, ko e Fakatufono-tohi ne moua mai ai e ataina po ke hagaaoaga ke he talagaaga he fakatufono lafi ko e mena fita ni e fakatufono-tohi ia he totou ko e taha vala he tau fakatufono-tohi a Niue; mo e

(e) Ko e fakaaogaaga ki Niue he fakatufono lafi, ko e mena ole mo e talia fakamua ki ai e Fono he tau Ikipule a Niue; mo e

(i) Kua fakailoa fakamahino ki ai i loto na, pehe, ko e fakatufono lafi na ne ole mo e talia ki ai e Fono he tau Ikipule a Niue ke lata mo e tauteaga na.

(3) Koe ha Fakatufono-tohi he Fono Ekepule (Palemene) Niu Silani kua fakaaoga ki Niue ha ko e tauteaga he Matakupu nei to tatai e fakagahuaaga mo e haana a aoga ke tuga ni ko e fakatufono-tohi he Fono Ekepule Niue.

(4) Ha ha he Matakupu nei e Kupu, 'fakatufono lafi" ko e kakano pehe ko e ha Poakiaga he Kanesila, Fakapuloaaga, tau poakiaga-tohi, tau la fono-tohi mo e falu a fakatufono lafi.

VALA III
FAKAFILIAGA
Fakafiliaga Lahi ha Niue

37 Ko e Fakatuaga he Fakafiliaga Lahi

(1) To ha ha i ai e fakamauaga he fakafiliaga ke fakahigoa ko e Fakafiliaga Lahi ha Niue, ke fakagahuahua e tau fifiliaga tonu i Niue.

(2) A to ke he ai ni, ke tuga ne tohia ai i loto he Tohi Fakave nei po ke mata fakatufono, ko e Fakafiliaga Lahi ke ha ha i ai katoatoa he tau fakagahuahuaaga he tau fakafiliaga kua aofia ai e tau (fakafiliaga holifono ke he tau mata fakatufono, fakafiliaga tonuhia faka-tagata mo e fakafiliaga kelekele) ke maeke ai ke fakagahuahua e tau fakatufono i Niue.

(3) To vevehe 3 pehe nai e Fakafiliaga Lahi –

(a) Fakafiliaga ha ko e tonuhia he tagata;

(b) Fakafiliaga holifono ke he tau fakatufono;

(c) Fakafiliaga kelekele.

(4) To maeke he Iki Fakafili he Fakafiliaga Lahi ke fakaaoga e ha malolo fakafiliaga mo e ha malolo pule ha ha ia ia ke he ha fakafiliaga ne tolu.

(5) Muitua ke he (1), (2), (3), mo e (4) he Matakupu nai mo e Matakupu 38, ko e tau Iki Fakafili taki toko taha he Fakafiliaga Lahi, po ke toko 2 po ke tokologa atu foki, maeke ia lautolu ia he ha magaaho i Niue po ke i fafo i Niue ke fakaaoga e tau malolo pule he Fakafiliaga Lahi.

38 Malolo Pule Fakafiliaga he tau La Fakafiliaga he Fakafiliaga Lahi

(1) Ko e tau La Fakafiliaga he Fakafiliaga Lahi ke fakanogonogo mo e fifili fakamitaki –

(a) E tau fakafiliaga ke tuga mo e tau poakiaga he ha fakatufono tohi, ke muitua mo e fifili fakamitaki;

(e) Ko e falu a fakafiliaga pihia mai he taha magahala ke he taha magahala ke toka ke he fifiliaga he Iki Fakafili Lahi ke he taha vala ni he fifiliaga po ke fakafiliaga katoa, po ke ha fakafiliaga taute fakamahao, po ke ha vahega fakafiliaga.

(2) To ha ha he Fakafiliaga Kelekele e tau malolo fakafiliaga oti mo e, tau malolo pule oti ke he ha fekau kelekele, ko e tau fekau ia ne tutupu to hoko e kamataaga he Matakupu nai ka e nakai la fai tauteaga ia ki loto he Fakafiliaga Kelekele ha Niue, ko e mena ia to maeke foki ke moua e falu malolo fakafiliaga pihia ke fakafili e tau fekau nai ka foaki atu he fakatufono tohi.

39 Tau Iki Fakafili he Fakafiliaga Lahi

(1) To ha ha i ai he Fakafiliaga Lahi toko taha po ke tokologa e tau Iki Fakafili, lautolu oti ia to fifili ai i lalo hifo he malolo he tau poakiaga he Tohi Fakave nei.

(2) Kaeke ke tokotaha ni e Iki Fakafili ka fifili ko ia ni ko e Iki Fakafili Lahi ha Niue, ka e, kaeke ke tokologa ka fifili taha mai ia lautolu ia ka fifili ke eke mo Iki Fakafili Lahi ha Niue.

(3) To nakai fai tagata ke moua e kotofaaga ko e Iki Fakafili he Fakafiliaga Lahi i lalo hifo he Matakupu nai, a to moua fakamua e ia e taha tohi paase tuga ne talahau ai he Tohi Fakave nei mo e tohia ai i loto he mata fakatufono tohi.

40 Hukui Iki Fakafili Lahi he Fakafiliaga Lahi

Kaeke ke tokanoa ha pu gahua he Ofisa he Iki Fakafili Lahi, po ke ka kitia ai kua fai kakano aoga ati kua nakai maeke ai he Iki Fakafili Lahi ke taute haana tau gahua kotofa, ka ko e tau gahua kotofa ia na maeke foki ke taute he taha Iki Fakafili he Fakafiliaga Lahi, ti kaeke ko e mena maeke he falu Iki Fakafili foki ke taute e tau gahua kotofa ia, koe mena ia ko e Iki Fakafili ne kua leva haana gahua ke he kotofaaga Iki Fakafili ko ia ka lago ki ai e kotofaaga Hukui Iki Fakafili Lahi a to fifili mo e kotofa ai e Iki Fakafili Lahi foou, po ke, a to maeke he Iki Fakafili Lahi ke liu taute haana tau gahua kotofa.

41 Tau Iki Fakafili nakai gahua mau

To maeke he Fono Ekepule he ha magaaho ke fifili mo e kotofa ai ha tagata mo e nakai fai kaupaaga e tau tau moui ne kitia kua lata tonu mo e kotofaaga he Iki Fakafili Lahi, po ke taha Iki Fakafili ke moua e kotofaaga ia ke nakai molea e taha tau tuga ne tohia ai he tohi kotofaaga gahua.

Fifiliaga, leva he nofo he kotofaaga, mo e tau totogi he tau Iki Fakafili.

42 Fifiliaga he tau Iki Fakafili

Ko e Iki Fakafili Lahi mo e falu Iki Fakafili he Fakafiliaga Lahi to fifili ni ke he puhala nai:

(a) Ko e Iki Fakafili Lahi he Fakafiliaga Lahi to fifili ai he Kavana Lahi, to taute e fifiliaga ia ha ko e taliaaga mai he Fono Ikipule mo e omoiaga he Palemia;

(e) Ko e Iki Fakafili he Fakafiliaga Lahi to fifili ai he Kavana Lahi, to taute e fifiliaga ia ha ko e taliaaga mai he Fono Ikipule ma e omoiaga he Iki Fakafili Lahi he Fakafiliaga Lahi mo e Ikipule he Faahi Fakafili.

43 Leva he nofo he kotofaaga Iki Fakafili

(1) To kehe ni kaeke ko e kotofaaga fifili i lalo hifo he Matakupu 41, ha kua talahau pehe e matakupu ia nakai fai tagata ne kua katoa e 68 e tau tau he moui ke fifili ke he kotofaaga nai, po ke fakatumau ke he kotofaaga ko e Iki Fakafili Lahi po ke taha Iki Fakafili foki he Fakafiliaga Lahi.

(2) To nakai fai fifiliaga ke pehe kua nakai tonu ka taute he Iki Fakafili lahi po ke taha Iki Fakafili he Fakafiliaga Lahi he tau magaaho ka taute ai e ia haana tau gahua kotofa, pete ni ke pehe kua hoko tuai haana tau tau ke fakaoti ai moe gahua tuga ne talahau he Matakupu nai, po ke haana tau tau kotofa kua oti tuai.

(3) Ko e Iki Fakafili Lahi po ke taha Iki Fakafili he Fakafiliaga Lahi maeke ia ia ke tohi ke he haana matalima tohi e haana tohi ke fakaoti moe kotofaaga, tohi atu ke he Kavana Lahi.

44 Tau totogi he tau Iki Fakafili

(1) Ko e tau totogi he Iki Fakafili Lahi mo e falu Iki Fakafili he Fakafiliaga Lahi to muitua ni ke he Fakatufono-tohi, mo e to totogi mai he Tokaaga Tupe he Fakatufono Niue.

(2) Ko e tau totogi he tau Iki Fakafili ia to nakai tuku hifo he ha magaaho he nonofo ai a lautolu he tau kotofaaga, a to maeke ni ke tuku hifo kaeke ko e tuku hifo ia kua lauia ai e tau totogi oti ha lautolu ne moua ha ko e muituaaga ke he fakatufono-tohi.

45 Fakaoti e Kotofaaga he tau Iki Fakafili

(1) Ko e Iki fakafili lahi mo e falu Iki fakafili he Fakafiliaga Lahi to nakai maeke ke fakaoti mai he tau kotofaaga, ko e maeke ni ka moua mai e fakailoaaga ke fakaoti mai he Kavana Lahi ha koe taliaaga he Fono Ikipule mo e omoiaga he Palemia mo e fakamooliaga he Fono Ekepule Niue he fonoaga ne talia oti ki ai a lautolu.

(2) Ko e taha ni e kakano ne kua maeke ai ke fakaoti ai e Iki Fakafili lahi mo e ha Iki Fakafili he Fakafiliaga lahi ka hoko ke he tuaga kua nakai tuai maeke he Iki Fakafili ke taute haana tau gahua kotofa, (tupu mai ha kua nakai malolo e tino, po ke nakai malolo e manamanatuaga po ke ha mena tupu kia ia) po ke mahani fakahanoa.

46 Tau Komisina Fakafili he Fakafiliaga lahi

(1) Ko e Fono Ikipule ka fifili e tau Komisina Fakafili he Fakafiliaga lahi ha Niue, to gahua ai a lautolu ke he tau tau tuga ne tohia ai he ha lautolu a tau tohi fakamooliaga ke he kotofaaga.

(2) To nakai fai tagata kua katoa e 64 e tau tau he moui, po ke ko e ekepule he Fono Ekepule Niue ka fifili ke he kotofaaga nai po ke fakatumau ke nofo ai he kotofaaga nai.

(3) Muitua ke he (2) he Matakupu nai, ko e kotofaaga Komisina Fakafili he Fakafiliaga Lahi ka ko e tagata gahua to maeke ni e tagata ia ke fakatumau ke he haana kotofaaga kaeke ke moua e fakamooliaga mai he Kau Pule Gahua, po ke tagata gahua ke he ha gahua, ko e mena ia kaeke ko e Komisina Fakafili ko e tagata gahua he kau gahua he tau kau gahua he Fakatufono to nakai maeke ia ia he magaaho ke fakaaoga ai haana tau malolo kotofa faka-Komisina Fakafili ke nofo ki lalo he puipuiaga he Kau Pule Gahua he Fakatufono Niue.

(4) To nakai fai fakafiliaga ka taute he Komisina Fakafili he Fakafiliaga Lahi he magaaho ka taute ai e ia haana tau malolo kotofa ke pehe kua nakai tonu ha kua hoko ke he tau tau kua lata ke fakaoti ai mo e kotofaaga ke tuga ne tohia ai he Matakupu nai, po ke ko e tau tau fafati he kotofaaga ke gahua ai kua molea tuai.

(5) Ko e Komisina Fakafili he Fakafiliaga Lahi maeke ia ia ke tohi ke he haana matalima tohi e haana tohi fakaoti gahua mo e taatu ke he Palemia.

47 Tau Komisina Fakafili nakai gahua mau

Maeke he Fono Ikipule he ha magaaho ke fifili ha tagata mo e nakai fai kaupaaga e tau he moui ne kua kitia kua lata mo e kotofaaga ko e Komisina Fakafili he Fakafiliaga lahi ke nakai molea e taha e tau tuga ne tohia he tohi fakamooliaga gahua.

48 Malolo Pule he tau Komisina Fakafili he Fakafiliaga Lahi

(1) Maeke he Komisina Fakafili he Fakafiliaga Lahi ke moua e malolo pule ke fakagahuahua haana tau gahua kotofa ko e Iki Fakafili he Fakafiliaga Lahi (ko e malolo ia ko e malolo faka fakafiliaga po ke malolo ke he tau puhala gahua, ka e nakai aofia ai e tau malolo pule ne foaki ke he Iki Fakafili Lahi) tuga ne tohia ai he fakatufono hagaao ke he tau Komisina Fakafili oti po ke fakamahao ni ke he tokotaha e Komisina Fakafili he Fakafiliaga Lahi, mo e, ko e tau talahauaga ne tohia ai he ha fakatufono tohi hagaao ke he Iki Fakafili he Fakafiliaga Lahi ne maeke ke fakamooli aki kua hagaao foki e tau talahauaga ia ke he Komisina Fakafili he Fakafiliaga Lahi, ka e fakakaupa mai ni ke he malolo pule ne foaki age ki a ia.

(2) Ko e fakaataaga moua mai he Komisina he Fale Hopo Lahi ke liu hafagi mai he Iki Fakafili he Fale Hopo ia.

49 Tau Palepale he tau Komisina Fakafili he Fakafiliaga Lahi

(1) Ko e tau Komisina Fakafili he Fakafiliaga lahi ke moua e tau totogi mo e tau totogi lafi he tau magahala takitaha tuga ne tohia ai he fakatufono-tohi; ka e kaeke ke fifili ha Komisina Fakafili ke he kotofaaga nai ke he tuaga nakai gahua mau, to moua ni e ia e totogi mo e totogi lafi fakalata ke he tau magaaho ne gahua ai a ia he haana a tau gahua kotofa tuga ne fifili a ia ki ai.

(2) Ko e tau totogi he tau Komisina Fakafili to moua mai he tokaaga tupe he Fakatufono Niue.

(3) Ko e tau tau fafati ka gahua ai e Komisina Fakafili he haana kotofaaga to maeke he haana totogi ke holo hake kaeke kua fai holo hake e tau totogi po ke kakano ni kua lata ke holo hake ai, ka e nakai maeke ke fai magaaho ke holo hifo ai he tau tau ne fafati ke gahua ai a ia ke he haana kotofaaga, a to maeke ni kaeke ko e holo hifo e tau totogi oti po ke holo hifo taha he tau totogi ha lautolu oti ne totogi ha ko e muituaaga ke he fakatufono-tohi.

50 Fakaoti e Kotofaaga Komisina Fakafili

(1) To nakai maeke e Komisina Fakafili he Fakafiliaga Lahi ke fakaoti mai he haana kotofaaga. Ka ko e Fono Ikipule ni ke maeke ke fakaoti e kotofaaga ia ha ko e pulega ne tuku atu he Iki Fakafili Lahi ke he Fono Ikipule.

(2) Ko e kakano ni ke maeke ai e Komisina Fakafili ke fakaoti mai mo e haana kotofaaga kaeke kua nakai maeke ia ia ke taute haana tau gahua kotofa (tupu mai ha kua nakai malolo e tino po ke nakai mitaki e manamanatuaga po ke ha mena ni ne tupu ki a ia) po ke mahani fakahanoa.

Tau Fakafili

51 Tau Fakafili he Mafola

(1) Ko e Fono Ikipule ke fifili e tau Fakafili he mafola ma Niue, to gahua ai a lautolu ia ke he tau tau tuga ne tohia ai he tau tohi fakamooliaga gahua.

(2) Ko e tokoua e tau Fakafili he mafola ma Niue ka gahua tokoua, mo e ha ha ia laua e malolo ke fakagahua i Niue e ha gahua kotofa ne foaki atu he mata-fakatufono ke he tau Komisina Fakafili he Fakafiliaga Lahi, ti pihia ni mo e tau fakafoouaga tuga ne tohia ai he Matakupu 48 he tohi Fakave nai, mo e fakahagaao foki e tau fakafoouaga ia ke he tau kotofa he tau Komisina Fakafili he Fakafiliaga Lahi, mo e ke fakaaoga foki ke he ha tokoua e fakafili he mafola ma Niue; ka e nakai hagaao e matakupu nai ke he ha Fakafili he mafola ma Niue ne gahua ekepule he Fono Ekepule ha Niue po ko ia kua katoa e 68 e tau tau he moui.

(3) To nakai maeke e Fakafili he mafola ma Niue ke fakaoti mo e haana kotofaaga a to moua e poakiaga ke fakaoti mai he Fono Ikipule ha ko e pulega mai he Iki Fakafili Lahi.

(4) Ko e tau Fakafili he Mafola ke moua a tau palepale ha lautolu fakalata ke he ha gahua kotofa ha lautolu ne gahua ki ai. Ko e tau palepale nai to muitua ni ke he tau magahala takitaha tuga ne tohia ai he fakatufono-tohi.

Fakafiliaga Liu fakafili

52 Fakatu e Fakafiliaga Liu Fakafili

(1) To ha ha i ai e Fakafiliaga Liu Fakafili ha Niue mo e to fakamau ai ko e Fakafiliaga kua mua he tokoluga moe malolo.

(2) Muitua ke he Matakupu 53 moe 54 ko e tau Iki Fakafili he Fakafiliaga Liu Fakafili.

(a) Ko e Iki Fakafili lahi mo e falu Iki Fakafili he ha Fakafiliaga Lahi ko lautolu ia ko e tau hukui kua fifili ke he Fakafiliaga nai ha ko ha lautolu a tau mahani fakamooli mo e fakauka kua lata tonu ko e kotofaaga; mo e

(e) Falu vahega tagata pehe nai kua lata tonu mo e kotofaaga ke tuga ne tohia ai he Fakatufono Tohi, to fifili ai a lautolu ia he Kavana Lahi ha ko e taliaaga he Fono Ikipule mo e omoiaga he Palemia.

(3) Ko e Iki Fakafili Lahi e takitaki he Fakafiliaga Liu Fakafili, ka e kaeke ke nakai ha ha i ai a ia ko e taha Iki fakafili ne kua leva haana gahua mo e motua ka hukui a ia.

(4) Ko e tau Iki Fakafili he Fakafiliaga Liu Fakafili to uta e tau tutuaga ha lautolu he tau kotofaaga ke he leva he gahua, kamata totou he aho ne kamata gahua ai he Fakafiliaga Lahi po ke kamata gahua he Fakafiliaga Liu Fakafili po ke ha fakafiliaga he ha motu i fafo i Niue.

(5) Ko e ha kotofaaga ne fifili i lalo hifo he palatafa (e) he (2) he matakupu nai ke fai magaaho ke tuku age ke fakamahani ai ke he fakafiliaga po ke fai magaaho ke tuku age ke fakanogonogo ke he taha fakafiliaga, ke tuga ne tohia ai he tohi fakamooliaga gahua.

53 Katoa he tau Iki fakafili

(1) Ko e toko 3 e Iki Fakafili he Fakafiliaga Liu Fakafili ke gahua fakalataha he ha magaaho i Niue po ke i fafo i Niue, mo e, fakagahua ai e tau malolo pule ne ha ha i ai he Fakafiliaga. Ka e maeke ni kaeke kua fita e fifiliaga fakaoti he Fakafiliaga he moua he taha hukui ne kua ha ha i ai he magaaho tonu ia he fakafiliaga, ka e kaeke ke nakai moua ha hukui to puhala atu ai e fifiliaga ia he Fakafiliaga he Fakamau Kupu Lahi he Fakafiliaga Liu Fakafili.

(2) Ko e fifiliaga he Fakafiliaga Liu fakafili ke falanaki ni ke he manatu kua tokologa ki ai e tau Iki Fakafili ne ha ha i ai he fakafiliaga.

54 Nakai maeke e Iki Fakafili ne taute e fifili he Fakafiliaga ke ha ha i ai a ia he Fakafiliaga Liu Fakafili ke liu fifili haana fifiliaga

Ko e Iki Fakafili he Fakafiliaga Liu Fakafili to nakai maeke ia ia ke ha ha i ai ke liu fakafili e ha fifiliaga ne taute e ia, po ke Fakafiliaga ne nofo ai a ia ko e taha Iki Fakafili.

55 Ko e fifiliaga he Fakafiliaga Liu Fakafili

(1) A to ke he ai ni ke tuga ne tohia ai he (2) he Matakupu nai, po ke tuga ne tohia ai he fakatufono tohi, ko e fifiliaga he Fakafiliaga Liu Fakafili ko e fifiliaga fakaoti ni a ia.

(2) To nakai fai talahauaga i loto he Matakupu nai ke taofi aki e tonuhia he Patuiki ne ha ha ia ia ne lalago e ha tagata, kaeke kua nakai fiafia e ha tagata ke he fifiliaga he Fakafiliaga Liu Fakafili kua lata ke taatu e nakai fiafia ia he tagata ke he taha fakafiliaga ne kua kitia e ia kua lata ke uta ki ai.

55A Malolo Pule Fakafiliaga Liu Fakafili

(1) Muitua ke he tau poakiaga he Tohi Fakave nei, ko e Fakafiliaga Liu Fakafili ke ha ha i ai e malolo pule ke fanogonogo mo e fifili e ha ole ke liu fakafili e fifiliaaga he Fakafiliaga Lahi.

(2) Muitua ke he tau poakiaga he Tohi Fakave nei mo e tau magaaho ke taute ai e ole liu fakafili tuga ne tohia ai he Fakatufono Tohi, a to kehe ai ni kaeke kua tohia ai he ha fakatufono tohi kua eke ni e fifiliaga ia he Fakafiliaga Lahi mo e fifiliaga fakaoti, ti ko e ole ke liu fakafili kua nakai tuai talia he Fakafiliaga Liu Fakafili ke liu fifili e fifiliaga, he Fakafiliaga Lahi –

(a) Ke lata mo e mooli, kaeke kua fakamooli he Fakafiliaga Lahi ko e fakafiliaga ne taute kua mamafa lahi ni ke he fifiliaga he mata fakatufono mo e to lauia ai foki e ha poakiaga he Tohi Fakave nei.

(e) Ke lata mo e mooli, ko e ha fakahala ka fafati he Fakafiliaga Lahi ha ko e fakagahuahuaaga he tau malolo faka-fakafiliaga ke lata mo e holifono he tagata ne ole ke liu fakafili ha kua fafati ke fakahala mate po ke fakahala tuku ke he fale puipui a to hoko kehe aho ka mate ai, po ke ha vahega fakahala (kua nakai tohia he mata fakatufono) ka e tuga ka tohia ai he Fakatufono Tohi;

(i) Ke lata mo e mooli kaeke kua nakai fai kakano aoga e matakupu ne fetoko ki ai e ole liu fakafili ke tuga ne tohia ai he Fakatufono Tohi;

(o) Kaeke ke toka ni ke he taliaaga he Fakafiliaga Lahi ke lata mo e falu fakafiliaga, ti kaeke kua manatu e Fakafiliaga ia ko e matakupu ne lago ki ai e ole ke liu fakafili ko e matakupu aoga mae tau tagata oti, po ke aoga ni mo lautolu ne aofia ai, po ke ha kakano aoga ne kua lata ai ke ta atu e matakupu ke fakafili he Fakafiliaga Liu Fakafili.

(u) Ko e falu he tau mena tutupu kua fai fakamaamaaga ke lata mo e fakatufono.

(3) Ke nakai fai mena ke taofi aki e (2) he Matakupu nai, a to kehe ai ni kaeke ke tohia ai he ha Fakatufono Tohi kua eke ni e fifiliaga he Fakafiliaga Lahi mo fifiliaga fakaoti, ka e maeke he Fakafiliaga Liu Fakafili ke lata mo e ha fekau ne manatu e Fakafiliaga ia kua lata ke talia pauaki ni ke tuku atu e ole ke liu fakafili he Fakafiliaga Lahi e fifiliaga ne taute he Fakafiliaga Lahi, ka muitua ke he tau tauteaga pehe nai kua lata ni ke moua e peehi ke puipui ke lata mo e tau tupe ke fakamole ke he kitiaaga kua manatu e Fakafiliaga Liu Fakafili kua lata.

(4) Ko e taha vala he matafakatufono kua ai tohia kehe vagahau Niue.

55E Utaaga he tau Poakiaga Tohi he Fakafiliaga Liu Fakafili

Ko e fifiliaga he Fakafiliaga Liu Fakafili ke he ha Liu Fakafili mai he Fakafiliaga Lahi to taatu ke he Fakamau Kupu Lahi he Fakafiliaga Liu Fakafili. Ko e Poakiaga Tohi ia kua fakamau fakamailoga ai he Fakafiliaga Liu Fakafili. Ti koe fifiliaga ia to tohi fakamau ai he Fakafiliaga Lahi po ke tohi fakamau ai mo e taha fakaholoaga fakafiliaga foou, po ke toka ni ke he fifiliaga he Fakafiliaga Lahi tuga ne fifili ki ai.

55I Omonuo he Mahani Fakamooli mo e Omonuo Faka-Fakafiliaga

(1) Ko e Iki Fakafili Lahi moe falu Iki Fakafili he Fakafiliaga Lahi mo e tau Iki Fakafili oti he Fakafiliaga Liu Fakafili, mo e tau Komisina Fakafili oti, mo e tau Fakafili he Mafola ha Niue, ko e magaaho ka talia ai ke he kotofaaga to taute ai e tau omonuo nai:

(a) Hanai e omonuo he mahani fakamooli –

Ko au ko_____ kua omonuo nei au ke he Atua Malolo mua ue atu, to fekafekau au moe tua fakamooli, mo e toto mau e mahani tonu moe fakalilifu ki a ia e Patuiki (Hanai kua fakahigoa ai mo e haana Pule Malolo: Ko e Patuiki ko Elisapeta II) ko ia ko e Ulu he Fakatufono Niue, fakalataha mo e haana tau ohi mo e haana tau hukui ke lata mo e Tohi Fakave mo e Fakatufono he kautu. Ko e mena ia ki a lagomatai mai au ma Atua na e.

(b) Hanai e Omonuo Faka-Fakafiliaga

Ko au ko _____.kua omonuo nei au ke he Atua Malolo mua ue atu to fekafekau au mo e loto mo e mahani fakamooli ki a ia e Lilifu koe Patuiki (Hanai kua fakahigoa ai mo e haana Pule Malolo: Ko e Patuiki ko Elisapeta II) ko ia ko e Ulu he Fakatufono Niue fakalataha mo e haana tau ohi mo e haana tau hukui ke lata mo e Tohi Fakave mo e fakatufono he Kautu.
Ko e mena ia ki a lagomatai mai au ma Atua na e.

(2) Ko e tau omonuo ka taute ha ko e poakiaga he Matakupu nai to taute ai ki mua ia lautolu nai –

(a) Ko e Iki Fakafili Lahi to taute ai ki mua he Kavana Lahi;

(e) Ke he falu Iki Fakafili he Fakafiliaga Lahi po ke ha Iki Fakafili he Fakafiliaga Liu Fakafili to taute ai ki mua he Kavana Lahi po ke ki mua he Iki Fakafili Lahi;

(i) Ke he tau Komisina Fakafili he Fakafiliaga Lahi, po ke tau Fakafili he Mafola to taute ai ki mua he Iki Fakafili Lahi po ke ki mua he ha Iki Fakafili he Fakafiliaga Lahi, po ke ki mua he Fakatonu Fono he Fono Ekepule Niue.

(3) Ko e ha tagata ne kua fakatonu he Matakupu nai ke taute e omonuo ka e fakatikai e ia mo e nakai talia e ia ke omonuo ka kua fita a ia he talia e kotofoaga, ko e magaaho ia ni ke uta kehe ai e kotofoaaga mai ia ia, ka e nakai maeke ha tagata ke fakaohooho ke omonuo lagaua ke he taha ni e kotofoaga: ka kua lata ke nakai fai tauteaga ke he ha tagata pihia a to tuku ke he Fakafiliaga ke huhu ki ai ko e ha ne nakai talia ai e ia ke taute e omonuo tuga ne tohia ai he Matakupu nai.

VALA IV
TAU TUPE MOUA HA NIUE

56 Levekiaga Faka-Fakatufono-tohi he tau tupe moua mo e tau tupe fakamole

(1) To nakai maeke ke fai tukuhau ka fakatu ai, a to fai talahauaga i loto he ha Fakatufono – tohi.

(2) Ko e tau tupe moua oti he Fakatufono Niue ki a tuku atu ki loto he fakaputuaga tupe he kautu po ke ha fakamauaga tupe; ko e tupe oti ia po ke tau fakamauaga tupe ia, to totogi ni a to kehe ka tohi ai i loto he fakatufono – tohi kua fakagahua ai, to taute ni tuga ne fakatoka ai he Fakatufono – tohi.

(3) Ko e tau fakamoleaga oti he tau tupe he kautu to taute ke lata moe poakiaga he fakatufono- tohi tigahau he fakagahua po ke poakiaga he ha fakatufono – tohi ka taute pauaki.

57 Fakaputuaga Tupe he Fakatufono Niue

(1) To ha ha i ai e taha Fakaputuaga Tupe he Fakatufono Niue.

(2) Ko e tau tupe tukuhau oti mo e falu a tupe moua mo e tau tupe ne kumi mo e moua he Fakatufono Niue ki a totogi atu ia ke he Fakaputuaga Tupe he Fakatufono Niue, a to kehe ai ka fakaata ai faka-fakatufono-tohi ke totogi atu ke he ha fakaputuaga tupe kehe he kautu.

58 Fakalatalataaga mo e Tufatufaaga he tau tupe ma e tau taha

(1) A to kehe ai ni kaeke kua ha ha he Matakupu 59 (4) (e) he Fakatufono – tohi Fakave nei po ke kua fakaata mai ai i loto he taha la fono fakatufono-tohi po ke he ha Fakatufono-tohi ka taute pauaki, ko e tau tupe fakamole oti mai he Fakaputuaga Tupe he Fakatufono Niue to muitua ni tuga ke he tau fakatokaaga ne talahau ai he Fakatufono – tohi Fakalatalata Tupe ma e tau ia.

(2) Ko e Fakatufono-tohi Fakalatalata Tupe to fakagahua ni ke lata mo e taha e tau, mo e fakaoti ni haana a aoga he tau na.

59 Ko e Fono He Tau Ikipule ke kitekite e fakamoleaga he tau tupe

(1) Ko e Fono Ikipule kua lago ki ai e poakiaga ke tuku ke he Fono Ekepule e tau fakalatalataaga fakakaupa he tau tupe moua he kautu mo e tau tupe fakamole he kautu he tau taha, a to pihia ai foki ke he falu a fekau hagaao ke he tupe. Ko e Palemia po ke taha Ikipule ke tuku ki mua po ke fakailoa ke he Fono Ekepule e ha Fakatufono – tohi Fakalatalata hagaao atu ia ke he ha fekau hagaao ke he tupe mo e ha fakalatalata tupe kua amanaki ke fakamole ke lata moe tau taha.

(2) Ko e Fono He Tau Ikipule kua lago ki ai gahua mo e falanaki atu ki lalo he Fono Ekepule hagaao ke he tau fakamauaga tonu he tau tupe fakamole ke fakataitai atu ke he tau fatifatiaga ne taute ai he Fono Ekepule ke lata moe Matakupu 58 he Fakatuono – tohi Fakave nei, po ke ha fakaataaga ke fakamooli e tau tupe fakamole ke lata moe vala kupu (4) he Matakupu nei, mo e ko e tau fakamauaga tupe ke ma e tau taha to tuku ai ke he Fono Ekepule.

(3) Ko e ha fakaataaga malolo pule foaki mai he Fono He Tau Ikipule, ko e tokotaha po ke tokologa ha lautolu e ha malolo ke fakamooli e ha tupe fakamole ke lata mo e ha fakatufono-tohi ne fakagahua ai he mogo ia mo e taute ai ke lata mo e Fakatufono-tohi ka e nakai ha ha i ai ha kehekeheaga mai he gahua mo e falanakiaga auloa he Fono He Tau Ikipule ke he gahuaaga tumau i lalo he Matakupu nei.

(4) Ke lata moe tau fakakaupaaga tuku hifo he tau magahala takitaha tuga ne toka ai he ha fakatufono-tohi po ke la fono-tohi ko e Fono he tau Ikipule ke fakamooli e fakamoleaga he tau tupe kua manatu kua lata –

(a) Ke taute taha fakatokaaga amanaki he Fakatufono- tohi Fakalatalata Tupe ma e ha tau taha; ka ko e tau tupe katoatoa ne tufa mo e totogi ai i lalo he palatafa nei he fakatatai atu ai ke he ha vahega gahua he tau taha, ki a nakai molea e tau fatifati tupe ne nakai fakamole he Fakatufono-tohi Fakalatalata tupe he tau kua mole, lafi ki ai e taha e mena ke fa-aki he vahega gahua ia, ti ko e tau tupe ki a lafi fakalataha e totouaga ke he fakalatalataaga ma e tau ia.

(e) Ko e magahala he vahloto to fakamooli e Fakatufono-tohi Fakalatalata Tupe moe fakaotiaga he tau taha kua maeke e tau tupe ia ke fakamole ke molea, mo e nakai fai fakamooli ke moua mai he Fono Ekepule, ka koe tau tupe oti ne foaki mo e totogi ai he palatafa nei he ha tau taha ki a nakai molea e taha mo e hafa e pasene he tau tupe katoa oti ne fatifati ai i loto he Fakatufono-tohi Fakalatalata Tupe he tau ia.

(5) Ko e ha tupe fakamole ne fakagahua ki lalo he fakaataaga he Matakupu (4) (e) he Matakupu nei, to tohia ai ko e tau tupe fakamole mo e nakai fakaata ti totou ko e fakamoleaga mai he taha fatifatiaga kua lata tonu ai.

(6) Ko e fakailoaaga he tupe fakamole ne nakai fai fakaataaga ma e tau ia to lalafi atu ia ke he fakailoaaga tupe ma e tau ia mo e tuku atu ai ke he Fono Ekepule.

60 Siviaga he tau Tupe

(1) Ko e Faahi Gahua Sivi Tupe ha Niu Silani ke eke mo Sivi Tupe he Fakaputuaga Tupe he Fakatufono Niue mo e tau fakaputuaga tupe oti he tau Faahi Gahua Fakatufono mo e tau Ofisa he fakatufono pule fakatonu mo e falu matakau fakatu faka fakatufono kua lauia ai i lalo he ha fakatufono-tohi.

(2) To lagataha he tau e taute e fakailoaaga mo e fakailoa atu he Faahi Gahua Sivi Tupe ke he Fakatonu Fono he Fono Ekepule Niue ke tuku ke he Fono Ekepule e fakailoaaga ne toka ai ha talahauaga tuga ne poaki ai he ha fakatufono-tohi lafi ki ai foki mo e falu a fakailoaaga hagaao ia ke he tau Fakaputuaga Tupe he Fakatufono po ke falu he tau vahega tupe kua tohia ai i lalo he Fakatufono – tohi Fakave nei po ke i lalo he ha fakatufono –tohi kua lata ke sivi ai he Faahi Gahua Sivi Tupe kaeke kua kitia kua lata ke taute pihia.

VALA V

FAAHI GAHUA MALOLO TINO, GAHUA FAKAAKO MO E FAAHI FIAFIA MOUI TINO

61 Faahi Gahua Malolo Tino, Faahi Gahua Fakaako mo e Faahi Fakafiafia he Moui Tino

(1) To ha ha he Fono he Tau Ikipule e lauiaaga malolo ke fakatu mo e fakatumau i Niue e levekiaga he tau fale gagao mo e falu matakau mo e foaki atu e falu e fekafekeauaga ke lata ma e tau malolo tino he tau tagata.

(2) Ha ha foki he Fono He Tau Ikipule e lauiaaga malolo ke fakatu i Niue mo e fakatumau i Niue e levekiaga he tau aoga mo e taute ai e falu a fakamauaga kua lata ia ma e foakiaga he tau fakaakoaga mitaki ma e tau tagata Niue.

(3) Ha ha he Fono He Tau Ikipule e lauiaaga malolo ke fakatu mo e fakatumau i Niue falu he tau matakau mo e falu gahua ke taute e falu a mena kua lata ma e tau nonofoaga he tau tagata i Niue ke fakatumau e leveki he tau puhala moua mena, fiafia mo e fakatumauaga he tau mahani motu.

(4) Nakai fai mena he Matakupu nai kua maeke ke fakakaupa aki e tau malolo ha he Fono he Tau Ikipule ne toka he Matakupu 2 he Fakatufono-tohi-Fakave nei, ke fakagahua ma e higoa haana he Patuiki Fifine, kua pule Fakatonu i Niue.

VALA VI

KO E KAU GAHUA FAKATUFONO NIUE

62 Kau Gahua Fakatufono Niue

(1) To ha ha i ai e Kau Gahua Fakatufono Niue kua ha ha i ai e tau tagata gahua ke maeke ke lagomatai e Fono He Tau Ikipule ke gahua e tau gahua kotofa i Niue mo e taute ai e falu a gahua mo e falu a malolo pule fakatonu, ne moua ha ko e fakatokaaga he ha fakatufono-tohi.

(2) A to kehe ni kaeke ke toka i loto he vala kupu (4) he Matakupu nei, to nakai maeke ha tagata ke gahua ma e Fakatufono Niue a to pehe ko ia ko e tagata gahua he Kau Gahua Fakatufono Niue.

(3) A to kehe ai ni kaeke kua fai talahauaga kehe he taha Fakatufono-tohi ko e gahua ma e taha matakau, po ke ha matakau fakatu faka-fakatufono, po ke ha matakau kua fakatu ai i lalo he taha fakatufono-tohi a Niue, ke lata mo e Matakupu nei, kua talahau pehe kua gahua he gahua he Fakatufono Niue.

(4) Nakai hagaao e vala kupu (2) he Matakupu nei ke lauia ai ha gahua kua totogi faka-konotuleke mai he tau tupe totogi palepale, po ke ha gahua taute noa, po ke ha gahua he –

(a) Fakafili po ke Komisina Fakafili he Fakafiliaga Lahi, po ke ha Lagomatai Fakafili ma Niue, po ke ha tagata gahua faka fakafiliaga ne kotofa po ke ke lata mo e taha la fono – tohi ne fakagahua po ke taha Fakatufono tohi; po ke

(b) Ha Ikipule po ke taha Ekepule, po ke Fakatonu Fono he Fono Ekepule; po ke

(c) Taha tagata he Kau Pule Gahua Ha Niue.

63 Tohi Kupu he Fakatufono

(1) To ha ha i ai taha ke kotofa mai he Kau Gahua Fakatufono Niue ke fakahigoa ai ko e Tohi Kupu he Fakatufono, ko ia ko e ulu gahua mau he Kau Gahua Fakatufono Niue mo e ko e takitaki lahi he tau gahua taute he Fakatufono Niue.

(2) Ke lalafi atu ke he falu he haana a tau gahua mo e tau malolo kotofa ne talahau mai he ha fakatufono – tohi, ko e Tohi Kupu he Fakatufono to gahua a ia mo e falanaki atu ke he Fono He Tau Ikipule ke lata ma e tau fakatonutonuaga he

tau gahua he tau faahi gahua oti mo e tau ofisa he Fakatufono pule fakatonu. Ko e tau ulu he tau Faahi Gahua po ke ofisa kua lago ki ai e fakaholoaga mitaki mo e tonu he tau gahua he Faahi Gahua ia po ke ofisa ia, mo e falanakai atu ki lalo he Tohi Kupu he Fakatufono, a to pihia atu foki e falanakiaga ia ki lalo he Ikipule he Faahi Gahua ia, po ke ofisa, po ke ha fekau i lalo he haana levekiaga.

(3) Nakai fai talahauaga he Matakupu 69 (2) he Fakatufono-tohi Fakave nei ke tauhele atu ke he tonuhia he Kau Pule Gahua Niue, ke kumi atu mo e fakatonu atu ke he Palemia ke maeke ke moua mai e taliaaga he Fono He Tau Ikipule, to maeke ke kotofa e ha tagata ke eke mo Tohi Kupu he Fakatufono.

(4) Nakai fai fakatufono-tohi po ke la fono-tohi ke maeke ai e ha ole liu fifili he ha tagata gahua he Kau Gahua Fakatufono Niue ke tuku hagaao atu ia ke he ha fakaholo ki luga po ke kotofaaga he ha tagata kua fifili ke he kotofaaga he Tohi Kupu he Fakatufono.

64 Kau Pule Gahua he Fakatufono Niue

(1) To ha ha i ai e Matakau Kau Pule Gahua ma Niue to fakahigoa e Matakau ia koe Kau Pule Gahua he Fakatufono Niue.

(2) To toko 3 a lautolu ka fifili he Fono Ikipule ke eke mo tau hukui.

(3) Ko e takitaki ha lautolu to fifili foki he Fono Ikipule mai ia lautolu tokotolu.

(4) Ko e Takitaki mo e tau hukui to gahua ai a lautolu ke he 3 e tau, ka e maeke foki a lautolu mai he tau magahala takitaha ke liu fifili.

(5) Ko e tau hukui oti to moua e tau totogi, tau tupe lafi mo e tau tupe lagomatai ka fifili he Fono Ikipule he tau magahala takitaha.

(6) Maeke ke hukui ke fakaoti haana kotofaaga he ha magaaho ke he tohi taatu ke he Palemia, po ke uta kehe he Fono Ikipule a ia mai he kotofoaga, kakano ha kua nakai tuai maeke ia ia ke taute haana tau gahua kotofa (ha kua nakai malolo e tino po ke manamanatuaga po ke ha kakano foki) po ke mahani fakahanoa.

65 Tau Hukui lagomatai he Kau Pule Gahua

(1) Ko e magaaho ka iloa ai kua nakai tuai maeke he ha hukui he Kau Pule Gahua ke taute haana gahua ha kua gagao, po ke fano kehe mo e motu po ke ha mena tupu, ko e Fono Ikipule ka fifili taha ke lagomatai e gahua he hukui ia he tau magaaho ne nakai maeke ai ia ia ke taute haana gahua.

(2) Ti ko e ha tagata ka fifili ke lagomatai e gahua he hukui he Kau Pule Gahua tuga ne tohia ai he Matakupu nai, to moua e ia e tonuhia ke he tau mena oti he hukui he Kau Pule Gahua, mo e ko e kotofaaga he ha tagata pehe nai, mo e ko e ha gahua ka taute e ia ko e hukui he Kau Pule Gahua to nakai maeke he ha fonoaga ke huhu haana kotofoaaga ha kua nakai iloa po ke kua fakaoti.

66 Puhala gahua he Kau

(1) Ka tokoua e tagata he Kau Pule Gahua Niue kua maeke tuai ke fakahoko e fono, he ha magaaho ka fono ai.

(2) To maeke e Kau ke uiina taha kua kitia kua lata ke lagomatai ke lagomatai atu ke he tau fakatutalaaga he fono.

(3) Ki a tokoua e tagata he Kau ka tatai e tau manatu pulega he Kau to maeke he ha fifiliaga ke fai kakano po ke aoga.

(4) Ko e ha mena ka pulega ki ai e Kau he ha fonoaga, po ke ha fifiliaga foki kua taute ke he tau kupu fakamau he Kau ti fakamooli matalima tohi ai e lautolu oti i loto he Kau, to pehe ai kua aoga e tau tauteaga ia.

(5) Ke lafi atu ke he tau fakatokaaga he Fakatufono–tohi Fakave nei to fakatoka ni he Kau haana e tau puhala taute gahua.

67 Ko e Foakiaga he tau Malolo Kotofa

(1) Mo e nakai tauhele atu ke he poakiaga ma e fakaholoaga tumau he gahua he Kau Gahua Fakatufono Niue, ko e Kau Pule Gahua Niue, mai he taha magahala ke he taha magahala, kua maeke ke foaki e falu he haana a tau malolo kotofa ke lata ma e Kau Gahua Fakatufono Niue (lafi atu ki ai e malolo kotofa nei) ke he taha he Kau po ke taha tagata kehe po ke ke he Tohi Kupu he Fakatufono.

(2) Ke lata mo e ha fakatonuaga ne tuku mai he Kau ko e ha tagata kua foaki ki ai e malolo kotofa to gahua ni a ia ki ai, ke pehe kua taute e haana a gahua ke tuga ni ko e tohia ai pauaki he ha fakatufono – tohi po ke ha la fono-tohi pauaki ki a ia, ka e nakai ko e malolo kotofa ne foaki ki a ia.

(3) Ko e ha tagata ne kua talahau kua gahua a ia ke lata mo e malolo kotofa ne foaki age ki a ia i lalo he Matakupu nei, to pehe ai kua gahua ni a ia ke tuga mo e talahauaga ia, mo e nakai fai talahauaga kua kehe a to kehe ni ka fai fakakiteaga fakamooli ne talahau ai ko e kehe.

(4) Ko e foakiaga he ha malolo kotofa i lalo he vala kupu nei to taute ni e ia, po ko lautolu, po ke ha vahega kua fakakite tonu ke taute e gahua ia, po ke pihia foki kia taha kua fakakite tonu e kotofoaaga.

(5) Ko e foakiaga he ha malolo kotofa i lalo he vala kupu nei to nakai maeke ke tauhele atu ke he tonuhia ha i ai he taha, po ke Kau, ne foaki e malolo kotofa ia, ke taute e gahua kua tonuhia ki ai.

Gahuahuaaga mo e Levekiaga he Kau Gahua Fakatufono Niue

68 Tau Gahua mo e tau Malolo Kotofa he Kau

(1) Ko e Kau Pule Gahua Niue to eke ia mo kau ke fakagahua e tau tagata ma e Kau Gahua Fakatufono Niue, ti, fakalataha mo e muitua ke he Fakatufono – tohi Fakave nei, to ha ha i ai e malolo katoa ke leveki mo e puipui e haana a gahuahuaaga, mo e ha ha i ai foki e levekiaga mo e holoaga mitaki he tau gahua he tau faahi gahua oti mo e tau ofisa he fakatufono pule fakatonu.

(2) Ke lafi atu ke he tau tauteaga Fakave he Fakatufono-tohi Fakave nei po ke ha la fono-tohi, to maeke he Kau Pule ke fakakite e tau fakatokatokaaga ke lata ma e fakagahuahuaaga he tau tagata he Kau Gahua Fakatufono Niue, mo e to fakafano e tau fakatonutonuaga po ke fakagahua e tau malolo kotofa ke lata ia ke taute aki e tau gahua tuga ne toka ai he Fakatufono-tohi Fakave nei po ke tuga ne toka ai i loto he ha fakatufono-tohi.

(3) Ha koe tauteaga he tau gahua mo e fakaaogaaga he tau malolo kotofa kua toka ai hagaao ia ke he Kau Gahua Fakatufono Niue, ko e Kau Pule Gahua kua ataina ke taute e tau kumikumiaga he ha vahega he tau vahega kumikumi fekau kaeke kua manatu kua lata ke eke pihia,mo e ke lata mo e ha kumikumiaga pihia, ko e tonuhia mo e malolo kua talahau nai kua ha ha he Kau Pule ia, ke ui poaki kia lautolu kua lata ke fai fakakiteaga talahau fakamooli mo e ke moua e tau talahauaga fakamooli tuga ne toka ai ke he ha Kau Kumikumi ha ko e ha fakatufono – tohi.

(4) A to kehe ni kaeke ko e muitua ke he Matakupu 69 (2) he Fakatufono Fakave nei, to gahua e Kau mo e falanaki atu ke he Fono He Tau Ikipule ke lata ia mo e tauteaga ke he haana tau gahua mo e fakaaogaaga he tau malolo kotofa ha i ai, ti ko e Kau kua poaki ai nai ke fakailoa atu po ke fakatonu atu ke he Fono He Tau Ikipule, kaeke kua lata, e ha mena kua lauia ai e tau Kau Gahua Fakatufono Niue.

(5) Ko e Kau ka mole e aho 31 ia Mati he tau tau oti, kua poaki nei ki ai ke tuku atu fakamafiti ke he Fono He Tau Ikipule e fakailoaaga hagaao ke he holo mitaki he gahua he Kau Gahua Fakatufono Niue ke lata mo e tau taha ne fakaoti ai he aho ia. Ko e lagaki he fakailoaaga ia ki a tuku atu foki ke he Fono Ekepule Niue.

69 Tau Kotofaaga ke he Kau Gahua Fakatufono Niue

(1) Ko e tau tagata gahua oti he Kau Gahua Fakatufono Niue to kotofa ni he Kau Pule Gahua Niue, ka e muitua atu ke he Fakatufono – tohi Fakave nei moe ha la fono –tohi po ke fakatufono – tohi, to gahua ni a lautolu ke he tau fakatonuaga mo e tau fakatokatokaaga kua taute he Kau.

(2) Ko e tau mena oti po ke tau talahauaga hagaao ke he tau tagata gahua takitaha (hagaao ke he kotofaaga, holo ki luga e kotofa, tuku hifo e kotofa, hiki e kotofa, hatakiaga, fakaoti kotofa, po ke taha mena kehe) to nakai falanaki e Kau ke he ha fakatonu pule mai he Fono He Tau Ikipule, ka e to gahua ni e Kau ke taute e tau mena ia kua fakamau ki ai mo e tu ke he tuaga tu-tokotaha.

(3) Ko e ha fakatuaga mo e liu fakafoouaga he tau fakatokatokaaga gahua po ke fanoaga he tau palepale he Kau Gahua Fakatufono Niue, ko e tau mena fifili ki ai, ki a lafi ki ai e tau mena nei –

(a) Ke lata mo e tonuhia he Kau Gahua Fakatufono Niue ke fakatumau e gahuaaga mitaki ke he tau gahua, kua lata ke kitia ko e holo tatai e puke tagata gahua mo e tau gahua ke taute, ti mua atu e aoga ke kitekite makutu atu ke kitia ko e tau vahega gahua kehekehe kua loga ke lata mo e tau Niue iloilo mo e makaka he gahua.

(e) Ko e manako ke fakaata e tau pu gahua ke maeke ke fakagahua aki e tau tagata Niue ha ko lautolu ko e tau tagata Niue, ti kua lata ke muitua e tauteaga ia mo e onoono fakatatai atu fakamakutu ke he loga he tau gahua i Niu Silani pihia mo e tau fafatiaga totogi.

(i) Ko e manako ke gahua mo e falanaki fakatatai atu ke he tau hagaaoaga he fakatupuaga ki mua he moui mitaki mo e monuina he motu ne fakatoka he Fakatufono mo e manatu ko e tau fakatokatokaaga gahua he Kau Gahua Fakatufono Niue ko e mena ke mitaki ai ni a Niue.

(4) Ko e tau totogi mo e tau tupe lafi ki luga he tau tagata gahua he Kau Gahua Fakatufono Niue to totogi mai ni he Fakaputuaga Tupe he Fakatufono Niue, ko e tau tupe ne fakaata mai he Fono Ekepule ke fakamole.

70 Ko e Kau Pule ke taute fakailoaaga mo e tau pulega ke he Fono Ekepule

(1) Ke lata mo e Matakupu 25 he Fakatufono-tohi Fakave nei, ko e poaki nei ke he Kau Pule Gahua Niue, he tau magahala takitaha, ka kitia kua lata, ke tuku atu e fakailoaaga mo e ha pulega ke he Fono Ekepule, hagaao ia ke he tuaga he tau totogi mo e falu a tupe moua he Palemia, tau Ikipule ne toe mo e tau Ekepule ne nakai ko e tau Ikipule mo e Fakatonu Fono, ti ko e Kau Pule Gahua ka taute e Fakailoaaga mo e tau pulega kaeke kua ha ha i ai e ha hikihikiaga he tuaga he tau totogi he Kau Gahua Fakatufono Niue.

(2 Ko e Kau Pule Gahua kua poaki nai ki ai ke tuku atu ke he Fakatonu Fono e ha fakailoaaga po ke ha pulega tuga ne toka ai he vala kupu (1) he Matakupu nei.

(3) Ka e kaeke, ke lata mo e Matakupu 32 he Fakatufono-tohi Fakave nei, kua lata e Kau Pule Gahua Niue ke tuku e ha fakailoaaga hagaao ke he tonuhia faka-fakatufono, po ke faka fakatufono-tohi Fakave, po ke ha fakatokaaga faka fakatufono ne talahau mai he Fakatufono Fakalatalata po ke fakahuiaga fakalataha he vahloto he magaaho kua fafati nei ke kaupa mai he taha e mahina mai he aho ne tuku ai e ole ke moua mai e fakailoaaga ke he Fakatonu Fono, po ke ka manako ki ai, ke moua mai e falu a fakailoaaga lafi a to fakailoa ke he Fakatonu Fono e fakailoaaga fakahiku.

VALA VII
Tau Fatokatokaaga Ma E Matutakiaga He Fakatufono

71 Fakatumau e tau fakatufono-tohi tuai ke lata mo e Fakatufono-tohi Fakave

Mo e muitua ai ke he Fakatufono–tohi Fakave nei –

(a) Ko e tau fakatufono –tohi he mogonei to fakatumau ni ke fakaaoga ka hoko po ke molea e Aho Fakakatoatoaaga he Pule Fakamotu a to utakehe po ke fakahui ai.

(b) Ko e tau tonuhia, tau mena mo e tau fekau lata ke taute po ke tau kaitalofa, i lalo he tau fakatufono-tohi he mogonei to tumau ni ka hoko po ke molea e Aho Fakakatoatoaaga he Pule Fakamotu, to tumau ni ke mailoga mo e fakagahua ni pihia.

72 – 80 Koe falu vala he tohi fakave nei kua nakai tuai fakaaoga

81 Fakamailoga a Niue

A to talia la he Fono He Tau Ikipule ke talaga po ke taute e taha Fakamailoga foou, ko e Fakamailoga a Niue ne talahau mai he Matakupu 15 he Fakatufono – tohi Fakave nei, ko e talaga ia kua talia ki ai e Fono Komiti Fakatufono ke eke mo fakamailoga a Niue ne fakatu ai he Matakupu 7 he Matapatu Fakatufono–tohi Niue 1966 (mo e ha ne toka ai he Matakupu 3 he Matapatu Fakatufono–tohi Fakahui ha Niue 1971).

VALA VIII
Fakamaamaaga

82 Fakamaamaaga

(1) He Fakatufono–tohi Fakave nei, a to kehe ai ni ka talahau pauaki ko e kehe, ko e –

"Aho Fakakatoatoaaga he Pule Fakamotu", kakano ko e aho ne kamata fakagahua ai e Fakatufono-tohi Fakave nei.

"Fakafili", ke lata mo e Fakafiliaga Lahi, kakano ko e ha Fakafili he Fakafiliaga Lahi ia, lafi ki ai e Iki Fakafili Lahi.

"Fakafiliaga Lahi", kakano ko e Fakafiliaga Lahi a Niue ne fakatu ai i lalo hifo he Matakupu 37 he Tohi Fakave nei.

"Fakafiliaga Liu Fakafili", kakano ko e Fakafiliaga Liu Fakafili ha Niue ne fakatu ai i lalo hifo he Matakupu 52 he Tohi Fakave nei.

"Fakamau Kupu he Fono Ekepule", kakano ko e Fakamau Kupu he Fono Ekepule Niue ne kotofa ai i lalo he Matakupu 27 he Fakatufono-tohi Fakave nei.

"Fakamau Kupu he Fono He Tau Ikipule", kakano ko e Fakamau Kupu he Fono He Tau Ikipule ha Niue ne kotofa ai i lalo he Matakupu 14 he Fakatufono-tohi Fakave nei.

"Fakatufono-tohi", kakano ko e ha Fakatufono – tohi he Fono Ekepule Fakave ha Niue tuga ne toka ai he Matakupu 34 he Fakatufono-tohi Fakave nei.

"Fakatufono-tohi Fakave", kakano ko e Fakatufono-tohi Fakave nei, lafi ki ai e Matapatu Fakatufono-tohi he Fono Ekepule (Palemene) Niu Silani ne fakahigoa ko e Matapatu Fakatufono-tohi Fakave ha Niue 1974; lafi ki ai e ha fakahuiaga fakafakatufono-tohi fakave, tuga ne fakaaoga ai he Matakupu 35 he Fakatufono-tohi Fakave nei, he magaaho ka fakamooli e ha fakahuiaga ia mo e fakagahua ai.

"Fakatufono-tohi", po ke "La Fakatufono-tohi" –

(a) Kakano ko e ha Fakatufono-tohi he Fono Ekepule mo e ha la fakatufono-tohi; ha poakiaga, la fono po ke ha mena ni kua taute ai i lalo he ha Fakatufono-tohi po ke ha la fakatufono-tohi.

(e) Ko e ha Matapatu Fakatufono-tohi he Fono Ekepule (Palemene) Niu Silani kua hokotia foki e fakagahua ki Niue ke eke mo taha vala he tau fakatufono-tohi a Niue po ke ha Poakiaga mai he Kanesila, Fakapuloaaga, poakiaga, la fakatufono-tohi, tohi kotofa faka-Ikipule, la fono po ke ha mena pihia tuga ne taute ha koe muitua ke he ha Fakatufono-tohi tuga ne talahau he palatafa nai, kaeke ko e tau mena oti ia kua pehe kua fakagahua ko e taha vala he tau Fakatufono-tohi a Niue.

"Fono He Tau Ikipule", ko e kakano ko e Fono He Tau Ikipule a Niue ne fakatu he Matakupu 2 he Fakatufono tohi Fakave nei.

"Iki Fakafili Lahi" ko e kakano ko e Iki Fakafili Lahi he Fakafiliaga Tokoluga ha Niue kua kotofa ai i lalo hifo he matakupu 42 he Tohi Fakave mo e putoia ai falu he tau Iki Fakafili he Fakafiliaga Tokoluga kua fakamooli ai he matakupu 40 he Tohi Fakave ke he haana kotofaaga gahua poke taute ai falu he tau gahua he Iki Fakafili Lahi.

"Tau Fakatufono Mogonei", kakano ko e tau Fakatufono–tohi oti ne fakagahua ai i Niue to hoko e Aho Fakakatoatoaaga he Pule Fakamotu; lafi ki ai e ha fakatufono – tohi ne fakamooli po ke eke mo e fakagahua ai fakamua po ke mole e Aho Fakakatoatoaaga he Pule Fakamotu.

"Fakatufono-tohi, kakano ko e ha fakatufono-tohi ni ne fakagahua ai i Niue lafi ki ai e Fakatufono-tohi Fakave nei mo e ha la fakatufono-tohi.

"Ekepule he Fono Ekepule", po ke "Ekepule", kua fakaaoga ia ke lata mo e Fono Ekepule Niue, kakano ko e ha tagata kua fifili ke eke mo Ekepule he Fono Ekepule ke lata moe Matakupu 16 he Fakatufono – tohi Fakave nei; ka e nakai koe Fakatufono Fono; mo e ka pehe kua tuku e Fono Ekepule to fakahoko atu ia ke lata mo e kakano he vala kupu (4) he Matakupu ia.

"Ikipule", koe kakano ko e ha Ikipule he Fono He Tau Ikipule; lafi ki ai e Palemia ; lafi ki ai ha Ekepule he Fono Ekepule ne kotofa mo Ikipule Hukui leveki ke lata mo e Matakupu 8 he Fakatufono-tohi Fakave nei.

"Fono Ekepule Niue" po ke "Fono", ko e Fono Ekepule a Niue ne fakatu ai he Matakupu 16 he Fakatufono-tohi Fakave nei.

"Kau Gahua Fakatufono Niue", ko e Kau Gahua Fakatufono Niue ne fakatu ai i lalo he Matakupu 62 he Fakatufono-tohi Fakavei nei.

"Kau Pule Gahua Fakatufono Niue" po ke "Kau Pule Gahua", kakano ko e Kau Pule Gahua Fakatufono Niue ne fakatu he Matakupu 64 he Fakatufono-tohi Fakave nei.

"La fakatufono-tohi", kakano ko e ha Fakatufono-tohi he Fono Ekepule he Motu ko Niue po ke Fono Tufono he Motu ko Niue.

"Palemia", ko e kakano ko e Ekepule he Fono Ekepule ne fifili ke eke mo Palemia ke lata mo e Matakupu 4 he Fakatufono-tohi Fakave nei he mole atu e fifiliaga haana ke eke mo Ikipule ke lata mo e Matakupu 5 he Fakatufono-tohi Fakave nei; lafi ki ai e Ikipule ne fifili ke taute e tau gahua he Palemia ke lata mo e vala kupu (1) po ke vala kupu (2) he Matakupu 9 he Fakatufono-tohi Fakave nei.

"Tohi Kupu he Fakatufono", kakano ko e Tohi Kupu he Fakatufono ne kotofa he Matakupu 63 he Fakatufono-tohi Fakave nei.

"Fakatonu Fono", kakano ko e Fakatonu Fono he Fono Ekepule Niue ne fifili ke lata mo e Matakupu 20 he Fakatufono–tohi Fakave nei; lafi ki ai e ha Ekepule he Fono Ekepule Niue kua fifili ke taute e gahua he Fakatonu Fono ke lata mo e Matakupu ia.

(2) I loto he Fakatufono–tohi Fakave nei ko e ha tagata kua lata ke omonuo, to maeke ke talia a ia, ka manako ki ai, ke taute fakamooliaga ka e nakai ko e omonuo ne, taute ai he Fakatufono–tohi Fakave nei, ti hiki ni e tau kupu fakatoka he omonuoaga ke lata ni mo e mena ka fakamooli ki ai.

(3) I loto he Fakatufono–tohi Fakave nei ko e ha tagata kua ha ha i ai e kotofa i loto he Kau Gahua Fakatufono Niue, ko e ha talahauaga ki a ia ne toka ai e kotofaaga ia, ki a taute ni e ia e kotofaaga ia lafi ki ai e malolo kotofa ke taute e tau gahua oti he kotofaaga ia.

NIUE CONSTITUTION ACT 1974

1974/42(NZ) – 19 October 1974

1 Short title
2 Application to Niue
3 Niue to be self-governing
4 Constitution of Niue
5 British nationality and New Zealand citizenship
6 External affairs and defence
7 Economic and administrative assistance
8 Co-operation between New Zealand and Niue
9 New Zealand Representative

SCHEDULES

An Act to make provision for self-government by the people of Niue, and to provide a constitution for Niue

1 Short title

This Act is the Niue Constitution Act 1974.

2 Application to Niue

This Act shall extend to Niue as part of the law of Niue.

3 Niue to be self-governing

Niue shall be self-governing.

4 Constitution of Niue

(1) The Constitution set out in its Niuean language version in the First Schedule to this Act and in its English language version in the Second Schedule shall be the Constitution of Niue (in this Act called the Constitution), and shall be the supreme law of Niue.

(2) Where the Constitution provides that any New Zealand Court or Department of Government or statutory authority shall perform any function or exercise any power in relation to Niue, that Court, or, as the case may be, the officers of that Department or the members and staff of that authority are by this Act authorised and required to perform that function or exercise that power in accordance with the Constitution.

5 British nationality and New Zealand citizenship

Nothing in this Act or in the Constitution shall affect the status of any person as a British subject or New Zealand citizen by virtue of the British Nationality and New Zealand Citizenship Act 1948.

6 External affairs and defence

Nothing in this Act or in the Constitution shall affect the responsibilities of Her Majesty the Queen in right of New Zealand for the external affairs and defence of Niue.

7 Economic and administrative assistance

It shall be a continuing responsibility of the Government of New Zealand to provide necessary economic and administrative assistance to Niue.

8 Co-operation between New Zealand and Niue

Effect shall be given to the provisions of section 6 and 7 of this Act, and to any other aspect of the relationship between New Zealand and Niue which may from time to time call for positive co-operation between New Zealand and Niue, after consultation between the Prime Minister of New Zealand and the Premier of Niue, and in accordance with the policies of their respective Governments; and, if it appears desirable that any provision be made in the law of Niue to carry out these policies, that provision may be made in the manner prescribed in the Constitution, but not otherwise.

9 New Zealand Representative

(1) There shall be appointed under the State Services Act 1962 a New Zealand Representative in Niue.

(2) The New Zealand Representative shall be stationed in Niue, and shall be the representative of the Government of New Zealand in Niue.

SCHEDULES

SCHEDULE 1

[The Constitution of Niue (Niuean Language Version) – this is reproduced earlier in this volume.]

SCHEDULE 2

[The Constitution of Niue (English Language Version) – this is reproduced earlier in this volume.]

LETTERS PATENT CONSTITUTING THE OFFICE OF GOVERNOR-GENERAL OF NEW ZEALAND

1983/225

1 Office of Governor-General and Commander-in-Chief constituted
2 Appointment of Governor-General and Commander-in-Chief
3 Governor-General's powers and authorities
4 Manner in which Governor-General's powers and authorities are to be executed
5 Publication of Governor-General's Commission
6 Oaths to be taken by Governor-General
7 Constitution of Executive Council
8 Membership of Executive Council
9 Quorum of Executive Council
10 Appointment of Members of Executive Council, etc
11 Exercise of Prerogative of Mercy
12 Administrator of the Government
13 Oaths to be taken by Administrator of the Government
14 Powers and authorities of Governor-General not abridged
15 [Revoked]
16 Ministers to keep Governor-General informed
17 Ministers and others to obey, aid, and assist Governor-General
18 Power reserved to Her Majesty to revoke, alter, or amend the present Letters Patent
19 Present Letters Patent to have effect as law

ELIZABETH R

ELIZABETH THE SECOND, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To all to whom these presents shall come, Greeting:

Recites Letters Patent of 11 May 1917

WHEREAS by certain Letters Patent under the Great Seal of the United Kingdom bearing date at Westminster the 11th day of May 1917, His late Majesty King George the Fifth constituted, ordered and declared that there should be a Governor-General and Commander-in-Chief in and over the Dominion of New Zealand:

Recites Letters Patent of 18 December 1918

AND WHEREAS by certain Letters Patent under the Great Seal of the United Kingdom bearing date at Westminster the 18th day of December 1918, His late Majesty King George the Fifth made other provision for the publication and the coming into operation of the said Letters Patent bearing date the 11th day of May 1917, in lieu of the provision made in the Fifteenth Clause thereof:

Recites Royal Instructions of 11 May 1917

AND WHEREAS at the Court at St. James's on the 11th day of May 1917, His late Majesty King George the Fifth caused certain instructions under the Royal Sign Manual and Signet to be given to the Governor-General and Commander-in-Chief:

Recites Dormant Commission of 23 July 1917

AND WHEREAS at the Court at St. James's on the 23rd day of July 1917, His late Majesty King George the Fifth caused a Dormant Commission to be passed under the Royal Sign Manual and Signet, appointing the Chief Justice or the Senior Judge for the time being of the Supreme Court of New Zealand, to administer the Government of New Zealand, in the event of the death, incapacity, or absence of the Governor-General and Commander-in-Chief and of the Lieutenant-Governor (if any):

Recites Approval by Executive Council of draft of new Letters Patent

AND WHEREAS, by Order in Council bearing date at Wellington the 26th day of September 1983, Our Governor-General and Commander-in-Chief of New Zealand, acting by and with the advice and consent of the Executive Council of New Zealand, has requested the issue of new Letters Patent revoking and determining the sad Letters Patent bearing date the 11th day of May 1917, the said Letters Patent bearing date the 18th day of December 1918, the said Instructions, and the said Dormant Commission, and substituting in place of the revoked documents other provision in the form of the draft of new Letters Patent set out in the First Schedule to that Order in Council:

Recites Application of Letters Patent, Royal Instructions, and Dormant Commission to Cook Islands and Niue

AND WHEREAS the said Letters Patent bearing date the 11th day of May 1917, the said Letters Patent bearing date the 18th day of December 1918, the said Instructions, and the said Dormant Commission extend to the self-governing state of the Cook Islands and to the self governing state of Niue as part of the law of the Cook Islands and of Niue, respectively:

Recites Approval by Government of Cook Islands and Government of Niue of draft of new Letters Patent. Effects Revocations

AND WHEREAS approval of the said draft of new Letters Patent has been signified on behalf of the Government of the Cook Islands and the Government of Niue:

NOW, THEREFORE, We do by these presents revoke and determine the said Letters Patent bearing date the 11th day of May 1917, the said Letters Patent bearing date the 18th day of December 1918, the said Instructions, and the said Dormant Commission, but without prejudice to anything lawfully done thereunder, and We do hereby declare that the persons who are members of the body known as the Executive Council of New Zealand immediately before the coming into force of these Our Letters Patent shall be members of Our Executive Council hereby constituted as though they had been appointed thereto under these Our Letters Patent.

AND WE do declare Our will and pleasure as follows –

1 Office of Governor General and Commander-in-Chief constituted

(1) We do hereby constitute, order, and declare that there shall be, in and over Our Realm of New Zealand, which comprises –

(a) New Zealand; and
(b) The self-governing state of the Cook Islands; and
(c) The self-governing state of Niue; and
(d) Tokelau; and
(e) The Ross Dependency, –

a Governor-General and Commander-in-Chief who shall be Our representative in Our Realm of New Zealand, and shall have and may exercise the powers and authorities conferred on him by these Our Letters Patent, but without prejudice to the office, powers or authorities of any other person who has been or may be appointed to represent Us in any part of Our Realm of New Zealand and to exercise powers and authorities on Our behalf.

2 Appointment of Governor-General and Commander-in-Chief

And We do hereby order and declare that Our Governor-General and Commander-in-Chief (hereinafter called Our Governor-General) shall be appointed by Us, by Commission under the Seal of New Zealand, and shall hold office during Our pleasure.

3 Governor-General's powers and authorities

And We do hereby authorise and empower Our Governor-General, except as may be otherwise provided by law –

(a) To exercise on Our behalf the executive authority of Our Realm of New Zealand, either directly or through officers subordinate to Our Governor-General; and

(b) For greater certainty, but not so as to restrict the generality of the foregoing provisions of this clause, to do and execute in like manner all things that belong to the office of Governor-General including the powers and authorities hereinafter conferred by these Our Letters Patent.

4 Manner in which Governor-General's powers and authorities are to be executed

Our Governor-General shall do and execute all the powers and authorities of the Governor-General according to –

(a) The tenor of these Our Letters Patent and of such Commission as may be issued to Our Governor-General under the Seal of New Zealand; and

(b) Such laws as are now or shall hereafter be in force in Our Realm of New Zealand or in any part thereof.

5 Publication of Governor-General's Commission

Every person appointed to fill the office of Governor-General shall, before entering on any of the duties of the office, cause the Commission appointing him to be Governor-General to be publicly read, in the presence of the Chief Justice, or some other Judge of the High Court of New Zealand, and of Members of the Executive Council thereof.

6 Oaths to be taken by Governor-General

Our Governor-General shall, immediately after the public reading of the Commission appointing him, take –

(a) The Oath of Allegiance in the form for the time being prescribed by the law of New Zealand; and

(b) The Oath for the due execution of the Office of Governor-General in the form following –

I, [*name*], swear that, as Governor-General and Commander-in-Chief of the Realm of New Zealand, comprising New Zealand; the self-

governing states of the Cook Islands and Niue; Tokelau; and the Ross Dependency, I will faithfully and impartially serve Her [*or* His] Majesty [*specify the name of the reigning Sovereign, as thus:* Queen Elizabeth the Second], Queen of New Zealand [*or* King of New Zealand], Her [*or* His] heirs and successors, and the people of the Realm of New Zealand, in accordance with their respective laws and customs. So help me God.

which Oaths the Chief Justice or other Judge in whose presence the Commission is read is hereby required to administer.

7 Constitution of Executive Council

And We do by these presents constitute an Executive Council to advise Us and Our Governor-General in the Government of Our Realm of New Zealand.

8 Membership of Executive Council

The Executive Council shall consist of those persons who, having been appointed to the Executive Council from among persons eligible for appointment under the Constitution Act 1986, are for the time being Our responsible advisers.

9 Quorum of Executive Council

The Executive Council shall not proceed to the despatch of business unless two Members at the least (exclusive of any Member presiding in the absence of Our Governor-General) be present throughout the whole of the meeting at which any such business is despatched, except that in a situation of urgency or emergency, members may be present by any method of communication that allows each member to participate effectively during the whole of the meeting.

10 Appointment of Members of Executive Council, etc

And We do hereby authorise and empower Our Governor-General, from time to time in Our name and on Our behalf, to constitute and appoint under the Seal of New Zealand, to hold office during pleasure, all such Members of the Executive Council, Ministers of the Crown, Commissioners, Diplomatic or Consular Representatives of New Zealand, Principal Representatives of New Zealand in any other country or accredited to any international organisation, and other necessary Officers as may be lawfully constituted or appointed by Us.

11 Exercise of Prerogative of Mercy

And We do further authorise and empower Our Governor-General, in Our name and on Our behalf, to exercise the prerogative of mercy in Our Realm of New Zealand, except in any part thereof where, under any law now or hereafter in force, the prerogative of mercy may be exercised in Our name and on Our behalf by any other person or persons, to the exclusion of Our Governor-General; and for greater certainty but not so as to restrict the authority hereby conferred, Our Governor-General may –

(a) Grant, to any person concerned in the commission of any offence for which he may be tried in any court in New Zealand or in any other part of Our said Realm to which this clause applies or to any person convicted of any offence in any such court, a pardon, either free or subject to lawful conditions; or

(b) Grant, to any person, a respite, either indefinite or for a specified period, of the execution of any sentence passed on that person in any court in New Zealand or in any other part of Our said Realm to which this clause applies; or

(c) Remit, subject to such lawful conditions as he may think fit to impose, the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Us on account of any offence in respect of which a person has been convicted by any court in New Zealand or in any other part of Our said Realm to which this clause applies.

12 Administrator of the Government

Whenever the Office of Governor-General is vacant, or the holder of the Office is for any reason unable to perform all or any of the functions of the Office, We do hereby authorise, empower, and command the Chief Justice of New Zealand to perform the functions of the Office of Governor-General. If, however, there is for the time being no Chief Justice able to act as Governor-General, then the next most senior Judge of the New Zealand judiciary who is able so to act is so authorised, empowered, and commanded. The Chief Justice or the next most senior Judge, while performing all or any of the functions of the Office of Governor-General, is to be known as the Administrator of the Government; and in these Our Letters Patent every reference to Our Governor-General includes, unless inconsistent with the context, a reference to Our Administrator of the Government.

13 Oaths to be taken by Administrator of the Government

The said Chief Justice or next most senior Judge of the New Zealand judiciary shall, on the first occasion on which he is required to act as Administrator of the Government and before entering on any of the duties of the office of Governor-General, take the Oaths hereinbefore directed to be taken by Our Governor-General, which Oaths, with such modifications as are necessary, shall be administered by some other Judge of the High Court of New Zealand, in the presence of not less than two Members of the Executive Council.

14 Powers and authorities of Governor-General not abridged

While Our Administrator of the Government is performing all or any of the functions of the office of Governor-General, the powers and authorities of Our Governor-General shall not be abridged, altered, or in any way affected, otherwise than as We may at any time hereafter think proper to direct.

15 [Revoked SR 2006/224]

16 Ministers to keep Governor-General informed

Our Ministers of the Crown in New Zealand shall keep Our Governor-General fully informed concerning the general conduct of the Government of Our said Realm, so far as they are responsible therefor, and shall furnish Our Governor-General with such information as he may request with respect to any particular matter relating to the Government of Our said Realm.

17 Ministers and others to obey, aid, and assist Governor-General

Our Ministers of the Crown and other Officers, civil and military, and all other inhabitants of Our Realm of New Zealand, shall obey, aid, and assist Our Governor-General in the performance of the functions of the office of Governor-General.

18 Power reserved to Her Majesty to revoke, alter, or amend the present Letters Patent

And We do hereby reserve to Ourselves, Our heirs and successors, full power and authority from time to time to revoke, alter, or amend these Our Letters Patent as to Us or them shall seem meet.

19 Present Letters Patent to have effect as law

And We do further declare that these Our Letters Patent shall take effect as part of the law of Our Realm of New Zealand...

IN WITNESS WHEREOF We have caused these Our Letters to be made Patent, and for the greater testimony and validity thereof We have caused the Seal of New Zealand to be affixed to these presents, which We have signed with Our Regal Hand.

GIVEN the 28th day of October in the Year of Our Lord One Thousand Nine Hundred and Eighty-three and in the 32nd Year of Our Reign.

By Her Majesty's Command.

SEAL OF NEW ZEALAND PROCLAMATION 1977

ELIZABETH R

A PROCLAMATION

WHEREAS there has been passed in the present Session of the Parliament of New Zealand the Seal of New Zealand Act 1977, by which Act the assent of the Parliament of New Zealand was given to the establishment, by Proclamation, by Us and Our Successors of a seal to be known as the Seal of New Zealand for use in relation to New Zealand and all other territories for whose foreign relations Her Majesty's Government in New Zealand is responsible: And whereas the Government of the Cook Islands and the Government of Niue have concurred in the proposals for the establishment of that Seal:
Now therefore We do hereby proclaim as follows:

1 Title

This Proclamation may be cited as the Seal of New Zealand Proclamation 1977.

2 Establishment of Seal of New Zealand

There shall be a Seal to be known as the Seal of New Zealand for use in relation to New Zealand and all other territories for whose foreign relations Our Government in New Zealand is responsible.

3 Use of Seal

(1) The Seal of New Zealand shall be used, in accordance with the Seal of New Zealand Act 1977, by Us and Our Successors and by the Governor-General.

(2) This Proclamation shall have effect –

(a) Notwithstanding anything contained in Our Warrant bearing date the 29th day of June 1959; and

(b) Notwithstanding anything contained in the Letters Patent dated the 11th day of May 1917 and the Instructions passed thereunder.

4 Design and style of Seal

The Seal mentioned in Our said Warrant bearing date the 29th day of June 1959, an impression of which seal is set out in the Schedule hereto, shall be and is hereby adopted by Us as the Seal of New Zealand.

SCHEDULE

[Not reproduced]

ADMINISTRATION ACT 1969

1969/52 (NZ) – 1 January 1971

1 Short title
2 Interpretation
3 Act to bind Crown
4 [Spent]

PART 1
ADMINISTRATION BY ADMINISTRATOR
Grant of Administration
5 Probate jurisdiction
6 Discretion of Court as to person to whom administration is granted
7 Administration pending legal proceedings
8 Grant of special administration where administrator is out of Niue
9 Administration during minority of executor
10 Administration with will annexed
11 Cesser of right of executor to prove
12 Withdrawal of renunciation
13 Executor of executor represents original testator
14 [Repealed]
15 Administration bond
16 Proceedings if condition of bond broken
17 Administration as evidence
18 Certificates of administration
19 Proceedings where executor neglects to prove will
20 [Repealed]
21 Discharge or removal of administrator

Administering of Estates
22 Interim vesting of estate where no executor appointed
23 Executor not to act while another administrator is in office
24 Estate to vest in administrator
25 How estate to be held by administrator
26 Estate to be assets for payment of debts
27 Power of sale on intestacy
28 Method of sale or lease
29 Administrator to represent real estate
30 Rights and duties of administrator as to real estate
31 Payment of claims where estate insufficient
32 Administration suits
33 Debts under deeds and simple contracts to stand in equal degree
34 Charges on property
35-36 [Repealed]
37 Liability of specific devise or bequest where estate is insufficient
38 Proving executors may exercise powers
39 Interest on legacies and annuities
40 No right of retainer by administrator
41 Rights and liabilities of administrator
42 Liability of agent of administrator
43 Administrator's right to distrain
44 Administrator may be required to exhibit inventory
45 Protection of person acting on administration
46-48 [Repealed]
49 Following of assets
50 Freedom to exercise remedies
51 Restriction on following assets
52 Liability of person fraudulently obtaining or retaining estate of deceased

Powers and Procedure of Court
53 Direction to executor to prove or renounce
54 Production of instruments purporting to be testamentary
55 Continuance of legal proceedings
56 Question of fact may be tried by a jury
57 Practice of Court in its administration jurisdiction
58 [Repealed]
59 Power to make rules

Caveats
60 Caveat may be lodged
61 Where a caveat lodged, Court may grant order *nisi*

Miscellaneous Provisions
62 [Repealed]
63 Administration granted to trustee companies
64-66 [Repealed]
67 Other Acts providing for payment without administration
68 Bondsmen and sureties deemed to be trustees

PART 2
ADMINISTRATION GRANTED OUT OF NIUE
69 Interpretation
70 Estate of person dying abroad not to vest without administration
71 Resealing of probate
72 Seal not to be affixed till fees are paid and administration bond effected
73 No probate granted out of Niue to be evidence unless resealed
74 Effect of sections 70 and 73

PART 3
DISTRIBUTION OF INTESTATE ESTATES
75-76 [Repealed]
77 Succession on intestacy
78 Statutory trusts in favour of issue and other classes of relatives
79 Application to cases of partial intestacy
80 [Repealed]

PART 4
MISCELLANEOUS PROVISIONS
81 Right of successor on intestacy to disclaim
82 Effect of bankruptcy on disclaimer
83 [Spent]
84 [Repealed]

SCHEDULE

To consolidate and amend certain enactments relating to the administration of the estates of deceased persons

1 Short title
This is the Administration Act 1969.

2 Interpretation
(1) In this Act –
"administration" means probate of the will of a deceased person, and includes letters of administration of the estate of a deceased person, granted with or without a will annexed, for general, special, or limited purposes, and in the case of a trustee corporation includes an order to administer and an election to administer;
"administrator" means any person to whom administration is granted, and includes a trustee corporation in any case where it is deemed to be an executor or administrator by reason of having filed an election to administer;
"Commonwealth" means the Commonwealth of Nations, and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible;
"Commonwealth country" means a country that is a member of the Commonwealth, and includes every territory for whose international relations the Government of that country is responsible;
"estate" means real and personal property of every kind, including things in action;
"intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;
"personal chattels", in relation to any person who has died, means all vehicles, boats, and aircraft and their accessories, garden effects, horses, stable furniture and effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles

of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors, and consumable stores, which immediately before his death were owned by him or in which immediately before his death he had an interest as grantor under an instrument by way of security, or under an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, but does not include any chattels used exclusively or principally at the death of the deceased for business purposes or money or securities for money;

"real estate" means lands, tenements, and hereditaments, corporeal or incorporeal, and whether in possession, reversion, remainder, or expectancy, and any estate or interest in them or any of them, whether freehold or chattel interests, and any possibility, right, or title of entry or action in or concerning them or any of them;

"Registrar" means the Registrar of the High Court;

"Rules" means rules made under the authority of this Act;

"securities" includes stocks, funds, shares and convertible notes;

"will" includes a codicil.

(2) References to a child or issue living at the death of any person include a child or issue who is conceived but not born at the death but who is subsequently born alive.

3 Act to bind Crown

This Act binds the Government.

4 [Spent]

PART 1
ADMINISTRATION BY ADMINISTRATOR
Grant of Administration

5 Probate jurisdiction

(1) The Court shall continue to have jurisdiction and authority in relation to the granting and revoking of probate of wills and letters of administration with or without a will annexed of the estates of deceased persons, and in regard to the hearing and determining of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

(2) Without restricting subsection (1) or any other enactment, the Court shall have jurisdiction to make a grant of probate or letters of administration in respect of a deceased person, whether or not the deceased person left any estate in Niue or elsewhere, and whether or not the person to whom the grant is made is in Niue.

6 Discretion of Court as to person to whom administration is granted

(1) (a) In granting letters of administration with or without a will annexed, or an order to administer with or without a will annexed, in respect of the estate of any deceased person or any part of it, the Court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale of it, and, in particular, administration with a will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit.

(b) Subject to subsection (2) where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons beneficially interested in the estate of the deceased, if they make an application for the purpose.

(2) Where by reason of the insolvency of the estate or other special circumstances the Court thinks it necessary or expedient to do so, it may –

(a) Grant administration to such person or persons as it thinks expedient notwithstanding that some other person is appointed an executor or that, apart from this subsection, some other person would by law be entitled to a grant of administration;

(b) Grant probate to one or more of the executors appointed by a will, notwithstanding that some other person or persons may also be appointed as an executor or executors.

(3) A grant may be made under subsection (2) notwithstanding that any person excluded from the grant would be competent to take it.

(4) Before determining to exclude from any such grant any person who, apart from this section, would by law be entitled to, or be included in, the grant, and wishes to have, or to be so included in, the grant, the Court shall have regard to his competency and solvency, his ability effectively to administer the estate, the rights of all persons interested in the estate, and any changes in circumstances between the making of the will (if any) and the time when the Court is asked to make the grant.

7 Administration pending legal proceedings

(1) Where any legal proceedings touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any grant of administration, are pending, the Court may grant administration of the estate of the deceased to a temporary administrator, who shall, until he is discharged or removed under section 21, have all the rights and powers of a general administrator, other than the right of distributing the balance of the estate remaining after payment of debts, funeral and testamentary expenses, duties, and fees, and every such temporary administrator shall be subject to the immediate control of the Court and act under its direction.

(2) The Court may, out of the estate of the deceased, grant to a temporary administrator appointed under this section reasonable remuneration.

8 Grant of special administration where administrator is out of Niue

(1) (a) If at any time after the death of a person any administrator of his estate is residing out of Niue, the Court may, on the application of any creditor or person interested in the estate, grant to him or some other person special administration of the estate of the deceased in such form and with such powers as the Court may direct or approve.

(b) Unless the Court otherwise directs, every grant of special administration shall continue until the administrator to whom the grant is made is discharged or removed under section 21.

(2) While a grant of special administration of the estate of a deceased person remains in force the previously subsisting administration of that estate shall be deemed to be suspended, and the administrator shall not be liable for acts and things done by the administrator under the grant of special administration.

(3) The Court may, for the purpose of any legal proceedings to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the estate, and all persons shall obey any such order.

(4) If the administrator capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceedings to which a special administrator is a party are pending, the administrator who so returns may be made a party to the legal proceedings and the Court may order that the costs of and incidental to the special administration and the legal proceedings shall be paid by such person and out of such fund as it may specify.

(5) Nothing in this section shall restrict section 21.

9 Administration during minority of executor

(1) Where a person who is sole executor of a will is at the date of the testator's death a minor who is not entitled to a grant of probate under subsection (3), administration with the will annexed may be granted to such person as the Court thinks fit, until the minor becomes entitled to and obtains a grant of probate to him; and on his attaining full age or sooner becoming entitled to a grant of probate under that subsection and not before, probate of the will may be granted to him.

(2) Where a testator by his will appoints a person who at his death is a minor who is not entitled to a grant of probate under subsection (3) to be an executor, the appointment shall not operate to transfer any interest in the estate of the deceased to the minor or to constitute him an administrator for any purpose, unless and until probate is granted to him under this section.

(3) Where a testator by his will appoints a person who is a minor to be an executor, probate of the will may be granted to the person if, at the date of the grant –

(a) The person has attained full age; or

(b) The person has attained the age of 18 years and is or has been married.

(4) A minor to whom probate is granted under subsection (3) (b) shall have the same rights, powers, duties, and obligations as executor as he would have if he were of full age, and shall be liable accordingly for his acts and omissions as executor.

10 Administration with will annexed

Where the Court grants administration of the estate of a deceased person with the will annexed, the will of the deceased shall be performed and observed in like manner as if probate of it had been granted to an executor.

11 Cesser of right of executor to prove

(1) Where a person appointed executor by a will –

(a) Survives the testator but dies without having been granted probate of the will; or

(b) Is cited to take out probate of the will and does not appear to the citation; or

(c) Renounces probate of the will, his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of the testator's estate shall devolve and be committed as if that person had not been appointed executor.

(2) (a) Where a person is appointed by a will to be both executor and trustee and his rights in respect of the executorship wholly cease under subsection (1), his rights in respect of the trusteeship shall also wholly cease and the trusteeship shall devolve or be determined as if he had not been appointed as trustee.

(b) Nothing in paragraph (a) shall prevent his subsequent appointment as trustee.

12 Withdrawal of renunciation

(1) Notwithstanding section 11, an executor who has renounced probate may be permitted by the Court to withdraw the renunciation and prove the will.

(2) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will –

(a) The probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other person to whom administration has been granted, and a memorandum of the subsequent probate shall be endorsed on the original grant of administration;

(b) His rights (if any) in respect of the trusteeship shall revive except so far as the Court otherwise orders.

13 Executor of executor represents original testator

(1) (a) An executor of a sole or last surviving executor of a testator shall be the executor of that testator.

(b) A person who does not prove the will of his testator shall be deemed not to be an executor notwithstanding his appointment as such by the will, and in the case of an executor who on his death leaves surviving him some other executor of his testator who at the time of the testator's death has not proved but who afterwards proves the will of that testator, paragraph (a) shall cease to apply when probate to the surviving executor is granted.

(2) So long as the chain of representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of representation is broken by –

(a) The failure to leave a will; or

(b) The failure of a testator to appoint an executor; or

(c) The failure to obtain probate of a will,

but is not broken by a temporary grant of administration if probate is subsequently granted.

(4) Every person in the chain of representation to a testator –

(a) Has the same rights in respect of the estate of that testator as the original executor would have had if living; and

(b) Is, to the extent to which the estate of that testator has come to his hands, answerable as if he were an original executor.

14 [Repealed]

15 Administration bond

(1) (a) Every person to whom a grant of administration (other than the probate of a will) is made shall, previously to the issue of it, execute a bond to the Registrar to enure for the benefit of the Registrar for the time being, with 2 sureties approved by the Court, conditioned for duly collecting, getting in, and administering the estate of the deceased, which bond shall be in such form as may be prescribed by rules.

(b) It shall not be necessary for any trustee, corporation or any person obtaining administration to the use or for the benefit of Her Majesty, to execute any such bond, and in any case in which the Court is willing to dispense with sureties under subsection (2) it may dispense with the bond.

(2) In every case in which a bond is required under subsection (1), the bond shall be in a penalty equal to the amount under which the estate of the deceased is sworn, if that amount does not exceed 20,000 dollars, and shall be in a penalty of 20,000 dollars where the amount exceeds that sum; but the Court may dispense with one or both of the sureties, or direct that the penalty be reduced in amount, and may also if it thinks fit direct that more bonds than one be given, so as to limit the liability of any surety to such amount as the Court thinks reasonable.

(3) The bond required under subsection (2) shall relate to both real and personal estate.

(4) The Court may in place of a bond, accept a security in favour of the Registrar of any corporation or guarantee society approved by Cabinet.

(5) Every such security shall be in such form and under such regulations as the rules direct.

16 Proceedings if condition of bond broken

The Court may, on being satisfied that the condition of any such bond or security has been broken, order the Registrar to assign the bond or security to some person to be named in the order and that person or his administrator may thereupon sue upon the bond or security in his own name as if the bond or security had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the bond or security.

17 Administration as evidence

Every administration of a will or with a will annexed shall be evidence of that will upon all questions concerning real estate in the same manner and to the same extent as in questions concerning personal estate, and every administration shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of the death of the testator or intestate.

18 Certificates of administration

(1) Subject to subsection (2) at any time after the grant of the relevant administration the Registrar may, on the request of the administrator, issue under his hand and seal such number of certificates of administration, in the form set out in the Schedule, as may be required.

(2) [Repealed by 2004/270]

(3) (a) Every such certificate shall, in the absence of proof to the contrary, be sufficient evidence of the death and the date of death of the testator or intestate and of the grant of administration to the administrator for all purposes including registering the administrator as proprietor of any estate or interest in any land or of any securities issued by or property in any bank or company or body or association.

(b) No bank or company or body or association to which any such certificate is produced shall be concerned to inquire concerning the trusts on which the administrator holds any such land or securities or property, or as to the authority to transfer or deal with the same.

(4) The fee payable to the Registrar in respect of each such certificate shall be $1 or such other amount as may be prescribed by the Cabinet.

19 Proceedings where executor neglects to prove will

(1) In any case where any executor named in a will neglects or refuses to prove the will, or to renounce probate of it, within 3 months from the death of the testator, the Court may, upon the application of any other executor or executors or of any person interested in the estate or of any creditor of the testator, grant an order *nisi* calling upon the executor who so neglects or refuses to show cause why probate of the will should not be granted to that executor alone or with any other executor or executors or, in the alternative, why administration should not be granted to the applicant or some other person.

(2) Upon proof (whether by affidavit or otherwise) of service of the order, or upon the Court dispensing with service of the order, if the executor who is so called upon does not appear or upon cause being shown, the Court may make such order for the administration of the estate, and as to costs, as appears just.

20 [Repealed by 2004/170]

21 Discharge or removal of administrator

(1) Where an administrator is absent from Niue for 12 months without leaving a lawful attorney, or desires to be discharged from the office of administrator, or becomes incapable of acting as administrator or unfit to so act, or where it becomes expedient to discharge or remove an administrator, the Court may discharge or remove that administrator, and may appoint any person to be administrator in his place, on such terms and conditions in all respects as the Court thinks fit.

(2) The administrator so removed or discharged shall, from the date of that order, cease to be liable for acts and things done after that date.

(3) Upon any administrator being discharged or removed as aforesaid (whether or not any such administrator is appointed) all the estate and rights of the previous administrator or administrators which were vested in him or them as such shall become and be vested in the continuing administrator or administrators (including any administrator appointed under subsection (1) who shall have the same powers, authorities, discretions, and duties, and may in all respects act, as if he or they had been originally appointed as the administrator or administrators.

(4) This section shall, with all necessary modifications, extend to the case where an administrator dies, and the powers and authorities hereby conferred may be exercised and shall take effect accordingly.

(5) Nothing in this section shall restrict section 8.

Administering of Estates

22 Interim vesting of estate where no executor appointed

(1) Subject to this Act and any other Act, where a person dies without leaving a will that effectively appoints an executor, his estate shall, until administration is granted in respect of it, vest in the Crown in the same manner and to the same extent as formerly in England in the case of personal property it vested in the ordinary.

(2) While any estate remains vested in the Crown under this section, the Crown Proceedings Act 1950 shall apply to the service on the Crown of notices and documents relating to the estate as if they related to civil proceedings instituted against the Crown.

23 Executor not to act while another administrator is in office

Subject to this Act and any other Act, where administration has been granted in respect of any part of the estate of a deceased person, and is not for the time being suspended, no person other than the administrator of that part of the estate shall have power to bring an action or otherwise act as administrator of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

24 Estate to vest in administrator

(1) (a) Immediately upon the grant of administration of the estate of any deceased person, all the estate then unadministered of that person, whether held by him beneficially or held by him in trust, shall vest in the administrator to whom the administration is granted for all the estate therein of that person.

(b) Nothing in paragraph (a) shall affect the earlier vesting in an executor by operation of law.

(2) The title of every administrator to any part of the estate of a deceased person shall relate back to and be deemed to have arisen immediately upon the death of the deceased person, as if there had been no interval of time between the death and the grant of administration.

(3) If there are concurrently more administrators than one of any part of the estate that part shall vest in them as joint tenants.

25 How estate to be held by administrator

Subject to this Act, the administrator shall hold –

(a) The estate of any person who dies or who has died leaving a will according to the trusts and dispositions of the will, so far as the will affects that estate;

(b) The estate of any person who dies intestate as to that estate under Part 3.

26 Estate to be assets for payment of debts

The whole of the estate of every deceased person shall be assets in the hands of his administrator for the payment of all duties and fees payable under any Act imposing or charging duties or fees on the estates of deceased persons, and for the payment in the ordinary course of administration of his debts and of debts properly incurred by his administrator; and for those purposes the administrator may, in as full and effectual a manner in law as the testator or intestate could have done in his lifetime, sell, lease (with or without an optional or compulsory purchasing clause), or mortgage (with or without a power of sale), the estate, or any part of it.

27 Power of sale on intestacy

(1) On the death of a person intestate as to any real or personal estate, his administrator shall have power to sell that real estate and to call in, sell, and convert into money such part of that personal estate as may not consist of money, with power to postpone the sale, calling in, and conversion for such a period as the administrator, without being liable to account, may think proper, and so that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold under this section except for special reason.

(2) This section shall have effect notwithstanding that the administrator has ceased to hold the real or personal estate as administrator and holds it as trustee.

(3) Where the deceased leaves a will this section shall have effect subject to the will.

28 Method of sale or lease

(1) Sections 14 to 18 of the Trustee Act 1956 shall, so far as they are applicable and with any necessary modifications, apply to any sale or lease under sections 26 and 27 of this Act as if the sale or lease were under sections 14 to 18 of the Trustee Act 1956.

(2) Nothing in this section shall restrict the term of any lease which may be granted under section 26.

(3) Land of any value may be sold or leased under section 26, or may be sold under section 27 without the consent of the Court.

29 Administrator to represent real estate

In all actions concerning the real estate of a deceased person, his administrator shall represent his real estate and the persons interested in it in the same manner and to the same extent as, in actions concerning personal estate, the administrator represents that estate and the persons interested in it.

30 Rights and duties of administrator as to real estate

The administrator of any deceased person shall have the same rights and be subject to the same duties and liabilities with respect to the real estate of that person as he has and is subject to with respect to the personal estate of that person, and shall perform the duties imposed on the administrator by any Act imposing or charging duties or fees or liabilities on the estates of deceased persons.

31 Payment of claims where estate insufficient

Where the estate of any deceased person is insufficient to pay his debts, funeral, and testamentary expenses in full, it shall be lawful for the administrator to apply that estate under the priorities that would be applicable if it were being administered under Part 17 of the Insolvency Act 1967 (NZ), without the administrator being under any obligation to have recourse to that Part or to administer that estate under it and any surplus shall be held for the person or persons lawfully entitled.

32 Administration suits

(1) [Repealed by 2004/270]

(2) In any action or other proceeding for the administration by the Court of the estate of any deceased person, no court shall have jurisdiction to order or allow payment of costs out of the estate to the party responsible for the commencement or continuance of the action or proceeding, unless the Court first certifies that there were reasonable grounds for the action being commenced or continued, and then only to the extent to which the continuance was necessary.

33 Debts under deeds and simple contracts to stand in equal degree

(1) Subject to this Act and any other Act, in the administration of the estate of every person who has died no debt or liability of the person shall be entitled to any priority or preference by reason merely that it arises under a bond, deed, or instrument under seal; but all the creditors of that person shall be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person, whether those assets are legal or equitable.

(2) Nothing in subsection (1) shall prejudice or affect any lien, charge, mortgage, or other security which any creditor may hold or be entitled to for payment of his debt or liability.

34 Charges on property

(1) (a) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property, or where an interest in property passes by survivorship on the death of a person, and at the time of his death the interest is charged with the payment of money, whether by way of mortgage, charge, or otherwise, and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for payment of all amounts charged thereon; and every part of the said interest, according to its value, shall bear a proportionate part of the amounts charged on the whole.

(b) Where a person dies possessed of or entitled to an interest in any personal chattels that passes under the will or on the intestacy of the person to the person's husband or wife, nothing in this subsection shall apply to that interest in those personal chattels.

(2) Such a contrary or other intention shall not be deemed to be signified –

(a) By a general direction for payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate, or his residuary personal estate; or

(b) By a charge of debts upon any such estate –

unless that intention is further signified by words expressly or by necessary implication referring to all or some part of the charge on the interest in property.

(3) Nothing in this section shall affect the right of a person entitled to the payment with which the interest in property is charged to obtain payment or satisfaction out of the other assets of the estate or otherwise.

35-36 [Repealed by 2004/270]

37 Liability of specific devise or bequest where estate is insufficient

If any testator's estate primarily liable for the payment of his debts is insufficient for that purpose, each of his specifically devised or bequeathed estates (if more than one) shall be liable to make good the deficiency, in the proportion that the value of each of those estates bears to the aggregate value of the specifically devised or bequeathed estates of the testator.

38 Proving executors may exercise powers

Where probate is granted to one or some of 2 or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are conferred by law or by the will on the administrator may be exercised by the proving executor or executors for the time being, and shall be as effectual as if all the persons named as executors had concurred in it.

39 Interest on legacies and annuities

(1) In any case where a legacy is charged upon both land and chattels, unless the will otherwise provides, interest shall be payable on the legacy and be a charge on the land and chattels under the rules of law that would apply if the legacy were charged upon the land only.

(2) While interest is payable on any legacy or on any arrears of an annuity, under the will or instrument under which the legacy or annuity is payable or any enactment or rule of law, unless the will or instrument otherwise provides or the Court otherwise orders, the interest on the legacy or arrears of the annuity shall be payable at the rate for the time being prescribed by Cabinet, and while no such regulation is in force at the rate of 5 percent per annum.

(3) Where an administrator (under any power conferred on him in that behalf) appropriates any property in or towards satisfaction of any legacy (other than an annuity), the legatee shall be entitled to the income from the property so appropriated, and interest shall not be payable out of any other part of the estate on so much of the legacy as has been satisfied by the appropriation.

40 No right of retainer by administrator

No person, being a creditor in his own right or as a trustee of any estate of which he is administrator, shall, by virtue of his office as administrator, have any right of retainer in priority to the other creditors of the estate in respect of any debt due to him; but every such creditor or administrator shall rank with other creditors, but without prejudice to any preferential claim or security which as a creditor he might have been able to enforce if he had not been the administrator.

41 Rights and liabilities of administrator

Every person to whom administration of the estate of a deceased person is granted, other than an executor, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

42 Liability of agent of administrator

No person appointed an administrator upon an application made by him as the attorney or agent for an administrator absent from Niue, shall be liable to account or pay money, or transfer property, to any one in respect of his administratorship excepting only to the administrator whose attorney or agent he was, or to any person who, after his appointment as administrator upon an application so made, is appointed administrator of the same estate.

43 Administrator's right to distrain

(1) An administrator may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged with it, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) An administrator may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Any such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made –

(a) Within 6 months after the termination of the lease or tenancy; and
(b) During the continuance of the possession of the lessee or tenant from whom the arrears were due.

(3) The enactments relating to distress for rent shall apply to any distress made under subsection (2).

44 Administrator may be required to exhibit inventory

Every administrator shall, when required by the Court so to do, exhibit on oath in the Court a true and perfect inventory and account of the estate of the deceased, and the Court shall have power to require administrators to bring in inventories.

45 Protection of persons acting on administration

(1) Every administrator or person who makes any payment or disposition or assumes any liability, or who permits any payment or disposition to be made, or who does any act, or who permits any act to be done, in good faith under an administration shall, notwithstanding any defect or circumstances whatsoever affecting the validity of the administration or its subsequent revocation, have the same indemnity and protection in so doing and in respect of all commission and remuneration earned by him in so doing, as he would if the administration were valid and not revoked.

(2) Where an administration is revoked, all payments and dispositions made in good faith to an administrator before the revocation shall be valid discharges to the person making the same; and the administrator who acted under the revoked administration may retain and reimburse himself out of the estate that comes into his hands in respect of any acts, payments, dispositions, liabilities, commission, and remuneration in respect of which he is indemnified as aforesaid or which the person to whom administration is afterwards granted might have properly made.

(3) Nothing in subsection (1) shall affect or prejudice the rights of any person entitled to any money or property that has been the subject of a payment or disposition to which that subsection relates against any person (other than the administrator in that capacity) to whom the payment or disposition has been made, but the person so entitled shall have the same remedy against the person (other than the administrator in that capacity) to whom the payment or disposition was made as he would have had against the administrator if the payment or disposition had not been made.

(4) Nothing in this section shall restrict section 51.

46-48 [Repealed by 2004/270]

49 Following of assets

(1) In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust and there is nothing in any Act to prevent the distribution from being disturbed, the Court may –

(a) Make, subject to such terms and conditions as it thinks fit, in respect of any interest in any such assets that is for the time being retained by the person to whom those assets were distributed or his administrator or any person who has received any interest in those assets from either of them otherwise than in good faith and for full valuable consideration an order on any claim to which section 35 of the Trustee Act 1956 applies, or an order requiring the transfer of payment of any such interest in any such assets to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets;

(b) Order that any person to whom any assets were so distributed or his administrator shall pay to any applicant for an order on any

claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee or to any person who under any enactment or rule of law has a right to follow the assets a sum not exceeding the net value of the assets at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;

(c) Order that any person who has received any interest in any such assets from the person to whom they were distributed or his administrator, otherwise than in good faith and for full valuable consideration, shall pay to any applicant for an order on any claim to which section 35 of the Trustee Act 1956 applies, or to the administrator of the deceased or the trustee, or to any person who under any enactment or rule of law has a right to follow the assets, a sum not exceeding the net value of that interest at the date of the distribution, or in a case where full valuable consideration has not been given a sum not exceeding the amount by which that net value exceeds the value of the consideration at that date, together (if the Court thinks equitable) with interest on it from that date until the date of the order at such rate as the Court may specify;

(d) In making any such order fix such terms and conditions as the Court thinks fit and for the purpose of giving effect to any such order, make such further order as it thinks fit.

(2) The remedies given to any person by subsection (1) are in addition to all other rights and remedies (if any) available to that person, and nothing in that subsection shall restrict any such other rights and remedies.

(3) Subject to subsection (4), no application for an order under subsection (1) shall be heard by the Court –

(a) [Repealed by 2004/270]

(b) In the case of an application to which section 50 (b) (i) applies, unless that application is made within 1 year after the satisfaction by the administrator or trustee of any claim in respect of any right or remedy against him;

(c) In any other case, unless the application for an order under subsection (1) is made within the time within which the applicant could have enforced his claim in respect of the estate without special leave of the Court if the assets had not been distributed:

Provided that, with the special leave of the Court, the application may be heard by the Court on an application made within the time within which the applicant could have enforced his claim in respect of the estate with special leave of the Court if the assets had not been distributed.

(4) Notwithstanding subsection (3), in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, and any person who is entitled to apply for an order under subsection (1) has, within the time specified in subsection (3), made an application to the Court for an order on any claim to which section 35 of the Trustee Act 1956 applies, and that person was not aware of the distribution at the time when he made that application, that person or any other person on whose behalf that application is deemed to be made, may apply to the Court under subsection (1), and the application may be heard by the Court after the expiration

of the period prescribed by subsection (3) if it is made within 6 months after the date on which that person first became aware of the distribution.

50 Freedom to exercise remedies

Notwithstanding any rule of law to the contrary, in any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust –

(a) Any person may exercise the remedies (if any) given to him by section 49 (1) and all other rights and remedies available to him (including all rights which he may have to follow assets and any money or property into which they have been converted) without first exercising the rights and remedies (if any) available to him against the administrator or the trustee in consequence of the making of the distribution;

(b) If any person exercises any right or remedy available against the administrator or the trustee in consequence of the distribution of any such assets, the administrator or trustee may –

(i) apply to the Court for any order which may be made under section 49 (1);

(ii) in any proceedings against him in respect of the exercise of any such right or remedy, by leave of the Court and in accordance with the rules of court relating to such notices, issue a third party notice against any person against whom he may apply for an order under subparagraph (i).

51 Restriction on following assets

In any case where an administrator or trustee has made a distribution of any assets forming part of the estate of any deceased person or subject to any trust, relief (whether under section 49 (1) or in equity or otherwise) against any person other than the administrator or trustee or in respect of any interest of any such person in any assets so distributed and in any money or property into which they have been converted, may be denied wholly or in part, if –

(a) The person from whom relief is sought received the assets or interest in good faith and has altered his position in the reasonably held belief that the distribution was properly made and would not be set aside; and

(b) In the opinion of the Court it is inequitable to grant relief or to grant relief in full, as the case may be.

52 Liability of person fraudulently obtaining or retaining estate of deceased

If any person other than the administrator, to the defrauding of creditors or without full valuable consideration, obtains or receives or holds any part of the estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the estate received or coming into his hands, or the debt or liability released, after deducting –

(a) Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death which might properly be retained by an administrator; and

(b) Any payment made by him which might properly be made by an administrator.

Powers and Procedure of Court

53 Direction to executor to prove or renounce

The Court shall have power to direct any person named as executor in a will to prove or renounce probate of the will, and (subject to this Act and any other enactment and the Rules) to do such other things as it thinks fit concerning the granting and revocation of administration, and the hearing and determination of proceedings relating to testamentary matters and matters relating to the estates of deceased persons.

54 Production of instruments purporting to be testamentary

The Court may, whether any suit or other proceeding is or is not pending with respect to any administration, order any person to produce any paper or writing, being or purporting to be testamentary, which may be shown to be in the possession or under the control of that person; and if it is not shown that any such paper or writing is in the possession or under the control of any person, but it appears that there are reasonable grounds for believing that he has knowledge of any such paper or writing, the Court may direct that person to attend for the purpose of being examined in open court, or upon interrogatories, respecting the same; and that person shall be bound to answer any such questions or interrogatories, and, if so ordered, to produce and bring in any such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering any such questions or interrogatories, or not bringing in any such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made any such default; and the costs of any such suit or proceeding shall be in the discretion of the Court.

55 Continuance of legal proceedings

If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the Court may order that the proceeding be continued by or against the new administrator in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

56 Question of fact may be tried by a jury

(1) If any question of fact arises in any proceeding under this Act, the Court may cause the same to be tried by a jury before the Court itself, or before any Judge of the Court, and may settle an issue for that purpose.

(2) In every such case the subsequent proceedings in respect of that issue shall be the same as if it had been settled in an ordinary action.

57 Practice of Court in its administration jurisdiction

The practice of the Court in regard to administration shall, except where otherwise provided, be regulated, so far as the circumstances of the case will admit, by the practice of the Court.

58 [Repealed by 2004/270]

59 Power to make rules

Cabinet may make rules of Court, including rules –

(a) Prescribing the forms of administration;

(b) Prescribing the practice in obtaining a grant of administration, and the procedure and practice of the Court and the duties of the Registrar;

(c) Regulating the procedure and practice of the Court with respect to non-contentious or common form probate business;

(d) Regulating the procedure and practice of the Court with respect to contentious probate business;

(e) Regulating the practice and procedure of the Court in relation to the resealing of probates or letters of administration under Part 2, and in particular for the purpose of imposing upon persons applying under it for the resealing of probates or letters of administration, or relieving any such persons from, any requirements that may be imposed upon persons applying to the Court for original grants of probate or letters of administration;

(f) Prescribing orders of priority among applicants for administration which shall apply unless the Court in special circumstances otherwise directs;

(g) Generally for carrying the provisions of this Act into effect.

Caveats

60 Caveat may be lodged

(1) Any person may lodge with the Registrar a caveat against any application for administration at any time previous to the granting of administration, and every such caveat shall set forth the name of the person lodging it, and an address within Niue at which notices may be served on him.

(2) Every such caveat shall, unless application for administration is sooner made, lapse upon the expiration of one year from the date of the lodging of the caveat.

(3) (a) Any such caveat may be withdrawn by the caveator at any time by notice in writing lodged with the Registrar.

(b) A copy of every such notice shall be served on any person who has applied for administration or to whom an order *nisi*, under section 61 has been granted.

(4) Nothing in this section shall prevent any person who has lodged a caveat from lodging a subsequent caveat, whether or not any caveat previously lodged has lapsed or been withdrawn.

61 Where a caveat lodged, Court may grant order *nisi*

In every case where a caveat has been lodged and has neither lapsed nor been withdrawn, the following provisions shall apply –

(a) The Court may, upon application on behalf of the person applying for administration, supported by affidavits upon which, if there had been no caveat, administration would have been granted, make an order *nisi* for the grant of administration to the person applying, and every such order shall name a time and place for showing cause against the same, and the Court may enlarge any such order;

(b) Every such order *nisi*, and every order enlarging the same, shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat;

(c) If before the day named in the order *nisi* or the day to which the order is enlarged the caveat is withdrawn, the order *nisi* may be made absolute at any time thereafter;

(d) In any case to which paragraph (c) does not apply, if on the day named in the order *nisi*, or on the day to which the order is enlarged, the caveator does not appear, the order *nisi* may be made absolute, upon an affidavit of service; but if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as in an ordinary action, and the Court may order –

(i) that the order nisi be made absolute or discharged; or

(ii) that the application for administration be made in solemn form,

and any order made under subparagraph (i) or (ii) may be with or without costs as may be just, and, if the Court so directs, those costs may be paid out of the estate;

(e) Upon the hearing of the order *nisi* the parties may, subject to the Rules, verify their cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed.

Miscellaneous Provisions

62 [Repealed by 2004/270]

63 Administration granted to trustee companies

(1) No grant of probate of the will of any deceased person or letters of administration of the estate of a deceased person, either with or without a will annexed, shall be made to any company unless the company is expressly authorised by an Act to apply for and obtain the grant.

(2) A grant of probate or letters of administration to a syndic of a company shall be deemed to be a grant to that company; and where a power is granted to a company or to the directors of a company by will to nominate any person as executor of the will, a grant to a person so nominated shall be deemed to be a grant to the company.

(3) Nothing in this section shall –

(a) Prevent the grant of probate of the will of any deceased person to any company or to a syndic of the company in any case where the company is appointed as executor of the will and the actual document providing for the appointment was made before 1 January 1963;

(b) Prevent the grant of probate of the will of any deceased person to any person nominated as executor of the will by a company or the directors of a company pursuant to a power granted by any testamentary instrument, if the actual document granting the power was made before 1 January 1963;

(c) Prevent the resealing in Niue of probate or letters of administration granted to a company in any other country;

(d) Affect any grant of probate or letters of administration subsisting at 1 January 1971.

64-66 [Repealed by 2004/270]

67 Other Acts providing for payment without administration

Nothing in this Act shall affect the powers of any person or body to make any payment to, or register any person to be, the owner of any property under any enactment authorising the payment of money belonging to the estate of a deceased person without requiring administration of the estate to be obtained.

68 Bondsmen and sureties deemed to be trustees

Every person who, in the capacity of bondsman or surety for another, receives money or other property belonging to the estate of any deceased person shall be deemed to be a trustee within the meaning of the Trustee Act 1956 in respect of that money or property, and may under that Act apply for relief and to be discharged from the custody of the money or property.

PART 2
Administration Granted out of Niue

69 Interpretation

(1) For the purposes of this Part "probate or letters of administration" includes an exemplification of any probate or letters of administration, or a duplicate of it sealed with the seal of the court granting the same, or a copy certified as correct by or under the authority of the court granting the same, and also includes an exemplification or a copy certified by or under the authority of any court, or a duplicate sealed under the seal of any court, of any instrument which is filed in or issued out of that court and which within the jurisdiction of that court operates to make any person the administrator of any property of a deceased person as if probate or letters of administration had been granted to him by that court.

(2) The filing in or the issuing out of any court of any instrument which operates to make any person an administrator in the manner described in subsection (1) shall be deemed to be equivalent to the granting of probate or letters of administration by that court to that person.

70 Estate of person dying abroad not to vest without administration

(1) Estate in Niue belonging to any person who dies abroad shall not vest in any person under any bequest or devise, or under an intestacy, or by inheritance, until administration of that estate is obtained in Niue; or, if probate or letters of administration of the estate have been granted in any place out of Niue, unless the probate or letters of administration are resealed in Niue as provided in this Part.

(2) Upon the estate in Niue becoming legally vested under this section, the legal estate shall vest as from the time of the death of the person from whom it is obtained.

71 Resealing of probate

(1) Where any probate or letters of administration granted in a competent court in any country are produced to and a copy deposited with the Registrar of the Court the probate or letters of administration may be sealed with the seal of the Court, and shall have the like force and effect and have the same operation in Niue, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities, as if the probate or letters of administration had been originally granted by the Court.

(2) Nothing in this section shall prevent the Court from making an independent grant of administration in Niue.

72 Seal not to be affixed till fees are paid and administration bond effected

(1) The seal of the Court shall not be affixed to any probate or letters of administration granted in any Commonwealth country (other than Niue) or in the Republic of Ireland, or by a competent court in any other country, so as to give operation as if the grant had been made by the Court, until all such fees have been paid as would have been payable if the probate or letters of administration had been originally granted by the Court ; and, further, no such letters of administration shall be so sealed until such bond is entered into as would have been required if the letters had been originally granted by the Court:

(2) The Court may if it thinks fit dispense with the bond or reduce the amount of the penalty thereunder.

(3) Where letters of administration are at any time granted to any Public Trustee or other like public official of any Commonwealth country (other than Niue) or of the Republic of Ireland or of any other country to which section 71 is declared to apply, it shall not be necessary, upon the resealing in Niue of the letters of administration, for the Public Trustee or other official, as the case may be, to execute any such bond.

73 No probate granted out of Niue to be evidence unless resealed

Probate or letters of administration granted in any place out of Niue shall not be received in evidence of the title of any person to any estate in Niue until the probate or letters of administration are resealed in Niue as provided in this Part.

74 Effect of sections 70 and 73

Nothing in sections 70 and 73 shall restrict any other enactment relating to the payment or devolution of any estate without administration.

PART 3
Distribution of Intestate Estates

75-76 [Repealed by 2004/270]

77 Succession on intestacy

Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely –

(a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely and, in addition, the residue of the estate shall stand charged with the payment of a sum of $12,000 to the surviving husband or wife with interest on it from the date of the death until paid or appropriated, at the rate from time to time prescribed by or under section 39, and, subject to providing for that sum and the interest on it, the residue of the estate shall be held –

(i) if the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate;

(ii) if the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other one-third if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely;

(iii) if the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely;

(b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate;

(c) If the intestate leaves no husband or wife or issue but a parent or parents, the estate shall be held in trust for the parents in equal shares if they both survive the intestate but if only one of them survives the intestate for that one;

(d) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:

Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate;

(e) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as *bona vacantia*, and in place of any right to escheat; and the Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

78 Statutory trusts in favour of issue and other classes of relatives

(1) Where the estate of any intestate, or any part of it, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely –

(a) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain full age or marry under that age, and for all or any of the issue living at the death of the intestate who attain full age or marry under that age of any child of the intestate who predeceases the intestate, the said issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent takes an absolutely vested interest:

Provided that if any person capable of taking under this paragraph (including this proviso) dies before taking an absolutely vested interest leaving any child or children who shall be living at the expiration of 21 years from the death of the intestate or who shall sooner attain full age or marry under that age, that child or those children shall take, in equal shares if more than one, the share which his, her, or their parent would have taken if he or she had not so died;

(b) The statutory power of advancement, and the statutory provisions which relate to maintenance, education, and benefit, and the accumulation of surplus income, shall apply, and when a person becomes entitled to a vested share or interest under the statutory trusts, that person shall be entitled on attaining the age of 18 years or sooner marrying to give a valid receipt for his share or interest;

(c) The administrator may permit any minor who has a vested or contingent interest in any personal chattels to have the use and enjoyment of the chattels in such manner and subject to such conditions (if any) as the administrator may consider reasonable, and without being liable to account for any consequential loss.

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest –

(a) The estate of the intestate and the income of it and all statutory accumulations, if any, of the income, or so much of it as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under this Act as if the intestate had died without leaving issue living at the death of the intestate;

(b) References in this Act to the intestate "leaving no issue" shall, subject to this section, be construed as "leaving no issue who attain an absolutely vested interest";

(c) References in this Act to the intestate "leaving issue" or "leaving a child or other issue" shall, subject to this section, be construed as "leaving issue who attain an absolutely vested interest".

(3) Where under this Act the estate of an intestate or any part of it is directed to be held on the statutory trusts for any class of the relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate as if those trusts were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

79 Application to cases of partial intestacy

(1) Where any person dies leaving a will effectively disposing of part of his estate this Part, shall have effect in respect of the part of his estate not so disposed of, subject to the will and subsection (2).

(2) Where the deceased leaves a husband or wife who acquires a beneficial interest under the will of the deceased, the references in section 77 to a sum of $12,000 payable to a surviving husband or wife, and to interest on that sum, shall be taken as references to that sum diminished by the value of the beneficial interest at the date of death, and to interest on that sum as so diminished, and, accordingly, where the value exceeds that sum, section 77 shall have effect as if references to that sum and to interest were omitted.

(3) References in subsections (1) or (2) to a beneficial interest acquired under a will shall be construed –

(a) As including a reference to a beneficial interest acquired by virtue of the exercise by the will of a general power of appointment, but not a special power of appointment;

(b) As not including a reference to a beneficial interest in any personal chattels.

(4) For the purposes of this section the administrator may ascertain and fix the value of the beneficial interest under section 28 of the Trustee Act 1956, and no action shall lie against the administrator if he distributes the estate in accordance with the value that he has honestly and reasonably so fixed.

80 [Repealed by 2004/270]

PART 4
Miscellaneous Provisions

81 Right of successor on intestacy to disclaim

(1) Subject to this section, where a successor has become entitled under this Act to an interest as a beneficiary in the whole or any part of the real and personal property which passes on the intestacy of any person –

(a) The successor may, by deed delivered to the intestate person's administrator, disclaim that interest if at the date of the disclaimer he has attained full age and is of sound mind;

(b) The Court may, by order, disclaim the interest on behalf of the successor or authorise the disclaimer of the interest by or on behalf of the successor if at the date of the disclaimer the successor has not attained full age or is not of sound mind.

(2) No disclaimer under this section shall be valid unless –

(a) The disclaimer is made by the successor in his lifetime; and

(b) The disclaimer relates to the whole of the successor's interest as a beneficiary in the real and personal property which passes on the intestacy of the person, including property which any other person has disclaimed under this section; and

(c) The disclaimer is made within one year after the date of the first grant in Niue of administration in respect of the estate or will of the intestate person or within such extended period as may be allowed by the Court.

(3) No disclaimer under this section shall be valid if –

(a) The successor has entered into enjoyment of the whole or any part of the interest to which he has become entitled as aforesaid; or

(b) The successor has transferred, assigned, mortgaged, settled, or otherwise disposed of that interest or of any part of it or of any property which would include that interest or any part of it if it were not disclaimed, or has covenanted or agreed to do any such thing; or

(c) There is any valuable consideration for the disclaimer; or

(d) The disclaimer provides for any assignment of the disclaimed interest or in any manner provides who is to be entitled to that interest; or

(e) The successor is bankrupt when the disclaimer is made.

(4) Every disclaimer under this section shall be irrevocable.

(5) Where a disclaimer which complies with all the requirements of this section has been made by or on behalf of any successor and the disclaimer is not void and does not become void by reason of its being deemed under section 82 to be a transfer of the disclaimed interest –

(a) The property which passes on the intestacy of the person shall be distributed, and estate duty in his estate shall be assessed, as if the successor had died immediately before the intestate person leaving only such issue (if any) as the successor would have left if he had died immediately before the intestate person;

(b) The successor shall be deemed for all purposes neither to have become entitled to nor to have disposed of the disclaimed interest or any part of it.

(6) Nothing in this section shall affect any right which any successor may have to disclaim any property apart from this section.

(7) Every disclaimer under this section shall be deemed to be made at the first point of time when everything has been done in respect of the disclaimer which is necessary to comply with the requirements of this section and of any order of the Court which relates to the disclaimer and is made under this section.

82 Effect of bankruptcy on disclaimer

(1) Where a successor disclaims the interest as a beneficiary to which he is entitled in any real or personal property which passes on the intestacy of any person, or disclaims any interest as a beneficiary in any real or personal property to which he is entitled under the will of a deceased person, then, for the purposes of any rule of law relating to the protection of creditors –

(a) The successor shall be deemed to have accepted the disclaimed interest; and

(b) The disclaimer shall be deemed to be a transfer of the disclaimed interest by the successor to the person or persons who become entitled to it in consequence of the disclaimer.

(2) Where any such successor has disclaimed any such interest in any property and there is no possibility of the disclaimer being void or voidable otherwise than by reason of its being deemed to be a transfer of the disclaimed interest, the deceased person's administrator may distribute the disclaimed interest or any part of it as if there were no possibility of the disclaimer being or becoming void or voidable by reason of its being deemed to be a transfer of the disclaimed interest if, at the date of the distribution –

(a) The successor is not bankrupt; and

(b) The administrator has no reason to believe that the successor is about to become bankrupt; and

(c) The administrator has no reason to believe that the disclaimer is void or voidable or is about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest.

(3) No action shall lie against any such administrator by reason of his distributing any disclaimed interest as aforesaid or by reason of his having failed to make any inquiry as to whether the successor was about to become bankrupt or as to whether the disclaimer was void or voidable or about to become void or voidable by reason of its being deemed to be a transfer of the disclaimed interest; but nothing in this subsection or in subsection (2) shall affect any right which any person may have to follow and recover any property to which the disclaimer relates.

83 [Spent]

84 [Repealed by 2004/270]

SCHEDULE
Section 18

Certificate of Administration

In the High Court of Niue
In the estate of , of
Under section 18 of the Administration Act 1969, I hereby certify that, on the day of 20 , probate of the will [or letters of administration in the estate]* of the above-named deceased who died on or about [date] was [were] granted to , of
Dated at this day of 20 .
[Seal]

Registrar.

*In the case of a limited or special grant the exact nature of the grant should be shown.

ADOPTION ACT 1955

1955/93 – 27 October 1955

1 This is the Adoption Act 1955.

2-15 –

16 Effect of adoption order

(1) Every adoption order shall confer the surname of the adoptive parent on the adopted child, with such first or Christian name as the Court, on the application of the person who is applying for the adoption order, may fix.

(2) Upon an adoption order being made, the following shall have effect for all purposes, whether civil, criminal, or otherwise, but subject to the provisions of any enactment which distinguishes in any way between adopted children and children other than adopted children, namely –

(a) The adopted child shall be deemed to be the child of the adoptive parent, and the adoptive parent shall be deemed to be the parent of the child, as if the child had been born to that parent in lawful wedlock:

Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the making of the adoption order shall not prevent the making of an affiliation order or maintenance order, or of an application for an affiliation order or maintenance order, in respect of the child;

(b) The adopted child shall be deemed to cease to be the child of his existing parents (whether his natural parents or his adoptive parents under any previous adoption), and the existing parents of the adopted child shall be deemed to cease to be his parents, and any existing adoption order in respect of the child shall be deemed to be discharged under section 20:

Provided that, where the existing parents are the natural parents, this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or to the crime of incest;

(c) The relationship to one another of all persons (whether the adopted child, the adoptive parent, the existing parents, or any other persons) shall be determined under this subsection so far as they are applicable;

(d) The foregoing provisions shall not apply for the purposes of any deed, instrument, will, or intestacy, or affect any vested or contingent right of the adopted child or any other person under any deed, instrument, will, or intestacy, where the adoption order is made after the date of the deed or instrument or after the date of the death of the testator or intestate, as the case may be, unless in the case of a deed, instrument, or will, express provision is made to that effect;

(e) The adoption order shall not affect the race, nationality, or citizenship of the adopted child;
(f) The adopted child shall acquire the domicile of his adoptive parent or adoptive parents, and the child's domicile shall thereafter be determined as if the child had been born in lawful wedlock to the said parent or parents:
Provided that nothing in this paragraph shall affect the domicile of origin of the child;
(g) In any case where the adoption order was made before the adopted child attained the age of 3 years, the child's domicile of origin shall be deemed to be the domicile which he first acquired under paragraph (f) upon the making of the adoption order, but nothing in this Act shall affect the domicile of origin of an adopted child in any other case;
(h) Any existing appointment as guardian of the adopted child shall cease to have effect;
(i) Any affiliation order or maintenance order in respect of the adopted child and any agreement (not being in the nature of a trust) which provides for payments for the maintenance of the adopted child shall cease to have effect:

Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the order or agreement shall not cease to have effect by reason of the making of the adoption order:

Provided also that nothing shall prevent the recovery of any arrears which are due under any order or agreement at the date on which it ceases to have effect.

17-19 –

20 Adoption order discharged

Upon an adoption order being discharged –

(a) The relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, the guardians of the child at the date of the adoption order or adoption, or any other persons) shall be determined as if the adoption order or adoption had not been made; and any appointment as guardian of the adopted child which was made while the adoption order or adoption was in force shall cease to have effect:
Provided that the discharge of the order or adoption shall not affect anything lawfully done or the consequences of anything unlawfully done while the order or adoption was in force;
(b) No change in the child's domicile shall occur by reason only of the discharge; but, where during the infancy of the child any natural parent resumes custody of the child to whom the discharged order or adoption related, the domicile of the child shall be determined as if neither the discharged order or adoption nor any prior adoption order or adoption in respect of the child had been made;
(c) Any affiliation order, maintenance order, or agreement for payment of maintenance which ceased to have effect under section 16 (2) (i) have effect under its terms:
Provided that nothing in this paragraph shall cause the order or agreement to have any effect in respect of the period while the adoption order or adoption remained in force:

Provided also that notice of the discharge of the adoption order or adoption shall be served on every person who is bound by the affiliation order, maintenance order, or agreement, but nothing in this proviso shall restrict the effect of the affiliation order, maintenance order, or agreement between the date of the discharge of the adoption order or adoption and the service of notice of the discharge;

(d) For the purposes of any other deed or instrument (except a will) made while the order or adoption was in force, or of the will or intestacy of any testator or intestate who died while the order or adoption was in force, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will or intestacy, the order or adoption shall be deemed to continue in force.

AGRICULTURE QUARANTINE ACT 1984

1984/99 – 12 February 1985

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PART 5
MISCELLANEOUS
21 Dispatch of animal or plant material to Niue
22 False declarations and documents
23 Offences
24–25 [Spent]

To make provision for the protection of plants and animals

1 Short title

This is the Agriculture Quarantine Act 1984.

2 Interpretation

In this Act –

"animal" means any living or dead stage of any member of the animal kingdom and includes the egg or semen or larva or embryo or the carcase of or tissue derived from an animal;

"animal product" means any part of an animal and any product that is wholly or partly derived from an animal or any part of an animal, being a part of an animal or a product that has not been treated or sterilised to the stage where it is rendered free from any viable form of any organism capable of causing disease;

"biological product" means any material, vaccine, chemical, hormone, enzyme, tissue or other thing derived from any animal, plant or organism;

"conveyance" means any kind of vehicle which may travel by land, sea or air and includes a cargo container;

"declaration" means a written statement concerning any animal, animal product, plant or plant material or any other goods restricted or prohibited under this Act;

"Director" means the Director of Agriculture and includes the Deputy;

"disease" means any unhealthy condition in any animal or plant suspected of being caused by an organism, and includes diseases transmissible from animals to man;

"diseased" means affected or has been affected by any disease, or as a result of diagnostic test or tests, is judged to have been affected by any disease or exposed to the causal agent of any disease; and in relation to any animal product or plant material that it has been derived from a diseased animal or plant;

"goods" means any movable property involving a quarantine hazard;

"import" means to introduce into Niue from any place outside of Niue whether by sea or air;

"infected" in relation to any animal or animal product or plant material means that it has been in direct or indirect contact with a diseased animal or plant or any place or vicinity or goods or thing which is suspected to be carrying or harbouring a disease or pest;

"land" includes any area, field, farm, garden, orchard, nursery, hothouse, shadehouse, cool store, dwellinghouse, shop, building, room or other place or premises and references to land extend to and include any harbour, highway, road, wharf, port or airport;

"organism" means any micro-organism, virus, bacterium, fungus, protozoon, parasite or other organism; and includes any dead, inactivated attenuated or genetically modified form of any such micro-organism, bacterium, fungus, protozoon, parasite or other organism;

"Quarantine Officer" means any officer appointed under section 4 and includes an assistant;

"quarantine station" means any area established by section 10(1);

"packing material" includes items not necessarily of animal or plant origin but which have been enclosed with the consignment during transport;

"permit" means a document issued by the Director indicating the conditions under which animals, animal products, plant, plant material and goods may be imported;

"pest" means any organism pestilent to animals or plants, and includes weed pests and insect pests;

"plant" means all species, varieties and types of vegetation or parts of them whether living or not and includes stems, branches, tubers, bulbs, culture, corms, stocks, budwood, cuttings, layers, slips, suckers, roots, leaves, flowers, fruit, seeds and any other plant growth and includes a dead plant;

"plant material" includes any fruit, seed, spore and portion or product of any plant unless, by any manufacturing process, it has been rendered free from all diseases and pests and has been made incapable of carrying any disease or pest;

"port" includes seaport, airport and post office;
"refuse" means any garbage or waste material, rubbish or packing whether or not of animal or plant origin;
"soil" includes earth, water, peat, compost, sand, clay and any other substance capable of supporting plant life or transmitting disease or pest whether or not used or intended to be used as a growing medium or in any process of manufacture, or as a ballast or for any purpose whatsoever;
"treatment" means any form of operation including disinfection and disinfestation to ensure removal sterilisation or killing of any animal or plant, pest or disease by such means as are deemed most appropriate and includes destruction.

3 Act to bind Crown

This Act binds the Government.

PART 1

ADMINISTRATION

4 Appointment of Quarantine Officers

There shall be appointed by the Niue Public Service Commission such Quarantine Officers as may be necessary for the purposes of this Act.

5 Powers of Quarantine Officers

(1) Every Quarantine Officer may for the purposes of this Act detain, open, inspect, examine, sample, submit for diagnostic examination, direct reshipment, direct removal to a quarantine area, remove for treatment, treat any animal, animal product, plant material, beneficial organism, disease, pest, soil, package, packing material, article of luggage or other thing.

(2) No Quarantine Officer shall direct reshipment or destroy or otherwise dispose of anything under this section unless with the concurrence of the Director and that the owner or the importer is invited to witness destruction.

6 Rights of entry

Every Quarantine Officer may, for the purposes of this Act and on producing (if so required) due evidence of his appointment, enter at any time upon any land dwelling or into any conveyance.

7 Liability for Crown expense

If any person by failing to comply with or acting contrary to this Act, causes a Quarantine Officer or an employee in the Public Service to incur an expense that he would not otherwise have incurred, that person shall reimburse the Government for the full amount of that expense reasonably and properly incurred and that amount shall be recoverable from that person as a debt due to the Crown.

8 Obstructing or hindering Quarantine Officer

Every person commits an offence who directly or indirectly obstructs, hinders, interrupts, threatens, or assaults any Quarantine Officer or any assistant of a Quarantine Officer in the performance of his duty under this Act.

9 Protection of Quarantine Officer

A Quarantine Officer shall not be liable for any loss or damage resulting from the exercise of powers conferred by this Act unless the loss or damage is caused otherwise than in the reasonable exercise of those powers.

PART 2
IMPORTATION

10 Quarantine Stations

(1) The Cabinet may at any port or place in Niue by notice in the *Gazette* set apart and define any land under its control as a quarantine station for the detention or treatment of animals, animal products, plants or plant material and may vary, alter, redefine or abolish any such quarantine station.

(2) The Director may from time to time give directions on the regulation management and control of quarantine stations and the disposal treatment or destruction of animals, animal products, plants or plant material while in the quarantine station; and may by any such direction specify any treatment that can also include the time during which any animal, animal product, plant or plant material intended to be introduced into Niue shall remain in a quarantine station.

11 Restrictions on importation

(1) No person shall import or introduce any animal, animal product, plant, plant material or organism or biological product or goods or packing material, into Niue –

(a) Without the written permit of the Director; or

(b) In contravention of any regulations made under this Act.

(2) Every such permit shall be subject to such conditions as may be specified in the permit and in any regulations made under this Act.

(3) Any such permit may be revoked or varied at any time by the Director.

12 Importation for research

Notwithstanding anything in this Act, the Director may, for the purpose of scientific research or experiment and subject to such terms and conditions as he thinks fit, permit the importation into Niue of any animal, animal product, plant or plant material or organism or biological product or goods not otherwise eligible for importation into Niue.

13 Seizure and disposal

Where any animal, animal product, plant or plant material or organism or biological product is found by a Quarantine Officer on any conveyance and the animal, animal product, plant or plant material or organism or biological product is not being imported or introduced into Niue under this Act the animal, animal product, plant or plant material or organism or biological product, shall be deemed to be smuggled; and unless the Director directs that it be retained on the ship or aircraft and reshipped therewith, the animal, animal product, plant or plant material or organism or biological product shall be seized and destroyed and no compensation shall be payable in respect of it.

14 Duty to prevent materials being landed

The owner, charterer, agent, master or captain of any conveyance arriving in Niue shall –

(a) Prevent any animal, animal product, plant or plant material or organism or biological product from being landed from that conveyance unless permitted by the Director; and

(b) If so required by the Director enter into a bond for such amount not exceeding $1,000 as the Quarantine Officer may require to secure due compliance with this section.

15 Material illegally introduced may be seized

Any animal, animal product, plant or plant material or organism or biological product or goods introduced into Niue contrary to this Act, may, together with anything else that may have been in contact, be seized by a Quarantine Officer and may be treated as the Director thinks fit.

16 Control of arrivals from overseas

(1) No person arriving in Niue by any conveyance from any country shall leave that conveyance or any wharf or airport to which that conveyance may come without first completing a baggage declaration form regarding any animal, animal product, plant or plant material or organism or biological product or goods which he wishes to bring into Niue.

(2) No person shall remove or cause to be removed from any conveyance arriving in Niue from any country, or from any wharf or airport to which that conveyance may come, any animal , animal products, plant, plant material, or organism or biological product or goods without the permission of a Quarantine Officer.

17 Duty of Officers

It shall be the duty of all officers of the Post Office and of the Customs respectively to assist in carrying out the provisions of section 15 and to prevent the introduction into Niue of anything contrary to this Act, and for that purpose they may, in respect of anything so introduced or attempted to be introduced or brought, exercise all the powers confirmed by the Communications Act 1989 in the case of postal articles posted in breach of that Act, and by the Customs Act 1966 in the cause of uncustomed or prohibited goods.

PART 3
Disease Control

17A Duty to notify disease

It shall be the duty of any owner or person in charge of any animal or plant to notify as soon as practicable a Quarantine Officer, Livestock Officer, or other competent person if he suspects the presence of disease or pests in the animal or plant and if so directed, to hold for examination the carcase of any animal which has died.

17B Power to declare Infected Place

(1) A Quarantine Officer, Livestock Officer or other authorised person may, if he suspects that any animal or plant is diseased or infected, declare the land or premises on which the animal or plant is kept and any other land in the neighbourhood which may be specified to be an Infected Place.

(2) Whilst the declaration of an infected place is in effect, no animal or plant may be introduced and no animal, animal product, animal manure, plant, plant material, fitting, fodder, goods or thing may be removed from that Infected Place except by permission of a Quarantine Officer, Livestock Officer or other authorised person and under such conditions as may be specified.

(3) Any declaration of an infected place may be revoked at any time by a Quarantine Officer, Livestock Officer or other authorised person; and the force of any such declaration shall in any case, unless sooner renewed lapse 3 months after the date of that declaration.

17C Disease Control Area

(1) Whilst an infected place continues to exist the Director may designate an area around and including the infected place or the whole of Niue, to be a Disease Control Area.

(2) Whilst a Disease Control Area is in effect, the Director may by public notice or radio or television announcement direct that, subject to such conditions he may impose or exemptions he may give, no animal, animal product, animal excreta, plant, plant material, fodder, fittings, goods or other things as may be specified may be moved out of, or into, or within the Disease Control Area without the permission of a Quarantine Officer, Livestock Officer or other authorised person.

17D Powers of Director to destroy

The Director may, with the approval of the Minister of Agriculture cause steps to be taken to destroy any diseased or infected animals or plants or animals or plants suspected of being diseased or infected, for the purposes of eradicating or controlling a disease, or preventing its spread.

18 Emergency powers

(1) Cabinet may declare by proclamation that a state of agriculture emergency exists throughout all or any part or parts of Niue under the Public Emergency Act 1979, and while that state of emergency continues Cabinet may direct that such measures be taken as it or any person authorised by Cabinet may specify as necessary for the purpose of preventing the establishment of the serious disease or pest in Niue or any part of Niue or eradicating it from Niue or any part of Niue.

(2) The Cabinet may pay to the owner of any animal, animal product, plant or plant material or any other goods destroyed as an emergency measure an amount by way of compensation equal to the fair market value of it, fixed as at the time of the inspection that results in the destruction of the animal, animal product, plant, plant material or other goods, such compensation shall be ascertained by arbitration under the Arbitration Act 1908.

19 Diseases and pests in crops for export

(1) If the Quarantine Officer has reason to believe that any disease or pest is present or which contravenes the regulations of the importing country in any animal, animal product, plant, plant material or goods which a person intends to export he may by notice in writing direct that person not to export all or such portion of the animal, animal product, plant or plant material or such portion of the goods as the Quarantine Officer may decide.

(2) Any person who contrary to any such notice exports any animal, animal product, plant, plant material or goods commits an offence.

PART 4
REGULATIONS

20 Regulations

The Cabinet may make regulations for the purpose of carrying out this Act and without in any way limiting the generality of the foregoing –

(a) Providing for the treatment or seizure and destruction of any animal, animal products, plants, plant material or goods that are diseased or infected or suspected of being diseased or infected;

(b) Prescribing the powers and duties of Quarantine Officers;
(c) Providing for the eradication and prevention of the spread of any disease or pests;
(d) Prohibiting the introduction into Niue either generally or from any specified region, country, or place of origin of all animals, animal products, plants or plant material or organism or biological product or such of the above as may be named or identified as being likely to introduce any disease or pest into Niue;
(e) Prohibiting or restricting the introduction into Niue of any disease or pest or organism or biological product;
(f) Prescribing conditions for introducing any animal, animal product, plant or plant material or organism or biological product or goods into Niue either generally or from any specified region, country or place of origin;
(g) Prescribing the matters for which fees shall be payable under this Act, fixing the amount of those fees and the mode of their payment and recovery;
(h) Providing for such matters as are contemplated by or are necessary to give full effect to this Act and for its due administration.

PART 5
MISCELLANEOUS

21 Dispatch of animal or plant material to Niue

(1) No person shall be deemed to have introduced into Niue any animal, animal product, plant or plant material received by that person from overseas without his consent given before dispatch of the animal, animal product, plant or plant material to Niue.

(2) Notwithstanding that any person receives such animal, animal product, plant or plant material from overseas without his consent given before dispatch of the material, he shall on receipt of the animal, animal product, plant or plant material immediately notify a Quarantine Officer and carry out to the satisfaction of the Quarantine Officer such directions as the Quarantine Officer may give as to the treatment of the animal, animal product, plant or plant material.

22 False declarations and documents

Every person who makes any false declaration or tenders any false document under this Act knowing the declaration or document to be false commits an offence.

23 Offences

(1) Every person who fails to comply with or act in contravention of this Act or any Regulations made under it or any order, direction, requirement, or condition made, given, or imposed by the Director or Quarantine Officer under any powers conferred by or under this Act or any Regulations commits an offence.

(2) Every person who commits an offence against this Act is liable on conviction to a fine not exceeding 20 penalty units, or imprisonment of not more than 12 months.

24–25 [Spent]

APPROPRIATION (ANNUAL) ACT 2006

2006/277 – 1 July 2006

1 Short title
2 Grant and appropriation

To appropriate certain sums of money out of the Niue Assembly Account to the services for the year ending 30 June 2007 and to appropriate the supplies granted in that year

1 Short title

(1) This is the Appropriation (Annual) Act 2006.

(2) This Act shall relate to the financial year ending on 30 June 2007 (the "financial year").

2 Grant and appropriation

(1) There may be issued and supplied from the Niue Assembly Account towards making good the supplies granted to Her Majesty for the services of the financial year, for Recurrent Expenditure, Capital Projects, Corporations and Special Projects a sum which does not exceed $23,414,292 in total.

(2) The particulars of which are set out under the relevant headings in the Schedules.

Appropriation from the Niue Assembly Account for RECURRENT, CAPITAL, and CORPORATIONS for the Financial Year ending 30 June 2007

	Recurrent	Capital	Corporation	Special Projects	Total
NON TRADING DEPARTMENTS					
Administration Services	668,030				668,030
Agriculture	557,834				557,834
Community Affairs	1,964,425				1,964,425
Education	1,350,650				1,350,650
Environment	126,900				126,900
Health	1,500,090				1,500,090
Justice	394,922				394,922
Public Service Commission	319,877				319,877
Police	416,278				416,278
Public Works	706,294				706,294
Premiers	2,570,105				2,570,105
Taoga Niue	113,423				113,423
Treasury	505,303				505,303
Meteorological	82,901				82,901
	11,277,032				**11,277,032**
TRADING OPERATIONS					
Administration: Govt Residences	27,842				27,842
Public Works: All Trading	574,790				574,790
Treasury: Bondstore	673,438				673,438
Telecom & Postal	1,288,150				1,288,150
Niue Power	1,522,807				1,522,807
Bulk Fuel	4,492,949				4,492,949
Tourism Authority	148,194				148,194
	8,728,170				**8,728,170**
CORPORATIONS					
Broadcasting			238,556		238,556
NDB			0		0
			238,556		**238,556**
SPECIAL PROJECTS					
Cyclone Heta				995,534	995,534
NZAID				1,595,000	1,595,000
Donor Repayment				530,000	530,000
				3,120,534	**3,120,534**
CAPITAL PROJECTS					
Education		50,000			50,000
		50,000			**50,000**
TOTAL	**20,005,202**	**50,000**	**238,556**	**3,120,534**	**23,414,292**

ANNUAL ESTIMATES NIUE GOVERNMENT 2006/2007
STATEMENT OF ESTIMATED SOURCE & APPLICATION OF FUNDS

		2006/2007 ESTIMATES	2005/2006 VOTED	June Prov
SOURCE OF FUNDS				
Taxation	Income	1,969,644	1,844,442	1,846,818
	Import Duty	1,033,500	948,500	934,801
	Company	55,000	50,000	3,362
	Other	236,800	198,800	229,193
Total Taxation		**3,294,944**	**3,041,742**	**3,014,174**
Other	Interest on Investments	10,000	2,000	31,084
	Fishing Rights	382,775	262,775	243,067
	Other Government Receipts	1,259,053	1,116,715	845,333
Total Other Revenue		**1,651,828**	**1,381,490**	**1,119,484**
Total Department Revenue		4,946,772	4,423,232	4,133,658
Trading Operations		8,571,986	6,630,642	7,003,727
Corporations		110,000	80,000	50,267
Special Projects		2,870,534	3,611,631	3,018,561
Total Recurrent Revenue		**16,499,292**	**14,745,505**	**14,206,212**
TOTAL INTERNAL FUNDING		16,499,292	14,745,505	14,206,212
NZ Funding – Recurrent		6,915,000	6,952,500	6,952,500
TOTAL NZ FUNDING		6,915,000	6,952,500	6,952,500
TOTAL FUNDING REVENUE		**23,414,292**	**21,698,005**	**21,158,712**
APPLICATION OF FUNDS				
Departmental – Recurrent		11,277,032	10,978,294	11,163,781
Trading Operations		8,728,170	6,722,931	7,536,347
Corporations		238,556	285,149	232,617
Special Projects		3,120,534	3,611,631	2,484,581
Total Recurrent Application		**23,364,292**	**21,598,005**	**21,417,325**
Capital Projects		50,000	100,000	89,733
Total Capital Disbursement		**50,000**	**100,000**	**89,733**
TOTAL EXPENDITURE		**23,414,292**	**21,698,005**	**21,507,059**
RECURRENT SURPLUS/(DEFICIT)		**(0)**	**(0)**	**(348,346)**

GOVERNMENT OF NIUE
SUMMARY OF REVENUE FOR YEAR ENDING 30 JUNE 2007

DEPARTMENT	2006/2007 ESTIMATE	2005/2006 VOTED	June Prov
NON-TRADING			
Administrative Services	21,000	18,350	16,400
Agriculture	416,822	266,190	256,938
Community Affairs	600	0	0
Education	83,250	500	655
Health	152,500	9,500	8,126
Justice	25,000	22,500	28,353
Police	92,425	57,925	92,153
Public Works	185,800	208,242	157,031
Premiers	241,000	252,512	303,515
Taoga Niue	10,500	0	0
Treasury	3,717,475	3,587,113	3,266,215
Meteorological	400	400	4,272
TOTAL NON-TRADING	**4,946,772**	**4,423,232**	**4,133,658**
TRADING OPERATIONS			
Admin: Govt Residences	101,761	106,960	85,126
Public Works Trading	361,000	218,000	166,622
Treasury: Bond Store	956,600	794,000	802,636
Telecom & Postal	1,288,150	1,202,750	1,150,686
Niue Power	1,238,655	1,286,932	1,199,616
Bulk Fuel	4,625,820	3,022,000	3,599,041
TOTAL TRADING	**8,571,986**	**6,630,642**	**7,003,727**
CORPORATIONS			
Broadcasting	110,000	80,000	50,267
TOTAL CORPORATIONS	**110,000**	**80,000**	**50,267**
SPECIAL PROJECTS			
Cyclone Heta	995,534	1,826,430	1,746,022
NZ AID	1,875,000	1,785,201	1,272,539
TOTAL SPECIAL PROJECTS	**2,870,534**	**3,611,631**	**3,018,561**
TOTAL INTERNAL FUNDING	**16,499,292**	**14,745,505**	**14,206,212**
NZ FUNDING			
Recurrent	6,915,000	6,952,500	6,952,500
TOTAL NZ FUNDING	**6,915,000**	**6,952,500**	**6,952,500**
TOTAL REVENUE	**23,414,292**	**21,698,005**	**21,158,712**

GOVERNMENT OF NIUE
SUMMARY OF EXPENDITURE FOR YEAR ENDING 30 JUNE 2007

DEPARTMENT	2006/2007 ESTIMATE	2005/2006 VOTED	June Prov
NON-TRADING			
Administrative Services	668,030	726,200	780,155
Agriculture	557,834	508,612	531,851
Community Affairs	1,964,425	1,855,047	1,921,154
Education	1,350,650	1,486,286	1,544,651
Environment	126,900	99,011	99,802
Health	1,500,090	1,326,375	1,465,285
Justice	394,922	391,154	352,250
Public Service Commission	319,877	338,224	296,653
Police	416,278	344,392	355,646
Public Works	706,294	846,864	861,697
Premiers	2,570,105	2,324,815	2,328,138
Taoga Niue	113,423	0	0
Treasury	505,303	648,155	556,003
Meteorological	82,901	83,159	70,495
TOTAL NON TRADING	**11,277,032**	**10,978,294**	**11,163,781**
TRADING OPERATIONS			
Admin: Gov Residences	27,842	55,149	64,208
Public Works: All Trading	574,790	503,587	548,253
Treasury: Bond Store	673,438	650,463	719,766
Telecom & Postal Corporation	1,288,150	1,202,750	917,696
Niue Power	1,522,807	1,353,396	1,476,648
Bulk Fuel	4,492,949	2,747,571	3,592,146
Tourism Authority	148,194	210,016	217,630
TOTAL TRADING	**8,728,170**	**6,722,931**	**7,536,347**
CORPORATIONS			
Broadcasting	238,556	275,149	222,617
Niue Development Bank	0	10,000	10,000
TOTAL CORPORATIONS	**238,556**	**285,149**	**232,617**
SPECIAL PROJECTS			
Cyclone Heta	995,534	1,826,430	1,012,746
Donor Projects	530,000	0	0
NZ AID	1,595,000	1,785,201	1,471,835
TOTAL SPECIAL PROJECTS	3,120,534	3,611,631	2,484,581
RECURRENT EXPENDITURE	23,364,292	21,598,005	21,417,325
CAPITAL			
Taoga Niue Office	0	100,000	89,733
Capital Projects	50,000	0	0
CAPITAL EXPENDITURE	50,000	100,000	89,733
TOTAL EXPENDITURE	23,414,292	21,698,005	21,507,059

SUMMARIES OF BUDGET PROPOSALS FOR YEAR ENDING 30 JUNE 2007

REVENUE LESS EXPENDITURE

DEPARTMENT	2006/2007 ESTIMATE	2005/2006 VOTED	June Prov
TOTAL REVENUE	23,414,292	21,698,005	21,158,712
TOTAL EXPENDITURE	23,414,292	21,698,005	21,507,059
SURPLUS/(DEFICIT)	**(0)**	**(0)**	**(348,346)**

ARBITRATION ACT 1908

1908/8 (NZ) – 4 August 1908

1 Short title
2 Interpretation

References by Consent out of Court

3 Submission to be irrevocable
4 Provisions implied in submissions
5 Power of Court to stay proceedings where there is a submission
6 Appointment of arbitrator or umpire
7 Power for parties to supply vacancy
8 Powers of arbitrator
9 Witnesses may be subpoenaed
10 Power to enlarge time for making award
11 Power to remit award
12 Power to remove arbitrator or set aside award
13 Enforcing award

References Under Order of Court

14 Reference for report
15 Power to refer in certain cases
16 Powers and remuneration of arbitrators
17 Court to have powers as in references by consent
18 Court of Appeal to have powers of Court

General

19 Power to compel attendance of witness in any part of Niue, and to order prisoner to attend
20 [Repealed]
21 Costs
22 Arbitrator or umpire entitled to remuneration
23 Power to make rules
24 Act binds the Government
25 Application of Act to references under statutory powers

SCHEDULES

To consolidate certain enactments relating to arbitration

1 Short title

This is the Arbitration Act 1908.

2 Interpretation

In this Act –

"arbitrator" includes referee and valuer;

"Court" means the High Court, and includes a Judge of it;

"rules of Court" means rules of the Court of Appeal, or of the High Court, made by the proper authority under this Act;

"submission" means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named in it or not, or under which any question or matter is to be decided by one or more persons to be appointed by the contracting parties or by some person named in the agreement.

References by Consent out of Court

3 Submission to be irrevocable

A submission, unless a contrary intention is expressed in it, shall be irrevocable, except by leave of the Court and shall have the same effect in all respects as if made an order of Court.

4 Provisions implied in submissions

A submission, unless a contrary intention is expressed in it, shall be deemed to include the provisions in Schedule 2 so far as they are applicable to the reference under the submission.

5 Power of Court to stay proceedings where there is a submission

If any party to a submission or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to those legal proceedings may, at any time before filing a statement of defence or a notice of intention to defend or taking any other step in the proceedings, apply to the Court in which the proceedings were commenced to stay the proceedings; and that Court may, if satisfied that there is no sufficient reason why the matter should not be referred under the submission, and that the applicant was at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, make an order staying the proceedings.

6 Appointment of arbitrator or umpire

(1) In any of the following cases –

(a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not concur in the appointment of an arbitrator; or

(b) Where an appointed arbitrator fails to act, or is or becomes incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy; or

(c) Where the parties or 2 arbitrators are at liberty to appoint an umpire or a third arbitrator or where 2 arbitrators are required to appoint an umpire and do not appoint one; or

(d) Where an appointed umpire or third arbitrator fails to act, or is or becomes incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy –

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire or a third arbitrator.

(2) If the appointment is not made within 7 days after the service of the notice, the Court may, on application by the party who gave the notice, appoint an arbitrator or umpire or a third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

7 Power for parties to supply vacancy

(1) Where a submission provides that the reference shall be to 2 arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention –

(a) If either of the appointed arbitrators fails to act, or is or becomes incapable of acting, or does, the party who appointed him may appoint a new arbitrator in his place; and

(b) If one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for 7 days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent.

(2) The Court may set aside any appointment made in pursuance of this section.

8 Powers of arbitrator

The arbitrators or umpire acting under a submission may, unless the submission expresses a contrary intention –

(a) Administer oaths to the parties and witnesses appearing; and

(b) [Repealed]

(c) Correct in any award any clerical mistake or error arising from any accidental slip or omission.

9 Witnesses may be subpoenaed

Any party to a submission may sue out a write of *subpoena ad testificandum*, or a writ of *subpoena duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

10 Power to enlarge time for making award

The time for making an award may be enlarged by order of the Court, whether the time for making the award has expired or not.

11 Power to remit award

(1) In all cases of reference to arbitration the Court may remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2) Where an award is remitted the arbitrators or umpire shall, unless the order otherwise directs, make their award within 3 months after the date of the order.

12 Power to remove arbitrator or set aside award

(1) Where an arbitrator or umpire has misconducted himself or the proceedings the Court may remove him.

(2) Where an arbitrator or umpire has misconducted himself or the proceedings, or any arbitration or award has been improperly procured, the Court may set the award aside.

13 Enforcing award

An award on a submission may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

References under Order of Court

14 Reference for report

(1) Subject to rules of Court, the Court may refer any question arising in any cause or matter (other than a criminal proceeding) for inquiry or report to an official or special referee.

(2) The report of such official or special referee may be adopted wholly or partially by the Court, and if so adopted may be enforced as a judgment or order to the same effect.

15 Power to refer in certain cases

In any cause or matter (other than a criminal proceeding by the Crown) –

(a) If all the parties interested who are not under disability consent; or

(b) If the question in dispute consists wholly or in part of matters of account; or

(c) If the cause of matter requires any prolonged examination of documents, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be made before a jury or conducted by the Court through its other ordinary officers –

the Court may at any time order the whole cause or matter or any question or issue of fact arising therein, to be tried before an arbitrator agreed on by the parties, or before an officer of the Court.

16 Powers and remuneration of arbitrators

(1) In all cases of reference to an arbitrator under an order of the Court in any cause or matter the arbitrator shall be deemed to be an officer of the Court, and shall have such authority, and shall conduct the reference in such manner, as is prescribed by rules of Court, and subject to it, as the Court directs.

(2) The report or award of any arbitrator on any such reference shall, unless set aside by the Court, be equivalent to the verdict of a jury.

(3) The remuneration to be paid to any arbitrator to whom any matter is referred under order of the Court shall be determined by the Court.

17 Court to have powers as in references by consent

The Court shall, as to references under order of the Court, have all the powers conferred by this Act on the Court as to references by consent out of Court.

18 Court of Appeal to have powers of Court

The Court of Appeal shall have all the powers conferred by this Act on the Court under the provisions relating to references under order of the Court.

General

19 Power to compel attendance of witness in any part of Niue, and to order prisoner to attend

(1) The Court may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before any arbitrator or umpire of a witness wherever he may be in Niue.

(2) The Court may also, by order in writing under the hand of a Judge, require a prisoner to be brought up for examination before any arbitrator or umpire, and such order shall operate and be obeyed in like manner in all things as a writ *of habeas corpus ad testificandum* issued out of the Court.

20 [Repealed]

21 Costs

Any order may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

22 Arbitrator or umpire entitled to remuneration

An arbitrator or umpire shall be entitled to a reasonable remuneration for his services as such arbitrator or umpire, and if the parties to the submission do not agree as to the amount to be paid, or as to the mode and time of payment, a Judge may, on a summary application to him for that purpose, fix and determine all or any of such matters.

23 Power to make rules

Rules may be made in the manner prescribed by section 70 of the Niue Act 1966 for the purpose of giving effect to this Act in the Court of Appeal or the High Court.

24 Act binds the Government

This Act binds the Government of Niue but no arbitration involving the Government shall proceed without the consent of Cabinet.

25 Application of Act to references under statutory powers

This Act applies to every arbitration under any Act passed before or after the coming into operation of this Act as if the arbitration were under a submission, except in so far as this Act is inconsistent with the Act regulating the arbitration, or with any rules or procedure authorised or recognised by that Act.

SCHEDULES

SCHEDULE 1
[Spent]

SCHEDULE 2
Section 4

Provisions to be Implied in Submissions

1 If no other mode of reference is provided, the reference shall be to a single arbitrator.

2 If the reference is to 2 arbitrators, the 2 arbitrators shall appoint an umpire immediately after they are themselves appointed.

3 {Repealed 1938]

4 If the arbitrators have delivered to any party to the submission, or to the umpire, a notice in writing stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

5 [Repealed]

6 The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire on oath in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings, or documents within their possession or power that may be required or called for, and do all such other things as during the proceedings on the reference the arbitrators or umpire may require.

7 The witnesses on the reference shall, if the arbitrators or umpire think fit, be examined on oath.

8 The award made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

9 The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what amount those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

10 The arbitrators or umpire shall have the same power as the Court to order specific performance of any contract other than a contract relating to land or interest in land.

11 The arbitrators or umpire may make an interim award.

ARBITRATION AMENDMENT ACT 1938

1938/6 (NZ) – 1 January 1939

1 Short title
2 Interpretation
3 Submission not to be discharged by death of party
4 [Repealed]
5 Power of Court where arbitrator is removed or appointment of arbitrator is revoked
6 Appointment of three arbitrators
7 Provisions relating to umpires
8 Arbitrators and umpires to use due dispatch
9 [Spent]
10 Additional powers of Court
11 Statement of case by arbitrator or umpire
12 Entry of judgment in terms of award
13 Interest on awards
14 Provision as to costs
15 Taxation of arbitrator's or umpire's fees
16 Power of Court to give relief where arbitrator is not impartial or dispute referred involves question of fraud
17 [Spent]
18 Limitation of time for commencing arbitration proceedings
19-21 [Repealed]
SCHEDULE

To amend the Arbitration Act 1908

1 Short title

This is the Arbitration Amendment Act 1938, and shall be read together with and deemed part of the Arbitration Act 1908 (the principal Act).

2 Interpretation

References in this Act and in the principal Act to an award shall be deemed to include references to an interim award.

3 Submission not to be discharged by death of party

(1) A submission shall not be discharged by the death of any party to it, either as respects the deceased or any other party, but shall in such an event be enforceable by or against the personal representative of the deceased.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this section shall be taken to affect the operation of any enactment or rule of law by virtue of which any right of action is extinguished by the death of a person.

4 [Repealed by 2004/270]

5 Power of Court where arbitrator is removed or appointment of arbitrator is revoked

(1) Where an arbitrator (not being a sole arbitrator) or 2 or more arbitrators (not being all the arbitrators) or an umpire who has not entered on the reference is or are removed by the Court, the Court may, on the application of any party to the submission, appoint a person or persons to act as arbitrator or arbitrators or umpire in place of the person or persons so removed.

(2) Where the appointment of an arbitrator or arbitrators or umpire is revoked by leave of the Court, or a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the Court, the Court may, on the application of any party to the submission, either –

(a) Appoint a person to act as sole arbitrator in place of the person or persons removed; or

(b) Order that the submission shall cease to have effect with respect to the dispute referred.

(3) A person appointed by the Court as an arbitrator or umpire shall have the like power to act in the reference and to make an award as if he had been appointed under the terms of the submission.

(4) Where it is provided (whether by means of a provision in the submission or otherwise) that an award under a submission shall be a condition precedent to the bringing of an action with respect to any matter to which the submission applies, the Court, if it orders (whether under this section or under any other enactment) that the submission shall cease to have effect as regards any particular dispute, may further order that the provision making an award a condition precedent to the bringing of an action shall also cease to have effect as regards that dispute.

6 Appointment of three arbitrators

(1) Where a submission provides that the reference shall be to 3 arbitrators, one to be appointed by each party and the third to be appointed by the 2 appointed by the parties, the submission shall have effect as if it provided for the appointment of an umpire, and not for the appointment of a third arbitrator, by the 2 arbitrators appointed by the parties.

(2) Where a submission provides that the reference shall be to 3 arbitrators to be appointed otherwise than as mentioned in the subsection (1), the award of any 2 of the arbitrators shall be binding.

7 Provisions relating to umpires

(1) [Spent]

(2) [Spent]

(3) At any time after the appointment of an umpire, however appointed, the Court may, on the application of any party to the reference and notwithstanding anything to the contrary in the submission, order that the umpire shall enter on the reference in lieu of the arbitrators and as if he were a sole arbitrator.

8 Arbitrators and umpires to use due dispatch

(1) The Court may, on the application of any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

(2) An arbitrator or umpire who is removed by the Court under this section shall not be entitled to receive any remuneration in respect of his services.

(3) Subject to section 11 (2) of the principal Act and to anything to the contrary in the submission, an arbitrator or umpire shall have power to make an award at any time.

(4) For the purposes of this section the expression "proceeding with a reference" includes, in a case where 2 arbitrators are unable to agree, giving notice of that fact to the parties and to the umpire.

9 [Spent]

10 Additional powers of Court

(1) (a) The Court shall have, for the purpose of and in relation to a reference, the same power of making orders in respect of any of the matters set out in the Schedule as it has for the purpose of and in relation to an action or matter in the Court.

(b) Nothing in paragraph (a) shall be taken to prejudice any power which may be vested in an arbitrator or umpire of making orders with respect to any of the matters aforesaid.

(2) Where relief by way of interpleader is granted and it appears to the Court that the claims in question are matters to which a submission to which the claimants are parties applies, the Court may direct the issue between the claimants to be determined under the submission.

(3) Where an application is made to set aside an award the Court may order that any money made payable by the award shall be brought into Court or otherwise secured pending the determination of the application.

11 Statement of case by arbitrator or umpire

(1) An arbitrator or umpire may, and shall if so directed by the Court, state –

(a) Any question of law arising in the course of the reference; or

(b) An award or any part of an award –

in the form of a special case for the decision of the Court.

(2) A special case with respect to an interim award or with respect to a question of law arising in the course of a reference may be stated, or may be directed by the Court to be stated, notwithstanding that proceedings under the reference are still pending.

(3) A decision of the Court under this section shall be deemed to be a judgment of the Court but no appeal shall lie from the decision of the Court on any case stated under subsection (1) (a) without the leave of the Court or of the Court of Appeal.

12 Entry of judgment in terms of award

Where leave is given under section 13 of the principal Act to enforce an award in the same manner as a judgment or order, judgment may be entered in terms of the award.

13 Interest on awards

A sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

14 Provision as to costs

(1) (a) Any provision in a submission to the effect that the parties or any party to it shall in any event pay the whole or any part of the costs of the reference or award shall be void; and the principal Act shall in the case of a submission containing any such provision have effect as if that provision were not contained in it.

(b) Nothing herein shall invalidate such a provision when it is part of an agreement to submit to arbitration a dispute which has arisen before the making of such agreement.

(2) If no provision is made by an award with respect to the costs of the reference, any party to the reference may within 14 days of the publication of the award, or such further time as the Court may direct, apply to the arbitrator for an order directing by and to whom such costs shall be paid, and thereupon the arbitrator shall, after hearing any party who may desire to be heard, amend his award by adding to it such directions with respect to the payment of the costs of the reference.

15 Taxation of arbitrator's or umpire's fees

(1) If in any case an arbitrator or umpire refuses to deliver his award except on payment of the fees demanded by him the Court may, on an application for the purpose, order that the arbitrator or umpire shall deliver the award to the applicant on payment into Court by the applicant of the fees demanded shall be taxed by the taxing officer and that out of the money paid into Court there shall be paid out to the arbitrator or umpire by way of fees such sum as may be found reasonable on taxation and that the balance of the money, if any, shall be paid out to the applicant.

(2) An application for the purposes of this section may be made by any party to the reference unless the fees demanded have been fixed by a written agreement between him and the arbitrator or umpire.

(3) A taxation of fees under this section may be reviewed in the same manner as a taxation of costs.

(4) The arbitrator or umpire shall be entitled to appear and be heard on any taxation or review of taxation under this section.

16 Power of Court to give relief where arbitrator is not impartial or dispute referred involves question of fraud

(1) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred to an arbitrator named or designated in the agreement and after a dispute has arisen any party applies, on the ground that the arbitrator so named or designated is not or may not be impartial, for leave to revoke the submission or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration, it shall not be a ground for refusing the application that the said party at the time when he made the agreement knew, or ought to have known, that the arbitrator by reason of his relation towards any other party to the agreement or of his connection with the subject referred might not be capable of impartiality.

(2) Where an agreement between any parties provides that disputes which may arise in the future between them shall be referred and a dispute which so arises involves the question whether any such party has been guilty of fraud, the Court shall, so far as may be necessary to enable that question to be determined by the Court, have power to order that the agreement shall cease to have effect and power to give leave to revoke any submission made thereunder.

(3) In any case where by virtue of this section the Court has power to order that an agreement shall cease to have effect or to give leave to revoke a submission, the Court may refuse to stay any action brought in breach of the agreement.

17 [Spent]

18 Limitation of time for commencing arbitration proceedings

(1)–(5) [Spent]

(6) Where the terms of an agreement to refer future disputes to arbitration provide that any claims to which the agreement applies shall be barred unless notice to appoint an arbitrator is given or an arbitrator is appointed or some other step to commence arbitration proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expires, may, on such terms, if any, as the justice of the case may require, but without prejudice to the foregoing provisions of this section, extend the time for such period.

19–21 [Repealed by 2004/270]

SCHEDULE

Section 10

MATTERS IN RESPECT OF WHICH THE COURT MAY MAKE ORDERS

(1) Security for costs.

(2) Discovery of documents and interrogatories.

(3) The giving of evidence by affidavit.

(4) Examination on oath of any witness before an officer of the Court or any other person, and the issue of a commission or request for the examination of a witness out of the jurisdiction.

(5) The preservation, interim custody, or sale of any goods which are the subject-matter of the reference.

(6) Securing the amount in dispute in the reference.

(7) The detention, preservation, or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence.

(8) Interim injunctions or the appointment of a receiver.

ARBITRATION CLAUSES (PROTOCOL) AND THE ARBITRATION (FOREIGN AWARDS) ACT 1933

1933/4 (NZ) – 28 October 1933

1 Short title

PART 1
PROTOCOL ON ARBITRATION CLAUSES
2 Interpretation
3 Stay of court proceedings

PART 2
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS
4 Application of Part 2
5 Effect of foreign awards
6 Conditions for enforcement
7 Evidence
8 Meaning of "final award"
9 Saving

SCHEDULES

To give effect in Niue (1) to a protocol on arbitration clauses signed on behalf of His Majesty at a meeting of the Assembly of the League of Nations held on 24 September 1923 and (2) to a convention on the execution of foreign arbitral awards signed on behalf of His Majesty on 26 September 1927

1 Short title

(1) This Act is the Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act 1933.

(2) This Act shall be read together with and deemed part of the Arbitration Act 1908 (the principal Act).

PART 1
PROTOCOL ON ARBITRATION CLAUSES

2 Interpretation

In this Part "the said protocol" means the protocol the terms of which are set forth in Schedule 1.

3 Stay of court proceedings

Notwithstanding anything in the principal Act, if any party to a submission made in pursuance of an agreement to which the said protocol applies, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking other steps in the proceedings, apply to that Court to stay the proceedings, and that Court or a Judge of it, unless satisfied that the agreement or arbitration has become inoperative or cannot proceed, or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred shall make an order staying the proceedings.

PART 2
ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

4 Application of Part 2

This Part applies to any award made after 28 July 1924 –

(a) In pursuance of an agreement for arbitration to which the protocol set out in Schedule 1 applies; and
(b) Between persons of whom one is subject to the jurisdiction of one of the powers which is a party to the Convention and of whom the other is subject to the jurisdiction of another of those powers; and
(c) In one of the territories to which the Convention applies.

5 Effect of foreign awards

(1) A foreign award shall, subject to this Part be enforceable in Niue either by action or under section 13 of the principal Act.

(2) Any foreign award which would be enforceable under this Part shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off, or otherwise in any legal proceedings in Niue, and any references in this Part to enforcing a foreign award shall be construed as including references to relying on an award.

6 Conditions for enforcement

(1) In order that a foreign award may be enforceable under this Part it must have –

(a) Been made in pursuance of an agreement for arbitration which was valid under the law by which it was governed;
(b) Been made by the tribunal provided for in the agreement or constituted in manner agreed upon by the parties;
(c) Been made in conformity with the law governing the arbitration procedure;
(d) Become final in the country in which it was made;
(e) Been in respect of a matter which may lawfully be referred to arbitration under the law of Niue; –

and the enforcement of it must not be contrary to the public policy or the law of Niue.

(2) A foreign award shall not be enforceable under this Part if the court dealing with the case is satisfied that –

(a) The award has been annulled in the country in which it was made; or
(b) The party against whom it is sought to enforce the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or was under some legal incapacity and was not properly represented; or
(c) The award does not deal with all the questions referred or contains decisions on matters beyond the scope of the agreement for arbitration:

Provided that, if the award does not deal with all the questions referred, the Court may either postpone the enforcement of the award or order its enforcement subject to the giving of such security by the person seeking to enforce it.

(3) If a party seeking to resist the enforcement of a foreign award proves that there is any ground other than the non-existence of the conditions specified in section 6 (1) (a), (b) and (c), or the existence of the conditions specified in section

6 (2) (b) and (c) entitling him to contest the validity of the award, the Court may, either refuse to enforce the award or adjourn the hearing until after the expiration of such period as appears to the Court to be reasonably sufficient to enable that party to take the necessary steps to have the award annulled by the competent tribunal.

7 Evidence

(1) The party seeking to enforce a foreign award must produce –

(a) The original award or a copy of it duly authenticated in manner required by the law of the country in which it was made; and

(b) Evidence proving that the award has become final; and

(c) Such evidence as may be necessary to prove that the award is a foreign award and that the conditions mentioned in section 6 (1) (a), (b) and (c) are satisfied.

(2) In any case where any document required to be produced under subsection (1) is in a foreign language, it shall be the duty of the party seeking to enforce the award to produce a translation certified as correct by a diplomatic or consular agent of the country to which that party belongs, or certified as correct in such other manner as may be sufficient under the law of Niue.

(3) Subject to this section, rules of Court may be made under section 70 of the Niue Act 1966 with respect to the evidence which must be furnished by a party seeking to enforce an award under this Part.

8 Meaning of "final award"

For the purposes of this Part an award shall not be deemed final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

9 Saving

Nothing in this Part shall –

(a) Prejudice any rights which any person would have had of enforcing in Niue any award or of availing himself in Niue of any award if this Part had not been enacted; or

(b) Apply to any award made on an arbitration agreement governed by the law of Niue.

SCHEDULES

SCHEDULE 1

PROTOCOL ON ARBITRATION CLAUSES

The Undersigned, being duly authorised, declare they accept, on behalf of the countries which they represent, the following provisions:

1 Each of the Contracting States recognises the validity of an agreement whether relating to existing or future differences between parties subject respectively to the jurisdiction of different Contracting States by which the parties to a contract agree to submit to arbitration all or any differences that may arise in connection with such contract relating to commercial matters or to any other matter capable of settlement by arbitration, whether or not the arbitration is to take place in a country to whose jurisdiction none of the parties is subject.

Each Contracting State reserves the right to limit the obligation mentioned above to contracts which are considered as commercial under its national law. Any Contracting State which avails itself of this right will notify the Secretary-General of the League of Nations, in order that the other Contracting States may be so informed.

2 The arbitral procedure, including the constitution of the arbitral tribunal, shall be governed by the will of the parties and by the law of the country in whose territory the arbitration takes place.

The Contracting States agree to facilitate all steps in the procedure which require to be taken in their own territories, in accordance with the provisions of their law governing arbitral procedure applicable to existing differences.

3 Each Contracting State undertakes to ensure the execution by its authorities and in accordance with the provisions of its national laws of arbitral awards made in its own territory under the preceding articles.

4 The tribunals of the Contracting Parties, on being seized of a dispute regarding a contract made between persons to whom article 1 applies and including an arbitration agreement, whether referring to present or future differences, which is valid in virtue of the said article and capable of being carried into effect, shall refer the parties on the application of either of them to the decision of the arbitrators.

Such reference shall not prejudice the competence of the judicial tribunals in case the agreement or the arbitration cannot proceed or become inoperative.

5 The present protocol, which shall remain open for signature by all States, shall be ratified. The ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who shall notify such deposit to all the signatory States.

6 The present protocol shall come into force as soon as 2 ratifications have been deposited. Thereafter it will take effect, in the case of each Contracting State, one month after the notification by the Secretary-General of the deposit of its ratification.

7 The present protocol may be denounced by any Contracting State as giving one year's notice. Denunciation shall be effected by a notification addressed to the Secretary-General of the League, who will immediately transmit copies of such notification to all the other signatory States and inform them of the date on which it was received. The denunciation shall take effect one year after the date on which it was notified to the Secretary-General, and shall operate only in respect of the notifying State.

8 The Contracting States may declare that their acceptance of the present protocol does not include any or all of the under-mentioned territories – that is to say, their colonies, overseas possessions or territories, protectorates, or the territories over which they exercise a mandate.

The said States may subsequently adhere separately on behalf of any territory thus excluded. The Secretary-General of the League of Nations shall be informed as soon as possible of such adhesions. He shall notify such adhesions to all signatory States. They will take effect one month after the notification by the Secretary-General to all signatory States.

The Contracting States may also denounce the protocol separately on behalf of any of the territories referred to above Article 7 applies to such denunciation.

SCHEDULE 2

Convention on the Execution of Foreign Arbitral Awards

Article 1

In the territories of any High Contracting Party to which the present convention applies, an arbitral award made in pursuance of an agreement, whether relating to existing or future differences (hereinafter called "a submission to arbitration") covered by the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923, shall be recognised as binding and shall be enforced in accordance with the rules of the procedure of the territory where the award is relied upon, provided that the said award has been made in a territory of one of the High Contracting Parties to which the present convention applies and between persons who are subject to the jurisdiction of one of the High Contracting Parties.

To obtain such recognition or enforcement, it shall, further, be necessary –

(a) That the award has been made in pursuance of a submission to arbitration which is valid under the law applicable to it;

(b) That the subject matter of the award is capable of settlement by arbitration under the law of the country in which the award is sought to be relied upon;

(c) That the award has been made by the arbitral tribunal provided for in the submission to arbitration, or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) That the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open *to opposition, appel or pourvoi en cassation* (in the countries where such forms of procedure exist) or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) That the recognition or enforcement of the award is not contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon.

Article 2

Even if the conditions laid down in article 1 are fulfilled, recognition and enforcement of the award shall be refused in the Court is satisfied –

(a) That the award has been annulled in the country in which it was made;

(b) That the party against whom it is sought to use the award was not given notice of the arbitration proceeding in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;

(c) That the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

If the award has not covered all the questions submitted to the arbitral tribunal, the competent authority of the country where recognition or enforcement of the award is sought can, if it think fit, postpone such recognition or enforcement or grant it subject to such guarantee as that authority may decide.

Article 3

If the party against whom the award has been made proves that, under the law governing the arbitration procedure, there is a ground, other than the grounds referred to in article 1 (a) and (c), and article 2 (b) and (c), entitling him to contest the validity of the award in a Court of law, the court may, if it thinks fit, either refuse recognition or enforcement of the award or adjourn the consideration of it, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Article 4

The party relying upon an award or claiming its enforcement must supply, in particular:

(1) The original award or a copy of duly authenticated under the requirements of the law of the country in which it was made;

(2) Documentary or other evidence to prove that the award has become final, in the sense defined in article 1 (d), in the country in which it was made;

(3) When necessary, documentary or other evidence to prove that the conditions laid down in article (1) and (2) (a) and (c) have been fulfilled.

A translation of the award and of the other documents mentioned in this article into the official language of the country where the award is sought to be relied upon may be demanded. Such translation must be certified correct by a diplomatic or consular agent of the country to which the party who seeks to rely upon the award belongs or by a sworn translator of the country where the award is sought to be relied upon.

Article 5

The provisions of the above articles shall not deprive any interested party of the right of availing himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

Article 6

The present convention applies only to arbitral awards made after the coming into force of the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923.

Article 7

The present convention, which will remain open to the signature of all the signatories of the Protocol of 1923 on Arbitration Clauses, shall be ratified.

It may be ratified only on behalf of those members of the League of Nations and non-member States on whose behalf the Protocol of 1923 shall have been ratified.

Ratifications shall be deposited as soon as possible with the Secretary-General of the League of Nations, who will notify such deposit to all the signatories.

Article 8

The present convention shall come into force 3 months after it shall have been ratified on behalf of 2 High Contracting Parties. Thereafter, it shall take effect, in the case of each High Contracting Party, 3 months after the deposit of the ratification on its behalf with the Secretary-General of the League of Nations.

Article 9

The present convention may be denounced on behalf of any member of the League or non-member State. Denunciation shall be notified in writing to the Secretary-General of the League of Nations, who will immediately send a copy of it, certified to be in conformity with the notification, to all other Contracting Parties, at the same time informing them of the date on which he received it.

The denunciation shall come into force only in respect of the High Contracting Party which shall have notified it, and one year after such notification shall have reached the Secretary-General of the League of Nations.

The denunciation of the Protocol on Arbitration Clauses shall entail, *ipso facto*, the denunciation of the present convention.

Article 10

The present convention does not apply to the colonies, protectorates, or territories under suzerainty or mandate of any High Contracting Party unless they are specially mentioned.

The application of this convention to one or more of such colonies, protectorates or territories to which the Protocol on Arbitration Clauses, opened at Geneva on 24 September 1923, applies, can be effected at any time by means of a declaration addressed to the Secretary-General of the League of Nations by one of the High Contracting Parties.

Such declaration shall take effect 3 months after the deposit of it.

The High Contracting Parties can at any time denounce the convention for all or any of the colonies, protectorates, or territories referred to above. Article 9 hereof applies to such denunciation.

Article 11

A certified copy of the present convention shall be transmitted by the Secretary-General of the League of Nations to every member of the League of Nations and to every non-member State which signs the same.

ARCHIVES ACT 1992

1992/166 – 5 November 1992

1 Short title

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To provide for the better preservation of the public records of Niue

1 Short title

This is the Archives Act 1992.

PART 1
PRELIMINARY

2 Interpretation

In this Act –

"Archives Office" means the National Archives of Niue established under this Act;

"Archivist" means the Archivist appointed under this Act;

"Government office" means any ministry, department, office, agency or instrument of any kind of the legislative or executive or judicial government of Niue; and includes any office or corporation or other body declared by Cabinet to be a Government office for the purposes of this Act;

"public records" means all such documentary materials of any kind, nature, or description which have been drawn up, made, received, acquired or used in the course of legislative, administrative or executive transactions or in proceedings in any Court, together with all exhibits and other material evidence which form part or are annexed to or are otherwise related to specific documents, which are or are required to be in the custody of any servant of the Government or Government office, or which may at the commencement of this Act or thereafter be transferred to or acquired by the Archives Office.

3 Application

Nothing in this Act or in any regulations made under this Act shall apply with respect to any public record which has been drawn up, received, acquired or used by any Government office if such record discloses any information which is required to be kept secret under any enactment.

PART 2
ADMINISTRATION

4 Archives Office

(1) There shall continue to be established an Archives Office to be known as the "National Archives of Niue" wherein shall be stored for better preservation such of the public records of Niue as are transferred to or acquired by the Archives Office under this Act.

(2) Subject to any general or special directions which may be given by Cabinet, the Archivist may by contract or bequest or in any like manner acquire for the Archives Office all such original records, manuscripts and other documentary materials, or copies, or replicas of it, other than public records, as the Archivist may deem necessary or desirable to secure, and all such materials shall be deemed to be public records of Niue for the purposes of this Act.

5 Archivist

There shall be appointed as a member of the Public Service an Archivist who shall, subject to any directions given to the Archivist by Cabinet, be charged with the care, custody, control and administration of the public records in the Archives Office and the public access to it and with the performance of any other duties prescribed by this Act.

6 Delegation of the Archivist's powers

(1) The Archivist may delegate in writing to any person or class of persons any of his powers under this Act, except the power of authorising the destruction or disposal of public records.

(2) (a) Subject to any general or special directions given or conditions attached by the Archivist, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on such person directly by this section and not by delegation.

(b) No such delegation shall prevent the exercise of any power by the Archivist.

(3) Every person purporting to act pursuant to any delegation shall, in the absence of proof to the contrary, be presumed to be acting under the terms of the delegation.

(4) Every delegation under this section shall, until it is revoked, continue in force under its tenor, notwithstanding the fact that the Archivist by whom it was made may have ceased to hold office, and shall continue to have effect as if made by his successor in office.

PART 3
CUSTODY AND PRESERVATION OF ARCHIVES

7 Deposit of public records

(1) All public records of the age of 15 years or over (other than those which under any Act are required to be held in the custody of a special person or Government office) which in the opinion of the Archivist are of sufficient value to warrant their preservation as –

(a) Evidence of the organisation, functions, and transactions of the Government office in which they were originally made or received; or

(b) Evidence of public or private personal or property rights or civic rights; or

(c) Containing historical or general information, shall be transferred to the custody of the Archivist and be deposited in the Archives Office.

(2) Notwithstanding subsection (1) –

(a) Where the Archivist is satisfied that the deposit in the Archives Office of any particular public record of the age of 15 years or over would unduly prejudice the effective administration of any Government office, the Archivist shall defer the deposit of that public record for such period as may be agreed upon between the Archivist and the administrative head of the Government office affected;

(b) Where the administrative head of the Government office having the possession or control of any public record satisfies the Archivist that by reason of its secret or confidential nature it would not be in the public interest immediately to deposit that record in the Archives Office, the Archivist shall defer the deposit of that public record for such period as may be agreed upon between that administrative head and the Archivist;

(c) Where the Minister in charge of any Government office certifies that in his opinion any specified public record or specified class of public records in the custody or control of the Government office contains information the release of which may adversely affect the security of Niue or relations between the Government of Niue and the Government of any other country, the deposit in the Archives Office or that public record or of public records of that class shall be deferred for such period or shall be made subject to such conditions as to access or otherwise as that Minister directs;

(d) Where the deposit of any public record in the Archives Office is deferred as aforesaid, the Archivist may prescribe any conditions the Archivist thinks fit to ensure the safe preservation of any such record during the time they are kept in a Government office.

(3) Any public records deposited under subsection (2) may be deposited unconditionally or, if the administrative head of the Government office making the deposit so requires, shall be deposited subject to such conditions as to access and otherwise as may be agreed upon by the Archivist and the administrative head of that office.

(4) Where the administrative head of any Government office and the Archivist are unable to agree as to whether or not the deposit of any records in the Archives Office should be deferred or as to the period for which that deposit should be deferred or as to the conditions as to access and otherwise on which any public records should be deposited, that question shall be determined by Cabinet, whose decision shall be final.

8 Records of less than 15 years

(1) The Archivist may allow the deposit in the Archives Office of public records of less than 15 years of age if the Archivist considers that they are of sufficient value for deposit.

(2) Any deposit of public records under subsection (1) may be subject to any special conditions imposed by the administrative head of the Government office making the deposit.

9 Records not in the Archives Office

(1) The Archivist shall be entitled to inspect any public records that are for the time being in the possession or under the control of any Government office and give such instructions as to their safe preservation and such advise as to their efficient and economical administration and management as the Archivist considers necessary.

(2) Nothing in this section shall be deemed to authorise the Archivist to inspect the contents of any public records –

(a) Which by law are forbidden to be communicated to the Archivist; or

(b) Which are secret or confidential;

except with the consent of the administrative head of the Government office having the custody of it.

10 Return of public records

Where the administrative head of the Government office by which any public record was deposited in the Archives, or the administrative head of the successor of that Government office, satisfies the Archivist that the public record is required for use in that Government office, the Archivist shall return such public record to the custody of that Government office for such period as may be agreed upon between the Archivist and the administrative head, and subject to such conditions as the Archivist may prescribe to ensure the safe custody and preservation of that public record during the time it is kept in that Government office.

11 Public records to be surrendered

Where any public record is in the custody or possession of any person other than a public officer or other person authorised to have such custody or possession in his official capacity, that person shall, on demand in writing by the Archivist, deposit that public record in the Archives Office or such other Government office as the Archivist may direct.

12 Public records not to be destroyed

(1) No person shall destroy or otherwise dispose of, or authorise the destruction or other disposal of, any public record of any kind whatsoever that is in his possession or under his control, except with the consent of the Archivist given under this Act.

(2) Before authorising the destruction of any public record or any class of it, the Archivist may consult with any person whom the Archivist considers qualified to give advice as to the value of permanent preservation.

13 Routine destruction of public records

The Archivist may authorise the immediate destruction, or the destruction after the expiration of such specified time as may be agreed upon between the

Archivist and the administrative head of the Government office concerned, or any specified public record or class of public records that –

(a) By reason of their number, kind or routine nature do not possess any enduring value for preservation in the Archives Office; and

(b) Are not required for reference purposes in any Government office after action on them is completed, or after the expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Archivist and the administrative head of the Government office concerned.

14 Access to public records

(1) Except as may be otherwise provided by enactment, and subject to the conditions under which any records are deposited, all records deposited in the Archives Office shall be available for public reference:

Provided that –

(a) The Archivist may, for any good cause, withhold access to any specified public record or any specified class of public records in his custody subject to the right of the person so denied access to appeal to Cabinet, whose decision on it shall be final;

(b) Any public record deposited in the Archives Office by any court and containing any information relating to the trial or punishment of any particular person, may be inspected only by a person authorised by the Chief Justice in that behalf.

(2) Nothing in this section shall limit the powers of any competent Court to order the production of any public record of Niue.

(3) Notwithstanding the other provisions of this section and subject to subsection (1) (b), Cabinet may, by causing written notice to be given to the Archivist, withhold access either generally or by any person or class of persons to any specified public record or to any specified class of public records in the custody of the Archivist.

(4) Any person may, with the consent of the Archivist, make or cause to be made at his own expense copies of or extras from any public archives which are available for public reference under this section.

15 Publication of public records

On the recommendation of the Archivist, Cabinet may authorise the publication of any public records deposited in the Archives Office and available for public reference which Cabinet considers to be of sufficient interest to warrant their publication.

16 Copyright

(1) Nothing in this Act shall derogate from any provision of the law relating to copyright in relation to anything contained in any public records deposited in the Archives Office.

(2) Where any person publishes any work containing any passage from any public record deposited in the Archives Office, he shall in that publication acknowledge the source from which that passage is taken.

PART 4
MISCELLANEOUS PROVISIONS

17 Archives Office seal

The Archivist shall cause to be made a seal for the Archives Office with which all certified copies issuing out of the Office shall be sealed.

18 Certified copies

Any copy of any public record of Niue in the custody of the Archivist which is certified by the Archivist to be a true copy of such public record shall be received as evidence of the contents of such record in all courts within Niue.

19 Regulations

(1) Subject to subsection (3), Cabinet may make regulations for any purpose for which regulations are contemplated by this Act and all such other regulations as may in Cabinet's opinion be necessary or expedient for giving effect to this Act and for the due administration of it.

(2) Without limiting the generality of subsection (1), Cabinet may make regulations –

(a) Regulating the transfer of public records from any Government office to the Archives Office or any record centre or other repository which may be established for the purposes of this Act;

(b) Regulating the manner of destruction or other disposal of valueless public records;

(c) Regulating the admission of the public to the Archives Office and the use by the public of public records of Niue deposited in the Archives Office, and the fees to be charged for such admission;

(d) Providing for the custody and preservation of records deposited in the Archives Office under section 4 (2) and prescribing the fees to be charged for that custody and preservation.

(3) The Chief Justice may make rules of court with regard to matters referred to in subsection (1) (a), (b) or (c) in cases where the public documents concerned relate to proceedings in any court.

20 Offences and penalties

(1) Every person shall commit an offence who –

(a) Wilfully or negligently damages any public records; or

(b) Wilfully or negligently disposes of or destroys any public records otherwise than under this Act; or

(c) Does any act in contravention of or fails to comply with this Act.

(2) Every person who commits an offence against this Act shall be liable on conviction to a fine not exceeding 10 penalty units.

(3) The court by which any person is convicted of an offence against subsection (1) may, in addition to any penalty imposed for the offence, direct that such person shall not be entitled to have access to the Archives Office for such period as the court thinks fit.

ARMS ACT 1975

1975/4 – February 1975

1 Short title
2 Interpretation
3 Permits for import of firearms
4 Permits for possession
5 Sale to and possession by young persons
6 Registration of firearms
7 Registration may be refused or existing certificate revoked
8 Unregistered firearms to be surrendered
9 Possession of unlawful weapon
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12 Presenting firearms at any person
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13A Offence to discharge firearm near residence
14 Obstruction of police
15 Arrest of offenders
16 Occupier of premises deemed to be in possession of arms
17 Search of suspected persons
18 Search of land or building for arms
19 Application to Government
20 Restoration of articles seized under this Act
21 Forfeitures
22 Authorising disposal of firearms
23 Persons acting under authority
24 Regulations
25 [Spent]

SCHEDULES

To make provision for the importation acquisition and possession of firearms and ammunition

1 Short title

This is the Arms Act 1975.

2 Interpretation

In this Act –

"Arms Officer" means a person appointed as an Arms Officer by the Niue Public Service Commission for the purpose of this Act, and in default of such appointment means the Chief Officer of Police;

"explosive" includes any article of which an explosive forms a part and which is capable of a destructive effect by way of an explosion;

"firearm" includes any weapon from which a missile can be discharged by the force of an explosion or by the force of any compressed gas or compressed air, and includes a weapon which for the time being is not capable of discharging a missile but which by the replacement of any component part or parts, or the correction of any defect, would be so capable, and also includes any weapon which is for the time being dismantled, but subject to section 13 (4) does not include any firearm of the type commonly known as humane killers, or bolt or stun guns;

"owner" as used in relation to a firearm includes any person for the time being in possession of or having control of it;

"pistol" means any firearm which is designed or adapted to be held and fired with one hand; and includes any firearm that is less than 30 inches in length;

"shot-gun" means a firearm having a smooth-bore barrel and primarily designed for sporting purposes and to discharge pellets of shot only;

"unlawful weapon" means any pistol, machine gun, rifle, air-gun, and any other class of firearm except a shot-gun.

3 Permits for import of firearms

(1) No person shall bring or cause to be brought or sent into Niue any ammunition or any firearm otherwise than under a permit issued to him for that purpose by the Arms Officer in the appropriate form contained in Schedule 1 and on payment of the appropriate fee prescribed in Schedule 4.

(2) Before issuing such a permit the Arms Officer may require the applicant to produce for examination and testing the firearm or such samples of any firearms or ammunition referred to in the application as he shall think fit and may in his discretion refuse to grant a permit for any or all of the firearms or ammunition referred to in the application.

(3) The issue of any permit under this section shall be subject to such conditions as the Arms Officer may impose.

(4) The Arms Officer may at any time revoke any permit to import firearms or ammunition issued under this section.

(5) If any constable or any officer of Customs has reasonable grounds to suspect that firearms have been brought into Niue in breach of this section, or have been brought into Niue territorial waters and are intended to be brought into Niue in breach of this section, that constable or officer may seize such firearms or ammunition and detain the same.

(6) Notwithstanding subsection (1) it shall not be lawful for any person to import into Niue otherwise than in a manufactured cartridge for any firearms any dynamite, gelignite, nitroglycerine, blasting powder, or any other explosive of any nature whatever except by and on behalf of the Government of Niue.

4 Permits for possession

(1) Subject to this Act, no person shall, whether by way of purchase or in any other manner, procure possession of any firearm or ammunition otherwise than under a permit issued to him for that purpose by the Arms Officer in the form contained in Schedule 2.

(2) No person shall, whether by way of sale or in any other manner, deliver possession of any firearm or ammunition to any person other than to a person entitled to obtain the firearm or ammunition by virtue of any permit referred to in subsection (1).

(3) A permit may be issued by the Arms Officer on payment of the fee prescribed in Schedule 4.

(4) Every person who commits or attempts to commit a breach of this section is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units or to both such fine and imprisonment, and the burden of proving the existence and terms of any such permit as aforesaid shall be on the defendant.

(5) Every permit issued under this section shall remain in force for such period not exceeding 28 days as may be specified in the permit.

(6) Every such permit issued may be revoked by the Arms Officer at any time.

5 Sale to and possession by young persons

(1) It shall not be lawful to sell or supply any firearm or ammunition to any person apparently under the age of 18 years.

(2) No person under the age of 18 years shall use or carry or have in his possession any firearm, explosive or ammunition.

(3) Any person who commits or attempts to commit a breach of this section shall be liable to a fine not exceeding 0.5 penalty units.

6 Registration of firearms

(1) No person shall be in possession of any firearm for a period longer than 28 days unless he is registered as the owner of it under this section.

(2) Registration under this section shall be affected by paying the fee prescribed in Schedule 4 and obtaining a certificate of registration from the Arms Officer in the form contained in Schedule 3.

(3) The Arms Officer may, before issuing a certificate of registration, require the firearm to be produced for his inspection and may refuse to issue a certificate if he considers that the firearm is in an unsafe condition, and may, if he considers the firearm to be a danger to the public, confiscate such firearm.

(4) A certificate of registration may, in the discretion of the Arms Officer, include the name of any employee or of any member of the family of the owner who has attained the age of 18 years, and, notwithstanding anything to the contrary contained in this Act, any person whose name is for the time being included in a certificate as aforesaid may be given lawful possession of the firearm.

(5) Any such name may be included in a certificate of registration at any time by the Arms Officer and may, at the request of the owner, be removed at any time.

(6) Any person whose name is included in a certificate of registration under subsection (4) or subsection (5) shall for the purpose of section 7, be deemed to be registered as an owner of the firearm.

(7) (a) Every certificate of registration issued under this section shall expire on 30 June next following the issue and may be renewed by application made to a constable and on payment of the prescribed fee.

(b) Such application shall contain such particulars as may be prescribed by the Arms Officer.

(8) (a) The Arms Officer may, before renewing any certificate of registration, call on the registered owner to produce the firearm for his inspection and if he considers such firearm to be unsafe he shall seize the firearm and refuse to renew the certificate of registration.

(b) Any registered owner who fails to account for the non-possession of such firearm shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding 1 penalty unit.

(9) If any certificate issued under this section is accidentally destroyed, defaced or lost the Arms Officer may, if he is satisfied as to the destruction, defacement or loss of such certificate, and upon payment of the prescribed fee issue to the person in whose name the certificate was originally granted a new certificate and endorse on it a statement reciting such destruction, defacement, or loss and such new certificate shall have the same force and effect as the original certificate.

(10) (a) Every person who commits a breach of this section is guilty of an offence and shall be liable on conviction to a fine not exceeding 1 penalty unit.

(b) In any prosecution for such an offence, if the defendant is proved to have been in possession of the firearm, the burden of proving that he was the holder of a valid certificate of registration in respect thereof for more than 28 days or that he was lawfully in possession of it under this section shall lie on the defendant.

7 Registration may be refused or existing certificate revoked

(1) No person shall be registered as the owner of any firearm who, in the opinion of the Arms Officer, is not a fit and proper person to be in possession of the firearm.

(2) If any person who is registered as the owner of any firearm is, in the opinion of the Arms Officer, not a fit and proper person to be in possession of the firearm or if, in the opinion of the Arms Officer, the firearm is unsafe, the Arms Officer may, by notice in writing under his hand, revoke the certificate of registration, and the person so registered shall on demand surrender the certificate to any constable.

(3) On the revocation of a certificate of registration under this section the person to whom the certificate was issued shall cease to be the registered owner of the firearm to which it relates, whether or not the certificate had been surrendered.

8 Unregistered firearm to be surrendered

(1) On the revocation of any certificate of registration under section 7 or on the refusal of the Arms Officer to issue a certificate of registration or on refusal of renewal of registration under an application under section 9, the owner or other person for the time being in possession of the firearm to which the certificate or application relates, shall, on demand deliver the firearm to a constable.

(2) The owner of any firearm in respect of which an application for a certificate of registration or renewal of registration has been refused may, at any time within 3 months thereafter or such longer period as the Arms Officer allows, sell or otherwise dispose of the firearm to a person approved for the purpose by the Arms Officer unless the Arms Officer considers that the weapon is unsafe, in which case he shall prohibit such sale or disposition.

(3) Subject to subsection (2), all firearms delivered to the Arms Officer under this section may be detained by him, and may, in the discretion of the Minister of Police become the property of the Government of Niue, free and discharged from all right, title, or interest possessed in respect of it by any other person.

(4) The Minister of Finance shall without further appropriation than this section pay out of the Treasury fund compensation for the value of all firearms delivered to the Arms Officer under this section and which have become the property of the Government of Niue as provided, the amount of such compensation to be agreed upon between the Minister and the owner, and in default of agreement to be determined by the Court.

(5) Every person who commits a breach of this section is guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units.

9 Possession of unlawful weapon

(1) Except as provided in subsection (2), every person who is at any time in possession of an unlawful weapon, or of any part or parts of an unlawful weapon, or of any part or parts specially intended or adapted for use as part of an unlawful weapon, or any ammunition for an unlawful weapon, shall forthwith

cause the weapon or the parts or the ammunition to be destroyed, exported from Niue or delivered to the Arms Officer.

(2) (a) The Minister of Police may, in writing authorise any person in any special case and for any special reason to have in his possession any unlawful weapon subject to such conditions as to use or custody as the Arms Officer may impose.

(b) Any such authorisation may be revoked at any time by the Minister without notice.

(3) Every person who is in possession of any weapon or parts or ammunition contrary to this section or who fails to comply with any condition imposed under subsection (2) commits an offence and shall be liable on such conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding 2 penalty units or to both.

10 Carriage or possession of arms

(1) No person shall carry or be in possession of any firearm, ammunition, explosive, or dangerous weapon except for some lawful, proper, and sufficient purpose and the burden of proving such purpose shall lie on the defendant.

(2) No person who, while under the influence of drink or drugs to such an extent as to be incapable of having proper control of the firearm, shall be in charge of any firearm.

(3) Every person who commits a breach of this section commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units or to both.

11 Unlawful acquisition of firearms

Every person who procures or attempts to procure or conspires to procure the possession of any firearm, ammunition or explosive by way of trespass or otherwise without lawful right or title commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units or to both.

12 Presenting firearms at any person

(1) Every person who except for some lawful and sufficient purpose, presents a firearm, whether loaded or unloaded, at any other person, commits an offence and shall be liable on conviction to a term of imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units or to both.

(2) Every person who, except for some lawful or sufficient purpose, presents at any person anything which, in the circumstances, is likely to lead that person to believe that it is a firearm commits an offence, and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units or to both.

13 Careless use of a firearm

(1) Every person who causes bodily injury to or the death of any person by carelessly using a firearm commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding 5 penalty units, or to both.

(2) Every person who has in his charge or under his control a firearm loaded, with a cartridge or cartridges, whether in its breech, barrel, chamber or magazine, and who leaves that firearm in any place in such circumstances as to endanger the life of any person without taking reasonable precautions to avoid

any such danger commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 2 penalty units or to both.

(3) It shall be no defence to the crime of manslaughter that the guilty act or omission proved against the person charged upon the indictment is an act or omission constituting an offence against this section.

(4) For the purposes of this section 'firearm' shall be deemed to include any firearm of the type commonly known as humane killers, or bolt or stun guns.

13A Offence to discharge firearm near residence

(1) A person must not discharge a firearm within 100 metres of a building being used as a residence.

(2) A person who fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding 5 penalty units or for a second or subsequent offence to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months or both such fine and imprisonment.

(3) Subsection (1) does not apply to a constable in the execution of his or her duties.

14 Obstruction of police

Every person who obstructs a constable in the exercise of any right or search, seizure, or detention conferred by this Act commits an offence, and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding 1 penalty unit or to both.

15 Arrest of offenders

Any person reasonably suspected of having committed an offence against this Act which is punishable by imprisonment may be arrested by any constable without warrant.

16 Occupier of premises deemed to be in possession of arms

For the purposes of this Act every person in occupation of any land or building on which any firearms, ammunition, or explosives are found shall, though not to the exclusion of the liability of any other person, be deemed to be in possession of those arms, ammunition, or explosives, unless he proves that they were in the possession of some other person or satisfies the court that he had no reasonable ground for believing that they were on such land or building.

17 Search of suspected persons

(1) If a constable has reasonable grounds to suspect that any person being in a public place is carrying or is in possession of any firearm, ammunition, or explosive in breach of this Act the member may without warrant search that person or any vehicle, package, or other thing there in his possession or under his control, and may detain that person for the purpose of any such search, and may seize any such firearm, ammunition, or explosive, and detain the same.

(2) If any constable has reasonable grounds to suspect that any person has in his possession or under his control in any place any firearm, ammunition or explosive, and that the person is of unsound mind, or is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the firearm, ammunition, or explosive, or may kill or do bodily injury to himself or any other person, the constable may, without warrant, search that person or place and may detain that person for the purpose of any such search, and may seize any such firearm, ammunition, or explosive and detain the same.

18 Search of land or building for arms

If the Chief Officer of Police has reason to suspect that there is in any house, building, land, vehicle, vessel, or other premises any firearms, ammunition, or explosives in respect of which any offence against this Act has been or is about to be committed or which may be evidence of any such offence, the Chief Officer of Police, or constable authorised by him in writing may enter any such house, building, land, vehicle, vessel, or premises, and either by day or by night, and search the same or any part of it, and may seize any firearms, ammunition or explosives found there, and detain the same.

19 Application to Government

Nothing in this Act shall render unlawful the importation, carriage or possession of firearms, ammunition, or explosives belonging to the Government of Niue and lawfully in the possession of any constable or any armed forces of the Government.

20 Restoration of articles seized under this Act

On application to the Court a Judge may make such order as he thinks just and expedient for the restoration of any firearms, ammunition, or explosives seized and detained in pursuance of the right of search, seizure, or detention conferred by this Act.

21 Forfeitures

When any person is convicted of using, carrying, or having in possession any arms, ammunition, or explosives in breach of this Act, the convicting Court may, as part of the conviction, order that any such arms, ammunition, or explosives shall be forfeited, and shall hereupon become forfeited to the Government of Niue accordingly, and may be disposed of in such manner as the Arms Officer directs.

22 Authorising disposal of firearms

Without limiting the operation of any other provisions of this Act as to the disposal of firearms, ammunition, or explosives seized or detained under this Act, any such firearms, ammunition, or explosives that have been detained for not less than 2 years may be disposed of in such manner as the Arms Officer may direct.

23 Persons acting under authority

No action, claim, or demand whatsoever shall lie or be made or allowed by or in favour of any person against the Government of Niue, or any person lawfully acting in execution or intended execution of this Act, save only in respect of any compensation that is payable under the express provisions of this Act.

24 Regulations

(1) The Minister of Police, acting by and with the advice and consent of Cabinet may make regulations for any purpose for which regulations are contemplated by this Act and for the due administration of it.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the following matters –

(a) Prescribing the form of permits, and certificates under this Act and the conditions and manner of their grant:
Provided that unless and until regulations shall be made adding to or amending the forms of permits and certificates contained or the

fees specified in the Schedules, such forms of permits and certificates contained and such fees specified shall be the forms and the fees for the several matters referred to in the Schedules;

(b) Making provision for the marking of firearms with identifying marks before the issue of certificates of registration;

(c) Applying the provisions of this Act to any class of firearm not included in this Act;

(d) Excluding any firearms from this Act;

(e) Declaring any firearm shotgun or weapon to be an unlawful weapon;

(f) Generally for any other purpose deemed by the Minister of Police to be necessary for giving effect to the full intent and purposes of this Act.

25 [Spent]

SCHEDULES

SCHEDULE 1

Form 1A Section 3

PERMIT TO IMPORT A FIREARM
ARMS ACT 1975 SECTION 3

No.

..... of ..... (occupation) ..... is permitted to bring or cause to be brought into Niue within ..... months from the date hereof the firearm mentioned in the Schedule.

Dated at Alofi this ..... day of ..... 20..... .

Arms Officer

SCHEDULE

Type ..... Country of Origin .....

Gauge or Calibre Lawful/Unlawful (delete that which is ..... inapplicable)

Conditions .....

Form 1B PERMIT TO IMPORT AMMUNITION No.
ARMS ACT 1975 SECTION 3

..... , of ..... (occupation) .....
is permitted to bring or cause to be brought into Niue within .....
months from the date hereof the ammunition described in the Schedule.

_____

Arms Officer

SCHEDULE

Quantity ..... Calibre ..... Country of Origin .....

..... Conditions .....

SCHEDULE 2

Form 2 Section 4

PERMIT FOR POSSESSION
ARMS ACT 1975 SECTION 4 No.

..... , of ..... (occupation) .....

Date of Birth ..... being a person of/or over the age of 16 years
is hereby permitted to obtain possession of the firearm mentioned in the Schedule.

_____

Arms Officer

SCHEDULE

Type ..... Gauge or Calibre .....

Description (numbers, marks, stamped on, etc.) .....

Lawful weapon/Unlawful weapon (delete that which is inapplicable).

SCHEDULE 3

Form 3 Section 6

CERTIFICATE OF REGISTRATION OF FIREARM
ARMS ACT 1975 SECTION 6

..... , of ..... (Occupation) .....

has this day been registered as the owner of: (Describe firearm – numbers, marks, calibre) being a lawful/an unlawful (delete one) weapon.

The names of the following persons are included in this certificate under section 6(4) of the Arms Act 1975.

Full Name Address Occupation Age

Dated at Alofi this ..... day of ..... 20..... .

_____
Arms Officer

_____

SCHEDULE 4

Permit to import firearm	$80.00
Certificate to register firearm for the first time	$30.00
Annual licence	$15.00

ASSEMBLY MEMBERS' SUPERANNUATION ACT 1984

1984/98 – 1 April 1984

1 Short title
2 Interpretation
3 Assembly Members Superannuation Account
4 Contributions by Members
5 Subsidy from Niue Government Account
6 Retiring allowance
7 Death of a Member
8 [Spent]
9 Provision for payment

To establish a superannuation scheme for Members of the Assembly

1 Short title

This is the Assembly Members' Superannuation Act 1984.

2 Interpretation

In this Act –

"Member" means a Member of the Assembly established under article 16 of the Niue Constitution and includes the Premier, Cabinet Ministers and the Speaker;

"Superannuation Account" means the Assembly Members Superannuation Account established under section 3.

3 Assembly Members' Superannuation Account

(1) There is hereby established within the Niue Government Accounts an account to be known as the Assembly Members' Superannuation Account.

(2) There shall be paid into the Superannuation Account, without further appropriation than this section, such sum or sums as may in the opinion of Cabinet be required to provide a fund sufficient to provide for the payments under this Act.

(3) Money from the Superannuation Account may be invested in such manner as Cabinet sees fit having regard to the need to ensure that the investment is secure at all times.

(4) The Superannuation Account shall be treated in all respects as if it were public money for the purposes of annual accounts and auditing.

4 Contributions by Members

(1) As from 1 April 1984 there shall be deducted from the salary of every Member a superannuation contribution at the rate of 10 per cent of the basic salary of a Member.

(2) A Member may elect, if he so wishes, to contribute a greater amount from his salary.

5 Subsidy from Niue Government Account

The Cabinet shall pay out of the Niue Government Account without further appropriation than this section into the Superannuation Account a subsidy in respect of each member at a rate of 10 per cent of the basic salary of a Member for each Member.

6 Retiring allowance

(1) Every Member who ceases to hold office as a Member shall be entitled to either –

(a) The refund in full to him of his own contributions together with the interest that has been earned on those contributions; or

(b) A retiring allowance purchased by the Superannuation Account on his behalf using the total of the Members' own contributions, together with the subsidy by the Government for that Member, and the interest that has been earned.

(2) A Member who ceases to hold office in the Assembly may if he so wishes defer indefinitely making a decision under subsection (1) in which case his own contributions and the Government subsidy for the period that he was a Member shall remain in the Superannuation Account and shall continue to earn interest.

(3) Where a Member who has ceased to hold office in the Assembly is subsequently re-elected to the Assembly all entitlements shall come to an end unless and until that person again ceases to be a Member of the Assembly at which time all of his periods of time in office shall be aggregated for the purposes of ascertaining his entitlement under subsection (1).

7 Death of a Member

(1) In the event of the death of a Member the spouse of that Member shall be entitled to either –

(a) A refund in full of the contributions made by the deceased Member together with the interest that had been earned on those contributions; or

(b) (i) An allowance equivalent to 50 per cent of the retiring allowance that the deceased Member would have been entitled to had he ceased to be a Member immediately prior to his death;

(ii) Such allowance shall cease upon the remarrriage of the spouse.

(2) The allowance payable under this section shall be payable on and from the day following the date of death of the Member.

8 [Spent]

9 Provision for payment

(1) Any allowances and other money payable under this Act shall be paid out of the Superannuation Account without further appropriation than this Act.

(2) Where in any year the money in the Superannuation Account is insufficient to meet all payments required to be made, Cabinet may, without further appropriation than this section make an advance from the Niue Government Account sufficient to meet the deficiency.

ATOMIC ENERGY ACT 1945

1945/41 (NZ) – 7 December 1945

1 Short title
2 Interpretation
3 [Repealed]
4 Notification of discovery
4A Grant of rewards
4B Grants to assist
5 Cabinet may control mining
6 Disposition of prescribed substances
7 Importation of prescribed substances
8 Uranium to be property of Crown
9 No compensation for uranium
10 Cabinet may mine
11 [Repealed]
12 No person to possess fissionable substances
13 Experimental work
14 Restriction on trading
15 Entry on land and premises
16 Granting of consents
17 Service of notices
18 Offences
19 Regulations

To make provision for the control in Niue of the means of producing atomic energy and for that purpose to provide for the control of the mining and treatment of the ores of uranium and other elements which may be used for the production of atomic energy, and to provide for the vesting of such substances in the Crown

1 Short title

This is the Atomic Energy Act 1945.

2 Interpretation

In this Act –

"atomic energy" means the energy released from atomic nuclei as a result of any process, including the fission process; but does not include energy released in any process of natural transmutation or radioactive decay which is not accelerated or influenced by external means;

"minerals" means any mineral, mineral substance, or metal; and includes precious metals, precious stones, and includes any prescribed substance;

"mining" means mining operations, and includes prospecting;

"mining operations" means operations in connection with mining for any mineral, and includes –

(a) The removal of overburden by mechanical or other means, and the stacking, deposit, storage and treatment of any substance considered to contain any mineral;

(b) The deposit or discharge of any mineral, material, debris, tailings, refuse, or waste-water produced from, or consequent on, any such operations or purposes;

(c) The erection, maintenance, and use of plant and machinery, and the construction or use of roads, races, dams, railways, channels, batteries, buildings, dwellings, and other works connected with such operations or purposes; and

(d) The lawful use of land , water, pools and natural depositories of water (whether containing water or not) and the doing of all lawful acts incident or conducive to such operations;

"prescribed substance" means uranium, thorium, plutonium, neptunium, or any of their respective compounds, or any such other substance as Cabinet may prescribe, being a substance which in his opinion is or may be used for the production of atomic energy or research into matters connected therewith;

"uranium" includes thorium and all natural substances, chemical compounds, and physical combinations of uranium or thorium.

3 [Repealed by 2004/270]

4 Notification of discovery

Every person has discovered that any prescribed substance occurs at any place in Niue shall, within 3 months after making the discovery, whichever is the later, report the discovery by written notice (which shall specify the place where the discovery took place and the date of the discovery) to the Secretary to the Government.

4A Grant of rewards

(1) The Cabinet may, out of money appropriated by the Assembly for the purpose, make such grants as the Cabinet thinks fit for the purpose of rewarding any person discovering any prescribed substance.

(2) Any application for a grant under this section shall be made in writing to the Secretary to the Government.

(3) Where, in the opinion of the Cabinet, any deposit containing any prescribed substance has no immediate commercial value but, because of geological interest, is sufficient to justify further prospecting, Cabinet may make a grant under this section, not exceeding $400, to the person discovering the deposit.

(4) Where, in the opinion of the Cabinet of Ministers of Niue, any deposit containing any prescribed substance is sufficient to have a potential value, the Cabinet may make a grant under this section not exceeding $2,000, to the person discovering the deposit.

(5) (a) Where, in the opinion of the Cabinet, any deposit containing any prescribed substance will produce 25 tons or more of uranium oxide, the Cabinet may make a grant under this section of $2,000, increased at the rate of $800 for each 5 tons in excess of 25 tons of uranium oxide which it is estimated that the deposit will produce, to the person discovering the deposit.

(b) That the total of any grant under this subsection in respect of any one discovery shall not exceed $50,000.

(6) Payment of any grant under this section may be made in one amount or by instalments payable at such times as the Cabinet determines.

(7) Where 2 or more persons, either jointly or severally, make application under this section for a grant in respect of the same discovery of a deposit containing any prescribed substance, the Cabinet may direct that the grant, if payable under this section, shall be paid to one applicant only or that it shall be

apportioned between such of the applicants and in such proportions as the Cabinet thinks fit.

(8) Any application for a grant under this section may be granted or refused in the absolute discretion of the Cabinet and, subject to this section, the amount of any such grant shall be in the absolute discretion of the Cabinet.

(9) Any grant made under this section shall be exempt from income tax.

4B Grants to assist

(1) The Cabinet may, out of money appropriated by the Assembly for the purpose make such grants as the Cabinet thinks fit for the purpose of assisting any person prospecting for or producing any prescribed substance.

(2) Any grant under this section may be by way of cash payment, loan, subsidy, or otherwise and may be made either unconditionally or subject to such conditions as the Cabinet thinks fit.

(3) Any application for a grant under this section shall be made in writing to the Secretary to the Government.

(4) Payment of any grant under this section may be made in one amount or by instalments payable at such times as the Cabinet determines.

(5) The Cabinet may for the purposes of this section, in the name and on behalf of Her Majesty, make and enforce such agreements, and execute such instruments, as the Cabinet thinks fit.

5 Cabinet may control mining

(1) If the Cabinet is satisfied that any person is mining or is about to mine any prescribed substance or is engaged or about to engage in carrying out any physical, chemical, or metallurgical process as a result of which, in the opinion of the Cabinet, any prescribed substance may reasonably be expected to be isolated or extracted, the Cabinet may, by notice in writing given to that person, require him in conducting the mining operations or in carrying out any process as aforesaid to comply with and observe such terms and conditions as the Cabinet may in the notice think fit to impose.

(2) Without prejudice to the generality of subsection (1), the Cabinet may require that the mining operations shall be so conducted, or that such process for treatment and concentration shall be used, as will provide for or facilitate the extraction, isolation or concentration of the prescribed substance.

6 Disposition of prescribed substances

(1) All minerals, concentrates, or other materials containing any prescribed substance which are extracted, isolated, or concentrated by any person shall only be disposed of with the prior written consent of the Cabinet and subject to such conditions as the Cabinet shall impose.

(2) The Cabinet may serve notice on any person who has produced any mineral, concentrate, or other material containing any prescribed substance that the Cabinet proposes to acquire, on behalf of Her Majesty, the mineral, concentrate or other material, and upon the service of the notice and the payment of purchase price under this section, the mineral, concentrate, or material shall become the property of the Crown and shall be delivered to the Cabinet or as it shall direct.

(3) There shall be payable out of money appropriated by the Assembly for the purpose in respect of the acquisition of any substance under this section a sum equal to the price which the owner of it might reasonably have been expected to obtain upon a sale of it effected by him immediately before the date of the service of the notice referred to in subsection (2).

7 Importation of prescribed substances

(1) Subject to subsection (2), no person shall, without the prior written consent of the Cabinet, import any prescribed substance.

(2) Samples of any minerals containing any prescribed substance may be imported without the consent of the Cabinet if the weight of those samples does not exceed 5 pounds.

8 Uranium to be property of Crown

(1) (a) Notwithstanding anything to the contrary in any Act or in any Crown grant, certificate of title, lease, or other instrument of title, all uranium existing in its natural condition on or below the surface of any land within the territorial limits of Niue, whether the land has been alienated from the Crown or not, is hereby declared to be the property of the Crown.

(b) Nothing in this subsection or in section 9 shall be deemed to affect the right of any person to receive payment in respect of any mineral, concentrate, or other material containing any prescribed substance mined or produced by that person under this Act.

(2) All alienations of land from the Crown, whether by way of sale or lease or otherwise, shall be deemed to be made subject to the reservation of all uranium existing in its natural condition on or below the surface of the land, and subject to this Act.

9 No compensation for uranium

Compensation shall not be payable under any Acts in respect of any uranium existing in its natural condition on or below the surface of any land.

10 Cabinet may mine

(1) The Cabinet may mine for any mineral containing any prescribed substance and carry on such processes or operations as the Cabinet thinks fit for the concentration, isolation, extraction and chemical purification of any prescribed substance.

(2) For the purposes of this section the provisions of any enactment relating to the application for, holding, purchase, or other acquisition of any licence authorising the prospecting for or mining of any prescribed substance shall apply to the Cabinet in all respects as they apply to any other person.

11 [Repealed 1976/4/26]

12 No person to possess fissionable substances

(1) No person shall, without the prior written consent of the Cabinet, import or have in his possession or control any plutonium or other substance from which atomic energy may be produced more readily than from uranium of natural isotope composition.

(2) No person shall, without the prior written consent of the Cabinet, import, construct, have in his possession or control, or operate any machine, atomic pile, or apparatus which may be capable of producing atomic energy or which the Cabinet has by notice in the *Gazette* for the purpose of this section declared to be an essential part of any such machine, pile, or apparatus.

(3) No person shall, without the prior written consent of the Cabinet import, manufacture, or have in his possession or control any material or substance which that Cabinet has by notice in the *Gazette* for the purposes of this section declared to be essential to any process for the production of atomic energy.

13 Experimental work

(1) Notwithstanding the foregoing provisions of this Act, uranium and thorium of natural isotope composition of an amount not exceeding the appropriate amount mentioned in subsection (2) may be possessed and used for the purpose of instruction and of investigation as to the properties and effects of radioactive and like radiations at any university in Niue, at any school providing secondary instruction, and at any laboratory under the control of a Department of State.

(2) (a) The amount of uranium and of thorium that may be possessed and used as provided in subsection (1) shall be one pound each of uranium and of thorium, calculated by metal content in the case of a school providing secondary instruction, and 20 pounds each of uranium and of thorium, calculated by metal content, in any other case.

(b) Cabinet may by notice in the *Gazette* increase or reduce the amounts that may be possessed and used as aforesaid.

(3) Notwithstanding the foregoing provisions of this Act any university in Niue and any laboratory under the control of a Department of State, may import, purchase, construct, have possession and control of, and operate any machine, pile, or apparatus capable of the production of atomic energy at a rate not exceeding 1000 watts, or at such other rate and under such conditions as may be fixed by the Cabinet by notice in the *Gazette*, and may retain and use for experimental purposes the products produced.

14 Restriction on trading

No person shall, without the prior written consent of the Cabinet, export or sell or otherwise dispose of any isotope of uranium, or any plutonium or other substance from which atomic energy may be more readily obtained than from uranium of natural isotope composition, except to the Crown.

15 Entry on land and premises

(1) It is hereby declared that any person authorised either specially or generally by the Cabinet may enter on any premises on which any mining operations are carried on or on which the person or officer so authorised has reasonable grounds to suspect that there may be found minerals, concentrates, or other materials which have been mined, extracted, isolated, or concentrated and which contain any prescribed substance, for the purpose of ascertaining whether or not there is any prescribed substance on the premises or in any minerals, concentrates, or other materials, and for that purpose the person or officer so authorised may make observations and tests and may extract and remove samples for further testing.

(2) Every person commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 3 months who wilfully obstructs or interferes with any person exercising or attempting to exercise his powers under this section.

16 Granting of consents

In granting any consent or imposing any requirement under this Act the Cabinet may impose such conditions as the Cabinet thinks fit.

17 Service of notices

(1) Any notice required to be given to any person for the purposes of this Act may be given by causing it to be delivered to that person, or to be left at his usual or last known place of abode or business or at the address specified by him in any application or other document received from him for the purposes of this Act, or to be posted in a letter addressed to him at that place of abode or business or at that address.

(2) If any such notice is sent to any person by registered letter, it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

18 Offences

Any person who fails to comply with, or contravenes, any provision, prohibition, condition, or requirement contained in or imposed under this Act commits an offence and, where no specific penalty is elsewhere provided, shall be liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

19 Regulations

The Cabinet may make all such regulations as may in its opinion be necessary or expedient for giving full effect to this Act and for its due administration.

AVIATION CRIMES ACT 1973

1973/82 – 24 September 1973

1 Short title and commencement
2 Interpretation
3 Hijacking
4 Offences in connection with hijacking
5 Other offences relating to aircraft
5A Offences relating to airports
6 [Spent]
7 Offences deemed to be included in extradition treaties
8 Surrender of offenders
9 Application of sections 3, 4 and 5
10 Powers of aircraft commander
11 Arrest of persons delivered to Police
12 Cabinet's consent required for prosecution
13 Aircraft in military, customs, or police service
14 Joint registration of aircraft
15 Other Acts not affected

To give effect to the provisions of the Hague Convention for the Convention for the Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the Tokyo Convention on Offence and Certain Other Acts Committed on Board Aircraft, and for matters incidental thereto

1 Short title and commencement

(1) This is the Aviation Crimes Act 1973.

(2) Sections 7, 8, 10 and 11 shall come into force on a date to be fixed by the Cabinet by notice in the *Gazette*. Different dates may be so fixed in respect of different sections.

(3) Except as provided in subsection (2), this Act shall come into force on the date of its passing.

2 Interpretation

(1) In this Act –

"aircraft" means a machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

"commander", in relation to an aircraft, means the pilot for the time being in lawful command of the aircraft;

"military service" includes naval and air force service; and a certificate by the Minister that any aircraft is or is not used in military service for the purposes of this Act shall be conclusive evidence of the fact certified;

"Niue" includes the territorial sea of Niue;

"Niue aircraft" means an aircraft registered in Niue under the Civil Aviation Act 1999;

"The Hague Convention" means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970

"The Montreal Convention" means the Convention for the Suppression of

Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

"The Tokyo Convention" means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1973.

(2) For the purposes of this Act, a person shall be deemed ordinarily resident in Niue of –

(a) His home is in Niue; or

(b) He is residing in Niue with the intention of establishing his home in it, or with the intention of residing in Niue indefinitely, he is outside Niue but has an intention to return to establish his home in it or to reside in Niue indefinitely.

(3) For the purposes of this Act, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation:

Provided that in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

(4) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft's crew begins for a specific flight until either –

(a) The flight is cancelled; or

(b) 24 hours after the aircraft, having commenced the flight, lands; or

(c) The aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in subsection (3) assume responsibility for the aircraft and for persons and property on board the aircraft; or

(d) The aircraft, having commenced the flight, ceases to be in flight –

whichever is the latest.

3 Hijacking

Everyone commits the crime of hijacking and is liable on conviction to imprisonment for life, who, while on board an aircraft in flight, whether in or outside Niue, unlawfully, by force or by threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft.

4 Offences in connection with hijacking

(1) Everyone who, while on board an aircraft in flight outside Niue, does or omits anything which, if done or omitted by that person in Niue, would be an offence, commits that offence if the act or omission occurred in connection with the offence of hijacking.

(2) Without limiting the generality of subsection (1) an act or omission by any person shall be deemed to occur in connection with the offence of hijacking if it was done or omitted with intent –

(a) To commit or facilitate the commission of the offence of hijacking; or

(b) To avoid the detection of himself or of any other person in the commission of the offence or hijacking; or

(c) To avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the offence of hijack.

5 Other offences relating to aircraft

Everyone commits an offence and is liable on conviction to imprisonment for a term not exceeding 14 years, who, whether in or outside Niue –

(a) On board on aircraft in flight, commits an assault which is likely to endanger the safety of the aircraft; or

(b) Destroys an aircraft in service; or

(c) Causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight; or

(d) Places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight; or

(e) Destroys, damages, or interference with the operation of any air-navigation facility used in international air navigation, or in air navigation between Niue and any place outside Niue, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or

(f) Endangers the safety of an aircraft in flight by communicating to any other person any information which the persons supplying the information knows to be false.

5A Offences relating to airports

Every person commits an offence, and shall be liable on conviction to a term of imprisonment not exceeding 14 years who, using any device, substance or weapon –

(a) Performs any act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

(b) Destroys or seriously damages the facilities of an airport serving international civil aviation, or any aircraft not in service located at such airport, or disrupts the services of the airport;

if such act endangers or is likely to endanger safety at that airport.

6 [Spent]

7 Offences deemed to be included in extradition treaties

(1) (a) For the purposes of the Extradition Act, the offence of hijacking (including aiding, abetting, inciting, counselling, or procuring any person to commit that offence, inciting, counselling, or attempting to procure any person to commit that offence when it is not in fact committed, and being an accessory after the fact to that offence) shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty extending to Niue concluded before the commencement of this section and for the time being in force between Niue and any foreign country which is a party to the Hague Convention.

(b) A certificate given under the hand of the Minister that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.

(2) (a) For the purposes of the Extradition Act 1965 of the New Zealand Parliament and any Order in Council made under section 3 of that Act or referred to in section 21 of that Act, each offence described in section 5 of this Act (including attempting to commit that offence, aiding, abetting, inciting, counselling, or procuring any person to commit that offence, inciting, counselling or attempting to procure any person to commit that offence when it is not in fact committed, and being an accessory after the fact to that offence) shall be deemed to be an offence described in any extradition treaty extending to Niue, concluded before the commencement of this section and for the time being in force between Niue and any foreign country which is a party to the Montreal Convention.

(b) A certificate given under the hand of the Minister that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.

(3) Where, under subsection (1) or under (2), any offence is deemed to be an offence described in an extradition treaty extending to Niue, a person whose surrender is sought under the Extradition Act 1965 of the New Zealand Parliament in respect of an act or omission which amounts to that offence shall be liable to be surrendered in accordance with that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(4) For the purposes of this section, "foreign country" includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention extends.

8 Surrender of offenders

(1) (a) Where the surrender of a person is sought under either the Extradition Act 1965 of the New Zealand Parliament or the Fugitive Offenders Act 1881 of the United Kingdom Parliament in respect of any act or omission which amounts to the offence of hijacking or to any offence described in section 5 or section 5A (including attempting to commit any of the offences so described, siding, abetting, inciting, counselling, or procuring any person to commit the offence of hijacking or any of the offences so described, inciting, counselling, or attempting to procure any person to commit the offence of hijacking or any of the offences so described when it is not in fact committed, and being an accessory after the fact to the offences of hijacking or any of the offences so described), and for which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country which is a party to the Hague Convention or the Montreal Convention, as the case may require, that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country.

(b) A certificate given under the hand of the Minister that a country is party to either Convention shall be sufficient evidence of that fact.

(2) For the purposes of this section, "country" includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty (if any) and the Hague Convention or, as the case may be, the Montreal Convention, extends.

9 Application of sections 3, 4 and 5

(1) Nothing in section 3 or 4 shall apply if both the place of take-off and the place of actual landing of the aircraft (not being a Niuean aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless –

(a) The alleged offender is a person ordinarily resident in Niue;
(b) The act or omission occurred in Niue; or
(c) The alleged offender is present in Niue.

(2) Nothing in section 5(a), (b), (c), (d) or (f) shall apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a Niuean aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless –

(a) The alleged offender is a person ordinarily resident in Niue;
(b) The act or omission occurred in Niue; or
(c) The alleged offender is present in Niue.

(3) Nothing in section 3 or section 4 or section 5 (a)-(d) shall apply to aircraft used in military, customs, or police service (not being aircraft used for the purposes of any of the Armed Forces of New Zealand operating in Niue or of the Niue Customs or of the Niue Police), unless –

(a) The alleged offender is a person ordinarily resident in Niue;
(b) The set or omission occurred in Niue.

10 Powers of aircraft commander

(1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft –

(a) Anything which is an offence under the law of this country in which the aircraft is registered or under the law of Niue (not being a law of a political nature or a law based on racial or religious discrimination); or
(b) Anything (whether an offence or not) which jeopardises or may jeopardise –
  (i) the safety of the aircraft or of persons or property on board the aircraft; or
  (ii) good order and discipline on board the aircraft –

the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary –

(c) To protect the safety of the aircraft or of persons or property on board the aircraft; or
(d) To maintain good order and discipline on board the aircraft;
(e) To enable the commander to disembark or deliver that person under subsection (4) or (5).

(2) (a) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) to restrain.

(b) Any member of the crew and any other person on board the aircraft may, without the commander's authority take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsection (1) or (2) shall not be continued after the aircraft ceases to be in flight, unless the commander of the aircraft notifies the appropriate authorities of the country or territory in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued –

(a) For any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (4) or (5); or

(b) If the person under restraint agrees to continue his journey under restraint on board that aircraft.

(4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise –

(a) The safety of the aircraft or of persons or property on board the aircraft; or

(b) Good order and discipline on board the aircraft –

he may, if he considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country or territory in which the aircraft may be.

(5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered or under the law of Niue, he may deliver that person –

(a) In Niue, to any member of the Niue Police; or

(b) In any country which is a party to the Tokyo Convention,

to any person exercising functions corresponding to those of a member of the Niue Police.

(6) If the commander of an aircraft disembarks any person under subsection (4) in the case of a Niuean aircraft, in any country, or, in the case of any other aircraft, in Niue, he shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country or territory of disembarkation (being, in Niue, a member of the Niue Police).

(7) If the commander of an aircraft intends to deliver any person under subsection (5) in Niue, or, in the case of a Niuean aircraft, in any country which is a party to the Tokyo Convention, he shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for his intention to an appropriate authority in that country, or, in the case of a person to be delivered in Niue, to a member of the Niue Police.

(8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (6) or (7) is liable on conviction to a fine not exceeding 4 penalty units.

(9) A person who in good faith imposes reasonable measures, including restraint, on another person under this section is not guilty of an offence and is not liable to any civil proceedings in respect of those measures.

11 Arrest of persons delivered to Police

(1) Any constable shall accept delivery of a person whom the commander of an aircraft seeks to deliver to him under section 10 (5) if he has reasonable grounds to support that person of having done or omitted on board that aircraft anything that is an offence against this Act, or any other Act, or any enactment in force in Niue.

(2) Where any constable accepts delivery of a person under subsection (1), he shall forthwith arrest that person.

12 Cabinet's consent required for prosecution

(1) No proceedings for the trial and punishment or any person charged with a crime against sections 3-5 shall be instituted in the High Court except with the consent of the Cabinet.

(2) A person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Cabinet to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

13 Aircraft in military, customs, or police service

Nothing in sections 10 and 11 shall apply to aircraft used in the military, customs or police service of any country, or of Niue, or of any territory for whose international relations the Government of a country is responsible.

14 Joint registration of aircraft

Where an aircraft is subject to joint international registration, it shall be deemed for the purposes of this Act to be registered in the country which, according to the records of the International Civil Aviation Organisation, is the country of registration.

15 Other Acts not affected

Nothing in this Act shall be construed to limit or affect the operation of the Entry, Residence and Departure Act 1985 or of Parts 5, 6 or 8 of the Niue Act 1996.

BILLS OF EXCHANGE ACT 1908

1908/15 (NZ) – 4 August 1908

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SCHEDULES

To consolidate certain enactments relating to bills of exchange

1 Short title

(1) This is the Bills of Exchange Act 1908.
(2) [Spent]
(3) This Act is divided into Parts, as follows:
Part 1 – Bills of Exchange
Part 2 – Cheques on a Bank
Part 3 – Promissory Notes
Part 4 – Miscellaneous.

2 Interpretation

In this Act –
"acceptance" means an acceptance completed by delivery or notice;
"action" includes counterclaim and set-off;
"banker" includes a body of persons, whether incorporated or not, who carry on the business of banking;
"bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy;
"bearer" means the person in possession of a bill or note payable to bearer;
"bill" means bill of exchange, and "note" means promissory note;
"delivery" means transfer of possession, actual or constructive, from one person to another;

"holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer of it;
"indorsement" means an indorsement completed by delivery;
"issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;
"non-business day" means every day on which bank premises are not open for business;
"value" means valuable consideration.

PART 1
BILLS OF EXCHANGE
Forms and Interpretation

3 "Bill of exchange" defined

(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument that does not comply with these conditions, or that orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount, or (b) a statement of the transaction giving rise to the bill, is unconditional.

(4) A bill is not invalid by reason that –
(a) It is not dated;
(b) It does not specify the value given, or that any value has been give;
(c) It does not specify the place where it is drawn or the place where it is payable.

4 Inland and foreign bills

(1) An "inland bill" is a bill that is, or on the face of it purports to be –
(a) Both drawn and payable in any country of the Realm of New Zealand or the Commonwealth of Australia or any state or territory of Australia;
(b) Drawn in any country of the Realm of New Zealand or the Commonwealth of Australia or any state or territory of Australia upon some person resident therein.

Any other bill is a "foreign bill".

(2) Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

5 How bills may be drawn

(1) A bill may be drawn payable to or to the order of the drawer; or it may be drawn payable to or to the order of the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

6 Address to drawee

(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to 2 or more drawees, whether they are partners or not; but an order addressed to 2 drawees in the alternative, or to 2 or more drawees in succession, is not a bill of exchange.

7 Certainty required as to payee

(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable –

(a) To 2 or more payees jointly; or

(b) In the alternative to one or 2, or one or some of several payees; or

(c) To the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

8 What bills are negotiable

(1) Where a bill contains words prohibiting transfer, or indicating an intention that it is not transferable, it is valid as between the parties to it, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer if it is expressed to be so payable, or if the only or the last indorsement thereon is an indorsement in blank.

(4) A bill is payable to order if it is expressed to be so payable, or if it is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it is not transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

9 Sum payable

(1) The sum payable by a bill is a sum certain, within the meaning of this Act, although it is required to be paid –

(a) With interest;

(b) By stated instalments;

(c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

(d) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the 2, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument provides otherwise, interest runs from the date of the bill, and, if the bill is undated, from its issue.

10 Bill payable on demand

(1) A bill is payable on demand –

(a) If it is expressed to be payable on demand, or at sight, or on presentation; or

(b) If no time for payment is expressed therein.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11 Bill payable at a future time

(1) A bill is payable at a determinable future time within the meaning of this Act if it is expressed to be payable –

(a) At a fixed period after date or sight;

(b) On or at a fixed period after the occurrence of a specified event that is certain to happen, though the time of happening may be uncertain.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12 Omission of date in bill payable after date

Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly:

Provided that (a) where the holder in good faith and by mistake inserts a wrong date, and (b) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, it shall not be avoided by the insertion of a wrong date, but shall operate and be payable as if the date so inserted had been the true date.

13 Antedating and postdating

(1) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is undated or postdated, or that it bears date on a Sunday.

14 Computation of time of payment

Where a bill is not payable on demand, the day on which it falls due is determined as follows –

(a) Three days (called "days of grace"), are in every case where the bill itself does not provide otherwise, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace;

Provided that when the last day of grace is a non-business day the bill is due and payable on the next following business day;

(b) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;

(c) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance or for non-delivery.

15 Referee in case of need

The drawer of a bill and any indorser may insert in it the name of a person to whom the holder may resort in case of need – that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not.

16 Optional stipulations by drawer or indorser

The drawer of a bill, and any indorser, may insert in it an express stipulation –

(a) Negativing or limiting his own liability to the holder;
(b) Waiving as regards himself some or all of the holder's duties.

17 Definition and requisites of acceptance

(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

(a) It must be written on the bill and be signed by the drawee; the mere signature of the drawee without additional words is sufficient;
(b) It must not state that the drawee will perform his promise by any other means than the payment of money.

18 Time for acceptance

(1) A bill may be accepted –

(a) Before it has been signed by the drawer or while otherwise incomplete;
(b) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

(2) Where a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as on the date of its first presentment to the drawee for acceptance.

19 General and qualified acceptances

(1) An acceptance is either (a) general, or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer; a qualified acceptance in express terms varies the effect of the bill as drawn.

(3) In particular, an acceptance is qualified which is –

(a) Conditional – which makes payment by the acceptor dependent on the fulfillment of a condition in it stated;
(b) Partial – an acceptance to pay part only of the amount for which the bill is drawn;
(c) Local – an acceptance to pay only at a particular specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere;
(d) Qualified as to time;
(e) The acceptance of some one or more of the drawees, but not of all.

20 Inchoate instruments

(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner, where a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way.

(2) (a) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly under the authority given.

(b) Reasonable time for this purpose is a question of fact.

(c) If any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly under the authority given.

21 Delivery

(1) (a) Every contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect to it.

(b) Where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than the holder in due course, the delivery –

(a) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;

(b) May be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the bill.

(3) If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(4) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties

22 Capacity of parties

(1) (a) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

(b) Nothing in this section shall enable a corporation to make itself liable as a drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by a minor or corporation, having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto.

23 Signature essential to liability

(1) No person is liable as drawer, indorser, or acceptor of a bill unless he has signed it as such.

(2) (a) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.

(b) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

24 Forged or unauthorised signature

(1) Subject to this Act, where a signature on a bill is forged, or is placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party to it can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

(2) Nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

25 Signature by procuration

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority.

26 Person signing as agent or representative

(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal, or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill

27 Value and holder for value

(1) Valuable consideration for a bill may be constituted by –

(a) Any consideration sufficient to support a simple contract;

(b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to that time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the amount of the sum for which he has a lien.

28 Accommodation party

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser without receiving value for it, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

29 Holder in due course

(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

30 Presumption of value and good faith

(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills

31 Negotiation of bill

(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

32 Requisition of a valid indorsement

An indorsement in order to operate as a negotiation must comply with the following conditions –

(a) It must be written on the bill itself and be signed by the indorser; the simple signature of the indorser on the bill, without additional words, is sufficient:
Provided that an indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, shall be deemed to be written on the bill itself;

(b) It must be an indorsement of the entire bill. A partial indorsement – that is to say, an indorsement that purports to transfer to the indorsee a part only of the amount payable, or to transfer the bill to 2 or more indorsees severally – does not operate as a negotiation of the bill;

(c) Where a bill is payable to the order of 2 or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others;

(d) Where in a bill payable to order the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature;

(e) Where there are 2 or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;

(f) An indorsement may be either special or in blank; it may also contain terms making it restrictive.

33 Conditional indorsement

Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the conditions has been fulfilled or not.

34 Indorsement in blank, and special indorsement

(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply, with the necessary modifications, to an indorsee under a special indorsement.

(4) Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill or to the order of himself or some other person.

35 Restrictive indorsement

(1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof – as, for example, if a bill is indorsed "Pay D. only", or "Pay D. for the account of X.", or "Pay D. or order for collection".

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

36 Negotiation of overdue or dishonoured bill

(1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been either restrictively indorsed, or discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill became overdue.

(5) Where a bill that is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour: but nothing in this subsection shall affect the rights of a holder in due course.

37 Negotiation of bill to party already liable thereon

Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to this Act, reissue and further negotiate the bill; but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

38 Rights of the holder

The rights and powers of the holder of a bill are as follows –

(a) He may sue on the bill in his own name;

(b) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(c) Where his title is defective –

(i) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and

(ii) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

39 When presentment for acceptance is necessary

(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

40 Time for presenting bill payable after sight

(1) Subject to this Act, where a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he does not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41 Rules as to presentment for acceptance and excuses for non-presentment

(1) A bill is duly presented for acceptance if it is presented under the following rules –

(a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorised to accept or to refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;

(b) Where a bill is addressed to 2 or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, in which case presentment may be made to him only;

(c) Where the drawee is dead, presentment may be made to his executor or administrator;

(d) Where the drawee is bankrupt, presentment may be made to him or to his assignee;

(e) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance –

(f) Where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill;

(g) Where, after the exercise of reasonable diligence, such presentment cannot be effected;

(h) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

42 Non-acceptance

Where a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he does not, the holder shall lose his right of recourse against the drawer and indorsers.

43 Dishonour by non-acceptance and its consequences

(1) A bill is dishonoured by non-acceptance –

(a) Where it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused, or cannot be obtained; or

(b) Where presentment for acceptance is excused and the bill is not accepted.

(2) Subject to this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

44 Qualified acceptance

(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain a general acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. The provisions of this subsection do not apply to a partial acceptance whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) Where the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented to it.

45 Rules as to presentment for payment

(1) Subject to this Act, a bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged.

(2) A bill is duly presented for payment if it is presented in accordance with the following rules –

(a) Where the bill is not payable on demand, presentment must be made on the day it falls due;

(b) (i) Where the bill is payable on demand, then, subject to this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable;

(ii) In determining what is a reasonable time regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case;

(c) Presentment must be made by the holder, or by some person authorised to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf, if by the exercise of reasonable diligence such person can there be found;

(d) A bill is presented at the proper place –

(i) where a place of payment is specified in the bill, and the bill is there presented;

(ii) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(iii) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known;

(iv) in any other case, if presented to the drawee or acceptor at his last known place of business or residence, or wherever he can be found.

(e) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;

(f) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;

(g) Where the drawee or acceptor of the bill is dead, and no place of payment is specified, presentment must be made to the executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he can be found;

(h) Where authorised by agreement or usage, presentment through the post office is sufficient.

46 Excuses for delay or non-presentment for payment

(1) (a) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence.

(b) When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with –

(a) Where, after the exercise of reasonable diligence, presentment as required by this Act cannot be effected: The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;

(b) Where the drawee is a fictitious person;

(c) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to believe that the bill would be paid if presented;

(e) By waiver of presentment, express or implied.

47 Dishonour by non-payment

(1) A bill is dishonoured by non-payment –

(a) Where it is duly presented for payment and payment is refused, or cannot be obtained; or

(b) Where presentment is excused and the bill is overdue and unpaid.

(2) Subject to this Act, where a bill is dishonoured by non-payment an immediate right of recourse against the drawers or indorsers accrues to the holder.

48 Notice of dishonour

(1) Subject to this Act, where a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged;

(2) (a) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission.

(b) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill has in the meantime been accepted.

49 Rules as to notice of dishonour

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules –

(a) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;

(b) Notice of dishonour may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;

(c) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers having a right of recourse against the party to whom it is given;

(d) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;

(e) The notice may be given either in writing by personal communication, and may be given in any terms sufficient to identify the bill, and intimating that the bill has been dishonoured by non-acceptance or non-payment;

(f) The return of a dishonoured bill to the drawer or an indorser is in point of form deemed a sufficient notice of dishonour;

(g) A written notice need not be signed, and an insufficient written notice may be supplemented and made valid by verbal communication;

(h) A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled by it;

(i) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf;

(j) Where the drawer or indorser is dead, and the party giving notice is aware of the fact, the notice must be given to an executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he can be found;

(k) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to his assignee;

(l) Where there are more than 2 drawers or indorsers, who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice on behalf of the others;

(m) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter;
(n) In the absence of special circumstances, notice is not deemed to have been given within a reasonable time unless –
  (i) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;
  (ii) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and, if there is no such post on that day, then by the next post thereafter;
(o) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice of his principal, he must do so within the same time as if he were the holder; and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder;
(p) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour;
(q) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the post office.

50 Excuses for want of notice and delay

(1) (a) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence;
  (b) When the cause of delay ceases to operate the notice must be given with reasonable diligence.
(2) Notice of dishonour is dispensed with –
  (a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
  (b) By waiver, express or implied, either before the time of giving notice of dishonour has arrived, or after the omission to give due notice;
  (c) As regards the drawer, in the following cases, namely –
    (i) where the drawer and drawee are the same person;
    (ii) where the drawee is a fictitious person, or a person not having capacity to contract;
    (iii) where the drawer is the person to whom the bill is presented for payment;
    (iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;
    (v) where the drawer has countermanded payment.
  (d) As regards the indorser, in the following cases, namely –
    (i) where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill;
    (ii) where the indorser is the person to whom the bill is presented for payment;
    (iii) where the bill was accepted and made for his accommodation.

51 Noting or protest of bill

(1) Where an inland bill has been dishonoured it may be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the fact of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, not having been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment, otherwise the drawer and indorsers are discharged.

(3) Where a bill does not appear on the face of it to be a foreign bill, protest of it as in case of dishonour is unnecessary.

(4) A bill that has been protested for non-acceptance may be subsequently protested for non-payment.

(5) Subject to this Act, where a bill is noted or protested it must be noted on the day of dishonour.

(6) Where a bill has been duly noted, the protest may be subsequently extended so as to take effect from the date of the noting.

(7) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(8) (a) A bill must be protested at the place where it is dishonoured.

(b) Where a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day.

(c) When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

(9) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify –

(a) The person at whose request the bill is protested;

(b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(10) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or on written particulars of it.

(11) Protest is dispensed with by any circumstance that would dispense with notice of dishonour.

(12) Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52 Duties of holder as regards drawee or acceptor

(1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable is not necessary to protest it, or that notice of dishonour should be given to him.

(4) When the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

53 Funds in hands of drawee

A bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment of it, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

54 Liability of acceptor

The acceptor of a bill, by accepting it –

(a) Engages that he will pay it under the tenor of his acceptance;

(b) Is precluded from denying to a holder in due course –

(i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(ii) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

55 Liability of drawer or indorser

(1) The drawer of a bill, by drawing it –

(a) Engages that on due presentation it shall be accepted and paid under its tenor, and that if it is dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken;

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill, by indorsing it –

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken;

(b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(c) Is precluded from denying to his immediate or a subsequent indorsee that he bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title to it.

56 Stranger signing bill liable as indorser

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

57 Measure of damages against parties to dishonoured bill

Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows –

(a) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser –
  (i) the amount of the bill;
  (ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
  (iii) the expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest;

(b) In the case of a bill that has been dishonoured abroad, in lieu of the above damages the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange, with interest thereon until the time of payment;

(c) Where by this Act interest may be recovered as damages, such interest may, if justice requires it, be withheld wholly or in part, and, where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

58 Transferor and transferee by delivery

(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery".

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not award of any fact which renders it valueless.

Discharge of Bill

59 Payment in due course

(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

(2) "Payment in due course" means payment to the holder of the bill made at or after its maturity in good faith and without notice that the holder's title is defective.

(3) When a bill is paid by the drawer or an indorser it is not discharged, but –

(a) Where a bill payable to or to the order of a third party is paid by the drawer, the drawer my enforce payment of it against the acceptor, but may not reissue the bill;

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted

to his former rights as regards the acceptor or antecedent parties, and may, strike out his own and subsequent indorsements, and again negotiate the bill.

(4) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

60 Banker paying on demand draft bearing forged indorsement

(1) Where a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

(2) Where a banker carries on the business of banking at more branches than one he shall for the purposes of this section, be deemed to be an independent banker in respect of each of such branches, and a draft issued by one of such branches and payable at another shall be deemed to be a bill.

61 Where acceptor the holder at maturity

Where the acceptor of a bill is or becomes the holder of it in his own right, oat or after its maturity, the bill is discharged.

62 Holder may waive his rights

(1) (a) Where the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

(b) The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

(3) Nothing in this section shall affect the rights of a holder in due course without notice of any such renunciation.

63 Cancellation

(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent on it, the bill is discharged.

(2) (a) Any party liable on a bill may in like manner be discharged by the intentional cancellation of his signature by the holder or his agent.

(b) In such case an indorser who would have had a right of recourse against the party whose signature has been cancelled is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

64 Alteration of bill

(1) (a) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

(b) Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it under its original tenor.

(2) In particular, the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour

65 Acceptance for honour *supra* protest

(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable on it, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable on it, or for the honour of a person on whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour supra protest in order to be valid must –

(a) Be written on the bill, and indicate that it is an acceptance for honour; and

(b) Be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

66 Liability of acceptor for honour

(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided that it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

67 Presentation to acceptor for honour

(1) Where a dishonoured bill has been accepted for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded for presentment to him not later than the day following its maturity.

(3) Delay in presentment, or non-presentment is excused by any circumstance that would excuse delay in presentment for payment, or non-presentment for payment.

(4) Where a bill is dishonoured by the acceptor for honour it must be protested for non-payment by him.

68 Payment for honour *supra* protest

(1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable on it, or for the honour of the person on whose account the bill is drawn.

(2) Where 2 or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or may form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for and succeeds to both the rights and duties of the holder, as regards the party for whose honour he pays and all parties liable to that party.

(6) The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest, and if the holder does not deliver them up on demand he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment supra protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Bills

69 Holder's right to duplicate of lost bill

(1) Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost is found again.

(2) If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so.

70 Action on lost bill

In any action or proceeding upon a bill, the Court or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

Bill in a Set

71 Rules as to sets

(1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses 2 or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where 2 or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues it, as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

(5) If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every part as if it were a separate bill.

(6) Where the acceptor of a bill dawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(7) Subject to the preceding rules where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws

72 Law governing contracts contained in a bill

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows –

(a) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is in each case determined by the law of the place where the contract was made:

Provided that –

(i) Where a bill is issued out of Niue it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(ii) Where a bill issued out of Niue conforms, as regards requisites in form, to the law of Niue it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Niue;

(b) Subject to this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill is determined by the law of the place where such contract was made:

Provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted under the law of Niue;

(c) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;

(d) Where a bill is drawn out of but is payable in Niue and the sum payable is not expressed in the currency of Niue, the amount shall, in the absence of some express stipulation, be calculated under the rate of exchange for sight drafts at the place of payment on the day the bill is payable;

(e) Where a bill is drawn in one country and is payable in another, the due date thereof is determined under the law of the place where it is payable.

PART 2
CHEQUES ON A BANK

73 "Cheque" defined

(1) A cheque is a bill of exchange drawn on a banker payable on demand.

(2) Except as otherwise provided in this Part, the provisions applicable to a bill of exchange payable on demand apply to a cheque.

74 Presentment of cheques for payment

Subject to this Act, –

(a) Where a cheque is not presented for payment within a reasonable time after its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between himself and the banker to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage – that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid;

(b) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case;

(c) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and shall be entitled to recover the amount from him.

75 Revocation of banker's authority

(1) The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by –

(a) Countermand of payment;

(b) Notice of the customer's death.

(2) Notwithstanding section 1(b) a banker may pay a cheque drawn on him, notwithstanding that he has notice of the death of the customer who drew it, if the cheque is presented not more than 10 days after the date of the customer's death, unless –

(a) The cheque is dated after that date; or

(b) The banker receives a countermand of payment by a person who claims to be entitled to a grant of administration in respect of or to be a beneficiary of the customer's estate.

Crossed Cheques

76 General and special crossings defined

(1) Where a cheque bears across its face an addition of –

(a) The words "and company" or "bank" or any abbreviation between 2 parallel transverse lines, either with or without the words "not negotiable"; or

(b) 2 parallel transverse lines simply, either with or without the words "not negotiable" –

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially, and to that banker.

77 Crossing by drawer or after issue

(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally, the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "Not negotiable".

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, the banker may cross it specially to himself.

78 Crossing to be deemed a material part of cheque

A crossing authorised by this Act is a material part of the cheque, and no person may obliterate or, except as authorised by this Act, add to or alter the crossing.

79 Duties of banker as to crossed cheques

(1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

(3) Where a cheque presented for payment does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker, or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

80 Protection to banker and drawer where cheque is crossed

Where the banker on whom a crossed cheque is drawn pays it in good faith and without negligence, if crossed generally, to a banker, and, if crossed specially, to the banker to whom it is crossed, or to his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque has been made to the true owner.

81 Effect of the words "Not negotiable"

Where a person takes a crossed cheque bearing on it the words "Not negotiable", he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

82 [Repealed 1960/s8(1)]

83 Branch banks deemed independent banks for certain purposes

Where a banker carries on the business of banking at more branches than one he shall, for the purposes of section 76 to 81 and for the purposes of the Cheques Act 1960, be deemed to be an independent banker in respect of each of such branches.

PART 3
PROMISSORY NOTES

84 "Promissory note" defined

(1) A promissory note is an unconditional promise in writing made by one person to another, signed buy the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to a bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.

(4) A note that is, or on the face of it purports to be, both made and payable in Niue is an inland note; any other note is a foreign note.

85 Delivery necessary

A promissory note is incomplete until delivery to the payee or bearer.

86 Joint and several notes

(1) A promissory note may be made by 2 or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by 2 or more persons, it is deemed to be their joint and several note.

87 Note payable on demand

(1) (a) Where a note payable on demand is indorsed, it must be presented for payment within a reasonable time of the indorsement.

(b) If it is not so presented, the indorser is discharged.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purposes of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

88 Presentment of note for payment

(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable; but in any other case presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

89 Liability of maker

The maker of a promissory note, by making it –

(a) Engages that he will pay it under is tenor;

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

90 Application of Part 1 to notes

(1) Subject to this Part the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes –

(a) Presentment for acceptance;

(b) Acceptance;

(c) Acceptance supra protest;

(d) Bills in a set.

(4) Where a foreign note is dishonoured, protest of it is unnecessary.

PART 4
MISCELLANEOUS

91 Good faith

A thing is deemed to be done in good faith within the meaning of this Act where it is in fact done honestly, whether it is done negligently or not.

92 Signature

(1) Where by this Act any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written on it by some other person by or under his authority.

(2) Where a corporation makes any instrument or writing required to be signed, it is sufficient if the instrument or writing is sealed with the corporate seal.

(3) Nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

93 Computation of time

Where by this Act the time limited for doing any act or thing is less than 3 days, in reckoning time non-business days are excluded.

94 When noting equivalent to protest

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter to take effect from the date of the noting.

95 Protest when notary not accessible

(1) Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of 2 witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

(2) The form given in Schedule 2 may be used with necessary modifications, and if used shall be sufficient.

96 Bill drawn at sight to be deemed a bill payable on demand

Every bill of exchange or promissory note drawn and purporting to be payable at the sight or on presentation shall be stamped as and shall for all purposes be deemed to be a bill of exchange or promissory note payable on demand without any days of grace, any law or custom or to the contrary notwithstanding.

97 [Repealed]

98 Saving

The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory note, and cheques.

SCHEDULES

SCHEDULE 1
Section 1 (2)

[Spent]

SCHEDULE 2
Section 95 (2)
PROTEST WHERE THE SERVICES OF A NOTARY CANNOT BE OBTAINED

Know all men that I, A.B. [householder] of , in Niue at the request of C.D., there being no notary public available did on the day of 20 , at , demand payment [or acceptance] of the bill of exchange hereunder written, from E.F., to which demand he made answer [State answer, if any]: Wherefore I now, in the presence of G.H. and J.K., do protest the said bill of exchange.

(Signed) A.B.

G.H.)
J.K.) Witnesses

[NB. The bill itself should be annexed, or a copy of the bill and all that is written on it should be underwritten.]

BROADCASTING ACT 1989

1989/132 – 8 June 1989

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To establish the Broadcasting Corporation of Niue for the provision of television and radio services and for related purposes

PART 1
PRELIMINARY

1 Short title

This is the Broadcasting Act 1989.

2 Interpretation

In this Act –

"advertisement" means any matter which draws the attention of the public, or a segment thereof, to a product, service, person, organisation or line of conduct in a manner which appears to be calculated to promote or oppose, directly or indirectly, that product, service, person, organisation or line of conduct;

"Board" means the Board of Directors appointed under this Act;

"broadcasting" means the transmission of sound and/or visual images intended for direct reception by the general public;

"community announcement" means an advertisement relating to a community event or activity or to public health or education;

"Corporation" means the Broadcasting Corporation of Niue established by this Act;

"Minister" means the Minister for the time being in charge of broadcasting;

"programme" means any matter including an advertisement transmitted as part of the Corporation's television and/or radio services;

"radio service" means the service called Radio Sunshine established by this Act;

"regulations" means regulations made under section 40;

"services" in addition to Radio Sunshine and Television Niue, includes any other service established by the Corporation;

"television service" means the service called Television Niue established by this Act.

3 Application

(1) This Act shall bind the Crown except as specified in this Act or the regulations but nothing in this Act shall render the Crown liable to any prosecution.

(2) Except as otherwise provided, this Act shall be read subject to the Communications Act 1989.

(3) Subject to this Act, the Film and Public Entertainment Act 1979 shall not apply to the Corporation.

4 General objectives of the Act

The general objectives of this Act are –

(a) To provide for national broadcasting to be controlled by a corporation which, subject to this Act, acts as a trustee of the national interest and operates its services with the maximum independence;

(b) To provide a means of ensuring that television and radio programmes are compatible with the identity and culture of Niue; and

(c) To provide for the ultimate accountability of the broadcasting system to the Niue Assembly through the Minister and Cabinet.

PART 2
THE BROADCASTING CORPORATION

5 The Corporation established

(1) There is hereby established a corporation to be called the Broadcasting Corporation of Niue.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do and suffer.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the corporation appearing on a document and shall presume that the document was duly sealed.

6 Services of Corporation

(1) The Corporation shall maintain the following services –

(a) The existing service called Radio Sunshine;
(b) The existing service called Television Niue;
(c) Such other services as the Corporation may from time to time establish.

(2) Cabinet may, on the recommendation of the Corporation, approve the disestablishment of any of the services mentioned in subsection (1) (a) and (b).

7 Functions and powers of the Corporation

(1) The functions of the Corporation are to provide national broadcasting services for Niue and if so directed by Cabinet to places outside Niue, which –

(a) Serve as far as practicable, all the people of Niue;
(b) Contribute to the development of national unity;
(c) Preserve and stimulate pride in the indigenous culture and traditions of the people of Niue; and
(d) Consist of a variety of programmes which inform, educate and entertain.

(2) Subject to this Act the Corporation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular has power –

(a) To enter into contracts;
(b) To acquire, hold and dispose of real or personal property;
(c) To occupy, use and control any land or building owned or held under lease by the State and made available for the purposes of the Corporation;
(d) To erect buildings and structures and carry out works;
(e) To appoint agents and attorneys, and to act as agent for other persons;
(f) To engage persons to perform services for the Corporation;
(g) To accept gifts, devises and bequests made to the Corporation, whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Corporation on trust;
(h) To borrow money from any bank or lending institution (with or without security) on such terms and conditions it may agree to; and
(i) To do anything incidental to any of its powers.

(3) The Corporation shall not borrow any sums up to $20,000 without first obtaining the Minister's concurrence, and further shall not borrow any sums of more than $20,000 without first obtaining Cabinet's approval.

8 Government policy

(1) In the exercise of its functions and powers the Corporation shall have regard to the general policy of the Government in relation to broadcasting or to the functions and powers of the Corporation as that policy is communicated to the Corporation by Cabinet, and shall comply with any directions given by Cabinet to the Corporation by notice in writing pursuant to any such policy.

(2) Nothing in subsection (1) authorises Cabinet to give a direction in respect of –

(a) A particular programme;
(b) The gathering or presentation of news or the preparation or presentation of current affairs programmes;
(c) Contracts for the provision of programmes; or
(d) The staffing of the Corporation.

9 Programme functions and powers

The programme functions and powers of the Corporation shall be –

(a) To ensure that each Service operates as a public service to provide and produce programmes which inform, educate, and entertain;
(b) To establish a system for the gathering of news for television, and a system for the gathering of news for radio; and to make such news available for the services;
(c) To negotiate for and purchase or otherwise acquire programmes, and rights or privileges in respect of sports fixtures and other events, occasions, meetings, functions, or incidents of public interest for broadcast by the Services, and to establish procedures for the allocation of such programmes, rights, or privileges to the Services;
(d) To conduct or commission a programme, audience research, market, or technical surveys, which may be released to such persons and in such manner and on such terms and conditions as the Corporation thinks fit.

10 Board of Directors

(1) The Corporation shall be governed by a Board of Directors consisting of the following Directors:

(a) Four persons appointed under subsection (2);
(b) The Financial Secretary ex officio;
(c) The Director of Community Affairs ex officio.

(2) The directors specified in subsection (1) (a) shall be appointed by Cabinet as follows:

(a) One director to represent commercial interests;
(b) One director to represent youth interests;
(c) One director to represent religious interests;
(d) One director to represent women.

(3) No other person may be appointed under subsection (2) to be a director or may continue to hold office as a director so appointed, while he is a person holding a full time office of emolument in the Corporation.

(4) Without limiting the generality of the powers and functions of the Corporation as provided under this Act, the Board shall –

(a) Ensure that the functions of the Corporation are performed efficiently with the maximum benefit to the people of Niue;
(b) Maintain the independence and integrity of the Corporation subject to this Act;

(c) Ensure that the assets of the Corporation are as far as practicable preserved, maintained and utilised in a manner consistent with the functions of the Corporation; and
(d) Ensure that the Corporation does not contravene or fail to comply with any of the provisions of this Act or any directions given under section 8.

11 Term of office of appointed directors

(1) Every director appointed under section 10 (2) shall be appointed for a term of 2 years.

(2) Subject to section 12 every appointed director shall continue to hold office until his successor comes into office.

(3) Every appointed director may be reappointed.

12 Extraordinary vacancies

(1) Any appointed director may at any time resign his office by notice in writing delivered to the Clerk of Cabinet.

(2) Cabinet may remove any appointed director from office –
(a) For disability, neglect of duty, misconduct, or bankruptcy; or
(b) If the director has permanently left Niue; or
(c) If the director is absent from three consecutive meetings of the Board without leave of absence from the Board as required under section 16.

(3) If an appointed director dies, or resigns, or is removed from office under this section, the vacancy thereby occurring shall be deemed to be an extraordinary vacancy, and may be filled by an appointment made in the same manner as that of the director vacating office.

(4) Any person appointed to fill an extraordinary vacancy shall hold office for the unexpired balance of the term of office of his predecessor, but may be reappointed.

(5) The powers of the Board shall not be affected by any vacancy in its membership.

13 Chairman

(1) Cabinet shall appoint one of the Directors specified under section 10 (1) (a) to be the Chairman of the Board.

(2) The Chairman shall hold office as such for a period of 3 years from the date of his appointment unless he sooner ceases to be a director, and may be reappointed as such.

14 Remuneration of directors

Every director shall be paid such fees as may be fixed by Cabinet by regulations made under this Act.

15 Meeting of directors

(1) [Spent]

(2) Meetings of directors shall be held at least once every 2 months at such times and places as the Chairman or the directors appoint.

(3) The Chairman shall call a meeting whenever required to do so in writing by any 3 directors.

(4) At any meeting 5 directors shall form a quorum.

(5) The Chairman shall preside at every meeting at which he is present.

(6) If the Chairman is for any reason absent from a meeting, the directors present shall elect one of their number to preside at that meeting.

(7) (a) In the absence from any meeting of a director ex officio, he may authorise any other officer of his department or (in the case of the General Manager) of the Corporation to attend the meeting in his place.

(b) Any officer so authorised shall be deemed for all purposes to be a director of the Corporation when he so attends that meeting.

(8) At every meeting the Chairman or other person presiding shall have a deliberative vote and in the case of an equality of votes, he shall also have a casting vote.

(9) Every question arising at a meeting shall be decided by a majority of the votes recorded on the question.

(10) Subject to this Act, the Board may regulate its procedure in such manner as it thinks fit.

16 Leave of absence

The Board may grant leave to a director to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Board thinks fit.

17 Disclosure of interests

(1) A director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the director shall not –

(a) Be present during any deliberation of the Board with respect to that matter; or

(b) Take part in any decision of the Board with respect to that matter; or

(c) In any way influence any decision of the Board.

(3) Notwithstanding subsection (2)(a), the director shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

18 Directors not personally liable

No director of the Corporation shall be personally liable for any act done or default made by the Corporation or by any of its members in good faith in the course of its operations.

19 Contracts by the Corporation

(1) Contracts on behalf of the Corporation may be made as follows –

(a) Any contract which, if made between private persons, must be by deed shall, if made by the Corporation, be in writing under the common seal of the Corporation;

(b) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Corporation, be in writing either under the common seal of the Corporation or signed by any person on behalf and by direction (either general or specific) of the Corporation;

(c) Any contract which, if made between private persons may be made orally, may if made by the Corporation be made orally by any person on behalf and by direction (either general or specific) of the Corporation.

(2) So far as reasonably practicable contracts of the Corporation shall be made in writing.

(3) The common seal of the Corporation shall not be affixed to any document except in pursuance of a resolution of the Board and the execution of any document so sealed shall be attested by 2 directors.

20 Committees

(1) The Corporation may appoint committees consisting of any directors of officers of the Corporation.

(2) Subject to this Act and to any directions given to it by the Corporation, every committee may regulate its procedure in such manner as it thinks fit.

21 Delegation of powers

(1) The Corporation may delegate to any of its committees, or to the General Manager, or to any other officer of the Corporation any of its powers under this Act, including this present power of delegation.

(2) Subject to any general or specific directions given to it or to him by the Corporation, any committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on it or him directly by this Act and not by delegation.

(3) Any committee or person purporting to act under any delegation under this section shall be presumed, until the contrary is proved, to be acting in accordance with the terms of the delegation.

(4) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Corporation itself.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor, notwithstanding any change in the membership of the Corporation or of any committee.

PART 3
Personnel

22 General Manager

(1) The Board, shall appoint a General Manager of the Corporation, for such period (not exceeding 2 years) as may be specified in the appointment, and on such terms and conditions as may be determined by the Board.

(2) (a) The General Manager shall be the administrative head of the Corporation, and shall be responsible to the Corporation for the effective and efficient execution of the Corporation's functions.

(b) In carrying out his duties, he shall follow any general or special directions given to him by the Corporation.

(3) The General Manager may be reappointed.

(4) All remuneration and other allowances and expenses payable to the General Manager shall be paid out of the funds of the Corporation.

(5) The General Manager shall not engage in any other business or occupation.

23 Corporation employees

(1) The Corporation may employ such officers and employees as it considers necessary for the performance of its functions, on such terms and conditions as provided under section 24, and may at any time remove any such officer or employee from his office or employment.

(2) For the purposes of article 62 of the Constitution the General Manager and other employees of the Corporation shall not be regarded as members of the Niue Public Service.

24 Public Service terms and conditions

(1) The Corporation shall, with any necessary modifications, apply the terms and conditions applicable to the Niue Public Service, to the remuneration and conditions of employment of the employees of the Corporation in the same manner as they apply to the remuneration and conditions of employment of employees in the Niue Public Service.

(2) Notwithstanding subsection (1) the Corporation may, with the express approval of Cabinet, apply to its employees terms and conditions more favourable than those applicable to the Niue Public Service.

PART 4
Financial Provisions

25 Capital

(1) The capital of the Corporation shall be $266,000 made up as follows –

(a) As to the amount of $190,000 representing a book value of all the assets of Radio Sunshine and Television Niue as of 31 March 1989; and

(b) A cash grant of $76,000 to be made by the Government of Niue to the Corporation on the commencement of this Act.

(2) (a) The Corporation may by resolution and with the concurrence of the Minister, recommend to Cabinet that the capital of the Corporation be increased, and in any such case Cabinet, on the advice of the Minister of Finance, may, by regulation increase the capital of the Corporation to such amount as may be prescribed in that regulation.

(b) The amount of any such increase shall be paid to the Corporation by the Minister of Finance, from money appropriated by the Assembly for that purpose.

(3) The whole of the capital of the Corporation for the time being shall be deemed to be vested in the Crown.

26 Bank accounts

(1) The Corporation shall open and maintain an account with a bank approved by the Board and shall pay to that account –

(a) All capital grants made under section 25 (1)(b);

(b) All advances made under section 29;

(c) All fees charged by the Corporation under section 38;

(d) All other money derived from the operations of the Corporation or received by the Corporation from any source whatsoever.

(2) The bank account shall be operated upon only by cheque or other instruments (not being a promissory note or bill) signed by such person or persons as may be authorised by the Corporation for that purpose.

27 Application of funds

The funds of the Corporation shall be applied only –

(a) In payment or discharge of the expenses, charges, obligations, or liabilities incurred or undertaken by the Corporation in or in connection with the performance of its functions or the exercise of its powers;

(b) In making any other payments that are required by law to be made out of the funds of the Corporation.

28 Disposition of profits

(1) The Corporation shall establish a Reserve Fund into which shall be paid the annual surplus of the Corporation.

(2) The annual surplus shall consist of so much of the annual income of the Corporation as is not required for the payment of expenses, including staff, salaries, and allowances; provision for previous losses, bad and doubtful debts; depreciation of assets; and all such other matters as the Corporation considers proper.

(3) [Spent]

(4) (a) During subsequent years the Corporation shall declare a dividend on the capital of the Corporation of such amount as may be fixed in that behalf by the Minister of Finance, after consultation by him with the Corporation.

(b) The Minister of Finance, having regard to the financial position of the Corporation, may in any financial year determine that no dividend shall be payable by the Corporation in respect of that year.

(5) The amount of any dividend declared by the Corporation under this section shall be paid into the Niue Government Account.

29 Advances to Corporation

(1) Cabinet may –

(a) Advance money to the Corporation; or

(b) Give in respect of any advance made to the Corporation by any other person any guarantee, indemnity, or security on and subject to such terms and conditions as Cabinet thinks fit.

(2) All money required to be paid by Cabinet under subsection (1)(a) shall be paid out of the Niue Government Account as appropriated by the Assembly for that purpose.

(3) Cabinet may enter into agreements with the Corporation for the purposes of giving full effect to this section.

30 Investment of excess funds

Any excess funds of the Corporation may be invested on deposit in any bank approved by the Board.

31 Annual estimates

(1) The Corporation shall, for each financial year, prepare an estimate in a form approved by the Minister of Finance, of the amount of expenditure for all purposes, and the receipts of the Corporation.

(2) The estimates so prepared shall be submitted to the Minister not later than such date as the Minister directs, for the approval of such estimates by Cabinet, and the funds of the Corporation shall not be expended otherwise than in accordance with estimates of expenditure so approved.

32 Accounts and records

The Corporation shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation and shall do all things necessary to ensure that all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over the assets of or in the custody of the Corporation and over the incurring of liabilities by the Corporation.

33 Audit

The accounts and records of financial transactions of the Corporation shall be audited annually by the Government Auditors and a report of the audit shall be furnished to the Corporation and Cabinet.

34 Annual report

The Corporation shall within 3 months after the end of the Corporation's financial year prepare and furnish to the Minister a report on its operations during the year ended on that date together with financial statements in respect of that year in such form as the Minister of Finance approves.

PART 5
PROGRAMMES

35 Programme standards

(1) Subject to any advice that the Corporation may receive from the Programme Advisory Committee pursuant to section 13 of the Communications Act 1989, the Corporation shall be responsible for maintaining, in its programmes and their presentation, standards which will be generally acceptable in the community, and in particular it shall have regard to –

(a) The provision of a range of programmes which will cater in a balanced way for the varied interests of different sections of the community;
(b) The needs to ensure as far as practicable, that a Niuean identity is developed and maintained in the services;
(c) The observance of standards of good taste and decency;
(d) The accurate and impartial gathering and presentation of news according to recognised standards of objective journalism;
(e) The principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest;
(f) The maintenance of law and order; and
(g) The privacy of the individual.

(2) In ensuring compliance with subsection (1)(c), the Corporation shall be guided by such guidelines as are applied by the Censor of Films under the Film and Public Entertainment Act 1979, notwithstanding section 3(3) of this Act.

36 Advertisements

(1) Notwithstanding section 12(1)(a) of the Communications Act 1989 the Corporation shall be empowered to transmit advertisements through any of its services.

(2) In making such transmissions the Corporation shall take into account Cabinet's policies on matters of advertising and shall further take into account any guidelines established by the Programme Advisory Committee under section 13(5) of the Communications Act.

PART 6
MISCELLANEOUS

37 Power to require certain transmissions

(1) When required to do so by the Minister, the Corporation shall make the service available to transmit any programme the Minister with Cabinet's approval, considers to be in the national interest.

(2) The Corporation shall not be obliged to make the service available under subsection (1) for more than 1 hour in any one day.

(3) During any period of national emergency proclaimed under section 2 of the Public Emergency Act 1979 –

(a) The limitation referred to in subsection (2) shall not apply; and

(b) The Corporation shall make the service available to authorised officers of the Government to transmit such matter as the Minister with Cabinet's approval, considers necessary.

(4) The power of the Minister under subsection (1) does not include the power to require the Corporation to transmit any programme or other matter that could reasonably be interpreted as promoting or opposing:

(a) A candidate in an election; or

(b) A particular point of view in relation to an issue or matter that is being submitted to the electorate in an election.

38 Power of Corporation to charge fees

(1) The Corporation may recommend to Cabinet the level of fees that the Corporation would charge for any of its services.

(2) The fees to be charged shall be set by Cabinet by regulations under section 40.

39 Contracts for services and programmes

The Corporation may enter into such contracts and make such arrangements as it thinks fit with any person who, subject to the terms and conditions of any such contract or arrangement, will produce programmes or parts of programmes to be broadcast by the Corporation.

40 Regulations

Cabinet may, on the recommendation of the Corporation, make regulations necessary for carrying out or giving full effect to this Act.

41 [Spent]

PART 7
TRANSITIONAL PROVISIONS

42 [Spent]

43 Personnel

(1) (a) Notwithstanding sections 22 and 23 the Corporation may employ the General Manager and other employees on a secondment basis from the Niue Public Service, on such arrangements as agreed upon with the Niue Public Service Commission.

(b) The Corporation shall have the sole discretion as to which employees of the Niue Public Service are to be engaged on such basis.

(2) During the term of such employment the General Manager and other staff shall come under the full control of the Corporation notwithstanding the continuance of their status as members of the Niue Public Service.

44 [Spent]

BUILDING CODE ACT 1992

1992/165 – 5 November 1992

1	Short title	12	Cancellation of permit
2	Interpretation	13	Notice of suspension or cancellation
3	Building inspector, other inspectors, and delegation	14	Appeals
4	National Building Code	15	Demolition order
5	Standards and controls	16	Offences
6	Buildings to have permit	17	Jurisdiction of Commissioners
7	Application for permit	18	Jurisdiction of Court with respect to dangerous deserted, ruinous and dilapidated buildings
8	Validity of permit		
9	Inspection of building	19	Regulations
10	Requisitions	20	Act to bind Crown
11	Suspension of permit	21-22	[Spent]

To make provision for a code to regulate the construction of buildings in Niue

1 Short title

This is the Building Code Act 1992.

2 Interpretation

In this Act –

"building" means any or part of any structure or erection used or capable of being used either –

(a) For human habitation;

(b) As a place within or under which work is performed;

(c) For storage of commodities articles or things,

and includes every other structure or erection associated with or having the purpose of assisting or enhancing such habitation work or storage, but does not include a structure or erection that is temporary having regard to the materials from which it is constructed or the purpose for which it shall be used;

"Building Inspector" means the Building Inspector appointed pursuant to section 3;

"Code" means the National Building Code prescribed under section 4;

"construct" means to carrying out work (other than temporary work) that shall have the purpose or effect of supporting adding to altering or adapting the structure of a building and includes work carried out that shall have the purpose or effect of supplying water or electricity to or within a building;

"permit" means building permit issued under this Act.

3 Building Inspector, other inspectors, and delegation

(1) There shall be appointed as members of the Public Service, a Building Inspector, and such other inspectors as may be required for the purpose of administering this Act.

(2) The Building Inspector may either generally or particularly delegate to any inspector, such of his powers as the Building Inspector may determine.

(3) Subject to this section and to any general or special directions given or conditions attached by the Building Inspector, the inspector to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the inspector directly by this section.

(4) Every inspector purporting to act under any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation made under this section may be revoked by the Building Inspector in whole or in part, and no such delegation shall prevent the exercise of any power by the Building Inspector.

4 National Building Code

(1) There may be prescribed under section 5, standards and controls relating to the construction of buildings and such standards and controls shall be known as the National Building Code.

(2) The National Building Code shall apply to the construction of every building.

5 Standards and controls

(1) Without limiting the generality of section 4 (1), Cabinet may prescribe regulations for all or any of the following –

(a) The classification of buildings or parts of a building having regard to the purpose for which the building is designed constructed or used;
(b) The structural requirements of a building;
(c) The resistance and stability of a building in the event of fire;
(d) The access to and egress from a building including access and egress by disabled persons, the provision of escape exits and the construction of any means of access or egress;
(e) The provision of electricity to and within a building;
(f) The provision of fire fighting equipment and the control of smoke in a building;
(g) The provision of amenities for the avoidance of health threatening conditions;
(h) The weatherproofing, supply of water, plumbing, drainage (including roof drainage) and sewage containment and its disposal;
(i) The provision of cooking and sanitary facilities;
(j) The size of rooms including their height and the provision of light and ventilation;
(k) The minimum requirements of any of the matters referred to in paragraphs (a) to (j).

(2) The National Building Code for Niue dated 1990 shall be deemed to be regulations made under subsection (1).

(3) Cabinet may by regulation add to, delete from or amend any provision of the Code.

6 Buildings to have permit

(1) No person shall commence or cause to be commenced the construction of a building or engage in the construction of a building without a building permit having first been applied for and issued under this Act.

(2) Every person who shall cause to be commenced the construction of a building and every person engaged in the construction of a building in respect of which a building permit is not issued in contravention of subsection (1), commits an offence and upon conviction shall be liable to a fine not exceeding 10 penalty units.

7 Application for permit

(1) Every person intending to construct a building shall make application to the Building Inspector for the issue of a permit in respect of the building to be constructed.

(2) Every application under subsection (1) shall contain all such information as the Building Inspector may reasonably require to ensure that the building complies with the Code including –

(a) A site plan detailing –
  (i) the location of the building and distance from each boundary measured from the outer extremities of the building;
  (ii) the distance from any existing building within the boundaries of the site measured from the outer extremities of each building;
  (iii) the width of any public road or access way adjacent to a boundary;
  (iv) the location of any water bore and its distance from any waste disposal facility measured from the outer limits of such facility;
  (v) the point at which electricity and water will be made available to the site and the location of the means by which the building shall be supplied;

(b) A design plan detailing –
  (i) drawings of at least 4 elevations of the building;
  (ii) drawings of at least one section of the building which shall describe the stud height;
  (iii) drawings describing the ties;

(c) Specifications;

(d) The dates upon which it is intended –
  (i) that construction shall commence;
  (ii) that the placement of foundations, and reinforcing studs shall be completed;
  (iii) the walls (without wall linings) and roof shall be completed;
  (iv) fixing of wall linings shall commence;
  (v) that construction shall be completed;

(e) The address at which the construction will take place;

(f) The name and address of the person who shall be the owner of the building;

(g) The name and address of the person who shall be responsible for the construction of the building, and the name and address of every subcontractor.

(3) No application for a permit shall be granted by the Building Inspector unless the information required under subsection (2) is submitted to the building inspector and the building complies with the Code.

(4) In approving the issue of a permit the Building Inspector may, subject to this Act and the Code –

(a) Require an existing building upon which construction work shall be undertaken and in respect of which work, a permit will issue, to comply with the Code to the extent that the work to be undertaken shall allow.

(b) Impose such reasonable terms and conditions that the Building Inspector deems to ensure that the Code shall be complied with.

(5) Every applicant for a building permit, or where the applicant is absent or unable to do so, the person who shall be responsible for the construction of the building, shall notify the Building Inspector in writing of every deletion from or addition to information contained in an application for a permit.

(6) Every person commits an offence who engages or who causes any other person to be engaged in the construction of a building and the construction engaged in is –

(a) Other than in accordance with information supplied to the building controller; and

(b) Without the prior written approval of the building inspector to the variation of such information;

and upon conviction shall be liable to a fine of 5 penalty units.

8 Validity of permit

(1) Every permit issued under section 7 shall entitle the applicant to commence or cause to be commenced the construction of the building in respect of which it is issued and shall remain in force until the construction of the building is completed consistent with the Code unless –

(a) Such construction is not commenced within the period of 12 months from the date that the permit was issued, in which case the permit shall upon the expiry of that period be cancelled under section 12; or

(b) Construction of the building shall cease for a continuous period of 6 months, in which case the permit shall be cancelled under section 12; or

(c) The permit shall be suspended under section 11 in which case the permit shall be of no effect during the period for which it is suspended;

(d) The permit shall be cancelled under section 12 in which case the permit shall be of no effect from the date that it is cancelled.

9 Inspection of building

(1) It shall be a condition of every permit that where the construction of a building shall involve work to be inspected, then upon such work having been undertaken no person engaged in the construction of the building shall undertake any other work that shall have the effect of preventing the Building Ins ector from carrying out a visual inspection of that work, until that inspection has actually been carried out and the building inspector has determined in writing that the other work may proceed to be undertaken.

(2) In respect of work to be inspected, it shall be the duty of every person responsible for the construction of a building to –

(a) Notify the Building Inspector when such work may be inspected; and

(b) Prohibit any work that shall have the effect of preventing such inspection.

(3) Every person who shall engage in work contrary to subsection (1) and every person responsible for the construction of a building who shall contravene subsection (2) commits an offence and upon conviction shall be liable to a fine not exceeding 5 penalty units.

(4) For the purpose of this Act, work to be inspected shall include –

(a) The footings and foundations (including steelwork) prior to the pouring of concrete;

(b) The wall framing prior to the affixing of wall coverings;

(c) The roof framing prior to the affixing of ceilings or roofing.

(5) The Building Inspector may, at any reasonable time, enter upon any land on which a building is being constructed and into any premises in respect of which a building permit has been issued for the purposes of either –

(a) Determining whether a building permit has been issued under this Act; or

(b) Ascertaining whether the provisions of this Act, the Code and any permit are being complied with;

(c) Ensuring that the matters set out in any requisition issued under section 10 are complied with.

(6) For the purposes of subsection (1), the Building Inspector may interview any person who shall appear to him to be engaged in the construction of the building and every person so interviewed shall, if within his knowledge, answer all questions put to him by the Building Inspector.

(7) Every person who prevents, obstructs or misleads the Building Inspector in the performance of his duties under this section, or who fails to answer any question put to him under subsection (6), commits an offence and upon conviction shall be liable to a fine not exceeding 5 penalty units.

10 Requisitions

(1) The Building Inspector may by requisition under his hand to the person responsible for the construction of the building, set out with reasonable particularity any matter that, in his opinion, does not comply with the Code of the permit and may require the person responsible for the construction of the building to remedy that inconsistency within a specified period not exceeding 3 months.

(2) Every person who shall be responsible for the construction of a building and who shall be served with a requisition under subsection (1) shall undertake or cause to be undertaken such work as shall be necessary to ensure that the matters set out in the requisition are complied with.

11 Suspension of permit

(1) The Building Inspector may, suspend a permit where –

(a) The provisions of the Code are not being complied with; or

(b) The provisions of the permit are not being complied with; or

(c) The matters set out in a requisition have not been complied with within the time specified in such requisition; or

(d) He is prevented by the owner of the building or his agents servants workmen or employees or the person responsible for the construction of the building from determining whether the provisions of the Code or the permit are being complied with.

(2) Every permit that is suspended under subsection (1) shall remain suspended until such time that –

(a) The person who shall be responsible for the construction of the building causes such construction to comply with any requisition or the provisions of the Code or permit; or

(b) The building inspector is permitted to determine whether the provisions of the Code or the permit are being complied with and such determination has been made.

(3) Where a permit is suspended, no person shall, while the permit remains suspended, undertake, or cause to be undertaken any further construction of the building to which the permit relates other than that construction as shall be necessary to cause the building to comply with the requisition, the Code or the permit.

(4) Every person who contravenes subsection (3), commits an offence and upon conviction shall be liable to a fine not exceeding 5 penalty units.

12 Cancellation of permit

(1) Subject to subsection (2), the Building Inspector shall cancel a permit where –

(a) The construction of the building in respect of which the permit is issued is not commenced within 12 months of the date that the permit was issued; or

(b) The permit has been suspended and remains suspended for a continuous period of 6 months for reasons within the control of the owner of the building or the person responsible for the construction of the building; or

(c) The construction of the building shall have ceased for a continuous period of 6 months in circumstances indicating that the building to which the permit applies is unlikely to be completed in accordance with such permit.

(2) Every person who shall commence or cause to be commenced the construction of a building or who shall engage in the construction of a building after the permit in respect of that building has been cancelled commits an offence and upon conviction shall be liable to a fine not exceeding 5 penalty units.

13 Notice of suspension or cancellation

(1) Every suspension of a permit and every cancellation of a permit under this Act shall be notified to the applicant of the permit by personal service upon the applicant of a notice to that effect.

(2) Where the applicant is beyond Niue, then service of the notice upon the applicant shall be deemed to have been effected if the Building Inspector shall cause to be delivered a copy of the notice to –

(a) the address at which the building is or was intended by the applicant to be constructed; or

(b) the person who shall be responsible for the construction of the building.

14 Appeals

(1) Every person who shall be affected by either a requisition issued under section 10 or a notice of suspension or of cancellation under section 13, may, within 21 days of being served with a requisition or a notice, appeal to the High Court against such requisition, suspension or cancellation setting out the grounds upon which he is dissatisfied and the reasons therefor.

(2) The Court may on appeal confirm vary or annual any requisition, notice or suspension or notice of cancellation.

15 Demolition order

(1) Where a person is charged with an offence under this Act the Court may in addition to imposing any penalty that may be prescribed, but subject to subsection (2), order that the building or such part of a building as the Court shall define be removed taken down or demolished under the supervision of the building inspector.

(2) The Court shall not order the removal taking down or demolition of a building or any part of a building unless –

(a) The removal taking down or demolition will facilitate the Building Inspector carrying out an inspection under section 9; or

(b) The building or the part of it to be removed taken down or demolished poses a threat to human life; or

(c) The building or the part of it to be removed taken down or demolished poses a threat to human health or health.

16 Offences

(1) Every person who shall contravene this Act for which no penalty is prescribed commits an offence and upon conviction shall be liable to a fine not exceeding . . . .

(2) Where the High Court shall impose a fine for the breach of this Act it may in addition to imposing such fine order that the person convicted pay a sum not exceeding . . . . for each day that the offence shall continue after the date that the conviction shall be entered.

17 Jurisdiction of Commissioners

Three Commissioners of the Court sitting together shall have all jurisdiction to hear and determine any proceedings under this Act and may hear and determine any appeal under section 12.

18 Jurisdiction of Court with respect to dangerous deserted, ruinous and dilapidated buildings

(1) Upon being satisfied that any building is either –

(a) In such a condition to be dangerous to persons therein or in any adjoining building or on any adjoining land or to passers-by; or

(b) In a dilapidated or ruinous condition and is being used in a disorderly manner so as to be obnoxious to the neighbouring inhabitants or to the public; or

(c) In a dilapidated and ruinous condition and in the case of a dwelling house, had not been inhabited by or with the authority of the owner for 12 months or more;

the Court may, upon application of the Building Inspector and after not less than 3 month's notice of such application has been given to the owner of the building, order the building to be secured or taken down, or as the case may be, repaired or taken down as the Court thinks fit, within a time to be specified in the order.

(2) Every order requiring the building to be secured or repaired shall specify the manner in which the building shall be so secured or repaired.

(3) If the order is not obeyed, the Building Inspector may cause the building to be secured or taken down or repaired in compliance with the order.

(4) The building inspector may recover from the owner the cost of securing or taking down or repairing any building under this section, together with all expenses incurred by the Building Inspector under this section.

(5) Any such notice or order to the owner may, in the absence of the owner, be given by being posted by registered letter addressed to him at his last known address, or by being served upon his agent or upon the occupier (if any) of the building, or, if the owner's address is not known and he has no known agent and the building is unoccupied, by fixing the notice or order on the building.

(6) Any such notice to any other person having an interest in the land may be given to him by serving the notice upon him personally or by posting it by registered letter addressed to him at his last known address or by serving it upon his agent.

(7) If the building is taken down by the Building Inspector, he may destroy or sell the materials or any part thereof, and apply the proceeds in or towards payment of the expenses incurred under this section, and shall apply the residue (if any) in payment of any registered encumbrances on the land in the order of their priority, and shall upon demand pay the balance (if any) to the owner.

19 Regulations

Cabinet may make regulations necessary or expedient for giving effect to this Act and its administration including regulations providing for –

(a) The form and content of documentation required for the purpose of this Act;
(b) The fees that may be charged for receiving an application or granting any approval;
(c) The reimbursement of costs and expenses incurred by the building inspector in having an application assessed to ensure that the Code is complied with.

20 Act to bind Crown

This Act shall bind the Crown.

21-22 [Spent]

BUSINESS LICENCE ACT 1997

1997/216 – 1 April 1997

1	Short title	15	Licence to be exhibited
2	Interpretation	16	Copies
3	Administration	17	Fees
4	Foreign enterprises and foreign interests	18	Delivery of documents
5	Act not to apply	19	A licensed wholesaler
6	Act not to bind	20	A licensed retailer
7	Prohibitions	21	A licensed service provider
8	Applications for licence	22	Register of licences
9	Advertising new applications	23	Business premises
10	Receipt of applications	24	Appeals to the Court
11	Issue of licence	25	Time for making appeals
12	Refusal of licence	26	Powers of the Court
13	Duration of licence	27	Offences
14	Renewal of licence	28	Regulations
		29-30	[Spent]

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1 Short title

This is the Business Licence Act 1997.

2 Interpretation

In this Act and any regulations made under it –

"business" includes any profession, occupation, or commercial trade, carried on for the purposes of making, or acquiring a commercial profit, or commercial gain but, does not include:

(a) The profession, occupation, or function of any person employed as a servant of the Crown;

(b) The profession of a bona fide minister of religion;

"business person" means –

(a) Any person, or body of persons whether corporate, or unincorporate engaging in, or carrying on a business;

(b) The agent of a business person (other than an employee) engaged in carrying on business on behalf of the business person;

"business premises" means any area of land, house, building, place, vehicle, boat, ship, vessel or aircraft where any business person engages in, or carries on any business;

"foreign enterprises" and "foreign interest" has the same meaning as under the Development Investment Act 1992;

"*Gazette*" means the *Gazette*, or any other periodic publication printed and available on Niue;

"goods" means any form of tangible moveable property excluding those things attached to and forming part of the land unless such things are to be severed from the land for the purposes of sale;

"hawker" includes any person who, carrying goods, regularly travels to any place in which he does not usually reside and there sells any of those goods;
"licence" means a licence duly issued under section 11 and in force under this Act;
"Licensor" means the Financial Secretary or his appointed agent;
"prescribed fee" means the fee prescribed in the Business Licence Regulations;
"public show" means an event that takes place on open ground to which the general public has access whether or not an entrance fee is payable;
"retail business" means a business carried on by a retailer;
"retailer" means any person whose business it is to sell goods to the public generally, or to any class, or section of the public;
"sale" means a transfer of goods from one person to another inconsideration of a price paid in money and shall include the bartering, or exchanging of goods;
"service business" means the business carried on by a service provider;
"service provider" means any person the principle object of whose business it is to provide services to the public generally, or to any class or section of the public;
"stall" means a makeshift table and its immediate surrounds from which goods are sold on any one day;
"wholesale business" means the business of selling goods only to licensed retailers.

3 Administration

Subject to section 4, this Act shall be administered by the Licensor.

4 Foreign enterprises and foreign interests

This Act shall be subject to the Development Investment Act 1992, in regard to all foreign enterprises and foreign interests.

5 Act not to apply

(1) This Act shall not apply to any person who carries on the business of selling goods solely from –

(a) a 'stall'; or

(b) the 'makete' (market) situate at Alofi.

(2) Notwithstanding subsection 1(a) and (b) this Act shall not apply to any person carrying on the business of a hawker.

6 Act not to bind

This Act shall apply to corporate bodies in which the Crown has a shareholding, or bodies incorporated by Act of the Assembly but, shall not apply to the Crown.

7 Prohibitions

(1) Subject to section 5 no person shall directly, or indirectly engage in or carry on any business unless a licence has first been obtained, provided however, it shall be lawful for the spouse, child or servant of a licensed business person to engage in, or carry on the business of that licensed business person.

(2) No licence shall be capable of being transferred, assigned, made the

subject of any security, or otherwise dealt with but, shall be strictly personal to the business person to whom it has been issued, provided however, where a licenced business person dies, or becomes a person of unsound mind, or becomes bankrupt, or insolvent, the licence held by such business person shall ensure in favour of his personal representative, trustee, or other persons entitled to administer his estate or control his affairs.

(3) It shall be unlawful for any licensed business person to engage in, or carry on any business

(a) Other than that business stated in the licence; or
(b) At a place other than that place stated in the licence; or
(c) Contrary to any terms and conditions of the licence.

8 Applications for licence

(1) Any person desiring to carry on any business shall make application to the Licensor for a licence to carry on the business.

(2) Each such application shall be delivered to the Licensor in the form prescribed and shall specify:

(a) The full name, occupation and address in Niue of the applicant;
(b) Whether the applicant intends his business to be that of a –
  (i) sole operator;
  (ii) partnership;
  (iii) family business;
  (iv) duly incorporated company;
(c) The precise nature of the business for which the licence is sought;
(d) The type of licence sought, namely;
  (i) a wholesaler's licence;
  (ii) a retailer's licence;
  (iii) a service provider's licence;
(e) Each business premise at, in, or from which, the applicant desires, or intends to engage in, or carry on the business;
(f) The opening and closing hours of the business for which, approval is sought;
(g) All other permits required to operate the business.

(3) Each such application shall be dated and signed by the applicant, or by his duly authorised agent.

(4) Every such application shall be accompanied by the prescribed application fee.

(5) Any applicant who knowingly and wilfully makes any false, or misleading statement in any such application commits an offence and on conviction shall be liable to a fine not exceeding 5 penalty units.

9 Advertising new applications

(1) The Licensor shall advertise all new applications for a business licence seeking any objections to the proposed business licence.

(2) The advertisement is to be published in the *Gazette* and broadcast over local radio and local television informing the public of:

(a) The name of the person seeking the licence;
(b) The nature of the business, and
(c) The location of the business stated in the business application.

(3) Any objections shall be in writing and delivered to the Licensor within 10 working days of the notice being published, or broadcast.

(4) No objection shall be considered if not received within the 10 working days specified in subsection (3).

10 Receipt of applications

(1) Upon expiry of the 10 working days referred to in section 9(3) the Licensor shall upon payment of the prescribed fee issued to the applicant a licence in the prescribed form within a period not exceeding 10 days.

(2) The Licence may be subject to such reasonable conditions considered, by the Licensor necessary to achieve orderly and balanced business activity throughout Niue.

(3) The licence shall state –

(a) The full name of the applicant;
(b) The type of business;
(c) The place of business;
(d) Any conditions imposed by the Licensor.

11 Issue of licence

Every licence shall have a registered number endorsed on it and on the issue of any licence, the Licensor shall forthwith deliver the licence to the business person named.

12 Refusal of licence

(1) The Licensor may refuse to grant, or renew a licence if he is reasonably of the opinion –

(a) The applicant is not a fit, or proper person to hold such a licence; or
(b) The issue of the licence would cause harm, or annoyance to the residents of any locality on Niue; or
(c) The issue of the licence would result in a serious imbalance in the particular market the applicant intends to operate having regard to–
  (i) objections made under section 9(3);
  (ii) any market analysis made, or required by the Licensor.

(2) Upon refusal of a licence, the Licensor shall forthwith, by written notice inform the applicant of such refusal together with the grounds for refusal.

(3) The Licensor shall deliver the written notice of refusal to the applicant.

13 Duration of licence

Every licence shall expire on 31 March, unless the licence shall be renewed under section 14.

14 Renewal of licence

(1) At any time during the month of March, a business person may renew his licence by delivering to the Licensor an application form in writing for the renewal of the licence.

(2) Each such application for renewal shall specify:

(a) The number of the licences to be renewed; and
(b) The full name, occupation and address in Niue of the applicant; and
(c) Any change in the matters set out in section 10 (3).

(3) Each such application shall be dated and signed by the applicant, or by his duly authorised agent and shall be accompanied by the prescribed fee.

(4) On receipt of any such application for renewal together with the prescribed fee, by the Licensor, the licence shall be renewed for a period of one year commencing on 1 April, provided however, the Licensor may refuse to renew the licence if he is reasonably satisfied that the applicant is no longer a fit and proper person to hold a licence.

(5) In the event of refusing to renew a licence, the Licensor shall within 7 days of the refusal, deliver a notice to the applicant for renewal, advising of the refusal.

(6) On receipt by the applicant for renewal of a notice from the Licensor refusing to renew a licence, such licence shall forthwith be revoked.

(7) On the renewal of any licence under subsection (4), the Licensor shall issue and deliver a certificate of renewal to the business person named in the certificate.

(8) One month prior to 31 March the Licensor shall insert a notice in the local newspaper and broadcast such notice over the local radio and television reminding persons to renew their business licence.

15 Licence to be exhibited

(1) A licensed business person shall exhibit his current business licence in a conspicuous position, visible to members of the public at, in, or upon each of his business premises, respectively at, in, or from which, he carries on the business stated in his licence.

(2) It shall be permissible for a true copy of a current business certificate to be exhibited, provided however, the true copy is a true copy issued under section 16.

(3) Any licensed business person who fails to comply with subsection (1) commits an offence and on conviction shall be liable to a fine not exceeding 2 penalty units.

16 Copies

(1) On paying the prescribed fee to the Licensor the licensed business person shall be entitled to receive from the Licensor a true copy of any licence, or any certificate of renewal of any licence issued to, or held by such business person.

(2) Each such copy shall be marked "true copy" and shall have the same effect as the original document.

17 Fees

(1) Fees shall be payable as prescribed in the Business Licence Regulations.

(2) The Licensor, or any person duly authorised to act on his behalf, shall issue an official Government receipt in respect of each fee received.

(3) All fees paid under this Act shall be paid into and shall form part of the general revenue of the Government.

18 Delivery of documents

(1) Any applications, or objections required by this Act to be made to the Licensor shall be in writing and delivered;

(a) Personally to the office of the Licensor; or

(b) By post.

(2) Any licence, or notice required by this Act to be delivered by the Licensor to any person shall be in writing and delivered –

(a) Personally to that person; or

(b) By post to that person's address stated on the licence.

(3) Any document despatched by post shall be deemed to have been received on the date upon which, in the normal course of post it would have been delivered.

19 A licensed wholesaler

(1) A licensed wholesaler shall be entitled to engage in, or carry on a wholesale business in respect of the goods for which, he is licensed to carry on a wholesale business provider however, he sells only to a licensed retailer and, or a licensed service provided.

(2) Records of all business sales and purchases shall be kept.

20 A licensed retailer

(1) A licensed retailer shall be entitled to sell goods to the public.

(2) A record of all business sales and local purchases shall be kept.

21 A licensed service provider

(1) A licensed service provider shall be entitled to offer services to the public from his business premises.

(2) If goods are sold without the provision of a service then a retailers license shall also be required.

(3) A record of all business services provided and business purchases made, shall be kept.

22 Register of licences

(1) The Licensor shall keep, in a convenient form, a Register of Licences which, shall consist of a duplicate of all licenses, certificates of renewal of licence, notices of refusal to renew licence and of any orders made by the Court, under this Act relating to any licence.

(2) Each such duplicate shall be marked "duplicate" and shall have the same evidential value as the original.

(3) Any person may between 10am and 3pm on any day except a Saturday, or Public Holiday inspect such Register of Licences.

23 Business premises

(1) The Licensor, or any other person authorised in writing so to do by the Licensor, or any constable may at any time between the hours of 9am and 4pm on any day, not being a Saturday, or holiday, enter upon any business premise for the purpose of carrying out an inspection of it.

(2) When carrying out such an inspection of the business premises, entry to any private property shall not be permitted without the consent of the occupier of it and, in the absence of any such consent, the prior consent of the Court.

(3) Should the requirements specified in any such notice not be carried out, or put into effect within the period of time stipulated in such notice then, upon the expiration of such period, no person thereafter shall be entitled to carry on business at, in, or from the premises concerned without the prior written conditional or unconditional consent of the Licensor, until such time as such requirements shall have been carried out, or put into effect.

(4) Nothing in this section shall derogate, or be deemed to derogate from the Public Health Act 1965.

24 Appeals to the Court

(1) Any applicant for a licence may appeal to the High Court against the failure, or refusal of the Licensor to issue the licence sought by the applicant.

(2) Any applicant for the renewal of a licence may appeal to the Court against a decision of the Licensor not to renew the licence.

(3) Any applicant for a licence to whom a licence has been issued may

appeal to the Court against any condition imposed by the Licensor in respect of the licence.

(4) Where the Licensor has issued any licence (not being a renewal of a licence) any person aggrieved at the issue of the licence may appeal to the Court.

25 Time for making appeals

(1) Any such appeal under section 23 shall, subject to subsection (2) not be made after the expiration of 2 weeks after the effective date of the act, ruling, refusal, notice or decision which is the subject matter of the appeal.

(2) Notwithstanding subsection (1), the Court may if it thinks it just and equitable to do so extend, or enlarge by not more than 2 months and either unconditionally, or subject to such conditions which, it may think fit to impose, the period of time within which any such appeal shall be made.

26 Powers of the Court

(1) On the hearing of any appeal bought in accordance with sections 24 and 23, the Court may, by order –

(a) Dismiss the appeal; or
(b) Allow the appeal; or
(c) Dismiss the appeal in part and allow it in part; or,
(d) Modify, vary, or amend the act, ruling, refusal, notice, or decision which is the subject matter of the appeal in such manner and to such an extent which the Court thinks just.

(2) Any such appeal shall be final.

27 Offences

(1) Subject to subsection (2) any person who engages in, or carries on any business contrary to this Act commits an offence and on conviction shall be liable –

(a) For a first offence, to a fine not exceeding 5 penalty units;
(b) For a second, or a subsequent offence, to a fine not exceeding 10 penalty units, or to imprisonment for a term not exceeding 20 days, or to both such a fine and such imprisonment.

(2) Nothing contained in subsection (1) shall derogate from section 8 (5) or section 15 (2).

(3) Any person who buys any goods from any wholesaler, or retailer who is not licensed, or gives any reward for any services provided by any service provider, who is not licensed, knowing that such wholesaler, retailer, or service provider should be licensed, commits an offence and on conviction shall be liable to a fine not exceeding 2 penalty units.

28 Regulations

Cabinet may make regulations as may be deemed necessary, or expedient to give full effect to this Act and to regulate licence fees and any other matters required in the administration of this Act.

29-30 [Spent]

CARRIAGE BY AIR ACT 1967

1967/151 (NZ) – 24 November 1967

1 Short title
2 Act to bind Crown
3 [Repealed]

Part 1
International Carriage by Air

4 [Repealed]
5 Interpretation
6 Application of Guadalajara Convention
7 Conventions to have force of law
8 Designation of Parties
9 Fatal accidents
10 Limitation of liability
11 Time for bringing proceedings
12 Contributory negligence
13 Power to exclude aircraft in use for military purposes
14 Actions against High Contracting Parties
15 Regulations
16-44 [Repealed]
45 [Spent]

SCHEDULES

To give effect to the provisions of a Convention concerning international carriage by air known as the Warsaw Convention as amended and supplemented by a subsequent Protocol and Convention, and to make provision with respect to carriage by air which is not international

1 Short title
This is the Carriage by Air Act 1967.

2 Act to bind Crown
This Act shall bind the Crown.

3 [Repealed by 2004/270]

PART 1
International Carriage by Air

4 [Repealed by 2004/270]

5 Interpretation
In this Part –
"Amended Convention" means the Convention set out in Schedule 1, being the Warsaw Convention as amended by a Protocol opened for signature at The Hague on 28 September 1955;
"court" includes (in an arbitration allowed by the amended Convention or the Guadalajara Convention) an arbitrator;
"Guadalajara Convention" means the Convention set out in Schedule 2 being a Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, opened for signature at Guadalajara on 18 September 1961;

"Warsaw Convention" means the Convention for the unification of certain rules relating to international carriage by air opened for signature at Warsaw on 12 October 1929 and includes the Additional Protocol to that Convention.

6 Application of Guadalajara Convention

In this Part references to the amended Convention or to any Article of that Convention include, where applicable and subject to any necessary modifications, references to that Convention or article as supplemented by the Guadalajara Convention.

7 Conventions to have force of law

(1) The amended Convention and the Guadalajara Convention shall, so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees, and other persons, and subject to this Part, have the force of law in Niue in relation to any carriage by air to which the amended Convention or the Guadalajara Convention, as the case may require, applies, irrespective of the nationality of the aircraft performing that carriage.

(2) If there is any inconsistency between the text in English of the amended Convention in Part 1 of Schedule 1 or the text of English of the Guadalajara Convention in Part 1 of Schedule 2 and the corresponding text in French of those Conventions in Part 2 of each of those Schedules, the text in French shall prevail.

8 Designation of Parties

(1) The Governor-General may, by Order in Council, certify who are the High Contracting Parties to the amended Convention and the Parties to the Guadalajara Convention, in respect of what territories they are respectively parties, and to what extent they have availed themselves of the Additional Protocol at the end of the amended Convention as set out in Schedule 1.

(2) Article 40A (2) of the amended Convention shall not be read as extending references in the amended Convention to the territory of a High Contracting Party (except such as are references to the territory of any State, whether a High Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.

(3) An Order in Council shall, except so far as it has been superseded by a subsequent Order, be sufficient evidence of the matters so certified.

(4) An Order in Council may contain such transitional and other consequential provisions as appear to the Governor-General to be expedient.

(5) An Order in Council certifying who are the High Contracting Parties to the amended Convention or the Parties to the Guadalajara Convention shall specify the date on and from which any such Party became or ceased to be a Party.

9 Fatal accidents

References in section 4 of the Deaths by Accidents Compensation Act 1952 to a wrongful act, neglect, or default shall include references to any occurrence which gives rise to a liability under article 17 of the amended Convention.

10 Limitation of liability

(1) The limitations on liability referred to in article 22 of the amended Convention shall apply whatever the nature of the proceedings by which liability may be enforced and, in particular –

(a) Those limitations shall apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor if the tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier; and

(b) The limitation for each passenger referred to the said article 22 (1) shall apply to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of Niue together with any proceedings brought against him outside Niue.

(2) A court before which proceedings are brought to enforce a liability which is limited by the said article 22 may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the said article 22, and of any other proceedings which have been, or are likely to be, commenced in Niue or elsewhere to enforce the liability in whole or in part.

(3) Without prejudice to subsection (2), a court before which proceedings are brought to enforce a liability which is limited by the said article 22 shall, where the liability is, or may be, partly enforceable in other proceedings in Niue or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

(4) The Minister of Finance may by notice in the *Gazette*, specify the respective amounts which for the purposes of the said article 22, and in particular of article 22 (5), are to be taken as equivalent to the sums expressed in francs which are mentioned in that article.

(5) References in this section to article 22 include, subject to any necessary modifications and as the case may require, references to that article as applied or supplemented by article 25A of the amended Convention and articles 5 and 6 of the Guadalajara Convention.

11 Time for bringing proceedings

(1) No action against a carrier's servant or agent which arises out of damage to which this Part relates shall, if he was acting within the scope of his employment, be brought after more than 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) Article 29 of the amended Convention shall not be read as applying to any proceedings for contributions between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which the said article 29 applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

(3) Subsections (1) and (2) and the said article 29 shall have effect as if references in those provisions to an action included references to an arbitration; and section 29 (3) and (4) of the Limitation Act 1950 (NZ) (which determines the time at which an arbitration is deemed to have commenced) shall apply.

12 Contributory negligence

For the purposes of article 21 of the amended Convention section 736 of the Niue Act 1966 shall be the law under which a court may exonerate the carrier or partly from his liability.

13 Power to exclude aircraft in use for military purposes

(1) The Cabinet may by regulation, direct that this section shall apply, or shall cease to apply, to Niue or any other State specified in the Regulation.

(2) The amended Convention shall not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this section applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

14 Actions against High Contracting Parties

Every High Contracting Party to the amended Convention who has not availed himself of the provisions of the Additional Protocol at the end of the amended Convention as set out in Schedule 1 shall, for the purposes of any action brought in a court in Niue under article 28 of the amended Convention or article 8 of the Guadalajara Convention to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on; but nothing in this section shall authorise the issue of execution against the property of any High Contracting Party.

15 Regulations

Cabinet may make such regulations as it thinks fit for the purposes of this Act.

16-44 [Repealed by 2004/270]

45 [Spent]

SCHEDULES

[The Schedules are not reproduced. Hard copy is available in *Niue Legislation as 1 August 1990*, volume 1, pg 233. The Warsaw Convention and the Guadalajara Convention are available on line at:

http://www.icao.int/eshop/conventions_list.htm]

CENSUS ACT 1971

1971/68 – 28 April 1971

1 Short title
2 Interpretation
3 Census of population
4 Census Officer
5 Enumerators and agents
6 Attestation
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8 Particulars to be collected at census of population
9 Census to be taken by means of schedules
10 Duty of head of household or occupier or person in charge of dwelling
11 Duty of inmates of dwelling
12 Objection to stating religion
13 Census employees may ask questions
14 Additional instructions
15 Neglect or refusal to supply particulars and false particulars
16 Mutilation or defacement of schedules
17 Divulging information
18 Hindering census employee
19 Preparation of statistics
20 [Spent]

To provide for the taking of the census of population

1 Short title

This is the Census Act 1971.

2 Interpretation

In this Act –

"census employee" means any person employed by the Census Officer under section 5;

"Census Officer" means the Census Officer appointed under section 4;

"dwelling or household" means any building, construction, or erection, whether permanent or temporary, which is wholly or partly used for human habitation; and includes a ship or aeroplane;

"night of the census" means that night between sunset on the day before and sunrise on the day appointed under this Act for the taking of the census; the precise time reference being midnight of that night;

"head of household" or "occupier" or "person in charge" includes, as the case may be, the person for the time being in charge of any dwelling, or habitation attached to or used in a factory, plantation, workshop, office, shop or other place of business, penal institution, hospital, or other public charitable institution; and also includes the master of any ship or vessel, the person in command of an aircraft, and the person in charge of any vehicle; and where the occupier or person in charge is a corporate body, includes the manager, secretary, clerk, or other executive officer of the corporate body or local authority, or any person actually in charge on behalf of the corporate body;

"schedule" means any book, document, form, or card on which the information required is entered or indicated for statistical purposes under this Act.

3 Census of population

(1) The census of population of Niue shall be taken in 1971 and in every fifth year thereafter.

(2) The day on which the census shall be taken and the time with reference to which the particulars shall relate shall be appointed by the Secretary to the Government by notice published in the *Gazette.*

4 Census Officer

(1) There shall be appointed, under Part 6 of the Niue Constitution, a Census Officer for the proper carrying out of the provisions of this Act.

(2) Any person so appointed may hold office in addition to or in conjunction with any office in the Niue Public Service.

(3) Any person so appointed shall be empowered to carry out any of the functions or duties of a census enumerator or census employee.

5 Enumerators and agents

(1) The Census Officer may employ such enumerators, sub-enumerators, agents, clerks, office assistants or other persons as may be necessary for the taking of a census, and the duties of those employees shall be such as the Census Officer determines.

(2) No person appointed under subsection (1) shall be deemed by reason of his appointment under this section only, to be employed in the service of the Government of Niue for the purpose of Part 6 of the Constitution.

6 Attestation

(1) Every person appointed for the purpose of taking the census, before entering on his duties, shall take and subscribe to the following oath:

"I , solemnly swear that I will faithfully and honestly fulfil my duties as in conformity with the requirements of the Census Act 1971, and that I will not, without due authority in that behalf, disclose or make known any matter or thing which comes to my knowledge by reason of my employment as such."

(2) The oath shall be taken before the Census Officer and returned and recorded as such Officer determines.

7 Schedules

The Census Officer shall, with the approval of the Cabinet, design and have prepared for use such census and other schedules as he deems requisite for collecting the statistics authorised to be collected, and shall lay down for all such schedules the instructions and procedures necessary for the proper distribution, filling in, and return of it.

8 Particulars to be collected at census of population

(1) At every census of population particulars relating to all of the following matters shall be obtained by means of schedules from every occupant or as the case may be from each person who is in charge of a dwelling –

(a) The name, sex, age, and ethnic origin of every occupant of the dwelling;
(b) Particulars of the dwelling as to location, number of rooms, ownership, and number of occupants on census night.

(2) At any census of population the Cabinet may, if it considers it in the public interest so to do, require the Census Officer to obtain from each or every occupant or as the case may be from each head of household or person in charge of a dwelling particulars relating to all or any of the following matters –

(a) The profession or occupation and industry in which employed, nationality and citizenship, health, marital status, religion, birthplace, duration of residence in Niue, number of children, number of hours worked per week for wages or salary or financial reward, status in employment, name of employer, income, usual residence of every occupant of the dwelling;
(b) Particulars of the dwelling as to type of dwelling, household amenities, material of walls and tenure of site;
(c) (i) Population and dwellings, migration (internal and external), vital and other demographic and social matters;
(ii) Health, welfare, and morbidity;
(iii) Cultural participation, education, and recreation;
(iv) Law enforcement and the administration of justice;
(v) Matters relating to the social and physical environment;
(vi) Labour and manpower, including conditions of employment; work descriptions; wages, including direct and indirect emoluments; hours of work and labour disputes;
(vii) Accidents, including industrial injuries;
(viii) Household (including family) characteristics, conditions, and activities;
(ix) Assets (including savings), liabilities and wealth of persons, and undertakings;
(x) Prices of commodities and services at any or all transaction levels;
(xi) Travel, internal and overseas;
(xii) Economic, financial, production, and other matters relating to undertakings; forestry, fishing, trapping; agriculture; mines, quarries, and wells; manufacturing; construction; transportation, storage, and communications; electric power, gas, and water utilities; wholesale and retail trade; finance, insurance, and real estate; restaurants; hotels and accommodation; and other community, business, welfare, and personal services.

9 Census to be taken by means of schedules

The census shall be taken by means of the schedules referred to in sections 7 and 8 and containing particulars which shall be furnished by each head of household or occupant or person who resided in the dwelling on the night of the census and who was alive at midnight or who, not already being included in any other census schedule, arrived in that dwelling after midnight of the night of the census and before midnight on the next following night.

10 Duty of head of household or occupier or person in charge of dwelling

The head of household or occupier or person in charge of every such dwelling shall ensure that the particulars required by the schedules are furnished with respect to –

(a) Every person who resided in the dwelling on the night of the census and was alive at midnight; and

(b) Every person who arrived at the dwelling after midnight on that night and before midnight on the next following night and was not included in any other census schedule.

11 Duty of inmates of dwelling

(1) Every person in respect of whom particulars are required under section 10 –

(a) Shall where necessary furnish such information as the head of household or occupier or person in charge of the dwelling may require so that he may complete the dwelling schedule; and

(b) Shall either complete a personal schedule and deliver it to the head of household or occupier or person in charge, or shall furnish the required particulars to the head of household or occupier or person in charge so that the latter can complete the personal schedule for him.

(2) (a) The person completing a personal schedule may enclose it in an envelope endorsed with his name and sex, and seal the envelope before delivery to the head of household or occupier or person in charge pending collection by the census employee.

(b) If the head of household or occupier or person in charge opens any such envelope he commits an offence and is liable to a fine not exceeding 1 penalty unit.

12 Objection to stating religion

If any person objects to stating his religion, an entry of "object" made in the space provided for the answer to this question in the personal schedule shall be sufficient for the purposes of the census.

13 Census employees may ask questions

Every census employee appointed for the purpose of the census may ask such questions and conduct such inquiries as are necessary to obtain or to verify the particulars authorised by this Act to be collected.

14 Additional instructions

In any case in which the prescription of particulars hereinbefore specified is insufficient to indicate the nature of the information to be furnished, the Census Officer may direct by means of instructions in a census schedule or by separate notice, the precise nature of the particulars required.

15 Neglect or refusal to supply particulars and false particulars

Subject to section 12 every person commits an offence who neglects or refuses to furnish any census schedule as required by this Act or to answer any questions lawfully put to him for the purposes of the census, or who knowingly makes any statements or gives any answer untrue in any material particular required by this Act, and is liable to a fine not exceeding 1 penalty unit.

16 Mutilation or defacement of schedules

Every person commits an offence who, without lawful authority, mutilates or defaces a census schedule or other census document or record containing particulars collected under this Act or requesting any such particulars and is liable to a fine not exceeding 1 penalty unit.

17 Divulging information

Every person commits an offence, who, whether or not he is a census employee appointed to any duty in connection with the census, divulges or makes use of any information obtained pursuant to this Act except as required for the preparation of statistics from the data obtained at the census, and is liable to a fine not exceeding 1 penalty unit.

18 Hindering census employee

Every person commits an offence who hinders or obstructs any census employee in pursuance of his duty and is liable to a fine not exceeding 0.5 penalty units.

19 Preparation of statistics

(1) The information furnished under this Act shall be used for statistical purposes only.

(2) Subject to this Act and with the approval of the Cabinet, the Census Officer may have statistics prepared from the data obtained at the census and may publish such statistics, with or without observations.

(3) Every person employed for the purpose of preparing such statistics before entering on his duties, shall take and subscribe to the oath contained in section 6.

(4) It shall be a principle to be followed in the publication of statistics to arrange, wherever possible, statistical tables in such a manner as to prevent any particulars published in the tables from being identifiable by any person (other than by the person by whom the particulars were supplied) as particulars relating to any particular person, unless that person has consented to their publication in that manner, and for that purpose the Census Officer shall make such rules as he considers necessary in the public interest.

20 [Spent]

CHATTELS TRANSFER ACT 1924

1924/49 – 1 January 1925

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1 Short title

This is the Chattels Transfer Act 1924.

2 Interpretation

In this Act –

"chattels" means any personal property that can be completely transferred by delivery, and includes machinery, stock and the natural increase of stock as hereinafter mentioned, crops and also includes book debts but does not include –

(a) Chattel interests in real estate, title deeds, choses in action (not being book debts), negotiable instruments; or

(b) Shares and interests in the stock, funds, or securities of any Government or local authority; or

(c) Shares and interests in the capital or property of any company or other corporate body; or

(d) Debentures and interest coupons issued by any Government, or local authority, or other corporate body;

"crops" means European flax, hemp, hops, wheat, maize, barley, oats, and grass (whether for hay or for grain), and all cereal and root crops, *Phormium tenax*, fruit and all other crops grown above or below the ground;

"executed" means signed by the grantor or his attorney, and, in the case of an instrument by way of bailment, means signed by the grantor and grantee or their respective attorneys;

"factory" or "workshop" means any premises on which any manual labour is exercised by way of trade or for the purposes of gain or in or about the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article or part of any article;

"grantee" means the party to an instrument to whom chattels in it referred to, or any interest in it, are thereby granted or assigned, or agreed so to be, and includes his executors, administrators, and assigns; and in the case of a company or corporation includes the successors and assigns of such company or corporation;

"grantor" means the party to an instrument who thereby grants or assigns, or agrees to grant or assign, chattels referred to in it, or any interest in it, and includes his executors, administrators, and assigns; and in the case of a company or corporation includes the successors and assigns of such company or corporation;

"instrument" means and includes any bill of sale, mortgage lien, or any other document that transfers or purports to transfer the property in or right to the possession of chattels, whether permanently or temporarily, whether absolutely or conditionally, and whether by way of sale, security, pledge, gift, settlement, bailment, or lease, and also the following:

(a) Inventories of chattels, with receipt to it attached;
(b) Receipts for purchase money of chattels;
(c) Other assurances of chattels;
(d) Declarations of trust without transfer;
(e) Powers of attorney, authorities, or licences to take possession of chattels as security for any debt;
(f) Any agreement, whether intended to be followed by the execution of any other instrument or not, by which a right in equity to any chattels, or to any charge or security on it or over it, is conferred;

"instrument" does not include the following –

(a) Securities over, or bailments or leases of, fixtures (except "trade machinery" as hereinafter defined), when mortgaged or leased in any mortgage or lease of any freehold or leasehold interest in any land or buildings to which they are affixed, and whether or not such fixtures are separately mortgaged or leased by mention thereof in separate words, and whether or not power is given by such mortgage or lease to sever such fixtures from the land or building to which they are affixed without otherwise taking possession of or dealing with such land or building;
(b) Assignments for the benefit of the creditors of the person making the same;
(c) Transfers of or agreements to transfer instruments by way of security;
(d) [Repealed by 2004/270]
(e) Transfers of chattels in the ordinary course of business of any trade or calling;
(f) Debentures and interest coupons issued by any Government or local authority;
(g) Bills of sale of chattels in any foreign parts, or at sea;
(h) Bills of lading, warehouse keepers' certificates, warrants, or orders for the delivery of chattels, entries in auctioneers' books, or any other document used in the ordinary course of business as proof of the possession or control of chattels, or authorising or purporting to authorise, either by endorsement or delivery, the possessor of such document to transfer or receive the chattels thereby represented;
(i) Debentures and interest coupons issued by any company or other corporate body and secured upon the capital stock or chattels of such company or other corporate body;
(j) [Repealed by 2004/270]
(k) Customary hire purchase agreements as defined in this Act;

"instrument by way of bailment" means an instrument whereby chattels are leased or bailed;

"instrument by way of security" means an instrument given to secure the payment of money or the performance of some obligation;

"Registrar" means the Registrar of the High Court and includes a Deputy Registrar (if any);

"registration" means the filing of an instrument with schedule or inventories, or a true copy of it, with the certificate hereinafter mentioned;

"stock" includes any sheep, cattle, horses, pigs, poultry, ostriches, and any other living animals;

"trade machinery" means the machinery used in or attached to any factory or workshop, but does not include –

(a) The fixed motive powers, such as the water wheels, and steam and other engines, and the steam boilers, donkey engines, and other fixed appurtenances of the said motive powers; or

(b) The fixed power machinery (such as the shafts, wheels, drums, and their fixed appurtenances) for transmitting the action of the motive powers to the other machinery, fixed and loose; or

(c) The pipes for steam, gas and water.

3 Agreement giving power of distress

(1) (a) An attornment or agreement (not being a mining lease) whereby a power of distress is given or agreed to be given by one person to another by way of security for any present, future, or contingent debt or advance, and whereby any rent is reserved or made payable as a means of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be an instrument within the meaning of this Act so far as regards any chattels seized or taken under the power of distress.

(b) Nothing in this subsection shall prejudice the right of a landlord to distrain for rent.

(c) Where a mortgagee of any interest in land, after entering (under the powers contained or implied in the mortgage) into possession of the mortgaged land, or into receipt of the rents and profits of the land, demises the land or any part of it to the mortgagor at a fair and reasonable rent, the instrument whereby such demise is effected shall not be deemed to be an instrument within the meaning of this Act.

(2) Machinery and plant used in milking, and machinery and plant used for shearing, shall not by reason of being attached to buildings or land become part of the land, nor shall any estate or interest therein pass by virtue of such attachment.

REGISTRATION

4 Registration of instrument to be notice

(1) (a) Save as provided in subsection (3) all persons shall be deemed to have notice of an instrument and of its contents when and so soon as such instrument has been registered.

(b) If registration of such instrument is not renewed under this Act, prior registration shall not be deemed to operate as notice after the lapse of the period within which renewal is required by this Act.

(2) [Repealed by 2004/270]

(3) Registration of any instrument to which subsection (1) or (2) applies shall not in itself constitute notice of the existence of that instrument or of its contents to the grantee of any prior registered instrument relating to the same chattels or to any of those chattels.

5 Mode of registration

(1) Registration of an instrument shall be effected by filing it and all schedules endorsed on it or referred to in it, or a true copy of the instrument and schedules and a certificate in the form numbered 1 in Schedule 1, with the Registrar of the High Court.

(2) [Repealed by 2004/270]

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding 1 penalty unit who wilfully or negligently signs any certificate in the form numbered 1 in Schedule 1 or to the like effect in respect of any instrument if the certificate is false in a material respect.

6 Where instrument made under process

Where an instrument is made by any person under or in execution of any process of court, the certificate to be filed on registration shall state the residence and occupation of the person against whom such process is issued.

7 Affidavits

An affidavit required by this Act may be sworn before any solicitor of the High Court, or a Registrar, or any Justice.

8 Limitation of time for registration

(1) The period within which an instrument may be registered is 21 days from the day on which it was executed.

(2) If there are more grantors than one, the date of execution of the instrument shall be deemed to be the date of the execution by the grantor who first executes the instrument.

(3) The day on which the instrument is executed shall not be included in the period for registration; but the instrument may be registered on that day.

9 Register book and index to be kept

(1) The Registrar shall cause every instrument registered in his office to be numbered, and shall mark on each such instrument, or on the filed copy of it, the date of registration and the number, and shall at the time of registration enter in a register to be kept for the purpose of his office the particulars of the instrument registered under the form numbered 2 in Schedule 1.

(2) The Registrar shall also keep an index in which he shall enter the names of the grantors of instruments by way of security and of the grantors and grantees of all other instruments, and shall refer in it to the entries in the register book of the instruments given by each such grantor.

(3) Such index shall be arranged in divisions corresponding with the letters of the alphabet, so that all grantors and grantees whose surnames begin with the same letter (and no others) shall be comprised in one division, but the arrangement within each such division need not be strictly alphabetical.

10 Entry where instrument made under process

Where any instrument is made or given by any person under or in the execution of any process of court, then the name, residence, and occupation of the person against whom such process issued, and also the name of the grantee of it, shall be inserted in the book to be kept as aforesaid.

11 [Repealed]

12-13 [Repealed by 2004/270]

Renewal of Registration

14 Registration of instruments must be renewed within five years

(1) The registration of an instrument shall cease to be of any effect at the expiration of 5 years from the date of the registration or, where the registration has been renewed under this section, at the expiration of 5 years from the date of the renewal of the registration or of the last renewal of the registration, as the case may be.

(2) [Repealed by 2004/70]

(3) The registration of an instrument shall be renewed by filing in the office of the Registrar an affidavit in the form numbered 3 in Schedule 1 or to the like effect.

(4) The Registrar shall thereupon number such affidavit as if the same were an instrument presented for registration, and renumber the instrument originally registered in the said office, or the filed copy of it, with a similar number, and mark thereon the date of renewal of registration, and shall enter particulars of the instrument in the register book in like manner as on an original registration, and shall also enter the date of renewal of registration in the column provided therefor in the register book.

Searches and Copies

15 Register book and instruments may be searched and viewed

The register books and indices hereinbefore provided for, and every instrument registered as aforesaid, or the filed copy of it, may be searched and viewed by all persons during the office hours of the High Court.

16 Copies may be had

Any person shall be entitled to have a copy or an extract of or from any instrument with the schedules filed therewith, or of or from the copy of it registered as aforesaid, and a copy of any affidavit filed under this Act; or if he makes such copy or extract himself the Registrar shall, upon satisfying himself that such copy or extract is correctly made, certify the same.

17 Instruments and affidavits presumed to have been duly executed or sworn

(1) Every instrument registered and certificate or affidavit filed shall, if purporting to be duly executed or sworn, be prima facie presumed to have been duly executed or sworn.

(2) The filed copy of any instrument, and of the schedules filed therewith, or an office copy of any such filed copy, and an office copy of any affidavit or certificate filed under this Act, and every copy or extract certified by the Registrar under Section 16, and a certificate by the Registrar of the time when any instrument, affidavit, or certificate was registered or filed, shall in all courts and before all persons having by law or consent of parties authority to take evidence be received as prima facie evidence of such instrument, schedules, affidavit, or certificate and of the signatures of the parties to the instrument and of the attesting witnesses thereto, and of the fact and time of the registration or filing of the instrument affidavit, or certificate.

(3) It shall not be necessary to prove the handwriting or official position of the person appearing as such Registrar to have certified any such copy or extract or to have given any such certificate.

Effect of Non-registration

18 Unregistered instruments to be void in certain cases

(1) Every instrument, unless registered in the manner hereinbefore provided, shall, upon the expiration of the time for registration, or if the time for registration is extended by a Judge of the High Court, then upon the expiration of such extended time, be deemed fraudulent and void as against –

(a) The Assignee in Bankruptcy of the estate of the person whose chattels or any of them are comprised in any such instrument;

(b) The assignee or trustee acting under any assignment for the benefit of the creditors of such person;

(c) Any sheriff, bailiff, and other person seizing the chattels or any part thereof comprised in any such instrument, in execution of the process of any Court authorising the seizure of the chattels of the person by whom or concerning whose chattels such instrument was made, and against every person on whose behalf such process was issued –

so far as regards the property in or right to the possession of any chattels comprised in or affected by the instrument which, at or after the time of such bankruptcy, or of the execution by the grantor of such assignment for the benefit of his creditors, or of the execution of such process (as the case may be), and after the expiration of the period within which the instrument is required to be registered, are in the possession or apparent possession of the person making or giving the instrument, or of any person against whom the process was issued under or in the execution of which the instrument was made or given.

19 Unregistered instrument not to affect *bona fide* purchaser for value

Upon the expiration of the time or extended time for registration no unregistered instrument comprising any chattels whatsoever shall, without express notice, be valid and effectual as against any bona fide purchaser or mortgagee for valuable consideration, or as against any person bona fide selling or dealing with such chattels as auctioneer or dealer or agent in the ordinary course of his business.

19A [Repealed by 2004/270]

As to Instruments Generally

20 Instrument to be attested

Sealing shall not be essential to the validity of any instrument; but every execution of an instrument shall be attested by at least one witness, who shall add to his signature his residence and occupation.

21 Instrument to take effect from execution

Every instrument shall be deemed to be made on the day on which it is executed, and shall take effect from the time of its execution.

22 Registration to give priority

(1) Where 2 or more instruments are executed comprising in whole or in part any of the same chattels, priority shall be given to such instrument or instruments in the order of time of their registration respectively as regards the title to or right to the possession of such chattels.

(2) Where a grantee under a second or subsequent instrument claims priority by virtue of prior registration he must prove that at the time of the execution of the instrument under which he claims he had no notice of any existing unregistered instrument.

23 Instrument to have inventory of chattels

Every instrument shall contain, or shall have endorsed on it or annexed to it, a schedule of the chattels comprised in and, save as is otherwise expressly provided by this Act, shall give a good title only to the chattels described in the said schedule, and shall be void to the extent and as against the persons mentioned in sections 18 and 19 in respect of any chattels not so described.

24 Instrument void where grantor not owner of chattels

(1) Save as is otherwise expressly provided by this Act, an instrument shall be void to the extent and as against the persons mentioned in section 18 and 19 in respect of any chattels which the grantor acquires or becomes entitled to after the time of the execution of the instrument.

(2) Where an instrument by way of security over any chattels is therein expressed to be given as security for a loan to be expended, in whole or in part, in the purchase of those chattels, the grantor shall be deemed to have acquired the said chattels contemporaneously with the execution of this instrument.

25 Instrument subject to defeasance, void in certain cases

(1) If an instrument is made or given subject to any defeasance, condition or declaration of trust not contained in the body of the instrument, such defeasance, condition, or declaration of trust shall for the purposes of this Act be taken as part of such instrument, and shall be written on the same paper or parchment on which such instrument is written, otherwise such instrument shall be void to the extent and as against the persons mentioned in section 18 so far as regards the property in or right to the possession of any chattels comprised in or affected by such instrument.

(2) In the case of a document securing the payment of the moneys or any part of it payable by virtue of an instrument it shall not be necessary for the purposes of this section to write such document on the same paper or parchment so long as the date, names of the parties to it, and the nature of the security are set forth in the instrument or in some schedule to it.

26 Saving

Nothing in sections 23-25 shall render an instrument void in respect of the following chattels, that is to say –

(a) Stock, wool and crops;

(b) Fixtures, plant, or trade machinery where the same are used in, attached to, or brought upon any place in substitution for any of the like nature described in, or in the schedule to, such instrument;

(c) Tractors, engines, machines, vehicles, implements and farming plant of every description described in such instrument and used upon or in connection with any land or premises specified in the instrument.

27 [Repealed by 2004/270]

Instruments Comprising Stock

28 How stock to be described

In any instrument they shall be described or referred to therein or in the schedule by some brand or brands, earmark or earmarks, or other mark or marks upon them, or shall be so described or referred to by sex, age, name, colour, or other mode of description as to be reasonably capable of identification, otherwise

the instrument shall be void to the extent and as against the persons mentioned in section 18, so far a regards such or so much of such stock as are not so described or referred to or are not reasonably capable of identification; and the land or premises on which such stock are or are intended to be depastured or kept shall be described or mentioned in such instrument or schedule.

29 Stock to include increase of stock

An instrument comprising stock shall, unless the contrary be expressed therein, be deemed to include not only the stock comprised therein as provided by section 28, but also the natural increase of such stock, and all stock of the class or classes described in the instrument, the property of the grantor, branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark, and which after the execution of such instrument are depasturing or are at, in, or upon any lands or premises mentioned in such instrument or in the schedule to it, on any land and premises used and worked as part of the first-mentioned land and premises, whether or not such stock be removed therefrom. The grantee shall have the same legal property and right in all stock which by force of this section are deemed to be included in the instrument as he has in the stock described in the instrument or in the schedule to it.

30 Special provisions as to poultry

Where the stock comprised in an instrument is poultry or ostriches, or other stock which cannot be properly the subject of distinctive marking –

(a) Section 28 shall not apply in respect of such stock;

(b) Section 29 shall apply, but modified by omitting therefrom, after the words "be deemed to include", the words "not only the stock comprised therein as provided by the last preceding section, but also"; and by further omitting after the words "the property of the grantor", the words "branded, earmarked, or marked as specified in the instrument, or which the grantor has covenanted or agreed by such instrument to so brand, earmark, or mark, and".

31 [Repealed]

32 Book debts

(1) For the purposes of this Act book debts shall be deemed to be chattels, and shall be deemed to be situate in the place where the grantor of the instrument comprising them longest resided or carried on business during the period of 6 months next before the execution of the instrument.

(2) For the purposes of any instrument comprising book debts each debt shall be deemed to be a separate chattel, and shall be described by setting forth the amount of the debt and the name of the debtor or firm of debtors so far as is reasonably necessary to show by whom the debt is owing.

(3) For the purposes of this Act "book debts" means debts owing to any person in the course of his trade or business, but does not include any debt secured or charged on land, or any debt owing to any person for or in respect of any milk, cream, or butterfat supplied by him to any butter factory, cheese factory, condensed milk factory, or milk powder factory.

As to Instruments by Way of Security

33 Form of instrument by way of security

(1) Every instrument by way of security may be in the form numbered 4 in Schedule 1 or to the like effect, with such variations or modifications and additions to it as are expressed in the instrument.

(2) An instrument by way of security securing an account current continues in full force and effect notwithstanding that the grantor may be in credit on such account.

34 Where successive securities are given over same chattels

Where an instrument by way of security is executed after the execution of a prior instrument which has never been registered, and comprises all or any of the chattels comprised in such prior instrument, then if such subsequent instrument is given as a security for the same debt as is secured by the prior instrument, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the chattels comprised in the prior instrument, be void to the extent and as against the persons mentioned in section 18 unless it is proved to the court having cognisance of the case that the subsequent instrument was bona fide given for the purpose of correcting some material error in the prior instrument, and not for the purpose of evading this Act.

Securities Over Crops

35 Security may be given over crops

An instrument by way of security may be granted over the crops described or referred to in it or in the schedule in to it then actually sown or growing, or to be sown or grown in or upon the lands mentioned in the instrument, and shall entitle the grantee of it to the whole of the crops in it mentioned, not only while growing, but afterwards when cut or separated from the soil, and whether stacked or stored on the land where the same were grown on or on any other land or premises.

36 Crops that cannot be harvested within 12 months

No such instrument shall avail to give security over any crops (other than *Phormium tenax*) that cannot in the ordinary course of husbandry be harvested and taken off such land within one year from the date of the execution of the instrument.

37 Saving of rights of landlord and mortgagee

(1) No such instrument shall prejudicially affect the rights of any landlord or mortgagee of any land whereon the said crops are growing, unless and so far as the landlord or mortgagee has consented in writing to such instrument.

(2) No such instrument being duly registered shall be extinguished or prejudicially affected by any subsequent sale, lease, mortgage, or other encumbrance of or upon the land described or referred to in the instrument or in any schedule thereto.

38-41 [Repealed by 2004/270]

Entry of Satisfaction

42 Memorandum of satisfaction may be filed

(1) In the case of an instrument by way of security, upon the production to the Registrar of a memorandum of satisfaction in the form numbered 5 in Schedule 1 or to the like effect, signed by the grantee of it or his attorney, discharging the chattels comprised in such instrument or any specified part of it from the moneys secured thereby or any specified part thereof, or from the performance of the obligation thereby secured or any specified part of it, and on production of such instrument the Registrar shall file such memorandum and make an entry thereof in the register book on the page where the instrument is registered.

(2) (a)The execution of such memorandum shall be attested by at least one witness, who shall add to his signature his residence and occupation, and shall be verified by the affidavit of that witness.

(b) It is not necessary for the execution to be verified by affidavit if –

(i) the witness is the Registrar, a notary public, a Justice of the Peace, Postmaster, or a solicitor of the High Court, resident in Niue; or

(ii) the grantee is a corporation and the memorandum is executed by the corporation affixing its common seal or its official seal for use in Niue.

(3) The Registrar may dispense with the production of the instrument on proof by affidavit to his satisfaction that the instrument has been destroyed, cannot be found, or cannot be produced.

43 Effect of filing such memorandum

From and after the filing of any such memorandum the debt or charge created by the instrument shall be vacated to the extent specified in the memorandum, and the interest of the grantee in the chattels expressed to be discharged shall vest in the person for the time being entitled to the equity of redemption but so far only as such interest is expressed by the memorandum to be determined, and subject to any lien or equity affecting the chattels.

44 [Repealed by 2004/270]

45 Judge may order memorandum to be filed

A Judge of the High Court may, upon application made to him for that purpose, order a memorandum of satisfaction to be filed in respect of any instrument by way of security if it appears to him that the debt (if any) for which such instrument was given as security has been satisfied or discharged, or that the obligation for securing the performance of which the instrument was given has been performed; and thereupon such order may be filed by the Registrar and entered in his book in like manner as if the same were a memorandum within the meaning of section 42.

46 Sales by Registrar

(1) Where a person is entitled to exercise the power of sale contained or implied in an instrument, that person may apply in writing to the Registrar for the property to be sold.

(2) As soon as practicable after receiving an application under this section the Registrar shall –

(a) Fix a convenient time (being not more than 3 months and not less than one month from the date of the application) and a convenient place for the conduct of the sale; and

(b) Give written notice to any person (including the debtor) whose name and address has been supplied by the applicant, of the time and place at which the sale is to be conducted, and of the redemption price of the property to be sold; and

(c) Give such public notice of the sale as he considers sufficient; and

(d) Approve proper conditions of sale and do all other things necessary for the proper conduct of the sale.

(3) (a) At any time before the sale the debtor may pay to the applicant either the redemption price, or the amount due and owing under the instrument, together with the expenses already incurred by the applicant in connection with the intended sale, and any money expended on or about the property subsequent to the time when the redemption price in the application for sale was fixed, and on such payment the applicant shall do the acts required by clause 10 of Schedule 4.

(b) Where the sum so paid is less than the amount owing under the instrument the balance may be recovered from the debtor under the covenant to repay expressed or implied in the instrument.

(4) The applicant may be a bidder at any such sale, and become the purchaser of the property or any part of it.

(5) In the event of the applicant being the purchaser, the Registrar shall execute a memorandum of conveyance of the property purchased containing a recital that the sale has been made under this section.

(6) In the memorandum the consideration to be stated shall be not less than the redemption price.

(7) Upon the execution of the memorandum by the Registrar, the property shall vest in the applicant in the same manner as if it had been conveyed to a third party purchaser at the sale.

(8) A memorandum of transfer executed by the Registrar upon a sale under this section shall be conclusive proof that the provisions of this Act relating to the sale have been complied with.

(9) If any surplus money arising from the sale of the property cannot be paid to the debtor by reason of his not being found after reasonable inquiry the money shall vest in the Government.

(10) In respect of every application under this section there shall be paid to the Registrar by the applicant, in addition to the reasonable expenses of the sale a fee of $100 which shall accompany the application.

47 Grantor's interest in chattels may be sold in execution

(1) Where legal process issues against the chattels of a judgment debtor for the execution of a judgment of any Court, and the said chattels, or any of them, are comprised in any instrument by way of security, the officer charged with the execution of the process may, in lieu of seizing and selling the chattels so comprised, sell the right, title and interest of the judgment debtor in the same.

(2) The grantee of the instrument, on receiving notice of the purchase of that right, title, and interest, may take possession of the chattels comprised in the instrument.

(3) A grantee so taking possession shall be deemed to hold the chattels in trust for the purchaser of the said right, title, and interest, subject to payment of all moneys due under the instrument.

(4) If the chattels are afterwards sold under the power of sale expressed or implied in the instrument, and any surplus remains out of the proceeds of the sale after payment of all moneys due under the instrument, the grantee shall on demand pay over that surplus to the purchaser of the said right, title and interest.

(5) If the grantee makes default, the purchaser may bring an action against him to recover the surplus, as money received to the use of the purchaser.

48 Not to affect interpleader process

Nothing in section 47 shall be deemed to affect the right of an execution creditor to test the validity of any instrument by interpleader process.

IMPLIED COVENANTS

49 Covenants for title

There shall be implied in every instrument the covenants for title on the part of the grantor set forth in Schedule 3, and such implied covenants shall have the same effect as if the same were respectively set out at length in the instrument.

50 Covenants implied in instruments by way of security

There shall be implied in every instrument by way of security the covenants, provisos, agreements, and powers set out in Schedule 4 or such of them as are applicable; and such implied covenants, provisos, agreements, and powers shall, subject to any modification of the same expressed in the instrument, have the same effect as if the same were respectively set out in it at length.

51 Meaning of "abbreviated expressions"

Such of the expressions defined in section 2 or in Schedule 5 as are used in any instrument, or in any of the covenants, provisos, agreements, or powers implied therein by this Act, shall, unless the contrary is expressed in such instrument, or unless manifestly inconsistent with the context, have the meanings given to the same in section 2 or Schedule 5 and such meanings shall be implied in such instrument as fully and effectually as if the same were set out in it.

52 Covenants to be several as well as joint

Where there are 2 or more grantors or 2 or more grantees of any instrument, then any covenants, conditions, provisos, agreements, and powers expressed in such instrument, or implied by this Act, and imposing an obligation on such grantors or grantees, or enuring fore the benefit of such grantors or grantees, shall, except in so far as a contrary intention appears, be deemed to impose such obligation, or confer such benefit as the case may be, severally as well as jointly.

53 Covenants to bind executors

Except in so far as a contrary intention appear, all covenants, conditions, provisos, agreements, and powers expressed in any instrument, or implied therein by this Act, shall bind the executors, administrators, and assigns of the person, or the successors and assigns of a company or corporation, upon whom such covenants, conditions, provisos, agreements, and powers impose an obligation

and shall operate for the benefit of the executors, administrators, and assigns of the person, or the successors and assigns of the company or corporation, for whose benefit the same enure.

54 Covenants may be negatived or varied

All or any of the covenants, provisos, conditions, agreements, or powers set forth in Schedules 3, 4 and 5 may be negatived, modified, or altered, or others may be added to them, by express words in the instrument.

TRANSFERS OF INSTRUMENTS

55 Form of transfer of instrument

Every instrument may be transferred by a document in the form in Schedule 6 or to the like effect, and every transferee, his executors, administrators, and assigns, shall, in respect of the instrument transferred, have the same rights, powers and remedies, and be subject to the same obligations, as the transferor.

56 Registration of transfers

Transfers of instruments by way of security may be registered at any time after the execution of it in like manner as instruments are registered; and, in case 2 or more transfers of any one such instrument are executed, a registered transfer shall have priority over an unregistered transfer; and, in case 2 or more transfers or any one such instrument are registered, priority shall be given to such transfers in the order of their time of registration.

CUSTOMARY HIRE PURCHASE AGREEMENTS

57 Special provisions as to customary hire purchase agreements

(1) A customary hire purchase agreement is a deed or agreement in writing made between the owner of or a dealer in certain chattels and a conditional purchaser of those chattels where –

(a) The owner of or dealer in the chattels is either the manufacturer thereof or a person who is engaged in the trade or business of selling or disposing of chattels of such nature or description;

(b) The deed or agreement provides expressly or impliedly for delivery of possession to the conditional purchaser, but that the property in the chattels shall not pass to the conditional purchaser, or shall only conditionally so pass, until the completion of the payments to be made by him;

(c) The chattels the subject of the deed or agreement are described in Schedule 7 at the time when the agreement is made.

(2) A customary hire purchase agreement may be either an actual contract for sale and purchase or a contract of bailment under which the purchaser has an option of purchase of the chattels defined in the agreement.

(3) A customary hire purchase agreement and any assignment of a customary hire purchase agreement and of the chattels the subject of the agreement, whether absolute or by way of mortgage is valid and effectual for all purposes without registration.

(4) [Repealed]

(5) The purchaser or bailee of chattels the subject of a customary hire purchase agreement shall not have any right to sell, deal with, or dispose of such chattels otherwise than as may be specially provided in the agreement; and no sale, dealing, or other disposition purported to be made by such purchaser or bailee shall be effectual to confer title upon any person as against the vendor or bailor named in the customary hire purchase agreement, or against the assigns of such vendor or bailor.

(6) [Repealed by 2004/270]

(7) (a) Any chattels which now or hereafter are the subject of a customary hire purchase agreement shall, notwithstanding any rule of law to the contrary, remain and be deemed to have remained in all respects chattels although the same may have been fixed or attached to any land or building, and shall be removable by the vendor or bailor if and when he shall become entitled to possession of the same under the provisions of such customary hire purchase agreement;

(b) Such vendor or bailor shall not be entitled to remove any such chattels fixed to such land or building without first giving to the owner or other person for the time being in possession of the said land one month's previous notice in writing of his intention to so remove them.

57A Customary hire purchase agreements to have inventory

Section 23 shall apply to customary hire purchase agreements as defined in section 57 to the same extent as if such agreements were instruments.

57B Finance corporations to be dealers

(1) In this section –

"customary chattels" means chattels described in Schedule 7.

"finance corporation" means a corporate body engaged in financing transactions in relation to purchasers of customary chattels on hire purchase terms or conditional sale.

(2) A finance corporation shall be deemed for all the purposes of section 57 to be a dealer engaged in the trade or business of selling or disposing of customary chattels, and a deed or agreement of hire purchase between a finance corporation and a conditional purchaser of a customary chattel in relation to such customary chattel shall for those purposes be deemed to be a customary hire purchase agreement.

(3) Customary chattels the property of a wholesale dealer in the possession of a retail dealer for the purposes of sale, hire, or demonstration shall not be deemed to be in the order and disposition of the retail dealer with the consent of the true owner thereof within the meaning of any law relating to bankruptcy or insolvency.

(4) An agreement in relation to customary chattels, made between the manufacturer or a wholesaler dealer in such chattels or a finance corporation and a retailer dealer in such chattels, by which possession of the chattels is given to such dealer, shall not be deemed to be a customary hire purchase agreement.

(5) (a) Section 57(5) shall be read subject to section 3 of the Mercantile Law Act 1908.

(b) For the purposes of section 3 of the Mercantile Law Act, a person entitled to the benefit of a customary hire purchase agreement as assignee or mortgagee shall be deemed to be the true owner of any customary chattels the subject of such hire purchase agreement.

PENAL

58 Attempt to defraud grantee

Every grantor of an instrument by way of security who, by sale or delivery without the consent of the grantee of any chattels comprised in or affected by such instrument, or by any other means, defrauds or attempts to defraud the grantee of the same or any part thereof, and thus or by any other means directly or indirectly defeats, in validates, or impairs the grantee's security over the same,

and every person who wilfully aids and abets any person in defrauding or attempting to defraud the grantee by defeating, invalidating, or impairing such instrument or in attempting to do so, is liable to 2 years' imprisonment and to a fine not exceeding 2 penalty units.

59-59A [Repealed by 2004/270]

REPEALS AND SAVINGS

60 [Repealed by 2004/270]

61 Regulations

Cabinet may make such regulations for the purposes of this Act and may prescribe the fees to be payable under this Act.

62 Act binds the Government

This Act binds the Government in respect of all instruments to which the Government is a party.

SCHEDULES

SCHEDULE 1
Section 2 (3)

(1) CERTIFICATE ON REGISTRATION OF INSTRUMENT

I, [*Full name*], of [*Place of residence or business*], in Niue, [Occupation], hereby certify:

1. That I was present and saw (this instrument*) or (the instrument of which this is a true copy*) or (the instrument of which the paper writing hereto annexed and marked "A" is a true copy*) executed by [*Full name, place of residence, and occupation of grantor*] (and the other signatures to it†) (by his attorney [*Full name of attorney*]*) or (by their respective attorneys [*Full names of attorneys*]* on the day of 20 at .

2. That my signature in my proper handwriting appears on the said instrument as that of the witness who attested its execution by the said [Full name of grantor] (and other signatories to it†).

3. That I am aware that I am guilty of an offence if this certificate is false in a material respect and I give it negligently or knowing it to be false.

Signed at this day of 20 .

*Delete if inapplicable.

†Delete if there are no other signatories. If the instrument is by way of bailment it must be signed by both grantor and grantee or their respective attorneys and this certificate must relate to the execution of the instrument by both parties.

NOTE: Where the grantor is a company or corporation the registered office of the grantor or its principal place of business in Niue should be stated in this form instead of the place of residence of the grantor and it shall not be necessary to state the occupation of such a grantor.

Section 9

(2) REGISTER BOOK

No.	By Whom Given for Against Whom Process Issued			To Whom Given			Nature and Date of Instrument	Date and Time of Registration	Date of Renewal	Satisfaction Entered
	Name	Residence	Occupation	Name	Residence	Occupation				

N.B. in the case of an instrument by way of security it shall not be imperative to state the residence and occupation of the grantee.

Section 14

(3) AFFIDAVIT ON RENEWAL OF REGISTRATION OF INSTRUMENT

In the High Court of Niue
District

In the matter of the Chattels Transfer Act 1924

I [*Full name of deponent*], of [*Place of residence or business*], in Niue [*Occupation*], make oath and say as follows"

1. I am the grantee [*or grantor, in the case of an instrument by way of bailment)* of the instrument registered under the above Act as No. , and made between *[State names of parties to instrument, their residences and occupations, as appearing therein; also names of the parties to the instrument, their residences and occupations at the time of the making of the affidavit*].

[*If the affidavit is made by an agent, clerk, or servant of the grantee or grantor, state such fact, and also state briefly how deponent has become acquainted with the facts deposed to*.]

2. The said instrument was registered on the day of 20.

3. The registration of the said instrument was last renewed on the day of 29.

[*This paragraph is inapplicable where registration of the instrument is being renewed for the first time*.]

4. The said instrument is still subsisting, and in full force and effect.

C.D.

Sworn at , this day of 20 , before me –

G.H., Solicitor [*or* Registrar of the High Court, or Justice].

Section 33

(4) INSTRUMENT BY WAY OF SECURITY

A.B., of [*State residence and occupation*], being owner of the chattels mentioned in the schedule hereto [where a schedule is necessary], on consideration of the sum of $ this day lent and advanced to him by C.D., of [*State residence and occupation*], [*Or, if consideration not an advance of money, state any other consideration for which mortgage given*], does hereby assign and transfer the same to the said E.F. by way of mortgage, to secure the payment of the said sum of $, on the day of 20 , with interest thereon in the meantime, and so long as the same or any part thereof remains unpaid, at the rate of $ percent per annum, by payments on the day of the months of and in each year.

[Implied covenants, powers, and provisions may be varied or negatived.]

In witness whereof A.B. has hereunto subscribed his name, this day of 20 .

[Schedule]

A.B.

Signed by the above-named A.B. in the presence of –
E.F.,
[*Residence and occupation*]

Section 42
(5) MEMORANDUM OF SATISFACTION

I, C.D., hereby consent to a memorandum of satisfaction being written upon the instrument [*or* registered copy of the instrument] given for securing the sum of $, bearing date the day of 20 , and made between and , and registered on the day of 20 , the moneys for which such instrument was given as a security having been satisfied.

Dated this day of 20 .

C.D., Grantee [or Assignee].

Witness: E.F.
[*Residence and occupation*]

SCHEDULE 2
Section 5

[Repealed 1973/2.52 (NZ)]

SCHEDULE 3
Section 49
COVENANTS IMPLIED IN ALL INSTRUMENTS

That the grantor has good right and full power to assign to the grantee the chattels purporting to be hereby assigned, and that free and clear from encumbrances other than such as are herein mentioned.

That the grantor will, at the cost of the grantee [or, if the instrument is by way of security, at the cost, until sale, of the grantor, and thereafter of the person requiring the same], do and execute all such acts, deeds, matters and things for the better assigning the chattels hereby assigned, or intended so to be, as by the grantee [or other person before mentioned] may from time to time be reasonably required.

SCHEDULE 4
Section 50
COVENANTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY

1. That the grantor will pay to the grantee the principal money and interest hereby secured, after the rate and at the times herein mentioned, without any deduction whatever.

2. That the grantor will also pay interest on any further advances that may be secured by this instrument, computed from the time of making the same respectively, at the rate and on the dates mentioned for the payment of interest in this instrument.

3. That the grantor will not, at any time while any moneys remain owing on this security, do or allow any act or deed whereby the chattels hereby assigned shall or may become prejudicially affected, and will at all times, while any moneys remain owing on this security, duly pay all rents from time to time coming due in respect of any lands or premises on which any of the chattels hereby assigned are for the time being situated.

4. That the grantor will at all times, while, any moneys remain owing on this security, keep and maintain all and singular the chattels hereby assigned in the lie good order and condition in which they are at the date hereof; and, if any of the same are damaged or destroyed, or cease to exist, will repair such damage, or replace the chattels so destroyed or ceasing to exist, with other chattels of a like nature; and further will, if required so to do by the grantee, execute any instrument that may be necessary to give to the grantee security over chattels replacing the chattels which have been destroyed or have ceased to exist.

PROVISOS AND AGREEMENTS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY

5. Provided always, and it is hereby declared and agreed, that until the grantor makes default in the payment of any of the moneys hereby secured, or in the observance or performance of any covenant, condition or agreement herein expressed or implied, and on his part to be observed and performed, or until the grantor becomes bankrupt, or until a judgment of any Court against the grantor has remained unsatisfied for 10 days, the grantor may retain possession and use of the chattels hereby assigned.

6. Provided further that the giving by the grantor to the grantee of any bill of exchange or promissory note for the whole or any part of the money hereby secured shall not, until such bill or note is honoured or met, be considered as payment of or on account of the moneys secured by this instrument, or in any way affect or alter the rights or powers of the grantee by virtue of this instrument; and no promissory note or bill of exchange which before, at, or at any time after the execution of this instrument may be given by the grantor to the grantee for the whole or any portion of the moneys hereby secured, or the remedy thereon of the grantee o of the holder of it, shall merge in the covenants herein expressed or implied.

POWERS IMPLIED IN INSTRUMENTS BY WAY OF SECURITY

7. Provided always and it is hereby declared and agreed, that if default is made by the grantor in payment of any of the principal or interest moneys hereby covenanted to be paid on the day on which the same ought to be paid under the terms hereof, or in the observance or performance of any of the covenants, conditions, or agreements herein expressed or implied, and on the grantor's part to be observed and performed, or if the grantor becomes bankrupt, or if at any time a judgment of any Court against the grantor remains unsatisfied for ten days, then and in such case the grantee, either personally or by his agent or servants, may immediately thereupon or at any time thereafter, without any further consent by the grantor, and without giving to the grantor any notice, or waiting any time, and notwithstanding any subsequent acceptance of any payment of any money due on this security, enter upon any lands or premises whereon the chattels for the time being subject to this security may be, and take possession thereof, and sell and dispose of the same or any part thereof by private sale or public auction, separately or together, in such lots and generally in such manner in every respect as the grantee deems expedient, with power to allow time for payment of purchase money, or to buy in the said chattels or any part of it at such auction, and to rescind or vary the terms of any contract or sale, and to resell without being answerable for any loss or expense occasioned thereby, and to execute all such assurances and do all such things for giving effect to any such sale as may be necessary or proper; and the receipt of the grantee or his agent shall be a sufficient discharge to any purchaser at such sale for any of the purchase money; and upon any sale purporting to be made in exercise of the powers herein expressed or implied no purchaser shall be bound to inquire as to the propriety or regularity of any such sale, or be affected by notice express or constructive that any such sale is improper or irregular.

And it is hereby declared and agreed that the grantee shall stand possessed of the proceeds of any such sale upon trust, after paying thereout the costs, charges and expenses of and incidental to such taking possession, sale, and the preparation and registration of this instrument, to apply the same in reduction of the moneys then owing on the security of this instrument, including all moneys herein covenanted to be paid, notwithstanding that the same may not then have become due, or that any promissory notes or bills of exchange may then be current for the same, and to pay the balance of the grantor.

POWERS, COVENANTS AND PROVISIONS TO BE IMPLIED IN INSTRUMENTS BY WAY OF SECURITY OVER STOCK

8. That, during the continuance of this security, the grantee, his agents or servants, may from time to time, and at reasonable times for that purpose, enter into and upon the said lands or premises, or any other lands or premises whereon the stock for the time being subject to his security are depasturing, for the purpose of viewing the state and condition of the same; and that the grantor will, upon receiving 7 days' previous notice in writing delivered to him personally or addressed to him through the ordinary course of post or otherwise at his last known place of abode in Niue, give and afford to the grantee, his agents or servants, all reasonable assistance to enable the grantee, his agents or servants, to view the same accordingly.

9. That there are now depasturing upon the said lands and premises all the stock herein respectively mentioned as depasturing thereon. And that the grantor will not, during the continuance of this security, without first obtaining the grantee's consent in writing, further encumber the stock for the time being subject to this security, or change the general quality, character, or description of the same, or remove the same or any part thereof from the said lands or premises, or sell the same or any part thereof except in the ordinary course of business, but no sale shall be made so as to reduce the number of the stock stated in this security.

And that the grantor will, during the continuance of this security, at the usual and convenient season for so doing, well and properly brand, earmark, and mark, with the brand, earmark, and mark herein specified, all stock for the time being subject to this security, so that all such stock shall bear and continue to bear the brand, earmarks, and marks herein specified.

And will not without the leave in writing of the grantee brand, earmark, or mark, or permit to be branded, earmarked or marked any stock for the time being subject to this security with any brands, earmarks, or marks other than the brands, earmarks, and marks herein specified.

And will at all times during the continuance of this security take, use, and adopt all due and proper means for keeping and maintaining all stock now depasturing or that may during the continuance of this security be brought upon the said lands or premises or any part thereof, free from disease, and in clean and healthy condition: And will at all times during the continuance of this security pay and defray all expenses in and about the good and proper conduct and management of the said lands, stock, and premises, and employ and maintain on the said lands, or premises efficient and proper assistance to assist in the said conduct and management: And will every year, on demand by the grantee, render and deliver to him a return or account in writing setting forth the number, ages, and sexes of the stock for the time being subject to this security and the places where the same are depasturing or kept.

10. That all stock belonging to the grantor, branded, earmarked, or marked as aforesaid, or covenanted so to be, of which possession has been taken, under the power in that behalf herein contained, shall be subject to the same powers, provisions, declarations, and agreements as are herein expressed or implied of and concerning the stock and increase of stock herein expressed to be assigned, and may be dealt with in the same manner in all respects as if the stock of which possession is taken as aforesaid had formed part of the stock hereby assigned: And that the grantor will, at his own cost and charges, do and execute all such deeds, matters, and things as may be necessary, or as the grantee may think proper, for the further, better, and more perfectly assigning and assuring to the grantee the stock and increase of stock, and all and singular other the premises hereby assigned or intended so to be, or the stock for the time being on the said lands or premises, and any stock, branded, earmarked or marked as aforesaid, or covenanted so to be, of which possession has been taken as aforesaid, so that the same may be held by the grantee upon and for the same ends, intents, and purposes and with, under, and subject to the same powers, provisos, agreements, and declarations, as are herein expressed or implied of and concerning the stock and premises being expressed to be assigned: And shall and will from time to time, and at all times during the continuance of this security,

pay all and singular the licence fees, head moneys, and other outgoings and payments and perform and observe all rules, regulations, and conditions which by the owner for the time being of the said stock or premises respectively now are or shall become at any time hereafter due, payable, observable or performable respectively: And that in case the grantor fails or neglects to pay such licence fees, head moneys, and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such payments respectively: And that in case the grantor fails or neglects to pay such licence fees, head moneys, and other outgoings and payments as aforesaid, or any of them, or any part thereof, the grantee may make such payments respectively: And that the grantor shall and will from time to time and at all times hereafter, on demand, pay or cause to be paid to the grantee all sums of money paid or advanced by the grantee in or towards such payment as aforesaid, with interest for the same time after the rate of $7 percent per annum from the time or respective times when the same were advanced or paid: And that in the meantime, and until such sums of money have been repaid with interest as aforesaid, the stock for the time being subject to this security shall stand charged and chargeable with the payment of the same in like manner as if the same had been principal moneys secured by this instrument. That in the case the grantee exercises any power of entry or taking possession vested in him hereunder, then he, or any person or persons appointed by him for the purpose, may continue in possession of the said stock and of the lands or premises whereon the same are depasturing or kept until the sale thereof, and manage, conduct, and carry on the said lands and stock, and employ servants and assistants, and provide all necessary stores in that behalf in all respects as the grantor could do if such power had not been exercised; and the grantee for any such purpose shall be entitled without any interference by the grantor to use all branding, earmarking, marking, and other implements and plant on or used in connection with the said lands or premises; and, further, that the costs, charges and expenses of so doing, from the time of such entry and taking possession until the sale and delivery of the said stock and premises to any purchaser thereof, shall together with interest thereon after the rate aforesaid, until payment, be a charge upon the stock for the time being subject to this security.

Power to be Implied in Instruments by Way of Security Over Crops

11 If the grantor does not pay to the grantee the moneys hereby secured, with interest and commission thereof as herein mentioned, at the time herein mentioned for payment of the same, the crops hereby assigned shall be gathered, carried away, and made marketable either by the grantor or by the grantee at the option of the grantee, but in either case at the expense of the grantor, and shall (if gathered by the grantor) be delivered by the grantor to the grantee or his order at the place of delivery mentioned [or, if no such place is mentioned in the instrument, at such place as the grantee directs]; and the grantee may either sell the same in Niue in one or more lots, by public auction or private contract, or partly in the one way and partly in the other, and upon such terms and conditions as to credit and otherwise as he thinks fit, or may cause the same to be shipped or exported to any place or places out of Niue, to be sold by his agents in the manner and on the terms aforesaid, without being responsible for any loss or deficiency occasioned either by the shipment of the said crop or by any sale or sales thereof, whether in Niue or elsewhere, or by the act, neglect, or default of any agent, broker, or other person; and may from the proceeds pay himself the moneys hereby secured, and any rent payable to any landlord, and any moneys payable to any mortgagee or other person that he may be compelled to pay in order to protect his security over the said crops, and all costs, mercantile and other charges, and expenses incurred in and about the harvesting, sale, shipment, and carrying away of such crops, and the storage and freight thereof, or on any other account connected with the realisation thereof, and shall pay over the balance, if any, to the grantor.

12 [Repealed by 2004/270]

SCHEDULE 5
Section 51
MEANING OF ABBREVIATED EXPRESSIONS

1. The words "upon demand" mean upon demand being made by notice in writing signed by the person entitled to make the demand, or any agent or clerk or servant of such person, served upon the person upon whom the demand is to be made, either personally or by posting the same in a duly registered letter addressed to him at his usual or last known place of abode in Niue.

2. The words "further advances" mean such further sum or sums of money as may be advanced or paid by the grantee to the grantor after the execution of this instrument, and include also such sums as may become owing by the grantor to the grantee during the continuance of this security for goods supplied, for bills and notes discounted and paid, and for other loans, credits, and advances that may during the continuance of this security be made by the grantee to or for the accommodation or at the request of the grantor.

3. The words "will, upon demand pay the balance due upon the account current between them" mean that the grantor will, on demand, pay to the grantee the balance on the account current of the grantor with the grantee for the time being owing for and on account of the moneys advanced on the execution hereof, or intended to be hereby secured, and for further advances as defined by the Chattels Transfer Act 1924, and for interest, commission and other lawful charges from the day of such demand being made till the actual payment thereof, at the rate mentioned in this instrument without any deduction; and it is hereby declared and agreed that the said account current shall be made up with half-yearly rests on the half-yearly days mentioned for that purpose in this instrument, in each year [or, if no such days are mentioned in the instrument, then on 31 March and 30 September in each year], until the final balance of account is fully paid; and that this instrument shall be a continuing security for all moneys for the time being owing by the grantor to the grantee, notwithstanding that the current account between them may have at any time theretofore been in credit by payments, settlement of account, or otherwise; and also that upon every such half-yearly day interest shall be considered as converted into principal, and the balance shall be chargeable with interest as aforesaid as upon further advances, and also that in making up such account interest at the rate specified in this instrument shall be calculated on the daily debtor balances; and also that, upon any such demand as aforesaid, all bills of exchange or promissory notes given by the grantor to the grantee and then current may, at the option of the grantee, be considered as matured or become due, subject to a rebate of interest upon the amount thereof for the time during which the same have to run, to be calculated at the rate at which interest is payable under this instrument, and that the amount of such bills or promissory notes, subject to such rebate, may be charged to the grantor in such account at the time of making such demand.

4. The words "will insure" mean that the party liable to insure will insure and at all times while this instrument remains in force will keep insured against loss or damage by fire all chattels comprised herein of a nature of kind capable of being insured against loss or damage by fire, such insurance to be effected in the name of the other party to this instrument and in some public insurance office to be approved of by him, and to be for the full amount herein specified [or, if no amount is specified, then for the full insurable value of the said chattels]; and will, at the request of the other party, hand over to and deposit with him the policy of every such insurance, and produce and deliver to him the receipt or receipts for the annual or other premiums payable on account thereof; and also that all moneys received under any such insurance shall, in the event of loss or damage by fire, be laid out and expended, so far as the same extend, in making good such loss or damage [or, if the instrument is given by way of security, in discharging the moneys hereby secured, if such other party so elects]: Provided that, if default be made in the observance or performance of this covenant, such other party may, without prejudice to and concurrently with the powers granted him by this instrument or otherwise by law, insure such chattels, and may forthwith recover the costs and charges of such insurance from the party liable to insure in like manner as if the same had been advanced by way of loan on the security of this instrument.

5. The words "will brand, earmark, and mark" mean that the party liable to brand, earmark, and mark will keep all the stock subject to this security at all times while the instrument remains in force distinctly branded, earmarked, and marked with the brands, earmarks, and marks specified in this instrument, failing which it shall be lawful for, but not imperative on, the other party hereto to enter upon any lands or premises where any stock subject to this security are and to take possession of the name, and brand, earmark, and mark the same with the brands, earmarks, and marks specified in this instrument, with the right to use all branding, earmarking, marking and other implements and plant requisite therefor, and all costs, charges, and expenses occasioned to him by so doing shall be recoverable from the party liable to brand, earmark, and mark as if the same had been advanced by way of loan as a further advance on the security of this instrument.

SCHEDULE 6
Section 55
TRANSFER OF INSTRUMENT

I, C.D. of [*State residence and occupation of transferor*], the grantee [*or* grantor, *in case of an instrument by way of bailment*] of the instrument registered in the office of the High Court at as no. under the Chattels Transfer Act 1924, do, in consideration of [*State consideration*], hereby transfer to X. Y., of [*State residence and occupation of transferee*], the chattels comprised in the said instrument, and all my right, title, estate, and interest thereunder.

As witness my hand this day of 20 .

C.D.

Signed by the said C.D, in the presence of –

E.F.,
[*Residence and occupation*]

SCHEDULE 7
Section 57
CHATTELS WHICH MAY BE THE SUBJECT OF CUSTOMARY HIRE PURCHASE AGREEMENTS.

Furniture.
Pianos and pianolas.
Gramophones.
Typewriters.
Motor vehicles of all descriptions.
Sewing machines.
Cash registers.
Shearing machines.
Engines.
Pumps and machinery, implements, and accessories for use in pumping.
Windmills.
Milking machines, and all other machinery and implements and accessories for use in the dairy industry.
Reapers and binders, and all other machinery and implements and accessories thereto for use in agriculture.
Machinery, implements, and accessories thereto for use in the bootmaking industry.
Electric motors.
Machine printing presses and slug casting machines, type composing machines, and other machinery accessories and attachments for use in connection with the printing and bookbinding industry.
Gas stoves, gas geysers, gas washing coppers.
Electrical equipment apparatus, and appliances required in connection with the use of electric energy.

Computing scales, weighing machines, bread and bacon slicing machines, cheese cutting machines.
Tractors.
Equipment, apparatus and appliances for use in connection with the consumption of coal gas.
Cinematograph projection machines, and lighting and other equipment peculiar thereto.
Electric ranges and water heaters.
Electric vacuum cleaners, electric refrigerators, radio sets and equipment, bicycles.
Electric washing machines, electric ironing machines, electric floor polishing machines, petrol driven washing machines
Electric dish washing machines
Piano accordions
Motor mowers, 12 to 21 in.
Electric clothes drying machines and appliances, electric garbage disposal machines and appliances.
Self-propelled machinery and plant for road-making, earth-moving, tree-moving, or tree-haulage purposes.
Equipment and appliances for road-making, earth-moving, tree-moving, or tree-haulage purposes, and attached to or for use with –

(a) Motor vehicles or tractors; or
(b) Self-propelled machinery or plant for roadmaking, earthmoving, tree-moving, or tree-haulage purposes.

Tanks, equipment, apparatus and appliances for use in connection with the storage, pumping, and serving of beer (excluding barrels).
Power-operated vehicle hoists and accessories thereto; power-operated lubrication equipment and accessories thereto.
Television sets and equipment.
Domestic knitting machines.
Heavy duty trailers.
Dry-cleaning equipment of a commercial or industrial type.
Laundry equipment of a commercial or industrial type.
Silos of the type commonly sold to farmers for the storage of grain on farms.

CHEQUES ACT 1960

1960/17 (NZ) – 1 January 1961

1 Short title
2 Protection of bankers paying unindorsed or irregularly indorsed cheques
3 Rights of bankers collecting cheques not indorsed by holders
4 Unindorsed cheques as evidence of payment
5 Protection of bankers collecting payment of cheques
6 Application of certain provisions of principal Act
7 Effect of Act
8 [Spent]

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1 Short title

This Act is the Cheques Act 1960, and shall be read together with and deemed part of the Bills of Exchange Act 1908 (the principal Act).

2 Protection of bankers paying unindorsed or irregularly indorsed cheques

(1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed, he shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and he shall be deemed to have paid in due course.

(2) Where a banker in good faith and in the ordinary course of business pays any such instrument as the following; namely –

(a) A document issued by a customer of his which, though not a bill of exchange, is intended to enable a person to obtain payment from him of the sum mentioned in the document; or

(b) A draft payable on demand drawn by him upon himself whether payable at the head office or some other office of his bank –

he shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment shall discharge the instrument.

3 Rights of bankers collecting cheques not indorsed by holders

A banker who gives value for, or has a lien on, a cheque payable to order which the holder delivers to him for collection without indorsing it shall have such rights (if any) as he would have had if, upon delivery, the holder had indorsed it in blank.

4 Unindorsed cheques as evidence of payment

An unindorsed cheque which appears to have been paid by a banker on whom it is drawn shall, in the absence of proof to the contrary, be sufficient evidence of the receipt by the payee of the sum payable by the cheque.

5 Protection of bankers collecting payment of cheques

(1) Where a banker in good faith and without negligence –

(a) Receives payment for a customer of an instrument to which this section applies, or

(b) Having credited a customer's account with the amount of any such instrument receives payable of it for himself –

and the customer has no title, or a defective title, to the instrument, the banker shall not incur any liability to the true owner of the instrument by reason only of having received payment of it.

(2) This section applies to the following instruments, namely –

(a) Cheques;

(b) Any document issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the document;

(c) Any document, not being a bill of exchange, issued by a member of the Niue Public Service which is intended to enable a person to obtain payment from a Niue public account of the sum mentioned in the document;

(d) [Repealed by 2004/270]

(e) Any draft payable on demand drawn by a banker upon himself, whether payable at the head office or some other office of his bank.

(3) A banker shall not be treated for the purposes of this section as having been negligent by reason only of his failure to concern himself with the absence of, or irregularity in indorsement of an instrument.

6 Application of certain provisions of principal Act

The provisions of the principal Act relating to crossed cheques shall, so far as applicable, have effect in relation to instruments (other than cheques) to which section 5 applies as they have effect in relation to cheques.

7 Effect of Act

Nothing in this Act shall be deemed to make negotiable any instrument which, apart from those provisions is not negotiable.

8 [Spent]

CHILD ALLOWANCE ACT 1995

1995/203 – 1 January 1996

1 Short title
2 Interpretation
3 Payment out of Government Account
4 Amount and payment date
5 Qualifying child
6 Disabled/disadvantaged persons
7 Residence qualifications
8 Exemptions
9 Period allowance is payable
10 Person allowance is payable to
11 Application of child allowance
12 Applying for allowance
13 Investigation of applications
14 Recovery of allowance
15 Offences
16 Proceedings for offences
17 Delegation of powers of Director
18 Regulations

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1 Short title

This is the Child Allowance Act 1995.

2 Interpretation

In this Act –

"applicant" means the person who makes an application for a child allowance;

"application" means a form filled out by the applicant when applying for a child allowance;

"beneficiary" means a person who receives a child allowance in that year;

"Director" means the Director of Community Affairs;

"qualifying child" means a child who meets the criteria under section 5 and includes a stepchild, an adopted child and any child who, if not a member of the applicant's family is recognised by the Director as a member of the applicant's family;

"recognised school" means a school that is recognised and approved by the Director for the purposes of this Act;

"Welfare Committee" means the committee constituted under section 5 of the Pensions and Benefits Act 1991.

3 Payment out of Government Account

Child allowance payable under this Act shall be paid from the Niue Government Account out of money appropriated by the Niue Assembly for the purpose.

4 Amount and payment date

(1) The rate of child allowance payable shall be such amount as may be determined by Cabinet to regulations made under this Act, such amount to be paid out to a qualifying person as defined in section 10 for each qualifying child as defined in section 7.

(2) No child allowance shall be payable in respect of any period before the first payment date pursuant to subclause (1).

5 Qualifying child

(1) A qualifying child shall be a child who qualifies on a residence basis as set out in section 7 and who is –

(a) Either a Niuean by descent;
(b) A permanent resident of Niue; or
(c) A New Zealand citizen.

(2) A qualifying child may apply for a child allowance who, at the time of application –

(a) Is ordinarily resident in Niue;
(b) Is not married;
(c) Is financially dependent; and
(d) Is attending a recognised school in Niue.

6 Disabled/disadvantaged persons

(1) Notwithstanding section 5 a disabled/disadvantaged person, who is not required or is unable to attend school shall be eligible for child allowance up to the age of 18 years.

(2) The Director on advice of the Welfare Committee shall have sole discretion to determine whether any child comes within the definition of disabled/disadvantaged to such an extent as to qualify for the exemptions referred to herein.

7 Residence qualifications

Subject to section 8 an applicant and/or the child the subject of the application who has been absent from Niue for a continuous period of more than 12 months immediately preceding the application shall not be eligible for child allowance until a period of 6 months has elapsed since returning to Niue.

8 Exemptions

(1) Any person being the child of an Award Holder who as a direct consequence of being overseas in the years immediately preceding application cannot fulfil the residence requirement in section 7 shall not be required to complete such requirement before being eligible to become a qualifying child.

(2) For the purposes of this section an "Award Holder" is a person who has taken up study or training overseas which will be of benefit to the Award Holder and Niue's development.

9 Period allowance is payable

(1) Child allowance payable in respect of a qualifying child shall, subject to this Act, commence on the day the application is approved by the Director and shall continue until the day on which the child leaves a recognised school.

(2) No allowance shall be payable in respect of any period before the date of coming into force of this Act or its Regulation.

(3) If an application is received by the Director after the closing date as determined by the Director, the allowance shall not commence until the following year.

(4) (a) It is the responsibility of the qualifying person to inform the Director in writing of any intended absence from Niue, of the child or themselves.

(b) Failure to inform the Director in writing will result in the loss of future allowances.

10 Person allowance is payable to

(1) A qualifying person shall be a parent or guardian whose application for child allowance has been granted by the Director.

(2) Unless otherwise provided, child allowance shall be payable only to the mother of a qualifying child (whether application for the allowance has been made by the mother or father or another person).

(3) The child allowance may be paid to the father of that child, if

(a) The mother of the child has passed away, or has left permanently for overseas, or has left the family permanently without the child; and

(b) The child is living with the father and under his care and control.

(4) In any other case the Director may determine that the child allowance shall be paid to any person who has care and control of the child.

(5) No child allowance shall be payable to any applicant if another allowance is being paid in another country or received from overseas for that child.

11 Application of child allowance

(1) Money received by way of child allowance shall be used towards the maintenance, education, or welfare of the child or children in respect of whom it is paid, with a sum allocated by Cabinet under regulation, for assisting the school committee at the school the child attends.

(2) (a) The Director may refuse to grant an allowance or may terminate or suspend an allowance if the Director is satisfied that the allowance will not be or has not been properly applied.

(b) Any person aggrieved by a decision of the Director made pursuant to this section may appeal to the Court for a ruling.

(3) A child allowance cannot be used as collateral or for guaranteeing a loan.

12 Applying for allowance

An application for a child allowance shall be on an approved application form and addressed to the Director and shall be by way of statutory declaration in such form with such information and evidence as the Director may determine.

13 Investigation of applications

(1) Every application shall be investigated by the Director, who shall decide as to whether the allowance is payable and if so, to whom.

(2) It shall be the duty of every person to answer all questions put by the Director concerning any application for a child allowance, or concerning any statements contained in any application for a child allowance.

(3) For the purpose of ascertaining the child's enrolment and attendance the Director shall have access to the child's school attendance records when required.

14 Recovery of allowance

(1) If any allowance is procured or paid by fraud or false information, the amount so paid may be recovered from the qualifying person as a debt due to the Crown.

(2) The Director may make any necessary adjustments in any future allowance or any other benefit or allowance (whether payable under this or any other enactment) thereafter becoming payable to the qualifying person.

15 Offences

Every person who –

(a) Makes any statement knowing it to be false in any material particular;

(b) Wilfully does or says anything or omits to do or says anything for the purpose of misleading or attempting to mislead any officer concerned in the administration of this Act or any other person whomsoever for the purpose of obtaining (for himself or any other person) or which results in himself or any other person obtaining any allowance under this Act;

(c) Demands or accepts from any applicant or from any other person any fee or other consideration for procuring or endeavouring to procure any allowance under this Act for that child,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 months, or to a fine not exceeding 2 penalty units or to both such imprisonment and fine.

16 Proceedings for offences

(1) Notwithstanding any other enactment, an information for an offence against this Act may be laid at any time within 5 years after the facts alleged in the information have been brought to the knowledge of any person concerned in the administration of this Act.

(2) Every information relating to an offence may, notwithstanding any other enactment, be heard and determined before the Court.

17 Delegation of powers of Director

(1) The Director may either generally or particularly, delegate to another officer of the Department such of his powers under this Act or its regulations as the Director may determine.

(2) Subject to this section and to any general or special directions given or conditions attached by the Director, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

18 Regulations

Cabinet may make all necessary regulations to carry out the provisions of this Act.

CITIZENSHIP ACT 1977

1977/61 (NZ) – 1 January1978

[EDITORIAL NOTE: The Citizenship Act of Niue is the Citizenship Act of New Zealand but it has had fewer amendments made to it. This is because none of the New Zealand amendments were extended to Niue. The Niue Assembly has made no amendments to the act. The citizenship enjoyed in Niue is the citizenship of the State of New Zealand. In practical terms therefore the important text is the current Citizenship Act 1977 of New Zealand. It is the Act which is reproduced here. The Citizenship Act 1977 in its Niue form is accessible in *Niue Legislation as at 1 August 1990* Vol 1.]

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SCHEDULES

To make better provision with respect to the status of New Zealand citizenship, and to consolidate and amend the British Nationality and New Zealand Citizenship Act 1948

1 Short title and commencement

This Act may be cited as the Citizenship Act 1977.

2 Interpretation

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

"alien" means a person who does not have the status of a New Zealand citizen, a Commonwealth citizen (British subject), a British protected person, or an Irish citizen;

"Armed Forces" has the meaning given to it by section 2 of the Defence Act 1990;

"Crown service under the New Zealand Government" means the service of the Crown under the Government of New Zealand or under the Government of a New Zealand mandated territory or New Zealand trust territory, whether that service is in any part of Her Majesty's realms and territories or elsewhere; and includes employment in any of the State Services, as that term is defined in section 2 of the State Sector Act 1988;

"employee" has the meaning given to it by section 2 of the State Sector Act 1988, except that it includes –

(a) Any chief executive; and

(b) [Repealed]

"Minister" means the Minister of Internal Affairs;

"New Zealand" includes the Cook Islands, Niue, Tokelau, and the Ross Dependency;

"New Zealand overseas representative" means a diplomatic or consular representative for New Zealand or a representative of the Government of New Zealand in any other country; and includes a High Commissioner for New Zealand in any other country;

"prescribed" means prescribed by regulations made under this Act or by the Minister;

"Protected state" means a Majesty by Order in Council to be a protected state for the purposes of the British Nationality Act 1948 (UK); and includes the New Hebrides and Canton Island;

"Protectorate" means a State or territory that is declared by Her Majesty by Order in Council to be a protectorate for the purposes of the British Nationality Act 1948 (UK);

"Secretary" means the Secretary for Internal Affairs.

(2) References in this Act to a Commonwealth country include references to every territory for the international relations of which that country is responsible.

(3) For the purposes of this Act, –

(a) A person born aboard a registered ship or aircraft shall be deemed to have been born in the place in which the ship or aircraft was registered;

(b) A person born aboard an unregistered ship or aircraft of the Government of a country shall be deemed to have been born in that country;

(c) A person shall be deemed to be of full capacity if he is not of unsound mind.

3 Special provisions relating to parentage

(1) For the purposes of this Act a person shall, in the absence of evidence to the contrary, be presumed to be the father of another person if—

(a) he is or was married to, or in a civil union or a de facto relationship with, that other person's mother at any time during the period commencing with that other person's conception and ending with that other person's birth; or

(b) His paternity of that other person has been established by one or more of the types of evidence specified by section 8 of the Status of Children Act 1969 –

and (but without limiting subsection (2) of this section) the term "father", when used in this Act, shall be construed accordingly.

(2) For the purposes of this Act a person shall be deemed to be the child of a New Zealand citizen if –

(a) He or she has been adopted by that citizen, in New Zealand, by an adoption order within the meaning of and made under the Adoption Act 1955; or

(aa) He or she has been legally adopted by that citizen, in Niue, Tokelau, or the Cook Islands, by an adoption order that has the same operation and effect as an adoption order made under the Adoption Act 1955; or

(b) He or she has been adopted by that citizen, outside New Zealand, by an adoption to which section 17 of the Adoption Act 1955 applies, and either –

(i) that adoption took place before the commencement of the Citizenship Amendment Act 1992; or

(ii) at the time that adoption order was made he or she had not attained the age of 14 years; or

(ba) He or she has been adopted by that citizen, outside New Zealand, by an adoption order which has been certified by the competent authority of the Contracting State in which the adoption was made as being an adoption made in accordance with the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption –

and in any such case –

(c) The terms "father", "mother", and "parent", when used in this Act, shall be construed accordingly;

(d) The person shall be deemed to have been born when and where the adoption order was made:

Provided that, on the discharge for any reason of the adoption order in accordance with section 20 of the Adoption Act 1955 (or in accordance with the law relating to the discharge of adoption orders in Niue, Tokelau, or the Cook Islands), the person shall cease to be deemed to be the child of that citizen.

(2A) Nothing in the Adoption Act 1955 shall confer on a person who has been adopted by a New Zealand citizen in circumstances other than those specified in subsection (2) of this section any greater right to New Zealand citizenship than that person would have had if that person had not been adopted.

(2B) For the purposes of this Act, a person is deemed to be the child of a person entitled to be in New Zealand indefinitely if—

(a) He or she has been adopted in New Zealand on or after 1 January 2006, by an adoption order within the meaning of and made under the Adoption Act 1955, by a person who, at the time of the adoption, is entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau; or

(b) He or she has been legally adopted in the Cook Islands, Niue, or Tokelau on or after 1 January 2006, by an adoption order that has the same operation and effect as an adoption order made under the Adoption Act 1955, by a person who, at the time of the adoption, is entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau, –

and, in any such case –

(c) The terms father, mother, and parent, when used in this Act, are to be construed accordingly, and

(d) The person is deemed to have been born when and where the adoption order was made; but

(e) On the discharge for any reason of the adoption in accordance with section 20 of the Adoption Act 1955, or in accordance with the law relating to the discharge of adoption orders in the Cook Islands, Niue, or Tokelau, the person ceases to be deemed to be the child of the person entitled to be in New Zealand indefinitely.

(3) References in this Act to the status or description of the father or mother of a person at the time of that person's birth shall, in relation to a person born after the death of his father or mother (as the case may require), be construed as referring to the status or description of the father or mother at the time of his or her death.

(4) Where the relevant parent died before, and the person was born on or after, the 1st day of January 1949, the status or description that would have been applicable to the parent had he or she died on or after the 1st day of January 1949 shall be deemed to be the status or description applicable to him or her at the time of his or her death.

(5) Where the relevant parent died before, and the birth occurs on or after, the 1st day of January 1978, the status or description that would have been applicable to the parent had he or she died on or after that date shall be deemed to be the status or description applicable to him or her at the time of his or her death.

(5A) In subsection 3(1)(a), de facto relationship has the same meaning as in section 2D of the Property (Relationships) Act 1976, except that—

(a) The reference to 18 years in subsection (1)(a) of that section is to be read as a reference to 16 years; and

(b) A person who has attained the age of 16 years but who is younger than 18 years may be treated as having a de facto relationship with another person only if –

(i) the person is under the guardianship of a court, and the court has on an application for the purpose consented to the relationship; or

(ii) in the case of a person not under the guardianship of a court, the person's parents and guardians have consented to the relationship.

(6) In subsection (2)(ba), Contracting State has the same meaning as in the Adoption (Intercountry) Act 1997.

4 Administration of Act

Subject to the control of the Minister, the Secretary for Internal Affairs is responsible for the administration of this Act.

4A Delegation of powers by Secretary

(1) The Secretary may from time to time, by writing under the Secretary's hand, either generally or particularly, delegate to such officer or officers of the Department of Internal Affairs as the Secretary thinks fit all or any of the powers and functions exercisable by the Secretary under this Act or under any regulations made under this Act, other than the power of delegation conferred by this section.

(2) Subject to any general or special directions given or conditions attached by the Secretary, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the officer directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

(4) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder for the time being of a specified office or class of office.

(5) Any delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power or function by the Secretary.

(6) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Secretary.

5 Act binds Crown

This Act binds the Crown.

PART 1
New Zealand Citizenship
Acquisition of Citizenship

6 Citizenship by birth

(1) Subject to subsection (2), a person is a New Zealand citizen by birth if –

(a) The person was born in New Zealand on or after l January 1949 and before 1 January 2006; or

(b) The person was born in New Zealand on or after 1 January 2006, and, at the time of the person's birth, at least one of the person's parents was –

(i) a New Zealand citizen; or

(ii) entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely, or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.

(2) A person shall not be a New Zealand citizen by virtue of this section if, at the time of his birth,—

(a) His father or mother was a person upon whom any immunity from jurisdiction was conferred by or under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 or in any other way, and neither of his parents was a New Zealand citizen; or

(b) His father and mother were enemy aliens and the birth occurred in a place then under occupation by the enemy.

(3) Despite subsections (1) and (2), –

(a) Every person born in New Zealand on or after 1 January 1978 is a New Zealand citizen by birth if the person would otherwise be stateless;

(b) A person is deemed to be a New Zealand citizen by birth if—

(i) the person, having recently been born, has been found abandoned in New Zealand; and

(ii) investigations have failed to establish the identity of at least one of the person's parents.

(4) Notwithstanding section 7 of this Act, a person born outside New Zealand shall be deemed to be a New Zealand citizen otherwise than by descent if that person's father or mother is then—

(a) A New Zealand citizen, or a New Zealand citizen by descent, pursuant to this Act; and

(b) Either—

(i) a head of mission or head of post within the meaning of the Foreign Affairs Act 1988; or

(ii) an employee in any part of the State services, or a member of the Armed Forces, on service overseas; or

(iia) a person working overseas for the public service of Niue, Tokelau, or the Cook Islands; or

(iii) an officer or employee of New Zealand Trade and Enterprise (as established by the New Zealand Trade and Enterprise Act 2003) on service overseas; or

(iv) an officer or employee of the New Zealand Tourism Board (as established by the New Zealand Tourism Board Act 1991) on service overseas.

(5) Despite section 7, a person is a New Zealand citizen by birth if—

(a) The person is born in the Independent State of Samoa; and

(b) But for reasons of medical necessity requiring the mother to travel from Tokelau to the Independent State of Samoa to give birth to the person, the person would have been born in Tokelau; and

(c) At the time of the person's birth the person would have been a New Zealand citizen by birth under subsection (1), had the person been born on that date in Tokelau.

(6) A person who is a New Zealand citizen by birth does not lose his or her New Zealand citizenship by reason of the person being adopted by a parent or parents who are neither—

(a) New Zealand citizens; nor

(b) Persons entitled to reside indefinitely in New Zealand in terms of the Immigration Act 1987 or entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.

7 Citizenship by descent

(1) Every person born outside New Zealand on or after 1 January 1978 is a New Zealand citizen by descent if, at the time of the person's birth,—

(a) His or her mother or father was a New Zealand citizen otherwise than by descent; or

(b) His or her mother or father was a New Zealand citizen by descent, and the person would otherwise be stateless.

(2) A person who is a New Zealand citizen by virtue of subsection (1) may apply for his or her citizenship status to be registered in accordance with regulations made under this Act.

(3) For the purposes of this section, the Secretary may issue a certificate stating a person's status under this section and, in the absence of evidence to the contrary, a certificate to such effect signed by the Secretary, or by a person authorised for the purpose by the Secretary, shall be sufficient evidence of the matters stated in the certificate.

(4) The citizenship of any New Zealand citizen by descent that has lapsed before the commencement of the Citizenship Amendment Act 2000 is reinstated with effect from the time it lapsed.

8 Citizenship by grant

(1) The Minister may authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent, who—

(a) Has attained the age of 16 years; and
(b) Is of full capacity; and
(c) Applies for citizenship in the prescribed manner; and
(d) Satisfies the Minister that he or she meets each of the requirements specified in subsection (2).

(2) The requirements referred to in subsection (1)(d) are as follows:

(a) That the applicant is entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely;
(b) That the applicant was present in New Zealand –
(i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and
(ii) for at least 240 days in each of those 5 years,

being days during which the applicant was entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely –

(c) That the applicant is of good character;
(d) That the applicant has sufficient knowledge of the responsibilities and privileges attaching to New Zealand citizenship;
(e) That the applicant has sufficient knowledge of the English language;
(f) That the applicant intends, if granted New Zealand citizenship, either—
(i) to continue to reside in New Zealand; or
(ii) to enter into or continue in Crown service under the New Zealand Government, or service under an international organisation of which the New Zealand Government is a member, or service in the employment of a person, company, society, or other body of persons resident or established in New Zealand.

(3) For the purposes of subsection (2)(a), a person will not be treated as entitled to be in New Zealand indefinitely if—

(a) Requirements have been imposed under the Immigration Act 1987 on the person's entitlement to reside in New Zealand indefinitely; and
(b) Those requirements have not been met in full or cancelled at the time of the person's application for citizenship.

(4) The Minister may, after consultation with the Minister of Immigration, –

(a) Waive the requirement in subsection (2)(a) if satisfied that an applicant is entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau;

(b) Waive the requirement in subsection (2)(b) if satisfied that an applicant was present in the Cook Islands, Niue, or Tokelau –

(i) for a minimum of 1 350 days during the 5 years immediately preceding the date of the application; and

(ii) for at least 240 days in each of those 5 years,—

being days during which the applicant was entitled to reside indefinitely in the Cook Islands, Niue, or Tokelau.

(5) For the purposes of subsection (2)(b), the Minister may treat the applicant as having been in New Zealand for any period within the period of 5 years immediately preceding the date of application for citizenship during which—

(a) The applicant was in Crown service under the New Zealand Government; or

(b) The applicant was outside New Zealand because the applicant was accompanying his or her spouse or civil union or de facto partner who was a New Zealand citizen in Crown service under the New Zealand Government.

(6) For the purposes of subsection (4)(b), the Minister may treat the applicant as having been present in the Cook Islands, Niue, or Tokelau for any period within the period of 5 years immediately preceding the date of the application for citizenship during which—

(a) The applicant served in the public service of the Government of the Cook Islands, Niue, or Tokelau; or

(b) The applicant was outside New Zealand because the applicant was accompanying his or her spouse or civil union or de facto partner who was a New Zealand citizen serving in the public service of the Cook Islands, Niue, or Tokelau.

(7) If the Minister is satisfied in a particular case that there are exceptional circumstances particular to the applicant that would justify such a course, the Minister may accept the presence by the applicant for a lesser number of days as being sufficient compliance with—

(a) The requirements of subsection (2)(b), so long as the applicant—

(i) was physically present in New Zealand for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and

(ii) was entitled in terms of the Immigration Act 1987 to be in New Zealand indefinitely during each of those 450 days.

(b) The requirements of subsection (4)(b), so long as the applicant—

(i) was physically present in the Cook Islands, Niue, or Tokelau for not less than 450 days during the 20-month period immediately preceding the date of the application for citizenship; and

(ii) was entitled to be in the Cook Islands, Niue, or Tokelau indefinitely during each of those 450 days.

(8) The Minister may waive the requirement in subsection (2)(e) if satisfied in a particular case that, because of the applicant's age or standard of education, or for any other reason personal to the applicant, the applicant would suffer undue hardship if compliance with the requirement of that provision were insisted upon.

(9) For the purposes of subsection (2)(f),—

(a) The intention referred to in subsection (2)(f)(i) must be a continuing intention throughout the period from the date of application for citizenship until the date that the applicant becomes a citizen under section 12;

(b) the Minister may treat an applicant as intending to continue to reside in New Zealand if the applicant intends to accompany his or her New Zealand citizen spouse or civil union or de facto partner on Crown service for the New Zealand Government or public service for the Government of the Cook Islands, Niue, or Tokelau.

9 Grant of citizenship in special cases

(1) Without limiting anything in section 8, the Minister may, upon application in the prescribed manner, authorise the grant of New Zealand citizenship to any person, including a person who may be a New Zealand citizen by descent,—

(a) Who has not yet attained the age of 16 years; or

(b) Whose father or mother was, at the time of that person's birth, a New Zealand citizen by descent; or

(c) If the Minister is satisfied that granting a certificate of New Zealand citizenship to the applicant would be in the public interest because of exceptional circumstances of a humanitarian or other nature relating to the applicant; or

(d) If the person would otherwise be stateless.

(2) In considering whether to authorise the grant of New Zealand citizenship to any person under subsection (1), the Minister—

(a) May have regard to such of the requirements of section 8(2) (as subject to section 8(3) to (9)) as the Minister thinks fit; and

(b) Must have regard to the requirements of section 9A (1) (but subject to the Minister's discretion under section 9A(2) and (3)).

9A Disqualifying convictions

(1) Except as provided in subsection (2), the Minister must not authorise a grant of citizenship under section 8 or section 9 to a person who has been convicted of an offence if—

(a) The person was sentenced on conviction to—

(i) a term of imprisonment of 5 years or more; or

(ii) an indefinite term of imprisonment capable of running for 5 years or more; or

(b) Within the preceding 7 years the person was subject to a sentence of imprisonment of less than 5 years or was subject to release under subpart 2 of Part 1 of the Parole Act 2002; or

(c) Within the preceding 3 years the person was convicted of an offence but did not receive a sentence of imprisonment.

(2) The Minister may however authorise a grant of citizenship to a person to whom subsection (1) applies and who otherwise meets the requirements of section 8 or section 9 if satisfied that there are exceptional circumstances relating to the conviction such that a grant of citizenship should not be precluded.

(3) Nothing in this section limits the Minister's discretion to refuse a grant of citizenship if the Minister is not satisfied that the applicant is of good character.

9B Minister may rescind approval at any time up until applicant becomes citizen

Notwithstanding that the Minister may have authorised a grant of citizenship under section 8 or section 9, the Minister may rescind that authorisation at any time before the date that the person becomes a citizen under section 12, if no longer satisfied that the person meets the requirements for a grant of citizenship.

10 Grant of citizenship as of right in certain cases

(1) Notwithstanding anything in section 8 or section 9 of this Act, the Minister shall, upon application made to him in the prescribed manner, authorise the grant of New Zealand citizenship to any person who was born before the 1st day of January 1978 if, at the time of that person's birth, his mother was a New Zealand citizen otherwise than by descent.

(2) This section does not apply to a person who has previously been deprived of New Zealand citizenship by order under section 16 or section 17, or renounced his or her citizenship under section 15.

11 Minister may require oath or affirmation of allegiance to be taken

(1) The Minister may, in such case or class of cases as the Minister thinks fit, make the grant of New Zealand citizenship conditional upon the applicant taking an oath of allegiance in the form specified in Schedule 1, or making an affirmation to similar effect.

(2) Unless the Minister agrees otherwise, the oath or affirmation must be taken or made at a public citizenship ceremony.

12 Certificate of New Zealand citizenship

(1) Where the Minister authorises the grant of New Zealand citizenship to any person, the Secretary shall issue to that person a certificate of New Zealand citizenship in the prescribed form.

(2) A person to whom a certificate of New Zealand citizenship is issued under subsection (1) of this section shall be a New Zealand citizen as from the specified date.

(3) Where a certificate of New Zealand citizenship is issued to a person who is a New Zealand citizen by descent, he shall cease to have that status as from the specified date.

(4) For the purposes of subsections (2) and (3) of this section the specified date shall be –

(a) In the case of a person required under section 11 of this Act to take an oath of allegiance, the date on which he takes that oath or makes an affirmation to the same effect;

(b) In every other case, the date specified in the certificate.

Transitional Provisions Relating to Citizenship

13 Existing rights of citizenship protected

(1) Notwithstanding the repeal of the British Nationality and New Zealand Citizenship Act 1948 by section 30 of this Act, every person who, by virtue of that Act, was a New Zealand citizen immediately before the commencement of this Act, shall, subject to the succeeding provisions of this Part of this Act, continue to be a New Zealand citizen.

(2) Notwithstanding subsection (1) of this section, a person who, by virtue of the British Nationality and New Zealand Citizenship Act 1948, was, immediately before the commencement of this Act, a New Zealand citizen by descent only, shall, for the purposes of this Act, be deemed to be a New Zealand citizen by descent only.

(3) Without limiting subsection (1) or subsection (2) of this section, but subject to subsection (4) of this section, every person born outside New Zealand on or after the 1st day of January 1949 but before the 1st day of January 1978 shall be a New Zealand citizen by descent if –

(a) In any case, his father was a New Zealand citizen at the time of that person's birth; or

(b) In the case of a person born on or after the 1st day of January 1970 (being the date of the commencement of the Status of Children Act 1969), his mother was a New Zealand citizen at the time of his birth.

(4) A person shall not be a New Zealand citizen by virtue of subsection (3) of this section if that person's relevant parent was a New Zealand citizen by descent only, unless—

(a) That person or his relevant parent was born in a protectorate, protected state, mandated territory, or trust territory, or any place in a foreign country where by treaty, capitulation, grant, usage, sufferance, or other lawful means Her Majesty then had jurisdiction over British subjects; or

(b) In the case of a person born in a place other than a place mentioned in paragraph (a) of this subsection, his birth [or citizenship by descent] is registered, in accordance with regulations made under this Act, before that person has attained the age of 16 years; or

(c) The relevant parent of that person was, at the time of the person's birth, in Crown service under the New Zealand Government.

14 Applications made under British Nationality and New Zealand Citizenship Act 1948 may be proceeded with under this Act

If a person has, before the commencement of this Act,—

(a) Applied for registration as a New Zealand citizen; or

(b) Given notice of his intention to apply for a certificate of naturalisation; or

(c) Applied for a certificate of naturalisation –

in accordance with the provisions of the British Nationality and New Zealand Citizenship Act 1948, the application (if it has not been finally determined under that Act) or notice may be dealt with in accordance with this Act as if it were an application for the grant of New Zealand citizenship under this Act.

Loss of Citizenship

15 Renunciation of citizenship

(1) A New Zealand citizen who has attained the age of 18 years and is of full capacity and who is recognised by the law of another country as a citizen of that country may, at any time, make a declaration of renunciation of his New Zealand citizenship in the prescribed manner.

(2) Subject to subsection (3) of this section, the Minister shall cause every declaration made under subsection (1) of this section to be registered in the prescribed manner, and, as from the date of that registration, the declarant shall cease to be a New Zealand citizen.

(3) The Minister may decline to register a declaration of renunciation if –

(a) The declarant is resident in New Zealand; or

(b) A state of war exists between New Zealand and any other country.

(4) A person who has ceased to be a New Zealand citizen under this section may regain New Zealand citizenship only by way of a grant of citizenship under section 8 or section 8A or section 9.

16 Deprivation of New Zealand citizenship [in special cases]

Subject to section 19 of this Act, the Minister may, by order, deprive a person of his New Zealand citizenship if he is satisfied that the person has, while a New Zealand citizen and while of or over the age of 18 years and of full capacity,—

(a) Acquired the nationality or citizenship of another country by any voluntary and formal act, and acted in a manner that is contrary to the interests of New Zealand; or

(b) Voluntarily exercised any of the privileges or performed any of the duties of another nationality or citizenship possessed by him in a manner that is contrary to the interests of New Zealand.

17 Deprivation of New Zealand citizenship in case of fraud, etc

(1) This section applies to a New Zealand citizen who has acquired that citizenship –

(a) By registration under the British Nationality and New Zealand Citizenship Act 1948; or

(b) By naturalisation under that Act; or

(c) By grant under this Act or the Citizenship (Western Samoa) Act 1982.

(2) Subject to section 19 of this Act, the Minister may, by order, deprive a New Zealand citizen to whom this section applies of his New Zealand citizenship if he is satisfied that the registration, naturalisation, grant, or any grant requirement was procured by fraud, false representation, or wilful concealment of relevant information, or by mistake.

(3) The Minister may not deprive a person of New Zealand citizenship under subsection (2) if –

(a) The citizenship was acquired by mistake; and

(b) To deprive the person of that citizenship would leave the person stateless.

18 Effect of order

A person in respect of whom an order is made under section 16 or section 17 of this Act shall cease to be a New Zealand citizen as from the date of the order.

19 Court review of grounds for depriving person of citizenship

(1) Before making an order under section 16 or section 17 of this Act depriving any person of New Zealand citizenship, the Minister shall serve on that person a notice –

(a) Stating that he intends to make such an order; and

(b) Citing the section of this Act under which he considers that he has grounds to make such an order; and

(c) Specifying the grounds on which he intends to make such an order; and

(d) Advising the person of his right to have the matter reviewed by the Court in accordance with the succeeding provisions of this section.

(2) Every person upon whom a notice is served under subsection (1) of this section may, within 28 days after it is served on him, apply to the High Court for a declaration that there are insufficient grounds to justify the making of an order under section 16 or, as the case may require, section 17 of this Act depriving the applicant of New Zealand citizenship; and the Court may make or refuse to make such a declaration accordingly.

(3) Notwithstanding any of the foregoing provisions of this section, in any

case where the whereabouts of the person concerned are unknown or for any other reason service on him of a notice under this section is not practicable, the Minister may apply to the Court for the dispensing of the requirement to serve notice; and, in such a case, if the Court dispenses with that requirement, it shall proceed to consider the merits of the case, in accordance with the provisions of this section, as if the person concerned had applied to the Court for a declaration of the kind referred to in subsection (2) of this section.

(4) Where the Court makes such a declaration, the Minister shall not thereafter, without fresh cause, make an order under section 16 or section 17 of this Act depriving the applicant of New Zealand citizenship.

(5) [Repealed]

(6) Subject to the succeeding provisions of this section, the procedure in respect of an application under this section shall be in accordance with the rules of Court.

(7) When hearing any application under this section the Court may receive as evidence any statement, document, information, or matter that, in the opinion of the Court, may assist it to deal justly with the application before it, whether or not the same would be otherwise admissible in proceedings before the Court.

(8) Where the Court is satisfied that it is desirable to do so by reason of the confidential nature of any evidence submitted or to be submitted to it in respect of any application under this section, the Court may, of its own motion or on the application of any party to the proceedings, –

(a) Take or hear the evidence in private;

(b) Make an order prohibiting the publication of any report or account of the whole or any part of any such evidence (whether heard or taken in public or private).

(9) The determination of the High Court on any such application shall be final.

20 Saving of obligations incurred before loss of citizenship, etc

A person who ceases to be a New Zealand citizen shall not thereby be discharged from any obligation, duty, or liability in respect of any act or thing done or omitted to be done before he ceased to be a New Zealand citizen.

Miscellaneous Provisions Relating to Citizenship

21 Evidentiary certificates

(1) Any person who wishes to obtain confirmation of whether he or she is or is not a New Zealand citizen may apply to the Minister in the prescribed manner for a certificate confirming the person's status in that respect.

(2) The Minister shall, if satisfied that any such person is or is not a New Zealand citizen, issue a certificate to that effect.

(3) A certificate issued under this section shall, unless it is proved that the issue of the certificate was procured by fraud, false representation, or the wilful concealment of relevant information, or was the result of administrative error, be evidence that the person named in the certificate was or was not, on the date on which the certificate was issued, a New Zealand citizen, but without prejudice to any evidence that he or she was or was not a New Zealand citizen at an earlier date.

22 Minister may delegate functions and powers to overseas representatives

(1) The Minister may from time to time, by writing under his hand, authorise any New Zealand overseas representative in any country to perform and exercise in that country any of the Minister's functions and powers under this Part of this Act.

(2) In the performance or exercise of any such functions or powers, the New Zealand overseas representative shall act in accordance with all directions in that behalf given to him by the Minister, whether generally or in a particular case.

(3) Any authority and any directions under this section may be given to a specified person, or to the holder for the time being of a specified office.

PART 2
Miscellaneous Provisions

23 Capacity as to property

(1) Subject to subsection (2) of this section and to any other enactment, every person who is not a New Zealand citizen shall be entitled to take, acquire, hold, and dispose of real or personal property in the same manner in all respects as if he were a New Zealand citizen.

(2) Subsection (1) of this section shall not—

(a) Qualify an alien for any office, or for any parliamentary or other franchise, for which he is not otherwise qualified;

(b) Qualify an alien to be the owner of a ship registered in New Zealand, or of a share in any such ship;

(c) Entitle an alien to acquire property without any consent required under the Overseas Investment Act 2005;

(d) Entitle a person to any right or privilege as a New Zealand citizen, except the rights and privileges conferred on him in respect of property by that subsection.

24 General provisions as to certificates and other documents

(1) For the purposes of this section the term document means a certificate or other document issued under this Act; and includes a certificate or other document issued under any enactment referred to in section 25(1) of this Act; and also includes a duplicate of any such certificate or other document.

(2) No person shall alter or deface a document otherwise than pursuant to this Act.

(3) Every person to whom a document is or has been issued shall, on the expiry or revocation of the document, or of the exemption or condition or status evidenced by it, deliver the document to the Secretary.

(4) If a document that has been damaged to the extent that it is no longer legible is returned to the Secretary, or if the Secretary is satisfied that a document has been destroyed, lost, or stolen, the Secretary shall, upon application by the person to whom the document was issued and upon payment of the prescribed fee, issue a duplicate of the document.

25 Evidence

(1) Every document purporting to be a notice, certificate, or declaration, or an entry in a register, or a subscription of an oath of allegiance given, granted, or made under this Act, the British Nationality and Status of Aliens (in New Zealand) Act 1923 or any enactment repealed by that Act, the British Nationality and Status of Aliens (in New Zealand) Act 1928, or the Registration of Aliens Act 1917, or any enactment repealed by section 30 of this Act shall be received in

evidence, and shall, unless the contrary is proved, be deemed to have been given, granted, or made by or on whose behalf it purports to have been given, granted, or made.

(2) Evidence of any document to which subsection (1) of this section applies may be given by production of a document purporting to be certified as a true copy thereof by such person and in such manner as may be prescribed.

(3) Any entry in a register made under this Act or any other Act referred to in subsection (1) of this section shall be received as evidence of the matters stated in the entry.

(4) For the purposes of this Act, a certificate given by or on behalf of the Minister that a person was at any time in Crown service under the New Zealand Government shall be conclusive evidence of that fact.

26 Discovery of documents held under this Act

(1) Notwithstanding section 17 or section 27 of the Crown Proceedings Act 1950, but subject to subsection (2) of this section, no Court shall have power in any civil proceedings to require the Crown to make discovery of a document or to produce a document for inspection if the document is held by or on behalf of the Crown for any of the purposes of this Act.

(2) Subsection (1) of this section does not apply to proceedings relating to any matter arising under this Act to which the Crown is a party.

26A Disclosure of citizenship information to certain specified agencies for certain purposes

(1) The purpose of this section is to authorise the disclosure of citizenship information to certain specified agencies for certain purposes.

(2) The Secretary and the chief executive of a specified agency listed in the first column of Schedule 4 may enter into an agreement for the disclosure by the Secretary to the chief executive of citizenship information only for the purpose described in the second column in relation to the specified agency.

(3) For the purposes of subsection (2), an agreement made in relation to citizenship information to be used to verify whether a person is eligible to hold a New Zealand passport, must be entered into by the Secretary in his or her capacity as the holder of citizenship information with himself or herself in the capacity as the holder of information under the Passports Act 1992.

(4) An agreement entered into under subsection (2) may be varied by the Secretary and the chief executive.

(5) The Secretary may disclose citizenship information to the chief executive only in accordance with Schedule 4 and an agreement entered into under subsection (2).

(5A) Despite anything in this section, the Secretary may disclose information about a person's citizenship status or the citizenship status of a person's parent or parents to the Registrar-General appointed under section 79 (1) of the Births, Deaths, and Marriages Registration Act 1995 for the purpose of recording that person's citizenship status on his or her birth record.

(6) In this section, –

"citizenship information" means information held by the Secretary that relates to the acquisition or loss of citizenship by, or the citizenship status of, any person; and includes information as to any change of identity or gender

"specified agency" has the meaning given to it by section 97 of the Privacy Act 1993.

26B Access to information for citizenship purposes

(1) The Secretary and the chief executive of the Department of Labour (the chief executive) may enter into an agreement for access by the Secretary, or officers of the Department of Internal Affairs designated by the Secretary for the purpose, to information held by the chief executive by virtue of being responsible for the administration of the Immigration Act 1987 that is needed for or relevant to –

(a) Citizenship investigations and the accurate assessment of applications for a grant of citizenship; or

(b) Determining whether a person is a New Zealand citizen by birth.

(2) An agreement entered into under subsection (1) may be varied by the Secretary and the chief executive.

(3) Before entering into an agreement under subsection (1), or varying an agreement under subsection (2), the Secretary and the chief executive must consult with the Privacy Commissioner on the terms of the agreement or variation.

(4) The Privacy Commissioner may require the Secretary and the chief executive to review an agreement under this section, and report on the result of the review to the Privacy Commissioner, at intervals not shorter than 12 months.

(5) For citizenship purposes, the Secretary or designated officers of the Department of Internal Affairs may access information held by the chief executive only in accordance with an agreement entered into under this section.

27 Offences and penalties

(1) Every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine not exceeding $15,000, or both, who –

(a) For the purpose of procuring anything to be done or not to be done under this Act, –

(i) makes any statement that he or she knows to be false in a material particular; or

(ii) recklessly makes any statement that is false in a material particular; or

(b) Knowingly or recklessly submits false or forged documents to support a citizenship application; or

(c) In contravention of section 24, knowingly—

(i) alters or defaces a document; or

(ii) fails to deliver a document; or

(d) Knowingly or recklessly lends or parts with a document (as defined in section 24(1)) for unlawful purposes; or

(e) Knowingly resists, obstructs, or deceives any person who is exercising or attempting to exercise any function or power imposed or conferred under this Act.

(2) Every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine not exceeding $50,000, or both, who, knowingly and without reasonable excuse,—

(a) Records, deletes, or alters any entry in a citizenship register or database; or

(b) Takes a citizenship document (including any blank certificate) from where it is officially kept; or

(c) Issues a citizenship document to a person who has no lawful entitlement to the document.

28 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes –

(a) Prescribing anything that under this Act is to be prescribed;

(b) Providing for the registration of anything required or authorised under this Act to be registered;

(c) Providing for the administration and taking of oaths of allegiance under this Act, prescribing the time within which oaths of allegiance shall be taken, and providing for the registration of oaths of allegiance;

(d) Providing for the giving of any notice required or authorised to be given to any person under this Act;

(e) Providing for the cancellation and amendment of certificates of naturalisation and certificates of New Zealand citizenship, and for the cancellation of the registration of such certificates, relating to persons deprived of New Zealand citizenship under this Act, and providing for the surrender of such certificates by such persons;

(f) Providing for the registration, by officers in the service of the New Zealand Government –

(i) of the births and deaths of persons of any class or description born or dying in any Commonwealth country, or in a protected state, or in any foreign country;

(ii) of citizenship by descent of persons born in any Commonwealth country, or in a protected state, or in any foreign country.

(g) Enabling the births and deaths, and the citizenship by descent, of New Zealand citizens and British protected persons to be registered in any country in which the New Zealand Government has for the time being no overseas representatives –

(i) By persons serving in the diplomatic, consular, or other foreign service of any country that, by arrangement with the New Zealand Government, has undertaken to represent that Government's interests in that country; or

(ii) By any person authorised in that behalf by the Governor-General.

(h) Providing for the keeping of records, registers, and indexes for the purposes of this Act, and enabling persons to inspect and make copies of any entry in any such record, register, or index –

(i) Prescribing the fees payable, or the rate at which fees are to be calculated, and providing for the recovery and application of such fees, in respect of—

(i) any application made under this Act;

(ii) the registration of any document under this Act;

(iii) the making of any declaration under this Act;

(iv) the taking of an oath of allegiance under this Act;

(v) the grant of any certificate under this Act;

(vi) the issue of any copy (whether certified or not) of any notice, certificate, order, declaration, or entry given, granted, or made under this Act;

(vii) the inspection of any record, register, or index kept under this Act;

(viia) the giving of written advice or the provision of written information, by or on behalf of the Secretary and whether generally or in relation to a particular case, in respect of all or any of the following:
(A) The eligibility of any person for citizenship by descent;
(B) The acquisition by any person of citizenship;
(C) The status of any person under this Act;
(viib) The issue of a certificate under section 7 (3) of this Act;
(viii) Any other matter arising under this Act;
(j) [Repealed]
(k) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and prescribing the amount of any fine that may be imposed in respect of any such offence, being an amount not exceeding $200 and, where the offence is a continuing one, a further amount not exceeding $20 for every day during which the offence has continued;
(l) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Every fee prescribed by or under regulations made under this section shall be reasonable, having regard to the costs and expenses incurred and borne by or on behalf of the Secretary in respect of the matter for which the fee is payable.

29 Application of Act to Cook Islands, Niue, and Tokelau

(1) Whereas in accordance with Article 46 of the Constitution of the Cook Islands (as set out in Schedule 2 to the Cook Islands Constitution Amendment Act 1965) the Government of the Cook Islands has requested and consented to the enactment of a provision extending all of the provisions of this Act to the Cook Islands as part of the law of the Cook Islands: Be it therefore enacted as follows:

The provisions of this Act shall extend to the Cook Islands as part of the law of the Cook Islands.

(2) Whereas in accordance with Article 36 of the Constitution of Niue (as set out in Schedule 2 to the Niue Constitution Act 1974) the Niue Assembly has by resolution requested and consented to the enactment of a provision extending all of the provisions of this Act to Niue as part of the law of Niue: Be it therefore enacted as follows:

The Niue Act 1966 is hereby amended by inserting, after section 684, the following section:

"684A Citizenship Act in force in Niue

"The Citizenship Act 1977 shall extend to and be in force in Niue."

(3) The provisions of this Act shall be in force in Tokelau.

30 Repeals, consequential amendments, and revocation

(1) The enactments specified in Schedule 2 to this Act are hereby consequentially repealed.

(2) The enactments specified in Schedule 3 to this Act are hereby consequentially amended in the manner indicated in that Schedule.

(3) The Citizenship Deprivation Rules 1949 are hereby consequentially revoked.

SCHEDULES

SCHEDULE 1
Oath of allegiance

Section 11

I, [Full name], swear that I will be faithful and bear true allegiance to Her [or His] Majesty [Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second, Queen of New Zealand,] Her [or His] heirs and successors, according to law, and that I will faithfully observe the laws of New Zealand and fulfil my duties as a New Zealand citizen.

SCHEDULE 2
Enactments consequentially repealed

Section 30(1)

1948, No 15 – The British Nationality and New Zealand Citizenship Act 1948.
1948, No 28 – The Aliens Act 1948: Sections 3 to 13.
1959, No 38 – The British Nationality and New Zealand Citizenship Amendment Act 1959.
1965, No 71 – The Aliens Amendment Act 1965: So much of the Schedule as relates to sections 3 to 13 of the Aliens Act 1948.
1965, No 72 – The British Nationality and New Zealand Citizenship Amendment Act 1965.
1967, No 56 – The Aliens Amendment Act 1967.
1969, No 70 – The British Nationality and New Zealand Citizenship Amendment Act 1969.
1970, No 123 – The Western Samoa Amendment Act 1970.
1973, No 51 – The British Nationality and New Zealand Citizenship Amendment Act 1973.

SCHEDULE 3
Enactments consequentially amended

Section 30(2)

Enactment	Amendment
1955, No 93 – The Adoption Act 1955	By repealing section 16(2)(e), and substituting the following paragraph: "(e) Subject to the Citizenship Act 1977, the adoption order shall not affect the race, nationality, or citizenship of the adopted child."
1961, No 68 – The Western Samoa Act 1961	By omitting so much of Schedule 2 as relates to the British Nationality and New Zealand Citizenship Act 1948.
1968, No 36 – The Diplomatic Privileges and Immunities Act 1968	By omitting from section 7 (2) the words "paragraph (a) of the British Nationality and New Zealand Citizenship Act 1948", and substituting the words "paragraph (a) of subsection (2) of section 6 of the Citizenship Act 1977".
1969, No 18 – The Status of Children Act 1969	By omitting so much of the Schedule as relates to the British Nationality and New Zealand Citizenship Act 1948.
1970, No 137 – The Age of Majority Act 1970	By omitting so much of Schedule 1 as relates to the British Nationality and New Zealand Citizenship Act 1948.
1971, No 11 – The Consular Privileges and Immunities Act 1971	By omitting so much of Schedule 1 as relates to the British Nationality and New Zealand Citizenship Act 1948.

SCHEDULE 4
Disclosure of information to specified agencies

Section 26A

Specified agency	Purpose
Department of Internal Affairs	To verify whether a person is eligible to hold a New Zealand passport
Registrar-General appointed under section 79 (1) of the Births, Deaths, and Marriages Registration Act 1995	For the Registrar-General to he satisfied whether or not a person is a New Zealand citizen
Department of Inland Revenue	To verify the identity of a person to establish— (a) The tax file number of the person; (b) The details of an applicant for child support
Department of Labour	To verify— (a) A person's citizenship status; (b) A person's entitlement to reside in New Zealand
Department of Work and Income	To (a) verify a person's eligibility or continuing eligibility for benefits, war pensions, loans, or allowances (b) verify a person's eligibility or continuing eligibility for a community services card
Ministry of Education	To verify and update student information on the National Student Index

CIVIL AVIATION ACT 1999

1999/250 – 15 August 1999

PART 1
PRELIMINARY

1 Short title
2 Interpretation
3 Act binds the Crown

PART 2
APPOINTMENTS, DUTIES AND FUNCTIONS

4 Duty of the Minister
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To regulate civil aviation and for related purposes

PART 1
PRELIMINARY

1 Short title
This is the Civil Aviation Act 1999.

2 Interpretation
(1) In this Act –
"accident" means an occurrence that –
(a) Is associated with the operation of an aircraft; and
(b) Takes place between the time a person boards the aircraft with the intention of flight and such time as each such person has disembarked form the aircraft and its engine and any propeller or rotor have come to rest,
being an occurrence –
(c) In which a person is fatally or seriously injured as a result of –
(i) being in the aircraft; or
(ii) direct contact with a part of the aircraft, including a part that has become detached from the aircraft; or
(iii) direct exposure to jet blast,
except when the injury is self-inflicted or inflicted by another person, or when the injury is to a stowaway hiding outside the areas normally available to passengers and crew; or
(d) In which the aircraft sustains damage or structural failure that –
(i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
(ii) would normally require major repair or replacement of the affected component,
except engine failure or damage that is limited to the engine, its cowling, or an accessory, or damage that is limited to a propeller, a wing tip, a rotor, an antenna, a tyre, a brake, a fairing, a small dent, or a puncture hole in the aircraft's skin; or
(e) In which the aircraft is missing or is completely inaccessible'
"Acting Director" means a person appointed under section 7;
"aeronautical product" means a thing that –
(a) comprises or is intended to comprise a part of an aircraft; or
(b) is or is intended to be installed in or fitted or supplied to an aircraft including fuel and similar consumable items necessary for the operation of an aircraft;
"aircraft" means a machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;
"airport" means the Hanan International Airport and includes the buildings, installations, and equipment on or adjacent to the airport used in connection with the airport or its administration;
"aviation document" means a document issued under this Act to or in respect of a person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service;

"aviation related service" means any –
(a) equipment; or
(b) facility; or
(c) service,
operated in support of or in conjunction with the civil aviation system and includes the provision of aeronautical products;
"Convention" means the Convention on International Civil Aviation signed on behalf of the Government of Niue in Chicago on 7 December 1944 and includes –
(a) Any amendment to the Convention which has entered into force under article 94 (a) of the Convention and has been ratified by or on behalf of Niue; and
(b) Any Annex or amendment to the Convention accepted under article 90 of the Convention; and
(c) The international standards and recommended practices from time to time accepted and amended by the ICAO under article 37 of the Convention.
"Director" means the person appointed to be the Director of Civil Aviation under section 5 but if –
(a) The Director is unable to perform the functions and duties of his office; or
(b) The office of Director is vacant;
means the Acting Director;
"ICAO" means –
(a) The International Civil Aviation Organisation established under the Convention; but
(b) If that Organisation ceases to exist, the successor to that Organisation;
"incident" means an occurrence other than an aircraft accident that –
(a) Is associated with the operation of an aircraft; and
(b) Affects or could affect the safety of that operation;
"Minister" means the Minister to whom responsibility for civil aviation has been assigned;
"navigation installation" means a building, facility, work, apparatus, equipment or place (whether or not part of the airport) intended –
(a) To assist in the control of air traffic; or
(b) As an aid to air navigation,
and includes any land adjacent to and used in connection with any such building, facility, work, apparatus, equipment, or place;
"Niue aircraft" means an aircraft registered in Niue under this Act;
"operate", in relation to an aircraft, means –
(a) to fly or use the aircraft, or
(b) to cause or permit the aircraft to fly, be used, or be in a place, whether or not the person is present with the aircraft, and "operator" has a corresponding meaning;
"owner", in relation to an aircraft, includes a person lawfully entitled to the possession of the aircraft for a period of 28 days or longer;
"pilot-in-command", in relation to an aircraft, means the pilot responsible for the operation and safety of the aircraft;
"this Act" includes regulations made under this Act.

(2) In this Act a reference to the Civil Aviation Act 1990 of New Zealand includes any Act of New Zealand that is to be read together with and deemed part of the Civil Aviation Act 1990 of New Zealand.

(3) If a penalty is set out at the foot of a section or subsection of this Act it means that a contravention of the section or subsection whether by act or omission is an offence punishable by a fine not exceeding the amount stated or by imprisonment not exceeding the period stated or both.

3 Act binds the Crown

This Act binds the Crown.

PART 2
Appointments, Duties and Functions

4 Duty of the Minister

(1) It is the duty of the Minister –
- (a) To promote safety in civil aviation; and
- (b) To ensure that Niue's obligations under international civil aviation agreements are implemented.

(2) In particular, the Minister must –
- (a) Administer Niue's participation in the Convention and any other international aviation convention, agreement, or understanding to which Niue is a party; and
- (b) Ensure that aviation security services are provided at the airport.

5 Appointment of Director

(1) There is established the office of the Director.

(2) The Niue Public Service Commission must appoint a suitably qualified person to be the Director of Civil Aviation.

(3) The Cabinet may permit the Director to carry on his duties wile permanently resident outside Niue.

6 Duty of the Director

(1) It is the duty of the Director to administer this Act.

(2) In particular, the Director must –
- (a) Monitor adherence to safety and security standards within the civil aviation system; and
- (b) Ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security; and
- (c) Investigate and review civil aviation accidents and incidents; and
- (d) Prepare and maintain an aviation security programme for Niue and ensure its implementation; and
- (e) Provide the Minister with any information and advice the Minister requires.

(3) The Minister does not have the power to direct the Director on the performance of his duties.

7 Acting Director

(1) There is established the office of Acting Director of Civil Aviation.

(2) The Niue Public Service Commission may appoint a suitably qualified public officer to be the Acting Director to carry out the duties and perform the functions of the Director if –
- (a) The Director is unable to do so; or
- (b) The office of Director is vacant.

8 Safety and security inspections and monitoring

(1) The Director may in writing require a person who –

(a) Holds an aviation document; or

(b) Operates, maintains, or services, or does any other act in respect of an aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure,

to undergo or carry out inspections and monitoring the Director considers necessary in the interests of civil aviation safety and security.

(2) The Director may in respect of a person described in subsection (1)(a) or (b) carry out inspections and monitoring the Director considers necessary in the interests of civil aviation safety and security.

(3) In order to inspect or monitor a person in accordance with subsection (2) the Director may serve on the person a written notice requiring the person to produce to the Director such information as the Director considers relevant to the inspection or monitoring within any reasonable time specified in the notice.

(4) A person must comply with a requirement made under subsection (1) or (3).

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units; or

(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

9 Powers of Director

(1) If the Director is satisfied that –

(a) The operation of an aircraft or of a class or aircraft; or

(b) The use of an aeronautical product or a class of aeronautical products;

may endanger a person or property, the Director may –

(i) detain the aircraft or aircraft of that class or

(ii) seize the aeronautical product or aeronautical products of that class; or

(iii) prohibit or impose conditions on –

(A) The operation of the aircraft or aircraft of that class; or

(B) The use of an aeronautical product or aeronautical products of that class.

(2) A detention or seizure under subsection (1) –

(a) Must not be maintained for longer than is necessary in the interest of safety; but

(b) If the aircraft, aeronautical product, or a part of an aircraft or aeronautical product is required as evidence in a prosecution – may be maintained for as long as is necessary for that purpose.

(3) The Director must as soon as practicable provide a written reason for a detention or seizure under this section.

10 Airworthiness directions

(1) The Director may issue an airworthiness directive in respect of –

(a) An aircraft; or

(b) Aeronautical product,

of a specified design if the Director is satisfied –

(i) that an unsafe condition exists in an aircraft or aeronautical product of that design; and

(ii) that the condition is likely to exist in an or develop in any other aircraft or aeronautical product of the same design.

(2) An airworthiness directive comes into force on the date specified in it.
(3) A person must comply with an airworthiness direction.
Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;
(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

11 Exemption power of Director

(1) The Director may exempt a person, aircraft, aeronautical product, or aviation related service from a requirement contained in regulations made under this Act if –
(a) The Director considers it appropriate to do so; and
(b) It is not specifically provided by the regulations that exemptions are not to be granted.
(2) Before granting an exemption the Director must satisfy himself –
(a) That –
(i) the requirement has been substantially complied with and that further compliance is unnecessary; or
(ii) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
(iii) the requirement is clearly unreasonable or inappropriate in the particular case; or
(iv) an event has occurred that makes the requirement unnecessary or inappropriate in the particular case; and
(b) That the risk to safety will not be significantly increased if the exemption is granted.
(3) The Director may grant an exemption subject to compliance with any condition the Director considers appropriate.

12 Director may suspend an aviation document

(1) The Director may –
(a) Suspend an aviation document; or
(b) Impose a condition in respect of an aviation document, if the Director –
(c) Considers the action is necessary in the interests of safety; and
(d) Also –
(i) considers the action is necessary to ensure compliance with this Act; or
(ii) is satisfied that the holder has failed to comply with a condition of an aviation document or with a requirement of section 29; or
(iii) is satisfied the holder has contravened or failed to comply with section 47;
(iv) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
(2) Without limiting subsection (1) the Director may –
(a) Suspend an aviation document relating to the use of an aircraft, aeronautical product, or the provision of a service; or
(b) Impose a condition in respect of an aviation document;
if the Director considers that there is a reasonable doubt as to –
(c) The airworthiness of the aircraft; or

(d) The quality or safety of the aeronautical product or service, to which the document relates.

(3) The –

(a) Suspension of an aviation document; or

(b) Imposition of a condition in respect of an aviation document,

remains in force until the Director has determined, after due investigation, the action to be taken in respect of the causes requiring the suspension or imposition of the condition.

(4) Despite subsection (3) the –

(a) Duration of a suspension; or

(b) The period of imposition of a condition,

cannot exceed 14 days unless the Director directs that a further specified period is necessary to complete the investigation.

(5) After an investigation the Director may –

(a) Suspend the aviation document for a further period; or

(b) Continue the imposition of the condition for a further period; or

(c) Revoke the aviation document.

(6) A person whose aviation document has been revoked, suspended, or made subject to a condition must forthwith produce the document to the Director.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;

(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

(7) The whole or part of an aviation document may be suspended.

(8) A person in respect of whom a decision is taken under this section may appeal against that decision to the Minister.

13 Director may revoke or amend an aviation document

(1) The Director may if requested to do so by the holder of an aviation document –

(a) Amend the document in the manner requested; or

(b) Revoke it.

(2) Subject to subsection (3), the Director may –

(a) Amend an aviation document to reflect the fact that the holder of the document –

(i) is no longer carrying out a privilege or duty for which the document was granted; or

(ii) is no longer able to carry out that privilege or duty; or

(b) Revoke an aviation document if the holder of the document –

(i) is no longer able to carry out each of the privileges or duties for which the document was granted; or

(ii) is no longer able to carry out each of those privileges or duties; or

(c) Amend an aviation document to correct a clerical error or obvious mistake on the face of the document.

(3) The Director must notify the holder of the aviation document before taking action under subsection (2) and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend an aviation document includes –

(a) The power to revoke the document and issue a new document in its place; and

(b) The power to impose reasonable conditions.

(5) If the Director notifies the holder of an aviation document that a specified action is proposed under this section the holder must forthwith produce the document to the Director.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;
(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

14 Duties of pilot-in-command

The pilot-in-command of an aircraft –

(a) Is responsible for –
  (i) the safe operation of the aircraft in flight; and
  (ii) the safety and well-being of its passengers and crew; and
  (iii) the safety of its cargo; and
(b) Has the final authority –
  (i) to control the aircraft while in his command; and
  (ii) for the maintenance of discipline by each person on board the aircraft; and
(c) Subject to section 15, is responsible for compliance with each requirement of this Act relating to the aircraft.

15 Duties during emergencies

(1) A pilot-in-command of an aircraft may in an emergency arising in flight breach this Act if the pilot is satisfied that –

(a) The emergency involves a danger to life or property; and
(b) The extent of the breach of the provision does not go further than is necessary to deal with the emergency; and
(c) There is no other reasonable means to alleviate, avoid, or assist with the emergency; and
(d) The degree of danger in complying with the provision is clearly greater than the degree of danger involved in deviating from the provision.

(2) If an emergency (not being an emergency arising in flight) necessitates the urgent transportation of a person or supplies for the protection of life or property the pilot-in-command of the aircraft or its operator may breach this Act if –

(a) The emergency involves a danger to life or property; and
(b) The extent of the breach of the provision does not go further than is necessary to deal with the emergency; and
(c) There is no other reasonable means to alleviate, avoid, or assist with the emergency; and
(d) The degree of danger involved in deviating from the provision is clearly less than the degree of risk in failing to attend to the emergency.

(3) Subsection (2) does not permit –

(a) The operation of an aircraft not registered in Niue or elsewhere; or
(b) The breach of this Act as to the airworthiness of an aircraft; or
(c) The operation of an aircraft by a person who is not lawfully entitled to do so.

(4) A pilot-in-command or an operator who breaches this Act under this section must –

(a) Immediately notify the relevant air traffic control service of the action; and

(b) As soon as practicable –

(i) notify the Director of the action and of the circumstances that necessitated it; and

(ii) if requested to do so by the Director, within any time specified by the Director provide the Director with a written report in respect of the action.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;

(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

16 Obligation to notify aircraft accidents and incidents

(1) The pilot-in-command of an aircraft involved in an aircraft accident must notify the Director of the accident as soon as practicable.

Penalty: A fine not exceeding 10 penalty units.

(2) If a pilot-in-command of an aircraft is for any reason unable to give the notification required by subsection (1) its operator must do so.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units; or

(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

(3) A person –

(a) Who does an act in respect of an aircraft, aeronautical product, or aviation related service; and

(b) Who when doing that act is involved in an aircraft incident, must notify the Director of the incident if it is a serious incident under the Convention.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;

(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

(4) If the Director is given notification under this section the Director may require the person who gave the information to provide additional information.

(5) A person must comply with a requirement made under subsection (4) as soon as possible.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units; or

(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

17 Aviation security

It is the duty of the police –

(a) To safeguard civil aviation operations against acts of unlawful interference; and

(b) To protect people and property from dangers arising from the commission or attempted commission of acts of unlawful interference in respect of civil aviation operations.

18 Police to provide aviation security services

It is the duty of the police in respect of aviation security services at the airport –

(a) To carry out passenger and baggage screening of aircraft passenger services and, if necessary, to undertake searches of passengers, baggage, cargo, aircraft, the airport and its navigation installations; and

(b) To carry out airport security patrols and patrols of the airport's navigation installations; and

(c) To review, inquire into, and keep itself informed of security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and people employed in or using civil aviation; and

(d) To undertake, or encourage or supervise, experimental or research work in aviation security; and

(e) To co-operate –

(i) with the authorities administering airport security services of other countries; and

(ii) with appropriate international organisations.

19 Security areas

(1) The Director may declare by a sign or signs fixed at the perimeter of an area within the airport that the area is a security area.

(2) Subject to subsection (3), a person other than –

(a) A constable; or

(b) A person authorised by the Director,

must not enter a security area.

(3) For the purpose of this section a person referred to in subsection (2)(b) is not a person authorised by the Director to enter a security area unless –

(a) The person is wearing any identification device provided by the Director identifying that person as a person authorised by the Director to enter that security area; and

(b) The person is in the security area solely for the purpose of performing the duties or carrying out the functions for which the person was authorised by the Director to be in that security area.

(4) A person in a security area must if requested to do so by a constable –

(a) State to the constable –

(i) the person's name and address; and

(ii) the person's reason for being in the security area, and

(iii) the person's authority (if any) to enter the area; and

(b) produce to the constable satisfactory evidence of the correctness of that name and address.

(5) A person must not fail to comply with a request made under subsection (4).

Penalty: A fine not exceeding 10 penalty units.

(6) A constable may order a person to leave a security area if –

(a) The person fails or refuses to provide the constable with satisfactory evidence of the person's name and address if requested to do so by the constable; or

(b) The person fails to satisfy the constable that the person is authorised to be in that security area.

(7) A person must not fail to comply with an order made under subsection (6).

Penalty: A fine not exceeding 10 penalty units.

(8) A constable may arrest without warrant a person who fails to comply with a request made under subsection (4) or an order made under subsection (6).

(9) A constable, and any person whom the constable calls on for assistance, may use such force as is reasonably necessary –

(a) To remove from a security area a person who fails or refuses to leave the security area after having been ordered to do so under subsection (6); or

(b) To arrest a person under subsection (8).

(10) A passenger embarking or disembarking directly through a gateway or thoroughfare in the airport approved for that purpose by the Director is to be taken to be authorised by the Director to pass through any security area forming part of the gateway or thoroughfare.

20 General power of entry and arrest

(1) To implement this Act a constable or a person authorised for the purpose by the Director may –

(a) Enter an aircraft, a building, or place; or

(b) Require the owner, occupier, or operator of an aircraft, aeronautical product, or aviation related service –

(i) to produce a document the owner, occupier, or operator is required to keep by virtue of this Act; and

(ii) to surrender the document; or

(c) If the constable or authorised person has reasonable grounds to suspect that –

(i) a breach of this Act is being or is about to be committed; or

(ii) a situation exists within the civil aviation system or is about to exist within that system that constitutes a danger to a person or property, enter and inspect an aircraft, building, or place.

(2) An authorised person exercising the power of entry under subsection (1) must produce the person's authorisation from the Director if required to do so.

21 Powers of entry in respect of the airport

(1) A person authorised by the Director to do so may –

(a) Enter land to gain access to equipment used by the Government to carry out the Government's functions in respect of the airport; and

(b) Perform operations necessary to inspect, maintain, replace or repair that equipment.

(2) A person who enters land in accordance with subsection (1) must produce the person's authorisation from the Director if required to do so by the owner or occupier of the land.

PART 3
Entry into the Aviation System

22 Requirement to register aircraft

(1) Except as otherwise provided in this Act, a person lawfully entitled to the possession of an aircraft for a period of 28 days or longer which flies to, from, within, or over Niue territory must register the aircraft and hold a valid certificate of registration for it from –

(a) The Director; or
(b) The appropriate aeronautical authority of a contracting State of ICAO; or
(c) The appropriate aeronautical authority of another State that is party to an agreement with Niue which provides for the acceptance of each other's registrations.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding 1,000 penalty units;
(b) In the case of a body corporate, fine not exceeding 100 penalty units.

(2) An aircraft cannot be registered in or remain registered in Niue if it is registered in another country.

(3) The Director may decline to register an aircraft under regulations made under this Act.

(4) A person in respect of whom a decision is taken under this section may appeal against that decision to the Minister.

23 Regulations in respect of aviation documents

(1) Regulations or rules may require that aviation documents are required by –

(a) People, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system; or
(b) Classes of people, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system,

as may, in the interests of safety or security, be specified in the regulations, and may, in particular, provide that aviation documents are required in respect of all or any of the following –

(c) Niue registered aircraft;
(d) Aircraft pilots;
(e) Flight crew members;
(f) Air traffic service personnel;
(g) Aviation security service personnel;
(h) Aircraft maintenance personnel;
(i) Air services;
(j) Air traffic services;
(k) Aviation security services;
(l) Aviation meteorological services;
(m) Aviation communications services.

(2) The regulations may prescribe the requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued.

24 Duration of aviation documents

Subject to the regulations, an aviation document may be issued by the Director for such period and subject to such conditions as the Director considers appropriate in each particular case.

25 Application for aviation document

(1) An application for the grant or renewal of an aviation document must be made to the Director in the prescribed form or if there is no prescribed form in such form as the Director may approve.

(2) An applicant for an aviation document must include the applicant's address for service in Niue including a telephone and facsimile number.

(3) The holder of an aviation document must promptly notify the Director of any change to the address, telephone number, or facsimile number of the holder.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;
(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

(4) The Director must record all information provided under this section is a register maintained by the Director for the purpose.

(5) Service of a notification under this Act on a holder of, or applicant for, an aviation document is effective service if served on the address last provided by that holder or applicant under this section.

26 Grant or renewal of aviation document

(1) After considering an applicant for the grant or renewal of an aviation document the Director must grant the application if the Director is satisfied that –

(a) All things in respect of which the document is sought meet the relevant prescribed requirements; and
(b) The applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document –
(i) either has the relevant prescribed qualifications and experience or has such foreign qualifications as are acceptable to the Director under subsection (2); and
(ii) is a fit and proper person to have such control or hold the document; and
(iii) meets all other relevant prescribed requirements; and
(c) It is not contrary to the interests of aviation safety for the document to be granted or renewed.

(2) For the purpose of granting or renewing an aviation document the Director may, subject to the regulations, accept such foreign qualifications or recognise such foreign certifications as the Director considers appropriate in each case.

(3) It is an implied condition of an aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection (1)(b)(ii).

(4) If the Director declines to grant an application for the grant or renewal of an aviation document the applicant may appeal against that decision to the Minister.

27 Criteria for fit and proper person test

(1) For the purpose of determining whether a person is a fit and proper person for the purpose of section 26(1)(b)(ii) the Director must, having regard to the degree and nature of the person's proposed involvement in the Niue civil aviation system, have regard to, and give such weight as the Director considers appropriate to –

(a) The person's compliance history with transport safety regulatory requirement; and
(b) The person's related experience (if any) within the transport industry; and
(c) The person's knowledge of the applicable civil aviation system regulatory requirements; and

(d) Any history of physical or mental health or serious behavioural problems; and
(e) Any conviction for a transport safety offence whether or not –
(i) the conviction was in a Niue court; or
(ii) the offence was committed before the commencement of this Act; and
(f) Any evidence that the person has committed a transport safety offence or has contravened or failed to comply with regulations made under this Act.

(2) The Director is not confined to consideration of the matters specified in subsection (1) but may take into account other matters and evidence the Director considers relevant.

(3) To determine if a person is a fit and proper person the Director may –
(a) Seek and receive any information (including medical reports) the Director considers relevant; and
(b) Consider information obtained from any source.

(4) In its application to a body corporate subsection (1) has effect as if –
(a) Paragraphs (a), (b), (c), (e) and (f) refer to the body corporate and its officers; and
(b) Paragraph (d) refers only to the officers of the body corporate.

28 Applying for aviation document while disqualified

(1) A person must not apply for or obtain an aviation document while disqualified by an order of a court from obtaining an aviation document.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

(2) A document obtained contrary to subsection (1) is of no effect.

29 General requirements for participants in civil aviation system

(1) A person who does anything for which an aviation document is required (in this section called an aviation participant) must ensure that the appropriate aviation document and all the necessary qualifications and other documents are held.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

(2) An aviation participant must comply with this Act and the conditions attached to the relevant aviation document.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

(3) An aviation participant must ensure that the activities or functions for which the aviation document has been granted are carried out –
(a) By the participant and by persons for whom the participant is responsible; and
(b) Under the relevant prescribed safety standards and practices.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

(4) An aviation participant who holds an aviation document that authorises the provision of a service within the civil aviation system must –

(a) If required to do so by regulations made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document; and
(b) Provide training and supervision to employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
(c) Provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

30 Endangerment caused by holder of aviation document

(1) The holder of an aviation document must not, in respect of an activity or service to which the document relates, do or omit to do an act or cause or permit an act or omission, if the act or omission causes unnecessary danger to another person or to property.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 1,000 penalty units.

(2) Subsection (1) is in addition to and not in derogation of any regulations made under this Act.

31 Court may disqualify holder of aviation documents

(1) If a court convicts a person of an offence under section 29, section 47 or section 48 it may in addition to any other penalty it imposes –
(a) Disqualify the person from holding or obtaining an aviation document or a particular aviation document; or
(b) Impose on an aviation document held by or issued to the person such restrictions or conditions or both as the court thinks fit having regard to the circumstances of the offence;

for a period not exceeding 12 months.

(2) Subsection (1) does not affect or prevent the exercise by the Director of his powers under section 26.

PART 4
Air Service Operations

32 Scheduled air service operations

A person must not engage in a scheduled air service operation between Niue and elsewhere except –
(a) Under the authority of and in conformity with the terms and conditions of an air service licence granted under this Act; or
(b) If stops are only made in Niue for non-traffic purposes.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

33 Non-scheduled flights

(1) An aircraft of a state other than Niue that is not engaged in scheduled international air service operation may –

(a) Make a non-scheduled flight in transit non-stop across Niue territory; or

(b) Make a stop in Niue for a non-traffic purpose.

(2) The Director may require an aircraft referred to in subsection (1) –

(a) To land; or

(b) To obtain special permission for the flight.

(3) A person must not fail to comply with a requirement of the Director imposed under subsection (2).

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;

(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

(4) The pilot of an aircraft of a state other than Niue that is not engaged in a scheduled international air service operation must not make a non-scheduled flight across Niue territory with a stop in Niue for traffic purposes except –

(a) With the approval of the Director; and

(b) In compliance with any condition or limitation the Director imposes on that approval.

Penalty: (a) In the case of an individual, a fine not exceeding 100 penalty units;

(b) In the case of a body corporate, a fine not exceeding 500 penalty units.

34 Cabinet is licensing authority

(1) Cabinet may grant an air service licence.

(2) Cabinet may appoint a person to inquire into and report upon a matter in relation to –

(a) An air service licence; or

(b) An application for an air service licence.

35 Application for an air service licence

(1) An application for an air service licence must –

(a) Be made to the Cabinet; and

(b) Be accompanied by such information and documents in support of the application as Cabinet requires.

(2) Cabinet may –

(a) Refuse an application for an air service licence; or

(b) Grant it –

(i) in whole or in part; and

(ii) subject to any condition Cabinet considers necessary in the public interest.

(3) An air service licence is to be in a form approved by Cabinet.

36 Duration of air service licence

(1) An air service licence –

(a) Takes effect on the date stated in it; and

(b) Unless sooner revoked or expressed to expire earlier expires 2 years later.

(2) If –

(a) An application for the renewal of an air service licence has been made; but

(b) The application has not been disposed of before the date of expiry of the licence,

the licence continues in force until the application is disposed of unless Cabinet otherwise directs.

37 Terms of air service licence may be varied during currency

(1) Cabinet may if Cabinet considers it to be in the public interest to do so –

(a) Amend or revoke a term or condition of an air service licence; or

(b) Add a new term or condition in an air service licence.

(2) Before exercising a power under subsection (1) Cabinet must give –

(a) The licensee; and

(b) Any other person Cabinet believes is likely to be affected,

at least 21 days notice of his intention to do so.

38 Renewal of air service licences

(1) An application for the renewal of an air service licence must –

(a) Be made to Cabinet; and

(b) Be accompanied by such information and documents in support of the application as Cabinet requires.

(2) Cabinet may –

(a) Refuse an application for the renewal of an air service licence; or

(b) Grant it –

(i) in whole or in part; and

(ii) subject to any condition Cabinet considers necessary in the public interest.

(3) The renewal of an air service licence –

(a) Unless sooner revoked or expressed to expire earlier expires 2 years after it takes effect; and

(b) May be granted in advance to take effect on the expiry date of the licence being renewed.

39 Inquiries as to air service licence

(1) Cabinet may appoint a person to hold a public inquiry to determine if an air service operation being carried on under the authority of an air service licence is being carried on in conformity with its terms and conditions.

(2) A person appointed under subsection (1) must give at least 21 days notice of his intention to hold the inquiry to –

(a) The licensee; and

(b) Any other person he or she believes has an interest in the air service licence.

(3) The notice must –

(a) State the day, time, and place fixed for the inquiry; and

(b) Contain details of the matter proposed to be inquired into.

40 Revocation of air service licences

Cabinet may revoke an air service licence or suspend it for any period the Cabinet considers appropriate –

(a) If the air service operation authorised by the licence is not started on the date specified in it for the start of the operation; or

(b) If the licensee abandons or curtails the air service operation authorised by the licence; or

(c) If after receiving the report of a person appointed to hold an inquiry Cabinet is satisfied that the licensee is not carrying on the air service operation in conformity with the licence; or
(d) If Cabinet is satisfied that the licensee has disposed of the air service operation authorised by the licence to another person without –
(i) transferring the licence to that person; or
(ii) obtaining Cabinet's consent to the transfer.

41 Transfer of licence

(1) A licensee under an air service licence must not transfer the licence without Cabinet's written consent.

(2) An application for Cabinet's consent to transfer an air service licence must –
(a) Be made to Cabinet; and
(b) Be accompanied by such information and documents in support of the application as Cabinet requires.

(3) Cabinet may –
(a) Refuse consent for the transfer of an air service licence; or
(b) Give it –
(i) in whole or in part; and
(ii) subject to any condition Cabinet considers necessary in the public interest.

42 Licensee to provide information

It is an implied condition of an air service licence that the person authorised to carry on an air service operation by virtue of the licence must provide the Minister with any financial and statistical returns and statements the Minister requires.

43 Nuisance, trespass, and responsibility for damage

(1) An action for nuisance cannot be brought in respect of the noise or vibration caused by an aircraft or its engines while on, or taking off from, or landing at, the airport.

(2) An action for trespass or nuisance cannot be brought in respect of the flight of an aircraft over property at a height that is reasonable in the circumstances.

(3) If damage or loss is caused to property –
(a) By an aircraft while in flight, taking off or landing; or
(b) By a person or article in or falling from an aircraft;
damages are recoverable from the owner of the aircraft without proof of cause of action as if the damage or loss was caused by the owner's fault unless the damage or loss was caused by or contributed to by the fault of the person who suffered the damage or loss.

(4) If –
(a) Damage or loss is caused in the manner described in subsection (3); and
(b) Damages are recoverable from the owner of an aircraft solely by virtue of subsection (3); and
(c) Another person is liable to pay damages in respect of the damage or loss, the owner is entitled to be indemnified by that other person against any claim in respect of the damage or loss.

(5) If damage or loss is caused by a person descending from an aircraft by parachute –

(a) Damages are not recoverable by virtue of subsection (4) from the owner of the aircraft; but

(b) Unless the damage or loss is caused by a person descending from an aircraft by parachute to avoid injury or death – damages are recoverable from the person descending and this section applies as if the person descending were the owner of the aircraft.

(6) If –

(a) An aircraft is hired by its owner to a person for a period of 28 days or longer; and

(b) During that period no pilot, commander, navigator, or operative member of the crew of the aircraft is an employee of the owner,

this section applies during the period as if each reference in it to the owner were a reference to the person to whom the aircraft is hired.

(7) In this section "fault" means an act or omission which gives rise to a liability in tort.

PART 5
OFFENCES

44 Dangerous activity involving aircraft, aeronautical product or aviation related service

(1) A person must not –

(a) Operate, maintain, or service; or

(b) Do any other act,

in respect of an aircraft, aeronautical product, or aviation related service, in a manner which causes unnecessary danger to a person or to property.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding 25 penalty units;

(b) In the case of a body corporate, a fine not exceeding 250 penalty units.

(2) A person must not –

(a) Cause or permit an aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or

(b) Cause or permit an act to be done in respect of an aircraft, aeronautical product, or aviation related service,

in a manner which causes unnecessary danger to a person or property.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding 25 penalty units; or

(b) In the case of a body corporate, a fine not exceeding 250 penalty units.

45 Operating aircraft in careless manner

A person must not operate an aircraft in a careless manner.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding 25 penalty units;

(b) In the case of a body corporate, a fine not exceeding 250 penalty units.

46 Communicating false information affecting safety

A person must not provide to another person information relating to the safety of –

(a) An aircraft; or
(b) The airport; or
(c) An aeronautical product; or
(d) An aviation related service; or
(e) Any other facility or product used in or connected with aviation; or
(f) A person associated with aviation,

knowing the information to be false or in a manner reckless as to whether it is false.

Penalty: (a) In the case of an individual, a fine not exceeding 10 penalty units;
(b) In the case of a body corporate, a fine not exceeding 50 penalty units.

47 Failing to disclose information relevant to aviation document

A person must not –

(a) Provide to the Director information relevant to the Director's exercise of powers under this Act knowing it to be false; or
(b) Being an applicant for an aviation document, fail, without reasonable excuse, to provide the Director information known to the person which is relevant to the Director's exercise of a power under this Act; or
(c) Being the holder of an aviation document, fail, without reasonable excuse, to provide the Director information known to the person which is relevant to the condition specified in section 26(3).

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 12 months or a fine not exceeding 50 penalty units;
(b) In the case of a body corporate, fine not exceeding 300 penalty units.

48 Acting without necessary aviation document

A person must not –

(a) Operate, maintain, or service; or
(b) Do any other act in respect of,

an aircraft, aeronautical product, or aviation related service –

(c) Without holding the appropriate current aviation document; or
(d) Knowing –
(i) that a current aviation document is required to be held in respect of that aircraft, product, or service before that act may lawfully be done; and
(ii) that the appropriate aviation document is not held.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 18 months or a fine not exceeding 100 penalty units;
(b) In the case of a body corporate, fine not exceeding 1,000 penalty units.

49 Obstruction of authorised person

(1) A person must not obstruct or impede a person who is authorised by the Director to perform a duty or exercise a power while performing that duty or exercising that power.

Penalty: (a) In the case of an individual, imprisonment for a term not exceeding 3 months or a fine not exceeding 20 penalty units; or
(b) In the case of a body corporate, fine not exceeding 100 penalty units.

(2) Subsection (1) applies only if the person obstructed or impeded is in uniform or produces evidence of his authority.

50 Trespass

A person must not, without reasonable excuse, enter or remain within the airport or a building or area in which are operated technical facilities or services for civil aviation if directed not to enter or remain –

(a) By a person authorised by the Director for that purpose; or
(b) By a constable; or
(c) By a notice or notices displayed for the purpose by the Director.

Penalty: Imprisonment for a term not exceeding 3 months or a fine not exceeding 20 penalty units.

PART 6
Regulations and Rules

51 Power to make regulations

(1) The Cabinet may make regulations –
(a) To implement Niue's obligations under the Convention; and
(b) In respect of any matter necessary or incidental to the implementation of this Act.

(2) The Cabinet may, in particular, make regulations to prescribe fees and charges payable generally for the purposes of civil aviation.

(3) The regulations may impose penalties for a breach of the regulations not exceeding a fine of 50 penalty units or 6 months imprisonment, or both in the case of an individual, or a fine not exceeding 250 penalty units in the case of a body corporate.

(4) There may be incorporated by reference into regulations made under this section all or any of the following –
(a) A standard, requirement, or recommended practice of an international aviation organisation;
(b) A standard, requirement, or rule prescribed under law by another contracting State of ICAO;
(c) A standard, requirement, or rule of an aviation sport or aviation recreational organisation;
(d) Any other written material or document that in the opinion of the Minister is too large or impractical to be printed as part of the regulations.

(5) Material incorporated in regulations in accordance with subsection (4) forms part of the regulations and unless otherwise provided in the regulations any amendment to the material subsequently made by the person or organisation that originated it also forms part of the regulations.

(6) A regulation is not invalid because –
(a) It confers a discretion upon or allows a matter to be determined or approved by a person; or
(b) It allows a person to impose a requirement as to the performance of an activity.

52 New Zealand Civil Aviation Rules to apply

(1) The New Zealand Civil Aviation Rules made under Part 3, Civil Aviation Act 1990 of New Zealand shall extend to and be in force in Niue as from time to time amended and in force in New Zealand.

(2) An amendment made to the New Zealand Civil Aviation Rules shall not extend to and be in force in Niue if the Cabinet so resolves.

(3) Any provision of the New Zealand Civil Aviation Rules as extended to and in force in Niue by virtue of this Act shall cease to extend to and be in force if the Cabinet so resolves.

53-54 [Spent]

CIVIL LIST ACT 1999

1999/248 – 1 July 1999

1 Short title
2 [Spent]
3 Interpretation
4 Remuneration and allowances
5 Appropriation
6 Payment of remuneration
7 Period for which the Premier's and Ministers' remuneration and allowances are payable
8 Period for which Members' remuneration and allowances are payable
9 Advance of remuneration
10 Advance of overseas travel allowance
11 Allowances to be treated as taxable income
12 [Spent]

SCHEDULE

To prescribe under article 25(2) of the Constitution the remuneration and other entitlements of the Premier, other Ministers, the Members of the Assembly who are not Ministers, and the Speaker

1 Short title

This is the Civil List Act 1999.

2 [Spent]

3 Interpretation

In this Act –

"Acting Premier" means a Minister discharging the functions of Premier pursuant to article 9(1) or (2) of the Constitution;

"Member" means a person elected as a member of the Assembly under article 16 of the Constitution but does not include the Premier, a Minister or the Speaker;

"Minister" means a member of the Cabinet but does not include the Premier or a temporary Minister;

"Premier" means a member of the Assembly elected under article 4 of the Constitution but does not include an Acting Premier;

"Speaker" means the Speaker of the Niue Assembly elected under article 20 of the Constitution but does not include a member of the Assembly performing the functions of the Speaker under that article;

"temporary Minister" means a Member appointed as a temporary Minister under article 8 of the Constitution.

"Associate Minister" means a Member designed as an Associate Minister for the purpose of assisting the Minister in the exercise of official duties.

4 Remuneration and allowances

There is payable to the Premier, Ministers, Members, and the Speaker the remuneration and allowances specified in the Schedule.

5 Appropriation

A remuneration or allowance payable under this Act is to be paid out of the Niue Government Account without further appropriation.

6 Payment of remuneration

A remuneration specified in Part 1 of the Schedule is payable by equal fortnightly instalments in arrears with a proportionate payment for any fraction of a fortnight served.

7 Period for which the Premier's and Ministers' remuneration and allowances are payable

The remuneration and allowances of the Premier and each Minister of Cabinet shall commence on the day on which he/she is appointed under article 4 and 5 of the Niue Constitution and ending on the day that he/she vacates his/her office under article 3 or 7 of the Niue Constitution.

8 Period for which Members' remuneration and allowances are payable

(1) The remuneration and allowance of each member shall commence on the day the Chief Electoral Officer publicly declares him/her to be elected and shall cease on the day a new Member has been declared by the Chief Electoral Officer or unless his/her seat becomes vacant by death or otherwise as the case may be.

(2) Where a member is returned unopposed his/her period of remuneration shall recommence on the date that the Chief Electoral Officer declares him/her to be elected and shall cease on the date a new Member has been declared by the Chief Electoral Officer or unless his/her seat becomes vacant by death or otherwise as the case may be.

9 Advance of remuneration

If a person who is entitled to be paid a remuneration under Part 1 of the Schedule is due to be absent from Niue he or she may be paid that remuneration in advance –

(a) If the person is due to be absent from Niue on official business connected with his or her position in the Assembly, for such part of the absence as the person is due to spend on that official business; or

(b) In any other case, for the period of his or her absence from Niue up to a maximum period of 4 weeks from his or her departure from Niue.

10 Advance of overseas travel allowance

(1) An overseas travel allowance payable may be paid in advance of the travel.

(2) If on the return of a person to whom an overseas travel allowance has been paid in advance it is found that the allowance was paid in respect of too few days allowance in respect of the additional days is to be paid to the person.

(3) If on the return of a person to whom an overseas travel allowance has been paid in advance it is found that the allowance was paid in respect of too

many days the allowance paid in respect of the additional days is to be refunded by the person to whom it was paid within 7 days of his or her return to Niue under Part 2 of the Schedule.

(4) Any overseas travel allowance not repaid by a person under subsection (3) may be deducted from any other money payable to that person under this Act.

11 Allowances to be treated as taxable income

An allowance referred to in Part 2 of the Schedule except for the Clothing Allowance, Overseas Travel Allowance, Premier's Entertainment and Residence Allowance, is to be treated as taxable income for income tax purposes.

12 [Spent]

SCHEDULE
PART 1 – REMUNERATION

Office	Rate of Remuneration
Premier	$60,803 a year
Minister	$39,315 a year
Speaker	$18,025 a year
Member	$14,729 a year

PART 2 – ALLOWANCES

Type of allowance	Amount of allowance
Premier's entertainment allowance Payable to the Premier to cover costs incurred by the Premier in hosting official functions.	$1,323 a year
Premier's residence allowance Payable to the Premier to cover the cost of maintaining the Premier's residence	$6,000 a year
The Ministers Payable to a minister annually	$3,000 a year
Acting Premier's allowance Payable to a Minister when acting as Premier	$60 a day in addition to remuneration as a Minister
Acting Minister's allowance Payable to a Member when acting as a Minister	$50 a day in addition to remuneration as Member
Clothing allowance	Premier $800 payable every 3 years Minister $750 payable every 3 years Speaker $500 payable every 3 years Member $500 payable every 3 years

	The allowance is payable on the person first becoming a member of the Assembly and is then payable not sooner than 3 years after the payment of any previous clothing allowance of any amount.
Overseas travel allowance Payable to the Premier, a Minister, a Member and the Speaker in connection with the person's official duties – To cover accommodation, meals and incidental expenses necessarily incurred in carrying out such duties.	Daily amount as determined by the Niue Public Service Commission The allowance may differ in respect of the office in the Assembly held by the person travelling and by the country or countries to be visited by the person The allowance payable is to be reduced by an equal amount to any allowance that is to be paid by a person other than the Government of Niue to cover accommodation, meals and incidental expenses.
Extra duties allowance Payable to a Member who at the request of a Minister and with the approval of the Premier provides assistance to that Minister in the exercise of that Ministers official duties.	$50 a day in addition to Associate Minister remuneration as a Member
Select Committee Member's Allowance Payable to a Select Committee Member who attends Select Committee meetings	For meetings outside of normal working hours $70 per day For meetings between 8.30am-12.30pm during normal working hours $30 per day For meetings during normal working hours between 8.30am and 4.00pm and beyond, $50 per meeting
Speaker's Allowance Payable to the Speaker to cover costs incurred in relation to official duties and representation at functions	$1,000 a year

COMMISSIONS OF INQUIRY ACT 1968

1968/50 – 1 October 1968

1 Short title
2 Interpretation
3 Cabinet may appoint Commissions of Inquiry
4 Members of Commissions protected
5 Commissioners' powers
6 Persons interested entitled to be heard at inquiry
7 Service of summons
8 Protection of witnesses and counsel
9 Witnesses' allowances
10 Payment of witnesses' allowances
11 Non-attendance of witness
12 Reference of point of law to Court
13 Power to award costs
14 Enforcing orders for costs
15 Powers of Judges when Commissioners

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1 Short title

This is the Commissions of Inquiry Act 1968.

2 Interpretation

In this Act –

"ship" means every description of vessel used in navigation however propelled.

3 Cabinet may appoint Commissions of Inquiry

(1) Cabinet may appoint any person or persons (including a member of Cabinet) to be a Commission to inquire into and report upon any question arising out of or concerning –

(a) The administration of the Government; or
(b) The working of any existing law; or
(c) The necessity of expedience of any legislation; or
(d) The conduct of any officer in the service of the Crown; or
(e) Any disaster or accident including any shipping casualty (whether due to natural causes or otherwise) in which members of the public were killed or injured or were or might have been exposed to risk of death or injury.

(2) For the purpose of subsection (1) (e), a shipping casualty shall be deemed to occur –

(a) When on or near the coast of Niue any ship is lost, abandoned, stranded or materially damaged or has been in collision with any ship; or
(b) When any loss of life ensues by reason of any casualty occurring to any ship on or near the coast of Niue; or
(c) When in any place any such loss, abandonment, stranding, material damage, or casualty as aforesaid occurs, and any witness is found in Niue; or

(d) When in any place any such loss, abandonment, stranding, material damage, or casualty as aforesaid occurs or is supposed to have occurred to any ship registered in Niue under the provisions of any law made in that behalf and for the time being in force; or
(e) When any ship proceeds to sea from any harbour in Niue and is lost or is supposed to have been lost and any evidence is obtainable in Niue as to the circumstances under which she proceeded to sea or was last heard of.

4 Members of Commissions protected

So long as any member of any such Commission acts bona fide in the discharge of his duties, no action shall lie against him for anything he may report or say in the course of the inquiry.

5 Commissioners' powers

Every such Commission shall for the purpose of the inquiry have the power and status of a Judge of the Court in respect of citing parties interested in the inquiry, summoning witnesses, administering oaths, hearing evidence, and conducting and maintaining order at the inquiry.

6 Persons interested entitled to be heard at inquiry

Any person interested in the inquiry shall, if he satisfies the Commission that he has an interest in the inquiry apart from any interest in common with the public, be entitled to appear and be heard at the inquiry as if he had been cited as a party to the inquiry.

7 Service of summons

Every summons to a witness shall be served either by delivering the same to the person summoned or by leaving the same at his usual place of abode within a reasonable time before his attendance is required.

8 Protection of witnesses and counsel

Every witness attending and giving evidence in pursuance of any such summons, and every counsel appearing before any Commission, shall have the same privileges and immunities as witnesses and counsel in the Court.

9 Witnesses' allowances

(1) Every witness attending in pursuance of any such summons shall be entitled to expenses for travelling and maintenance during his absence from his usual place of abode under the scale allowed to witnesses in civil cases by the rules of the Court.

(2) Persons prosecuting any claim before a Commission shall not be entitled to be paid any money under this section.

10 Payment of witnesses' allowances

(1) Where the Commission has obtained the authority in writing of the Resident Commissioner for summoning any witness, the expenses of that witness shall, if certified by the Chairman of the Commission be paid by the Treasurer out of the Niue Government Account.

(2) In every other case the person requiring the evidence of any witness shall, before the summons is issued, deposit with the Commission such sum of money as the Commission deems sufficient, and the expenses of the witness shall be paid out of the sum so deposited.

11 Non-attendance of witness

(1) Every person who, after being duly summoned to attend before the Commission, or to produce to it any books, papers, writings or documents –

(a) Fails to appear under the exigency of such summons; or

(b) Refuses to be sworn or to give evidence, or to make answer to such questions as may be put to him by the Commission or any member thereof touching the subject of the inquiry; or

(c) Fails to produce any such books, papers, writings, or documents;

is liable for every such default to a fine not exceeding 0.5 penalty units.

(2) No person so summoned shall be liable to any such fine unless at the time of the service of the summons there was made to him a payment or a tender of his travelling expenses, according to the scale allowed to witnesses in civil cases by the rules of the Court.

12 Reference of point of law to Court

(1) Subject to section 15 the Commission may refer any disputed point of law arising in the course of an inquiry to the Court for decision, and for this purpose may either conclude the inquiry subject to such decision or may at any stage of the inquiry adjourn it until after the decision has been given.

(2) The question shall be in the form of a special case to be drawn up by the parties (if any) to the inquiry, and, if the parties do not agree or if there are no parties, to be settled by the Commission.

(3) The decision of the Court shall be final and binding upon all parties to the inquiry and upon the Commission.

13 Power to award costs

(1) The Commission, upon the hearing of an inquiry, may order that the whole or any portion of the costs of the inquiry or of any party thereto shall be paid by any of the parties to the inquiry, or by all or any of the persons who have procured the inquiry to be held.

(2) No such order shall be made against any person who has not been cited as a party or authorised by the Commission, pursuant to section 6 to appear and be heard at the inquiry or summoned to attend and give evidence at the inquiry.

14 Enforcing orders for costs

For the purpose of enforcing any order of the Commission for the payment of costs, a duplicate of such order may be filed by the person to whom the costs are payable in any office of the Court and shall thereupon be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.

15 Powers of Judges when Commissioners

(1) In every case where under this Act, or any other enactment Cabinet appoints one or more Judges of the Court to be members of a Commission for the purpose of holding an inquiry, every such Judge, and the Commission of which he is a member, shall for all the purposes of such inquiry, have the same powers, privileges and immunities as are possessed by a Judge of the High Court in the exercise of its civil jurisdiction.

(2) For the purpose of enforcing any order made by such Commission the order shall, as soon as conveniently may be after the making thereof, be drawn up and signed by the Chairman (whose signatures and status shall be judicially noticed), and may be filed in any office of the Court, whereupon the order shall be enforceable in the same manner as a final judgment of the Court in civil proceedings.

COMMUNICATIONS ACT 1989

1989/131 – June 1989

1 Short title

PART 1
TELECOMMUNICATIONS

2 Objectives and obligations
3 Interpretation
4 Control of transmission installations
5 Control of reception installations
6 Public communications service licence
7 Private communications service licence
8 Radio communications licence
9 Grant of public communications service licences
10 Grant of private communications service licences and radio communications licences
11 Schedule of transmission and reception installations
12 Programmes of public communications service
13 Programme Advisory Committee
14 Power of Cabinet to require certain transmissions
15 Forefeiture
16 Director may give directions
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PART 4
REPEAL AND SAVINGS

31-32 [Spent]

To make provisions in respect of communications within Niue and between Niue and elsewhere

1 Short title

This is the Communications Act 1989.

PART 1
TELECOMMUNICATIONS

2 Objectives and obligations

(1) In the administration of this Part the Cabinet and the Director shall have regard to the objectives of –

(a) Facilitating the development of communications both within Niue and between Niue and elsewhere;
(b) Providing within Niue public communications services of a kind and quality appropriate to the social, cultural, educational and economic needs of Niue;
(c) Ensuring that effective means exist to control and supervise the programmes transmitted by any public communications service within Niue so that they benefit the Niuean community; and
(d) Providing the people of Niue with a reliable and efficient telephone service at a reasonable cost.

(2) In the administration of this Part the Cabinet and the Director shall, so far as practicable, act in accordance with any applicable standards, rules and regulations set by international agreements binding upon Niue.

3 Interpretation

In this Part –

"Cabinet" includes any person authorised by the Cabinet to exercise a power of the Cabinet under this Part;

"Director" means the person for the time being carrying out the duties of the head of the Telecommunications Department of the Government;

"operate", in respect of any transmission or reception installation, does not include the operation of an ordinary telephone handset;

"radiocommunications transmitter" means a transmission installation designed to transmit electromagnetic energy without continuous artificial guide;

"radiocommunications receiver" means a reception installation designed to receive electromagnetic energy without continuous artificial guide;

"reception", in respect of a reception installation, includes interception;

"reception installation" –

(a) Means an apparatus designed to receive by means of electric or electromagnetic energy either with or without –
(i) sounds (including speech and music);
(ii) visual images;
(iii) any other signals for the purpose of communications, or for the actuation or control of machinery or apparatus; but
(b) does not include an installation designed solely to receive signals intended for direct reception by the general public;

"transmission installation" –

(a) Means an apparatus designed to transmit, by means of electric or electromagnetic, either with or without artificial guide –
(i) sounds (including speech and music);
(ii) visual images;
(iii) any other signals for the purpose of communications, or for the actuation or control of machinery or apparatus; but
(i) does not include an installation which –
(I) is not a radiocommunication transmitter;
(II) is confined within a single property boundary; and
(III) is not connected to the Niue telephone system; or
(ii) an aerial and lines which are not used except to receive a signal intended for direct reception by the general public and to distribute that signal free of charge without alteration.

4 Control of transmission installations

(1) Subject to subsection (2), a person shall not operate a transmission installation unless authorised to do so by the licence granted under this Part.

(2) Subsection (1) does not apply to –

(a) A person acting on behalf of the Government in accordance with general or specific authorisation given by the Cabinet or by a person authorised by the Cabinet to give that authorisation;

(b) A member of the crew of a foreign registered vessel or aircraft operating a transmission installation on board the vessel or aircraft under any directions of the Director; or

(c) A person operating a transmission installation in circumstances where that person reasonably believes it necessary to do so because an emergency exists.

(3) A person who operates a transmission installation contrary to the provisions of this Part or contrary to the provisions of any licence granted under this Part is guilty of an offence and is liable on conviction to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment.

5 Control of reception installations

(1) Subject to subsection (2), a person shall not operate a reception installation with intent to receive signals (other than signals intended for direct reception by the general public) emanating from outside Niue unless authorised to do so by a licence granted under this Part.

(2) Subsection (1) does not apply in relation to a person acting on behalf of the Government under a general or specific authorisation given by the Cabinet or by a person authorised by the Cabinet to give that authorisation.

(3) A person who operates a reception installation contrary to this Part or contrary to the provisions of any licence granted under this Part is guilty of an offence and is liable on conviction to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment.

6 Public communications service licence

(1) A public communications service licence authorises the licensee to operate a service the primary purpose of which is the transmission of sound or visual images, or both, for direct reception by the general public.

(2) Where –

(a) A member of the general public is not entitled to receive sound or a visual image except upon payment of a fee to a licensee; or

(b) Sound or a visual image is transmitted in an encoded form,

that fact shall not, by itself, be taken to indicate that the sound or visual image was not intended for direct reception by the general public.

7 Private communications service licence

A private communications service licence authorises the licensee to operate a service, the primary purpose of which is the transmission of sound or visual images, or both, and the direct reception of those sound or visual images, or both, by persons within a specified group of persons (other than the general public).

8 Radiocommunications licence

A radiocommunications licence authorises a person to operate one or more of the following, namely –

(a) A radiocommunications transmitter;
(b) A radiocommunications receiver;
(c) A radiocommunications transceiver.

9 Grant of public communications service licences

(1) The Cabinet may grant public communications service licences.

(2) The Cabinet may grant a licence under subsection (1) for any period not exceeding 5 years and may renew such a licence for further periods each not exceeding 5 years.

(3) A licence granted under subsection (1) is subject to such conditions as are specified in it.

(4) The Cabinet may revoke, or vary any condition specified in a licence granted under subsection (1) and may make such a licence subject to additional conditions.

(5) The Cabinet may refuse to renew a licence granted under subsection (1) or may revoke such a licence if, in its opinion, the licensee –

(a) Has failed to comply with any condition of the licence or with any law relating to the operation of the transmission installation; or
(b) Is no longer a suitable person to hold the licence or no longer has the financial, technical or management capability to provide a service appropriate to the general public of Niue.

(6) The Cabinet may either generally or in any particular case authorise another person to exercise all or any of its powers under this section.

10 Grant of private communications service licences and radiocommunications licence

(1) The Director may grant –

(a) Private communications service licences; and
(b) Radiocommunication licences.

(2) The Director may refuse to grant a licence under subsection (1) if, in his opinion –

(a) The applicant has insufficient training to operate the relevant transmission or reception installation; or
(b) In the case of a private communications service licence, any person within the specified group of persons referred to in section 7 has insufficient training to operate the relevant transmission or reception installation.

(3) The Director may grant a licence under subsection (1) for a period of 1 year and may renew such a licence for further periods of 1 year.

(4) A licence granted under subsection (1) is subject to such conditions as are specified in it.

(5) The Director may revoke or vary any condition specified in a licence granted under subsection (1) and may make such a licence subject to additional conditions.

(6) The Director may refuse to renew a licence granted under subsection (1) or may, at any time, revoke such a licence if, in his opinion, the licensee has failed to comply with any condition of the licence or with any provision of this or any other law relating to the operation of the transmission or reception installation.

(7) The Cabinet may, within 28 days of the Director taking any action under this section, review that action.

(8) Where the Cabinet, after reviewing any action of the Director, decides that no action or different action should have been taken, the decision shall have effect and the action of the Director shall cease to have effect.

11 Schedule of transmission and reception installations

(1) Before a public or private communications service licence is issued, the Director shall prepare a schedule for the licence setting out the specifications of all the transmission or reception installations to be used to provide the service authorised by the licence.

(2) A public or private communications service licence authorises the licensee to operate transmission or reception installations complying with the specifications set out in the schedule to the licence for the purpose of the service authorised by the licence but for no other purpose.

(3) The Director may, after giving the licensee reasonable notice of his intention to do so, vary a schedule to a public or private communications service licence.

12 Programmes of public communications service

(1) The licensee under a public communications service licence –

(a) Shall not transmit any advertisement unless authorised to do so in writing by the Cabinet; and

(b) Shall comply with any programme guidelines issued by the Programme Advisory Committee established under section 13.

(2) For the purpose of subsection (1) "advertisement" does not include –

(a) A community announcement; or

(b) Programme promotion,

transmitted without charge.

13 Programme Advisory Committee

(1) There is established by this Act a Programme Advisory Committee consisting of not less than 3 members nor more than 6 members appointed by the Cabinet.

(2) The Programme Advisory Committee shall –

(a) Advise licensees under public communications services licences on all aspects of the services authorised by their licences, including the nature and diversity of their programmes, the suitability of programmes for Niue, the hours of transmission of the services, and the amount of any fee which may be charged for the reception of the services; and

(b) In consultation with licensees under public communications service licences, prepare and subsequently publish a set of programme guidelines for public communication services.

(3) Programme guidelines may, in addition to other matters, include guidelines in respect of –

(a) Material offensive to community standards of behaviour in Niue;

(b) The depiction of sexual activities, violence and the use of drugs;

(c) The amount of times to be assigned for educational, informational and religious programmes; and

(d) The classification of programmes as suitable for transmission at various times of the day.

(4) For the purposes of subsection (3) (a) and (b), the Programme Advisory Committee may in consultation with the Censor of Films appointed under the Film and Public Entertainment Act 1979, apply the same guidelines as those applied by the Censor of Films.

(5) Where the Cabinet has authorised the transmission of advertisements, programme guidelines may also include guidelines in respect of –

(a) The content of advertisements;
(b) The products which may or may not be advertised; and
(c) The amount of transmission time allocated to the transmission of advertisements.

14 Power of Cabinet to require certain transmissions

(1) When required to do so by the Cabinet, the licensee under a public communications service licence shall make the service available to transmit any programme or other matter the Cabinet considers to be in the national interest.

(2) A licensee shall not be obliged to make his service available under subsection (1) for more than 3 hours in any period of 24 hours.

(3) During any period of national emergency proclaimed under section 2 of the Public Emergency Act 1979 –

(a) The limitation referred to in subsection (2) shall not apply; and
(b) The licensee under any public or private communications service licence or radiocommunications licence shall make the service or his radiocommunications transmitter, as the case may be, available to authorised officers of the Government to transmit such matter as the Cabinet considers necessary.

(4) The power of the Cabinet under subsection (1) does not include power to require a licensee to transmit any programme or other matter that could reasonably be interpreted as promoting or opposing –

(a) The election of a candidate as a member of the Assembly; or
(b) A particular point of view in relation to an issue or matter that is being submitted to the electorate in an election of members of the Assembly.

15 Forfeiture

(1) Where a person is convicted of an offence under this Part the court may order that any transmission or reception installation used in connection with that offence be forfeited to the Government.

(2) Any transmission or reception installation forfeited to the Government under subsection (1) becomes the property of the Government which may retain the installation or dispose of it in such manner as it thinks fit.

16 Director may give directions

(1) Subject to compliance with any direction given to him by the Cabinet, the Director may give a person directions in respect of all or any of the following, namely –

(a) The technical standards and requirements of any transmission or reception installation;
(b) The frequencies, power and location of any radiocommunication equipment;
(c) The location of any line, pole or associated equipment used in connection with the provisions of a public or private communications service, and situated outside land owned or occupied by the licensee.

(2) A person who fails to comply with a direction given to him under subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding 0.5 penalty units.

17 Exemptions

(1) Subject to subsection (2), the Director may exempt a reception or transmission installation or reception or transmission installation within a specified class of reception or transmission installation from all or any of the provisions of this Part.

(2) Subsection (1) does not apply to or in respect of any transmission installation used for or in connection with the transmission of sound or visual images, or both, intended for direct reception by the general public.

18 Regulations (Part 1)

The Cabinet may make regulations for carrying out this Part and without in any way limiting the generality of the foregoing such regulation may provide for –

(a) The charges which may be levied for services provided by the Government;
(b) The fees which may be charged for the grant or renewal of a licence under this Part;
(c) Periodic fees which may be payable in respect of a licence under this Part;
(d) The prevention of harmful interference with any transmission installation or any signals transmitted to, from, or within Niue;
(e) The conditions upon which persons may subscribe to the Niue telephone system;
(f) The conditions upon which any private communication service may be connected to the Niue telephone system; and
(g) Penalties, not exceeding 1 penalty unit for any breach of the regulations.

PART 2
Postal Services

19 Obligation

In the administration of this Part the Cabinet, the Niue Post Office and the Postmaster shall, so far as practicable, act under any applicable standards, rules and regulations set by international agreements binding upon Niue.

20 Interpretation

In this Part –

"Niue Post Office" means that Department of Government established to conduct postal services both within Niue and between Niue and elsewhere and includes –
(a) The officers and employees of that Department;
(b) Any person authorised by the Postmaster to collect or deliver postal articles for fee or commission on behalf of the Niue Post Office; and
(c) Any casual or contract staff of the Niue Post Office;

"postal article" means any article transmissible by post, including a letter, postcard, packet or package, or a telegram which is to be conveyed or otherwise dealt with in the manner of a posted letter;

"Postmaster" means the person for the time being carrying out the duties of the office in the public service having the designation Postmaster.

21 Control on carriage of postal articles

(1) Subject to subsection (2), a person commits an offence if he carries or conveys or causes to be carried or conveyed a postal article for reward.

(2) Subsection (1) does not apply –

(a) To the Niue Post Office; or

(b) To a person acting under an agreement with the Niue Government or the Niue Post Office for the carriage of postal articles within Niue or between Niue or elsewhere.

22 Control of creation of postage stamps

(1) Subject to subsection (2), a person is guilty of an offence if he creates a Niue postage stamp.

(2) Subsection (1) does not apply in relation to –

(a) The Niue Post Office; or

(b) A person acting with and under the authorisation of the Cabinet.

23 Stealing postal articles

A person is guilty of an offence if he steals a postal article in the possession of the Niue Post Office.

24 Delay and interference with postal articles

(1) A person is guilty of an offence if he unlawfully opens a postal article in the possession of the Niue Post Office.

(2) An officer, employee or person acting on behalf of the Niue Post Office is guilty of an offence if, contrary to his duty, he –

(a) Opens or procures or suffers to be opened a postal article in the possession of the Niue Post Office; or

(b) Wilfully delays or detains a postal article in the possession of the Niue Post office or procures or suffers such a postal article to be delayed or detained.

(3) A person who receives from the Niue Post Office a postal article not intended for him is guilty of an offence if he wilfully opens, keeps, detains or destroys the postal article.

25 Divulging contents of postal articles

(1) Subject to subsection (2), an officer, employee or person acting on behalf of the Niue Post Office is guilty of an offence if he divulges to another person information from, or as to the contents of, a postal article that is or was in the possession of the Niue Post Office and that came to his knowledge in the course of his duty.

(2) Subsection (1) does not apply in respect of information an officer, employee or person is lawfully entitled or obliged to divulge.

26 Prohibited material

(1) A person is guilty of an offence if he posts a postal article knowing it to contain a prohibited material.

(2) For the purpose of subsection (1) "prohibited material" means –

(a) Explosive, dangerous or destructive substances or fluids;

(b) Noxious animals and other things;

(c) Indecent or obscene writings, pictures or articles;

(d) Sharp articles, fluids or other injurious thing when not properly packed.

27 Penalties

A person convicted of an offence under this Part is liable on conviction –

(a) In the case of an offence under section 22 to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment;

(b) In the case of an offence under sections 21, 23, 24 of 25 to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment; and

(c) In the case of an offence under section 26 to a fine not exceeding 2 penalty units.

28 Lawful opening of postal articles

(1) The Postmaster may, when authorised to do so by the Cabinet, detain and open a postal article in the possession of the Niue Post Office which he reasonably believes to contain prohibited material as defined in section 26 (2).

(2) The Postmaster shall not open a postal article under subsection (1) unless he has given the sender and intended recipient of the article notice of his intention to open the article and a reasonable opportunity to be present when he does so.

(3) Subsection (2) does not apply in relation to as sender or intended recipient of a postal article who is not in Niue.

(4) If a postal article opened under this section is found to contain prohibited material the Postmaster may destroy the article or direct that it be forfeited to the Government, or direct that the article be returned to its sender.

(5) A person is not entitled to compensation in respect of any damage suffered by him as the result of the opening of a postal article under this section.

29 Insufficient postage

(1) The Niue Post Office may refuse to carry a postal article in respect of which insufficient postage has been paid.

(2) The Niue Post Office may refuse to deliver a postal article in respect of which insufficient postage has been paid except upon payment of any prescribed surcharge.

30 Regulations

(1) The Cabinet may make regulations for carrying out this Part and without in any way limiting the generality of the foregoing such regulations may provide –

(a) For the prescription of fees for the carriage of postal articles; and

(b) Penalties, not exceeding 1 penalty unit, for any breach of the regulations.

(2) Regulations made for the purposes specified in subsection (1) may be made by reference to regulations either as in force on a specified date or as in force in New Zealand and either with or without amendments of those regulations.

PART 3
Electronic Addressing

30A Interpretation

In this Part –

"NITC" means the Niue Information Technology Committee;

"ccTLD" means country code Top Level Domain;

".nu" means the ccTLD two letter code designated and applying to Niue;

"electronic addressing" means the use of any scheme for organising, distributing or assigning any type of symbolic reference, name, address, code which is pertinent to the transfer of information within and between information systems. Including but not exclusive to internet addressing schemes including those referred to by the ISO 3166;

"ISO 3166" means Standard 3166 of the International Organisation for Standardisation.

30B Objectives and obligations

(1) In the administration of this Part, Cabinet shall have regard to the objectives of –

(a) Facilitating the development of Information Technology and electronic addressing both within Niue, between Niue and elsewhere;

(b) The recognition that the ccTLD .nu is a National resource for which the prime authority is the Government of Niue;

(c) Ensuring that effective means exist to control and supervise the information transmitted or made available by any appointed Manager of the Niue ccTLD.nu;

(d) Ensure that the ccTLD .nu is managed consistent with the interests and matters of public importance of the Niuean community and consistent with the public policy objectives of the Government.

(2) In the administration of this Part the Cabinet shall, so far as practicable, act under any applicable standards, rules and regulations set by international agreements binding upon Niue.

30C Niue Information Technology Committee

(1) There is established by this Act the NITC consisting of not less than 3 members nor more than 6 members appointed by the Cabinet.

(2) The NITC shall be the only designated Registry Manager of the Niue ccTLD .nu.

(3) The NITC shall –

(a) Advise Cabinet on all matters related to and associated with Information Technology and the management of the ccTLD .nu;

(b) Be responsible for establishing and monitoring any and all contractual relationships entered into relating to the management of the ccTLD .nu;

(c) When and where appropriate appoint technical and administrative advisors.

30D Appointed Manager/s of electronic addressing

(1) Cabinet on the advice of the NITC determine for the purposes of this Part, a specified person or association as an appointed manager of electronic addressing in relation to a specified kind of listed carriage services utilizing the ccTLD .nu.

(2) The appointment has effect accordingly.

(3) Cabinet must not make a re-appointment under subsection (1) in relation to a particular person or association unless –

(a) The NITC recommends Cabinet to do so;

(b) The NITC is of the opinion that the person or association is managing electronic addressing in accordance with the interests, principles and standards of the Niuean community and the public policy of the Government.

(4) The Cabinet may give written directions to the NITC in relation to its advisory role.

30E Cabinet may give directions to the Appointed Manager of electronic addressing

(1) The Cabinet may, by written notice given to an Appointed Manager of electronic addressing in relation to a particular kind of carriage service, directing manager to do, or refrain from doing, a specified act or thing relating to electronic addressing in connection with that kind of carriage service utilising the ccTLD .nu.

(2) The Cabinet may not give a direction under this section unless, in the opinion of the Cabinet, the issues pertaining to the electronic addressing is of public importance to the Niuean community.

(3) In determining whether the electronic addressing is of public importance the Cabinet must have regard to the extent to which the addressing is of significant social and/or economic importance to –

(a) Service providers; and

(b) End-users of carriage services.

(4) Subsection (3) does not, by implication, limit the matters to which Cabinet may have regard.

(5) Before giving a direction under this section, the Cabinet must consult the NITC.

(6) A person must comply with a direction under this section.

(7) A person or association who intentionally or recklessly contravenes subsection (6) is guilty of an offence punishable on conviction by a fine not exceeding US 5,000,000.

30F Delegation of powers

Cabinet may delegate all or part of its powers vested under this Act to the NITC.

PART 4
Repeal and Savings

21-22 [Spent]

COMPANIES ACT 2006

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5 Vacancy in office of liquidator
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COMPANIES ACT 2006

2006/275 – 1 August 2006

An Act to provide for the formation and governance of companies in Niue

1 Short title

This is the Companies Act 2006.

PART 1
PRELIMINARY PROVISIONS

2 [Spent]

3 Interpretation

Definitions and other interpretation provisions that apply to this Act are set out in Schedule 1.

4 Overview

In this Act –

(a) This Part deals with preliminary matters;
(b) Part 2 deals with incorporating new companies. It also contains provisions concerning changes to company names, company rules, and changes to the registered office and postal address of companies. Schedules 2 to 4 contain model rules:
(c) Part 3 deals with shares;
(d) Part 4 deals with shareholders. Schedule 5 sets out the procedure for the minority buy-out procedure;
(e) Part 5 deals with the powers, duties, and liabilities of directors;
(f) Part 6 deals with enforcement;
(g) Part 7 deals with company administration. Subpart 1 sets out dealings with third parties— how to bind the company. Subpart 2 relates to company records. Subpart 3 sets out the documents that must be sent to the Registrar (for example, the annual return) and the shareholders (for example, the annual report). Subpart 4 sets out requirements concerning accounting records, financial statements, and auditors;
(h) Part 8 deals with amalgamations. Further provisions are set out in Schedule 6;
(i) Part 9 contains various procedures for insolvent companies. Schedule 7 sets out the procedure and other matters for registering company charges under this Act. Subpart 1 deals with administrations. Schedules 8 to 12 supplement that subpart. Subpart 2 deals with compromises with creditors and Schedule 12 supplements that subpart. Subpart 3 deals with liquidations and Schedules 12 to 18 supplement that subpart;
(j) Part 10 relates to the removal of companies from the Niue register;
(k) Part 11 deals with overseas companies and Schedule 19 (which relates to the liquidation of the assets of overseas companies) supplements that Part;
(l) Part 12 relates to the transfer of registration of overseas companies;
(m) Part 13 deals with the Registrar of Companies, the registers under this Act, and registration requirements;

(n) Part 14 sets out the requirements for reregistering existing international business companies under this Act;
(o) Part 15 sets out some miscellaneous provisions, including some more offence provisions, regulation-making powers, repeals, and transitional and savings provisions. In particular, it provides that no further companies may be incorporated under the International Business Companies Act 1994, with immediate effect, and that that Act and certain related Acts are repealed with effect from 31 December 2006.

5 Act binds the Government

This Act binds the Government.

PART 2
INCORPORATING NEW COMPANIES
Subpart 1 – Incorporation

6 Application for incorporation

(1) An application for incorporation of a company must be made to the Registrar in the prescribed form.

(2) An application for incorporation of a company must specify –
(a) The name of the company, which must comply with section 10; and
(b) Whether the company is a private company or a public company; and
(c) Whether the rules of the company differ from the model rules set out in Schedule 2 (in the case of a private company) or Schedule 4 (in the case of a public company); and
(d) The full name, residential address, and postal address of every director of the proposed company; and
(e) The full name of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
(f) The registered office of the proposed company; and
(g) The postal address of the company, which may be the registered office or any other postal address.

(3) An application for incorporation must be accompanied by –
(a) A consent by each person named as a director to act as a director of the company, in the prescribed form; and
(b) A copy of the rules of the company, if they differ from the model rules; and
(c) The prescribed fee.

7 Certificate of incorporation

As soon as the Registrar receives an application for incorporation that complies with section 6, the Registrar must –

(a) Enter the company on the Niue register; and
(b) Issue a certificate of incorporation in respect of the company.

8 Effect of incorporation

(1) A certificate of incorporation of a company is conclusive evidence that –
(a) All the requirements of this Act as to incorporation have been complied with; and
(b) On and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

(2) A company incorporated under this Act is a legal entity in its own right separate from its shareholders, and continues in existence until it is removed from the Niue register.

9 Registration as private company or public company

(1) A company may be registered as a private company if –

(a) Its rules prohibit it from offering its securities to the public; and

(b) Its rules restrict the number of shareholders in the company to not more than 100; and

(c) It has not more than 100 shareholders.

(2) A company that is not registered as a private company is a public company.

(3) A public company may apply to the Registrar to be registered as a private company if –

(a) The company meets the requirements in subsection (1); and

(b) The application has been approved by shareholders by special resolution.

(4) If a public company applies to the Registrar under subsection (3), the Registrar must –

(a) Amend the registration of the company accordingly; and

(b) Issue a new certificate of incorporation for the company in the prescribed form.

(5) A private company may apply to the Registrar to be registered as a public company, with the approval of shareholders by special resolution.

(6) A private company must apply to be registered as a public company if it ceases to meet the requirements in subsection (1).

(7) The Registrar must register the company as a public company, and issue a new certificate of incorporation for the company in the prescribed form if –

(a) An application is made to the Registrar in accordance with subsections (5) or (6); or

(b) It comes to the Registrar's attention that a private company has ceased to satisfy the requirements of subsection (1).

Subpart 2 – Names

10 Name of company

(1) The name of a company must end with the word "Limited".

(2) The Registrar must not register a company with a name –

(a) That is identical or almost identical to the name of another company; or

(b) The use of which would contravene any enactment in relation to the use of names; or

(c) That contravenes regulations made under this Act in relation to company names; or

(d) That the Registrar considers to be offensive.

(3) If an application for incorporation of a company specifies a name that does not meet the requirements of this section, the Registrar must incorporate the company with a name in the form "Company number x Limited", where "x" is a unique number assigned to the company by the Registrar for this purpose.

11 Change of name

(1) An application to change the name of a company must be –

(a) In the prescribed form; and

(b) Signed by a director of the company; and

(c) Accompanied by the prescribed fee.

(2) An application to change the name of a company is not an amendment of the rules of the company for the purposes of this Act.

(3) As soon as the Registrar receives a properly completed application under this section that complies with subsection (1) and with the requirements in section 10, the Registrar must –

(a) Enter the new name of the company on the Niue register; and

(b) Issue a certificate of incorporation for the company recording the change of name of the company.

(4) A change of name of a company –

(a) Takes effect from the date specified in the certificate issued under subsection (3); and

(b) Does not affect rights or obligations of the company, or legal proceedings by or against the company.

(5) Legal proceedings that might have been continued or commenced against the company under its former name may be continued or commenced against it under its new name.

12 Direction to change name

(1) If the Registrar believes on reasonable grounds that a company has been registered under a name that contravenes section 10 at the time of registration, the Registrar may serve written notice on the company to change its name by a date specified in the notice that is not less than 20 working days after the date on which the notice is served.

(2) If the company does not change its name within the period specified in the notice, the Registrar may enter on the Niue register a new name for the company in the form "Company number x Limited", where "x" is a unique number assigned to the company by the Registrar for this purpose.

(3) If the Registrar registers a new name under subsection (2) –

(a) The Registrar must issue a certificate of incorporation for the company recording the new name of the company; and

(b) Section 11(4) applies in relation to the registration of the new name as if the name of the company had been changed under section 11.

13 Use of company name

(1) A company must ensure that its name is clearly stated in –

(a) Every written communication sent by, or on behalf of, the company; and

(b) Every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.

(2) If –

(a) A document that evidences or creates a legal obligation of a company is issued or signed by or on behalf of the company; and

(b) The name of the company is not correctly stated in the document –

every person who issued or signed the document is liable to the same extent as the company if the company fails to discharge the obligation.

(3) Subsection (2) does not apply if –

(a) The person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or

(b) The Court is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.

(4) For the purposes of subsections (1) to (3) and section 107 (which relates to the manner in which a company may enter into contracts and other obligations), a company may use a generally recognised abbreviation of a word or words in its name if it is not misleading to do so.

(5) If, within the period of 12 months immediately before a company gives public notice of any matter, the name of the company was changed, the company must ensure that the notice states –

(a) That the name of the company was changed in that period; and

(b) The former name or names of the company.

(6) If a company fails to comply with subsections (1) or (5) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Subpart 3 – Company rules

14 Adoption and alteration of rules

(1) A company may adopt rules at the time of its incorporation by –

(a) Filing those rules with its application for incorporation; or

(b) In the case of model rules set out in Schedules 2, 3, or 4, indicating in its application for incorporation that it wishes to adopt those model rules as its rules.

(2) Subject to any restrictions in its rules, a company may, by special resolution, adopt new rules or alter its rules.

(3) Within 10 working days of the adoption of new rules by a company, or the alteration of the rules of a company, as the case may be, the company must deliver a notice in the prescribed form to the Registrar for registration.

(4) If a company fails to comply with subsection (3), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

15 Model rules

(1) The model rules set out in Schedule 2 have effect as the rules of a private company except to the extent that the company has –

(a) Adopted the model rules set out in another schedule as its rules; or

(b) Adopted rules that exclude, or modify, or are inconsistent with, the model rules.

(2) The model rules set out in Schedule 4 have effect as the rules of a public company except to the extent that the company has –

(a) Adopted the model rules set out in another schedule as its rules; or

(b) Adopted rules that exclude, or modify, or are inconsistent with, the model rules.

(3) A company may resolve to adopt the model rules in Schedules 2, 3, or 4 as its rules in accordance with section 14(2).

16 Contents and effect of rules

(1) The rules of a company may contain –

(a) Matters contemplated by this Act for inclusion in the rules of a company;

(b) Any other matters that the company wishes to include in its rules.

(2) Subject to subsection (3) –

(a) The rules of a company have effect and may be enforced as if they constituted a contract –

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) The shareholders and directors of a company have the rights, powers, duties, and obligations set out in the rules of the company.

(3) The rules of a company are of no effect to the extent that they are inconsistent with this Act.

Subpart 4–Registered office and postal address

17 Registered office and postal address

(1) A company must always have a registered office and postal address in Niue.

(2) Subject to section 18 –

(a) The registered office of a company at a particular time is the place that is described as its registered office on the Niue register at that time; and

(b) The postal address of a company at a particular time is the place that is described as its postal address on the Niue register at that time.

(3) The description of the registered office of a company must describe the location of the registered office in enough detail to enable the registered office to be readily identified for the purposes of this Act.

18 Change of registered office and postal address

(1) Subject to the company's rules and to subsection (3), the directors of a company may change the registered office and postal address of the company at any time.

(2) Notice in the prescribed form of the change must be given to the Registrar for registration.

(3) The change in the registered office or postal address, as the case may be, takes effect on the later of –

(a) The date that is 5 working days after the notice is received by the Registrar; or

(b) Any date specified in the notice as the date on which the change is to be effective.

19 Requirement to change registered office or postal address

(1) Subject to this section, a company must change its registered office or postal address if it is required to do so by the Registrar.

(2) The Registrar may require a company to change its registered office or postal address, as the case may be, by notice in writing sent to the company at its postal address.

(3) The notice must –

(a) State that the company is required to change its registered office or postal address by a date stated in the notice that is not earlier than

20 working days after the date of the notice; and
(b) State the reasons for requiring the change; and
(c) State that the company has the right to appeal to the Court under this Act; and
(d) be dated and signed by the Registrar.

(4) A copy of the notice must also be sent to each director of the company.

(5) The company must change its registered office or postal address, as the case may be –
(a) by the date stated in the notice; or
(b) If it appeals to the Court and the appeal is dismissed, within 5 working days after the decision of the Court.

(6) If a company fails to comply with this section –
(a) The company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

PART 3
SHARES
General

20 Legal nature of shares

A share in a company is personal property.

21 No nominal value

(1) A share must not have a nominal or par value.

(2) Nothing in subsection (1) prevents the issue by a company of a redeemable share.

22 Minimum number of shares

Every company must have at least 1 issued share.

23 Rights and powers attached to shares

(1) Subject to the rules of the company and to the terms on which it is issued, a share in a company confers on the holder –
(a) The right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to –
(i) appoint or remove a director or auditor;
(ii) adopt new rules;
(iii) alter the company's rules;
(iv) approve a major transaction;
(v) approve an amalgamation of the company;
(vi) approve reregistration of a public company as a private company, or of a private company as a public company;
(vii) put the company into liquidation;
(viii) approve the transfer of registration of the company to another country;
(b) The right to an equal share in dividends paid by the company;
(c) The right to an equal share in the distribution of the surplus assets of the company in a liquidation.

(2) Subject to its rules, a company may issue different classes of shares.

(3) Without limiting subsection (2), shares in a company may –
(a) be redeemable; or

(b) Confer preferential rights to distributions of capital or income; or
(c) Confer special, limited, or conditional voting rights; or
(d) Not confer voting rights.

24 Shares must not impose liabilities on holder

(1) A company must not issue a share that is partly paid, or that otherwise imposes any liability to make a payment to the company on its holder.

(2) Nothing in subsection (1) –
(a) Prevents a company from attaching conditions, limits, or restrictions to the rights and powers attached to the share; or
(b) Prevents a company from issuing a share on credit terms that provide for a liability to make future payments to the company on the part of the person to whom it is first issued.

Issue of shares

25 Issue of initial shares

A company must –
(a) Immediately after the registration of the company, issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons;
(b) In the case of an amalgamated company, immediately after the amalgamation is effective, issue to any person entitled to a share or shares under the amalgamation proposal, the share or shares to which that person is entitled.

26 Issue of other shares

(1) A company may issue shares –
(a) In accordance with its rules; or
(b) With the approval of all shareholders under section 51.

(2) A company must deliver to the Registrar for registration, within 10 working days of the issue of any shares, a notice in the prescribed form of the issue of the shares by the company.

(3) If the rights attached to the shares are not set out in full in the rules, the notice must be accompanied by a document setting out the terms of issue of the shares.

(4) If a company fails to comply with subsection (2), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

27 Time of issue of shares

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

Distributions – general

28 Distributions prohibited unless solvency test satisfied

A company must not make a distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made, the company will satisfy the solvency test.

29 Recovery of improper distributions

(1) A distribution made to a shareholder in breach of sections 28, 30, or 31 may be recovered by the company from the shareholder unless –

(a) The shareholder received the distribution in good faith and without knowledge of the company's breach of sections 28, 30, or 31, as the case may be; and
(b) The shareholder has altered the shareholder's position in reliance on the validity of the distribution; and
(c) It would be unfair to require repayment in full or at all.

(2) If a distribution has been made in breach of section 28, any person who authorised the making of the distribution at a time when that person knew, or ought to have known, that the distribution did not comply with section 28 is liable to repay to the company so much of that distribution as is not reasonably recoverable from the recipients under subsection (1).

(3) If, in an action brought under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the requirements of section 28, the Court may permit a shareholder to retain, or excuse a person who authorised the distribution from liability in respect of, an amount equal to the value of any distribution that could properly have been made.

Dividends

30 Dividends

(1) Subject to section 28 and to subsection (2), a company may pay a dividend to shareholders if, and only if, that dividend is authorised –
(a) By all shareholders under section 51; or
(b) If the company's rules so provide, by the directors.

(2) A dividend authorised by the directors must comply with any conditions or restrictions set out in the rules.

(3) Subject to its rules and to the terms of issue of any share, a company must not pay a dividend –
(a) In respect of some, but not all, shares; or
(b) That is of a greater value per share in respect of some shares than of others.

(4) Subsection (3) does not apply if the payment of that dividend in that manner is approved by all shareholders under section 51.

(5) In this section, dividend means any distribution other than –
(a) A distribution by way of repurchase or redemption of shares; or
(b) A distribution of the surplus assets of the company in a liquidation.

Acquisition of own shares

31 Company may acquire its own shares

(1) A company may acquire its own shares only –
(a) In accordance with subsection (2) or section 55; and
(b) Subject to section 28.

(2) A company may acquire its own shares by agreement with a shareholder –
(a) In accordance with its rules; or
(b) With the approval of all shareholders under section 51.

(3) A company must deliver to the Registrar for registration, within 10 working days of the acquisition of any shares, a notice in the prescribed form of the acquisition of the shares by the company.

(4) The notice required under subsection (3) must also be sent to each shareholder within 20 working days of the acquisition of the shares if an acquisition of shares by a company does not result from an offer made to all shareholders that –

(a) Would, if accepted, leave unaffected relative voting and distribution rights; and
(b) Affords a reasonable time for acceptance of the offer.

(5) If a company fails to comply with subsections (3) or (4), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

32 Cancellation of shares acquired by company

(1) If a company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition unless the rules of the company expressly provide otherwise.

(2) If a company acquires its own shares and the rules provide that those shares are not cancelled on acquisition, the rights attached to those shares may not be exercised by or against the company at any time at which it would, apart from this section, be entitled to –

(a) Exercise those rights; or
(b) Give directions to the holder of that share as to the manner in which any of those rights should be exercised.

(3) For the purposes of this section, a company acquires a share at the time at which it would, apart from this section, become entitled to –

(a) Exercise the rights attached to that share; or
(b) Give directions to the holder of that share as to the manner in which any rights attached to that share should be exercised.

33 Enforcement of contract to repurchase shares

(1) A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that performance would breach section 28.

(2) The company has the burden of proving that performance of the contract would breach section 28.

(3) Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, before the removal of the company from the Niue register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

Redeemable shares

34 Redeemable shares

(1) For the purposes of this Act, a share is redeemable if the rules or the terms of issue of the share make provision for the redemption of that share by the company –

(a) At the option of the company; or
(b) At the option of the holder of the share; or
(c) On a date specified in the rules or the terms of issue of the share – for a consideration that is –
(d) Specified; or
(e) To be calculated by reference to a formula; or
(f) Required to be fixed by a suitably qualified person who is not associated with, or interested in, the company.

(2) To avoid doubt, the auditor of a company is not associated with, or interested in, the company for the purposes of subsection (1)(f).

35 Redemption of redeemable shares

(1) A company must redeem a redeemable share in accordance with its rules and the terms of issue of the share, except to the extent that the company would, by doing so, breach section 28.

(2) The company has the burden of proving that redemption of a share would breach section 28.

(3) Until the company has fully redeemed a share in accordance with subsection (1), the former holder of the share retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, before the removal of the company from the Niue register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

(4) Redeemable shares are deemed to be cancelled immediately on the date on which the rules or their terms of issue provide for them to be redeemed, unless the rules or terms of issue provide otherwise.

(5) A company must deliver to the Registrar for registration, within 10 working days of the redemption of any shares, a notice in the prescribed form of the redemption of the shares by the company.

(6) If a company fails to comply with subsection (5), every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Assistance by company in purchase of its own shares

36 Financial assistance

A company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if –

(a) The company gives the assistance in the normal course of its business and on usual terms and conditions; or

(b) The giving of the assistance is authorised by the directors or by all shareholders under section 51, and –

(i) there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test; and

(ii) the company complies with any conditions or restrictions in its rules.

Cross-holdings

37 Cross-holdings

(1) Subject to this section, a subsidiary must not hold shares in its holding company.

(2) An issue of shares by a holding company to its subsidiary is void and of no effect.

(3) A transfer of shares in a holding company to its subsidiary is void and of no effect.

(4) If a company that holds shares in another company becomes a subsidiary of that other company, the subsidiary –

(a) May, despite subsection (1), continue to hold those shares; but

(b) May not exercise any voting rights or other rights attaching to those shares, other than rights to receive distributions and to receive notices and other information from the company.

(5) Nothing in this section prevents a subsidiary holding shares in its holding company in its capacity as a personal representative or a trustee unless

the holding company or another subsidiary has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.

(6) This section applies to a nominee for a subsidiary in the same way as it applies to the subsidiary.

Transfer of shares

38 Transfer of shares

(1) Subject to any limitation or restriction on the transfer of shares in the rules, a share in a company is transferable.

(2) A share is transferred by entry in the share register in accordance with section 40.

(3) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

39 Transfer of shares by operation of law

(1) Subject to subsection (2), shares in a company may pass by operation of law despite anything in the rules of the company.

(2) The rules of a company may provide that, if a share passes by operation of law, the voting rights attached to that share cease to be exercisable until it is transferred in accordance with the rules of the company.

Share register

40 Company to maintain share register

(1) A company must maintain a share register that records the shares issued by the company and states –

(a) The names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) The number of shares of each class held by each shareholder within the last 7 years; and

(c) The date of any issue of shares to, repurchase or redemption of shares from, or transfer of shares by or to, each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) The share register must be kept –

(a) In a form permitted under section 118; and

(b) At the registered office of the company, or any other place or places permitted under section 119.

(3) The share register of the company may be maintained by an agent on behalf of the company.

(4) If a company fails to comply with the requirements of this section –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

41 Share register as evidence of legal title

(1) Subject to section 42, the entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person.

(2) A company must treat the registered holder of a share as the only person

entitled to –

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

42 Power of Court to rectify share register

(1) If the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Court for rectification of the share register, or compensation for loss sustained, or both.

(2) The Court may, on an application under this section, order –
(a) Rectification of the register;
(b) Payment of compensation by the company or a director of the company for any loss sustained;
(c) Rectification and payment of compensation.

(3) The Court may, on an application under this section, decide –
(a) A question relating to the entitlement of a person who is a party to the application to have his or her name entered in, or omitted from, the register; and
(b) A question necessary or expedient to be decided for rectification of the register.

43 Trusts not to be entered on register

No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

44 Registration of personal representative or assignee of bankrupt

(1) Despite section 43, but subject to section 39, a personal representative of a deceased person whose name is registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as personal representative.

(2) Despite section 43, but subject to section 39(2), the assignee of the property of an insolvent natural person registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as the assignee of the property of that person.

(3) The registration of a trustee, executor, administrator, or of an assignee under this section does not constitute notice of a trust.

(4) For the purposes of this section, assignee means a person in whom the property of an insolvent natural person is vested pursuant to insolvency legislation applicable to that natural person.

Share certificates

45 Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subsection (1), the company must, within 20 working days after receiving the application –
(a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –
(i) The name of the company; and
(ii) the class of shares held by the shareholder; and
(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by –
(a) The share certificate relating to the share; or
(b) Evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

(5) If a company fails to comply with subsection (2) –
(a) The company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Part 4
SHAREHOLDERS
Subpart 1 – General

46 Every company must have at least 1 shareholder

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

47 Liability of shareholders

(1) A shareholder is not liable for an obligation of the company by reason only of being a shareholder.

(2) The liability of a shareholder to the company is limited to –
(a) Any liability to repay a distribution that is recoverable under section 29;
(b) Any liability under section 73.

(3) Nothing in this section affects the liability of a shareholder to a company under a contract (including a contract for the issue of shares) or liability incurred in any other capacity (including as a director of the company) or liability for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the shareholder.

48 Decisions that must be made by shareholders

The following powers must be exercised by the shareholders of a company by special resolution, and may not be delegated under the rules or otherwise –

(a) The power to approve reregistration of a public company as a private company under section 9(3), or of a private company as a public company under section 9(5);
(b) The power to adopt new rules, or to amend the company's rules, under section 14(2);
(c) The power to approve an amalgamation of the company under section 144 and Schedule 6;
(d) The power to approve a major transaction under section 50(1)(b)(i);
(e) The power to put the company into liquidation;

(f) The power to approve an extension of time for the completion of a private company's financial statements under section 130(3);
(g) The power to approve the transfer of registration of the company to another country under section 298.

49 Decisions that may be made by shareholders

(1) Unless the rules provide otherwise, the following powers are exercised by shareholders –
(a) The power to appoint or remove a director;
(b) The power to appoint an auditor.

(2) The rules may provide for other matters to be decided by shareholders, or approved by shareholders.

(3) Unless the rules provide otherwise, the powers referred to in subsection (1), and any other powers conferred on shareholders under subsection (2), may be exercised –
(a) by ordinary resolution; or
(b) In accordance with section 51.

50 Shareholder approval of major transactions

(1) A company must not enter into a major transaction unless –
(a) The rules expressly authorise it to enter into that transaction, or transactions of that class; or
(b) Entry into the transaction is approved by shareholders –
(i) by special resolution; or
(ii) in accordance with section 51; or
(c) The transaction is conditional on approval by shareholders in accordance with paragraph (b).

(2) In this section – assets includes property of any kind, whether tangible or intangible major transaction, in relation to a company, means –
(a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or
(b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
(c) A transaction that has, or is likely to have, the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction.

(3) Nothing in paragraph (c) of the definition of major transaction in subsection (2) applies by reason only of the company giving, or entering into an agreement to give, a charge secured over assets of the company the value of which is more than half the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation.

(4) Nothing in this section applies to a major transaction entered into by a receiver appointed under a document creating a charge over property of a company.

51 Unanimous shareholder approval

(1) If all the shareholders of a company consent to or concur in any action taken by the company or a director, the taking of that action is deemed to be validly authorised by the company despite –

(a) Anything to the contrary in its rules; or

(b) The absence of express authority to take that action in its rules.

(2) The matters that may be authorised in accordance with subsection (1) include, but are not limited to, the following –

(a) The issue of shares;

(b) The making of a distribution;

(c) The repurchase of shares;

(d) Giving financial assistance for the purpose of, or in connection with, the purchase of shares in the company;

(e) The payment of remuneration to a director, or the making of a loan to a director, or the conferral of any other benefit on a director;

(f) The making of a contract between the company and a director, or of any other contract in which a director has an interest;

(g) Entry into a major transaction;

(h) The ratification after the event of any action that could have been authorised under this section.

(3) A company must not authorise a distribution under this section unless there are reasonable grounds for believing that, after that distribution is made, the company will satisfy the solvency test.

(4) Section 29 applies to a distribution made in breach of subsection (3) as if –

(a) The distribution had been made in breach of section 28; and

(b) The distribution was authorised by all shareholders.

52 Shareholder written resolutions

(1) Subject to subsection (3), a resolution in writing signed by shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of those shareholders.

(2) A resolution in writing is made in accordance with this Act or the rules of the company, as the case may be, if the resolution –

(a) Relates to a matter that is required by this Act or by the rules to be decided at a meeting of the shareholders of a company; and

(b) Is signed by the shareholders referred to in subsection (1).

(3) If, in respect of any matter, the rules of a company –

(a) Require approval by a higher majority than 75% of those shareholders entitled to vote and voting, the reference in subsection (1) to 75% is taken to be a reference to that higher majority;

(b) Specify additional requirements for approval of such matters, those requirements must also be satisfied in order for the resolution to be valid.

(4) Within 5 working days of a resolution being passed under this section, the company must send a copy of the resolution to every shareholder who did not sign the resolution.

(5) A resolution may be signed under subsections (1) or (2) without any prior notice being given to shareholders.

(6) If a company fails to comply with subsection (4) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

53 Shareholder meetings

(1) The rules of a company must include provisions –
(a) For holding meetings of shareholders of the company; and
(b) That govern proceedings at meetings of shareholders of the company.

(2) Meetings of the shareholders of a company must be held in accordance with the rules of the company.

(3) A special meeting of shareholders entitled to vote on an issue –
(a) May be called at any time by a director; and
(b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on the issue.

Subpart 2 – Alteration of shareholder rights

54 Alteration of shareholder rights

(1) A company must not take action that affects the rights attached to shares unless that action has been approved by –
(a) A special resolution of each interest group; or
(b) All shareholders under section 51.

(2) For the purposes of subsection (1), the rights attached to a share include –
(a) The rights, privileges, limitations, and conditions attached to the share by this Act or the rules, including voting rights and rights to distributions;
(b) The right to have any provisions of the rules in relation to the issue of further shares observed by the company;
(c) The right to have the procedure set out in this section, and any further procedure required by the rules for the amendment or alteration of rights, observed by the company;
(d) The right that a procedure required by the rules for the amendment or alteration of rights not be amended or altered.

(3) In this section –

class means a class of shares having attached to them identical rights, privileges, limitations, and conditions

interest group, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders –
(a) whose affected rights are identical; and
(b) Whose rights are affected by the action or proposal in the same way; and
(c) Subject to subsection (4)(b), who comprise the holders of 1 or more classes of shares in the company.

(4) For the purposes of this section and the definition of interest group –
(a) 1 or more interest groups may exist in relation to any action or proposal; and
(b) Holders of shares in the same class may fall into 2 or more interest

groups if –

(i) action is taken in relation to some holders of shares in a class and not others; or

(ii) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class.

55 Repurchase of dissenter's shares

(1) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if –

(a) The shareholder is entitled to vote on the exercise of 1 or more of the powers set out in –

(i) section 48(b) and the proposed alteration imposes or removes a restriction on the activities of the company; or

(ii) section 48(c) or (d); and

(b) The shareholders resolve to exercise the power; and

(c) The shareholder cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the exercise of the power.

(2) A shareholder is entitled to require the company to purchase shares in accordance with the procedure set out in Schedule 5 if –

(a) An interest group of which the shareholder was a member has, under section 54, approved, by special resolution, the taking of action that affects the rights attached to those shares; and

(b) The company becomes entitled to take the action; and

(c) The shareholder cast all the votes attached to the shares registered in that shareholder's name and having the same beneficial owner against approving the action.

(3) If a resolution of shareholders or of an interest group is made in writing in accordance with section 52, subsections (1) and (2) apply as if references to a shareholder who cast all the votes attached to shares registered in the shareholder's name and having the same beneficial owner against the matter in question were references to a shareholder who did not sign the written resolution in respect of those shares.

Subpart 3 – Disclosure to shareholders

56 Annual report to shareholders

(1) Subject to subsection (2), the directors of every company must, within 20 working days after the date on which the company is required to complete its financial statements under section 130 –

(a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) Send a copy of that report to each shareholder.

(2) The rules of a private company may provide that the directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring the annual report to be prepared.

(3) Every annual report for a company must –

(a) be in writing and be dated; and

(b) Include financial statements for the accounting period that comply with section 130; and

(c) If an auditor's report is required for the financial statements included in the report, include that auditor's report; and

(d) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
(e) Contain any other information that may be required by –
(i) regulations made under this Act; and
(ii) the rules; and
(f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

(4) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

57 Inspection of company records by shareholders

A shareholder is entitled to inspect company records in accordance with section 121.

58 Request for information held by company

(1) A shareholder may, at any time, make a written request to a company for information held by the company.

(2) The request must specify the information sought in enough detail to enable it to be identified.

59 Company must provide requested information

(1) Within 10 working days of receiving a request under section 58, the company must –
(a) Provide the information; or
(b) Agree to provide the information within a specified period; or
(c) Agree to provide the information within a specified period if the shareholder pays a reasonable charge to the company (which must be specified and explained) to meet the cost of providing the information; or
(d) Refuse to provide the information, specifying the reasons for the refusal.

60 Reasons for refusing information

Without limiting the reasons for which a company may refuse to provide information under section 59, a company may refuse to provide information if the –
(a) Disclosure of the information would be likely to prejudice the commercial position of the company; or
(b) Disclosure of the information would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or
(c) Request for the information is frivolous or vexatious.

61 Shareholder may withdraw request

If the company requires the shareholder to pay a charge for the information, the shareholder may withdraw the request, and is deemed to have done so unless, within 10 working days of receiving notification of the charge, the shareholder informs the company that the shareholder –

(a) Will pay the charge; or
(b) Considers the charge to be unreasonable.

62 Court may order company to provide requested information

(1) The Court may, on the application of a person who has requested information, make an order requiring the company to provide the information within any time and on payment of any charge that the Court thinks fit if it is satisfied that –

(a) The company does not have sufficient reason to refuse to provide the information; or
(b) The period specified for providing the information is unreasonable; or
(c) The charge set by the company is unreasonable.

(2) If the Court makes an order under subsection (1), it may specify the use that may be made of the information and the persons to whom it may be disclosed.

(3) On an application for an order under this section, the Court may make any order for the payment of costs that it thinks fit.

63 Investigation at request of shareholder

(1) On the application of a shareholder of a company, the Court may make –

(a) An order authorising a person named in the order, at a time specified in the order, to inspect and to make copies of, or take extracts from, the records or other documents of the company, or any of the records or documents of the company specified in the order; and
(b) Any ancillary order that it thinks fit, including an order that the accounts of the company be audited by that person.

(2) The Court may make an order under subsection (1) only if it is satisfied that –

(a) In making the application, the shareholder is acting in good faith and that the inspection is proposed to be made for a proper purpose; and
(b) The person to be appointed is a proper person for the task.

(3) A person appointed by the Court under subsection (1) must diligently carry out the inspection and, having done so, must make a full report to the Court.

(4) On receiving the report of an inspector, the Court may make any order in relation to the disclosure and use that may be made of the records and information obtained that it thinks fit.

(5) An order made under subsection (4) may be varied from time to time.

(6) The reasonable costs of the inspection must be met by the company unless the Court orders otherwise.

(7) A person may only disclose or make use of information or records obtained under this section in accordance with an order made under subsections (4) or (5).

(8) A person who discloses or makes use of information or records obtained under this section other than in accordance with an order made under subsections (4) or (5) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

PART 5
DIRECTORS
Subpart 1 – Powers and duties
POWERS

64 Management of company

Except to the extent that this Act or the company's rules provide otherwise –

(a) The business and affairs of a company must be managed by, or under the direction or supervision of, the directors of the company; and

(b) The directors of a company have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

DUTIES

65 Fundamental duties of directors

Every director of a company must, when exercising powers or performing duties as a director, act –

(a) In good faith; and

(b) In a manner that the director believes to be in the interests of the company.

66 Duty of directors to comply with Act

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

67 Duty of directors to comply with rules

A director of a company must not act, or agree to the company acting, in a manner that contravenes the company's rules.

68 Interest of director in company transactions

(1) A director must not exercise any power as a director if the director is directly or indirectly materially interested in the exercise of that power, unless –

(a) This Act expressly authorises the director to exercise the relevant power despite that interest; or

(b) The director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either –

(i) the rules expressly authorise the director to exercise the relevant power despite that interest, following disclosure of the interest in accordance with subsection (2); or

(ii) the exercise of the power by the director has been approved by all shareholders under section 51, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in the exercise of any power may only be authorised by the rules to exercise that power if the rules require that, before the exercise of the power, the director discloses the nature and extent of that interest in writing –

(a) If there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company;

(b) If paragraph (a) does not apply, to all shareholders other than the director.

69 Use and disclosure of company information

A director of a company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except –

(a) In the interests of the company; or
(b) As required by law; or
(c) If there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action and that action –
  (i) is authorised by the rules; or
  (ii) is approved by shareholders under section 51.

70 Standard of care of directors

Subject to the company's rules, a director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances taking into account, but without limitation –

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

71 Obligations of directors in connection with insolvency

(1) A director of a company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator if the director –

(a) Believes that the company is unable to pay its debts as they fall due in the normal course of business; or
(b) Is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due in the normal course of business.

(2) At a meeting called under this section, the directors must consider whether to appoint an administrator or liquidator or to continue to carry on the business of the company.

(3) A director is liable to any creditor to whom the company incurred an obligation after the time that the director failed to comply with subsection (1) if –

(a) At the time of that failure, the company was unable to pay its debts as they fell due in the normal course of business; and
(b) The company is later placed in liquidation.

(4) Each director who did not participate in the meeting and did not vote in favour of appointing an administrator or a liquidator is liable to any creditor to whom the company incurred an obligation after the date of the meeting in accordance with subsection (5) if –

(a) At a meeting called under this section, the directors do not resolve to appoint an administrator or liquidator; and
(b) At the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and

(c) The company is later placed in liquidation.

(5) A director who is liable to a creditor under subsections (3) or (4) in respect of an obligation of the company is liable to that creditor for the amount of any loss suffered by that creditor as a consequence of the company's failure to perform that obligation, unless the director establishes that the creditor –

(a) Knew or ought to have known of the circumstances that called into question the solvency of the company; or

(b) Otherwise assumed the risk of dealing with the company in those circumstances.

(6) If more than 1 director is liable to a creditor under this section, the liability of those directors is joint and several.

72 Effect of unanimous shareholder approval on certain duties of directors

If a director exercises any power or takes any other action in his or her capacity as a director with the consent or concurrence of shareholders under section 51 –

(a) The director is deemed to be acting in accordance with the requirements of section 67; and

(b) If, at the time the director so acts, there are reasonable grounds for believing that the company is able to meet its debts as they fall due, the director is deemed to be acting in accordance with the requirements of sections 65 and 70.

Subpart 2 – Liabilities

73 Persons deemed to be directors for liability purposes

(1) A person (principal) in accordance with whose directions or instructions a director is required or is accustomed to act is liable under sections 65 to 71 to the same extent as that director, unless the principal shows that the director was not in fact acting in accordance with the principal's directions or instructions in acting or failing to act in the manner giving rise to liability on the part of the director.

(2) A person who exercises, or who is entitled to exercise, or who controls or who is entitled to control the exercise, of powers that, apart from the rules of the company, would fall to be exercised by the directors, is liable under sections 65 to 70 in connection with the exercise of those powers as if that person were a director.

(3) Without limiting subsection (2), if the rules of a company confer a power on shareholders that would otherwise fall to be exercised by directors under this Act, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is liable under sections 65 to 70 in connection with the exercise of that power as if that person were a director.

(4) A person to whom a power or duty of the directors has been directly delegated by the directors with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the directors, is liable under sections 65 to 70 in connection with the exercise of those powers as if that person were a director.

(5) To avoid doubt, if any action is approved by all shareholders under section 51 –

(a) No shareholder is liable under section 67 in respect of that action;

(b) If there are reasonable grounds for believing that the company is able to meet its debts as they fall due, no shareholder is liable under sections 65 or 68 or 69 or 70 in respect of that action.

Indemnities and insurance for directors

74 Certain indemnities prohibited

(1) A company may not indemnify a director of the company or of any related company in respect of –

(a) Any criminal liability; or

(b) Any liability to the company or a related company for any act or omission in his or her capacity as a director of the company or of the related company, as the case may be; or

(c) Any liability to any person arising out of a breach by that person of a duty to the company or related company, as the case may be, under any of sections 65 to 71.

(2) An indemnity given in breach of this section is void.

(3) In this section –

director includes –

(a) A person who is liable under any of sections 65 to 71 by virtue of section 73;

(b) A former director

indemnify includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

75 Company may indemnify or insure directors

Subject to section 74, a company may provide an indemnity or purchase insurance for a director of the company or of a related company –

(a) In accordance with its rules; or

(b) With the approval of shareholders under section 51.

Defences

76 Defences for directors

(1) It is a defence to a director charged with an offence in relation to a duty imposed on the directors of a company if the director proves that –

(a) The directors took all reasonable and proper steps to ensure that the requirements would be complied with; or

(b) The director took all reasonable and proper steps to ensure that the directors complied with the requirements; or

(c) In the circumstances, the director could not reasonably have been expected to take steps to ensure that the directors complied with the requirements.

(2) It is a defence to a director charged with an offence in relation to a duty imposed on the company if the director proves that –

(a) The company took all reasonable and proper steps to ensure that the requirements would be complied with; or

(b) The director took all reasonable steps to ensure that the company complied with the requirements; or

(c) In the circumstances, the director could not reasonably have been expected to take steps to ensure that the company complied with the requirements.

Subpart 3 – Prohibition and disqualification of directors

77 Persons prohibited from managing companies

(1) A person must not, during the period of 5 years after the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company if the person has been convicted of an offence –

(a) In connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or

(b) Under any of sections 337 to 340 of this Act or under any of sections 180 to 183, 191 to 205A, or 207 to 211 of the Niue Act 1966.

(2) Subsection (1) does not apply if the person first obtains the leave of the Court, which may be given on any conditions that the Court thinks fit.

(3) A person who intends to apply for the leave of the Court under subsection (2) must give to the Registrar not less than 10 working days' notice of that person's intention to apply.

(4) The Registrar, and any other persons that the Court thinks fit, may attend and be heard at the hearing of any application under this section.

(5) Every person who fails to comply with this section or any order made under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(6) In this section, company includes an overseas company that carries on business in Niue.

78 Court may disqualify directors

(1) The Court may make an order that a person must not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company for any period, not exceeding 10 years, that may be specified in the order if the person has –

(a) Been convicted of any offence in connection with the promotion, formation, or management of a company punishable by imprisonment for a term exceeding 2 years, whether or not a sentence of imprisonment was imposed; or

(b) Been convicted of an offence under any of sections 337 to 340 of this Act or under any of sections 180 to 183, 191 to 205A, or 207 to 211 of the Niue Act 1966; or

(c) Committed an offence for which the person is liable (whether convicted or not) under this Part; or

(d) While a director of a company and whether convicted or not –

(i) persistently failed to comply with this Act, or, if the company has failed to so comply, persistently failed to take all reasonable steps to obtain compliance; or

(ii) been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or

(iii) acted in a reckless or incompetent manner in the performance of his or her duties as director; or

(e) Been convicted of an offence in any other country that corresponds to the offences referred to in paragraphs (a) to (c); or

(f) Been prohibited under the law of any other country from acting as a director of a company, or being concerned or taking part in the management of a company; or

(g) Become of unsound mind.

(2) An order may be made under this section even though the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(3) The Registrar of the Court must, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar must give public notice of the name of the person against whom the order is made.

(4) Every person who fails to comply with an order under this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(5) In this section and sections 79 and 80, company includes an overseas company.

79 Persons entitled to apply for order under section 78

(1) An application for an order under section 78 may be made by the Registrar, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company.

(2) The Registrar or liquidator must appear and call the attention of the Court to any matters that seem to him or her to be relevant, and may give evidence or call witnesses on the hearing of an application for –

(a) An order under section 78 by the Registrar or the liquidator; or

(b) Leave under section 78 by a person against whom an order has been made on the application of the Registrar or the liquidator.

80 Notice of application for order under section 78

(1) A person who intends to apply for an order under section 78 must give not less than 10 working days' notice of that intention to the person against whom the order is sought.

(2) On the hearing of the application, the person against whom the order is sought may appear and give evidence or call witnesses.

81 Application of sections 82 to 84

Sections 82 to 84 apply to a company –

(a) That has been put into liquidation because of its inability to pay its debts as and when they became due;

(b) The liquidation of which has been completed, whether or not the company has been removed from the Niue register;

(c) That has ceased to carry on business because of its inability to pay its debts as and when they became due;

(d) In respect of which execution is returned unsatisfied in whole or in part;

(e) In respect of the property of which a receiver, or a receiver and manager, has been appointed by a Court or pursuant to the powers contained in a document, whether or not the appointment has been terminated;

(f) In respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or as a manager, or to exercise control, under an enactment, whether or not the appointment has been terminated;

(g) That has entered into a compromise or arrangement with its creditors.

82 Court may prohibit persons from managing companies

(1) The Court may, on the application of the Registrar, make an order that a person must not, without the leave of the Court, be a director or promoter of a company, or in any way, whether directly or indirectly, be concerned in, or take part in the management of, a company for any period, not exceeding 5 years, that is specified in the order if –

(a) The person was, within a period of 5 years before a notice was given to that person under section 83 (whether that period commenced before or after the commencement of this Act), a director of, or concerned in, or a person who took part in, the management of, a company in relation to which this section applies; and

(b) The manner in which the affairs of the company were managed was wholly or partly responsible for the company being a company in relation to which this section applies; and

(c) The person bears a significant degree of responsibility for the manner in which the affairs of the company were managed.

(2) If a person was, within a period of 5 years before a notice was given to that person under section 83 (whether that period commenced before or after the commencement of this Act), a director of, or concerned in, or a person who took part in, the management of, 2 or more companies to which this section applies, subsection (1)(b) and (c) are presumed to be satisfied in relation to each of those companies unless that person satisfies the Court to the contrary.

(3) The Registrar must give public notice of the making of any order under subsection (1).

(4) Every person who fails to comply with an order under this section commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(5) In this section and sections 83 and 84, company includes an overseas company that carries on business in Niue.

83 Notice of application

(1) The Registrar must not make an application under section 82(1) unless –

(a) Not less than 10 working days' notice of the fact that the Registrar intends to consider making the application is given to the person and the Registrar considers any representations made by the person; and

(b) The Registrar appoints a suitably qualified accountant to advise the Registrar in relation to the making of the application. That accountant may also be appointed to inquire into the affairs of the company under section 313; and

(c) The accountant appointed under paragraph (b), after considering the information in the Registrar's possession, any representations made by the person concerned to the Registrar, and if the accountant thinks fit, any representations made by that person to the accountant, advises the Registrar that, in his or her professional opinion –

(i) the manner in which the affairs of the company were managed was wholly or partly responsible for the company being a company to which this section applies; and

(ii) the person bears a significant degree of responsibility for the manner in which the affairs of the company were managed.

(2) If the Registrar has made an application under section 82(1) in respect of a person, the Registrar may give a notice to that person prohibiting that person from being a director or promoter of a company, or being concerned in, or taking part, whether directly or indirectly, in the management of, a company pending the determination by the Court of that application. The Registrar must give public notice of every such notice.

(3) No person to whom a notice under subsection (2) applies may be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.

(4) If a person to whom the Registrar has issued a notice under subsection (2) appeals against the issue of the notice under this Act or otherwise seeks judicial review of the notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.

(5) The Registrar may, by notice in writing to a person to whom a notice under subsection (2) has been given –

(a) Revoke that notice; or

(b) Exempt that person from the notice in relation to a specified company or companies, on such conditions as the Registrar thinks fit. The Registrar must give public notice of every such notice.

(6) Every person to whom a notice under subsection (2) is given who fails to comply with the notice commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

84 Liability for contravening sections 77, 78, or 82

(1) A person who acts as a director of a company in contravention of section 77 or an order made under section 78 is, while that person was so acting, personally liable to –

(a) A liquidator of the company for every unpaid debt incurred by the company; and

(b) A creditor of the company for a debt to that creditor incurred by the company.

(2) A person who acts in contravention of an order or a notice under section 82 is, while that person was so acting, personally liable to –

(a) A liquidator of the company for every unpaid debt incurred by the company; and

(b) A creditor of the company for a debt to that creditor incurred by the company.

Subpart 4 – Office of director

APPOINTMENT AND RETIREMENT OF DIRECTORS

85 Qualifications of directors

(1) A person may be appointed and hold office as a director of a company only if the person –

(a) Is a natural person; and

(b) Is not disqualified from being a director under subsection (2).

(2) The following persons are disqualified from being a director of a company –

(a) A person who is under 21 years of age;

(b) A person who is an undischarged bankrupt;
(c) A person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under sections 77, 78, or 82;
(d) A person in respect of whom a trustee order is in force under section 501 of the Niue Act 1966, or in respect of whom an order of medical custody is in force under section 602 of that Act;
(e) In relation to any particular company, a person who does not comply with any qualifications for directors contained in the rules of that company.

(3) A person who is disqualified from being a director but who acts as a director is treated as a director for the purposes of any provision of this Act that imposes a duty or an obligation on a director of a company.

86 Appointment of directors

(1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.

(2) All subsequent directors of a company may, unless the rules of the company provide otherwise, be appointed by ordinary resolution.

(3) The appointment of a person as a director is not effective until that person has consented in writing to act as a director of the company.

87 Director ceasing to hold office

(1) The office of director of a company is vacated if the person holding that office –

(a) Resigns in accordance with subsection (2); or
(b) Is removed from office in accordance with subsection (4) or the rules of the company; or
(c) Becomes disqualified from being a director under section 85(2); or
(d) Dies; or
(e) Otherwise vacates office in accordance with the rules of the company.

(2) A director of a company may resign by signing a written notice of resignation and delivering it to the registered office of the company.

(3) Subject to subsections (5) and (6), the notice is effective when it is received at that address or at a later time specified in the notice.

(4) Subject to the company's rules, a director may be removed by ordinary resolution.

(5) If a company has only 1 director, that director may not resign office –

(a) Until that director has called a meeting of shareholders to receive notice of the resignation; or
(b) If the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(6) A notice of resignation given by the sole director of a company does not take effect, despite its terms, until the earlier of the appointment of another director of the company or –

(a) The time and date for which a meeting of shareholders is called under subsection (5)(a); or

(b) If the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

(7) Despite the vacation of office, a person who held office as a director remains liable under the provisions of this Act that impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

88 Notice of change of directors

(1) A company must ensure that the following notices in the prescribed form are delivered to the Registrar for registration –

(a) Notice of a change in the directors of a company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;

(b) Notice of a change in the name or the residential address or the postal address of a director of a company.

(2) A notice under subsection (1) must –

(a) Specify the date of the change; and

(b) Include the full name and residential address and postal address of every person who is a director of the company from the date of the notice; and

(c) In the case of the appointment of a new director, have attached a consent by that person to act as a director, in the prescribed form; and

(d) be delivered to the Registrar within 20 working days of –

(i) the change occurring, in the case of the appointment or resignation of a director; or

(ii) the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address or postal address of a director.

(3) If a company fails to comply with this section –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Miscellaneous

89 Remuneration of directors

Directors may receive remuneration and other benefits from the company –

(a) In accordance with its rules; or

(b) With the approval of shareholders under section 51.

90 Proceedings of directors

(1) The rules of a company must include provisions –

(a) For holding meetings of directors of the company; and

(b) That govern proceedings at meetings of directors of the company.

(2) Meetings of the directors of a company must be held in accordance with the rules of the company.

PART 6
ENFORCEMENT
Injunctions

91 Injunctions to require compliance with Act and rules

(1) Without limiting section 16(2) or this Part, the Court may, on an application under this section, make an order restraining a company that, or a director of a company who, proposes to engage in conduct that would contravene the rules of the company or this Act from engaging in that conduct.

(2) An application may be made by –

(a) The company; or

(b) A director or shareholder of the company.

(3) If the Court makes an order under subsection (1), it may also grant any consequential relief that it thinks fit.

(4) An order may not be made under this section in relation to conduct or a course of conduct that has been completed.

(5) The Court may, at any time before the final determination of an application under subsection (1), make, as an interim order, any order that it is empowered to make under that subsection.

Derivative actions

92 Leave to bring proceedings

Subject to section 95, the Court may, on the application of a person referred to in section 93, grant leave to that person to –

(a) Bring proceedings in the name and on behalf of the company or any subsidiary of the company; or

(b) Intervene in proceedings to which the company or any subsidiary company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or subsidiary, as the case may be.

93 Who may apply for leave to bring proceedings

An application for leave to bring proceedings or to intervene in proceedings under section 92 may be made by –

(a) A director of the company; or

(b) A shareholder or shareholders representing not less than 10% of the voting rights of all shareholders entitled to vote on a resolution to amend the rules of the company.

94 Matters that Court must consider

Without limiting section 92, in determining whether to grant leave under that section, the Court must consider –

(a) The likelihood of the proceedings succeeding; and

(b) The costs of the proceedings in relation to the relief likely to be obtained; and

(c) Any action already taken by the company or subsidiary to obtain relief; and

(d) The interests of the company or subsidiary in the proceedings being commenced, continued, defended, or discontinued, as the case may be.

95 When leave may be granted

Leave to bring proceedings or intervene in proceedings may be granted only if the Court is satisfied that either –

(a) The company or subsidiary does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or

(b) It is in the interests of the company or subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

96 Procedural matters

(1) Notice of the application must be served on the company or subsidiary.

(2) The company or subsidiary –

(a) Must inform the Court whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be; and

(b) May appear and be heard.

(3) Except as otherwise provided, a shareholder is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiaries.

(4) No proceedings brought or intervened in with leave of the Court may be settled or compromised or discontinued without the approval of the Court.

97 Powers of Court

The Court may, at any time, make any order that it thinks fit in relation to proceedings brought or intervened in with leave of the Court and, without limitation, may –

(a) Make an order authorising the person to whom leave was granted or any other person to control the conduct of the proceedings;

(b) Give directions for the conduct of the proceedings;

(c) Make an order requiring the company or the directors to provide information or assistance in relation to the proceedings;

(d) Make an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to former and present shareholders of the company or subsidiary instead of to the company or the subsidiary.

98 Costs of derivative action to be met by company

The Court must, on the application of the person to whom leave was granted, order that the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved by the Court, must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs, or to bear the whole of those costs.

Personal actions by shareholders

99 Personal actions by shareholders against company

(1) A shareholder of a company may bring an action against the company for breach of a duty owed by the company to him or her as a shareholder.

(2) The Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring the company to take any action that is required to be taken by the rules of the company or this Act, whether or not the company owes a duty to the shareholder to take that action.

(3) On making an order under this section, the Court may grant any consequential relief that it thinks fit.

100 Personal actions by shareholders against directors

(1) A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder.

(2) An action may not be brought under subsection (1) to recover any loss in the form of a reduction in the value of shares in the company or a failure of the shares to increase in value by reason only of a loss suffered, or a gain forgone, by the company.

(3) The Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring a director of the company to take any action that is required to be taken by the directors under the rules of the company or this Act, whether or not the director owes a duty to the shareholder to take that action.

(4) On making an order under this section, the Court may grant any consequential relief that it thinks fit.

101 Representative actions

(1) The Court may appoint a shareholder of a company to represent all or some of the shareholders having the same or substantially the same interest if –

(a) The shareholder brings proceedings against the company or a director; and

(b) Other shareholders have the same, or substantially the same, interest in relation to the subject matter of the proceedings.

(2) On making an order under subsection (1), the Court may, for that purpose, make any other order that it thinks fit, including an order –

(a) As to the control and conduct of the proceedings;

(b) As to the costs of the proceedings;

(c) Directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the shareholders represented.

Prejudiced shareholders

102 Prejudiced shareholders

(1) A shareholder or former shareholder of a company may apply to the Court for an order under subsection (2) if the shareholder considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity or in any other capacity.

(2) If the Court considers that it is just and equitable to do so, it may make any order that it thinks fit, including an order –

(a) Requiring the company or any other person to acquire the shareholder's shares; or

(b) Requiring the company or any other person to pay compensation to a person; or

(c) Regulating the future conduct of the company's affairs; or

(d) Altering or adding to the company's rules; or

(e) Appointing a receiver of the company; or

(f) Directing the rectification of the records of the company; or

(g) Putting the company into liquidation; or

(h) Setting aside action taken by the company or the board in breach of this Act or the rules of the company.

(3) No order may be made against the company or any other person under subsection (2) unless the company or that person is a party to the proceedings in which the application is made.

103 Certain conduct deemed prejudicial

Failure to comply with any of the following sections of this Act is conduct that is deemed to be unfairly prejudicial for the purposes of section 102 –

(a) Section 26(1) (which relates to the issue of shares);
(b) Section 30 (which relates to dividends);
(c) Section 31 (which relates to acquisitions of its own shares by a company);
(d) Section 34 (which relates to redeemable shares);
(e) Section 36 (which relates to the provision of financial assistance by a company to purchase its own shares);
(f) Section 50 (which relates to major transactions);
(g) Section 54 (which relates to the alteration of shareholder rights).

104 Alteration to rules by Court

(1) Despite anything in this Act, but subject to the order, if the Court makes an order under section 102 altering or adding to the rules of a company, the rules must not, to the extent that they have been altered or added to by the Court, again be altered or added to without the leave of the Court.

(2) Any alteration or addition to the rules of a company made by an order under section 102 has the same effect as if it had been made by the shareholders of the company under section 14, and this Act applies to the rules as altered or added to.

(3) Within 10 working days of the making of an order under section 102 altering or adding to the rules of a company, the company must ensure that a copy of the order and a copy of the rules as altered or added to are delivered to the Registrar for registration.

(4) If a company fails to comply with subsection (3) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Certain applications

105 Effect of arbitration clause in rules

A shareholder is entitled to apply to the Court for relief under sections 91 to 100 and 102 despite any provision in the rules of a company requiring disputes relating to the affairs of the company to be referred to arbitration, or otherwise seeking to prohibit the shareholder from making the application.

106 Application for relief by Registrar

(1) The Registrar may apply to the Court for an order in respect of a public company under sections 91 to 100 and 102 as if the Registrar were a shareholder of that company if –

(a) The Registrar is requested to do so in writing by a shareholder or shareholders who would be entitled to make the application in question; and
(b) The Registrar considers that it is in the public interest that the application be made; and

(c) The Registrar considers that it is unreasonable to expect the person or persons making the request to pursue the application themselves.

(2) If the Registrar considers that the persons making a request under subsection (1) should bear some of the costs of any application to be made by the Registrar under this section, the Registrar may require them to pay an amount towards those costs, or to enter into an agreement to contribute to those costs. If they fail to do so, the Registrar may decline to make the application, or to take any further steps in relation to the application.

(3) If an application made by the Registrar under this section results in an award of costs or any other monetary award in favour of the Registrar or the company or the shareholders of the company, the Registrar has a first claim on that award for payment of the costs incurred by the Registrar in making the application.

PART 7
ADMINISTRATION OF COMPANIES
Subpart 1 – Dealings with third parties
BINDING COMPANY

107 Authority to bind company

(1) A contract or other enforceable obligation may be entered into by a company as follows –

(a) An obligation that, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by –
  (i) 2 or more directors of the company; or
  (ii) if there is only 1 director, by that director, whose signature must be witnessed; or
  (iii) if the rules of the company so provide, a director, or other person or class of persons. If the rules provide for signature by 1 person, that person's signature must be witnessed; or
  (iv) 1 or more attorneys appointed by the company in accordance with section 108;

(b) An obligation that, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company –
  (i) in the manner specified in paragraph (a); or
  (ii) in writing by a person acting under the company's express or implied authority;

(c) An obligation that, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company by a person acting under the company's express or implied authority.

(2) Nothing in subsection (1) prevents a company from affixing its common seal to a contract or document, if it has one. But despite anything in the rules of the company, the absence of a seal does not affect the enforceability of an obligation entered into in accordance with subsection (1).

(3) Subsection (1) applies to a contract or other obligation whether or not –
  (a) That contract or obligation was entered into in Niue; and
  (b) The law governing the contract or obligation is the law of Niue.

108 Attorneys

(1) Subject to its rules, a company may, by an instrument in writing executed in accordance with section 107(1)(a), appoint a person as its attorney either generally or in relation to a specified matter.

(2) An act of the attorney in accordance with the instrument binds the company.

(3) Part XII of the Property Law Act 1952 applies, with the necessary modifications, in relation to a power of attorney executed by a company to the same extent as if the company was a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal from the Niue register, of the company was the death of a person within the meaning of that Part.

109 Validity of dealings with third parties

(1) Subject to sections 111 and 112, the validity of a transaction entered into by a company is not affected by –

(a) A failure to comply with this Act (except section 107);
(b) A failure to comply with the company's rules;
(c) The absence of express authority to enter into the transaction in the company's rules;
(d) A failure by the company or its directors to take any steps required by the company's rules to authorise entry into the transaction;
(e) The fact that the transaction is not in the interests of the company;
(f) A breach of duty by a director in connection with entry into the transaction.

(2) Subsection (1) does not limit –

(a) Section 91 (which relates to injunctions to restrain conduct by a company that would contravene its rules); or
(b) Sections 92 to 98 (which relate to derivative actions); or
(c) Section 99 (which relates to actions by shareholders against a company); or
(d) Section 100 (which relates to actions by shareholders against directors); or
(e) The obligations and the liabilities of directors of a company in respect of any contract or other obligation, or transfer of property to or by the company.

(3) In this section and sections 111 to 113, transaction –

(a) Includes any contract or other obligation entered into by a company, or any transfer of property to or by a company; but
(b) Does not include –
(i) A distribution to shareholders; or
(ii) An indemnity provided to a director under section 75; or
(iii) remuneration or other benefits given to a director in accordance with section 89.

110 Assumptions that may be made by third parties

(1) Without limiting section 109, neither a company nor any person claiming under or through a company, nor a guarantor of an obligation of a company, may assert against a person dealing with the company or against a person who has acquired property, rights, or interests from the company that –

(a) A person named as a director of the company in the most recent notice received by the Registrar under section 88 or in the most recent annual return delivered to the Registrar –

(i) is not a director of a company; or
(ii) has not been duly appointed; or
(iii) does not have authority to exercise a power that a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(b) A person held out by the company as a director, employee, or agent of the company –
(i) has not been duly appointed; or
(ii) does not have authority to exercise a power that a director, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise;

(c) A person held out by the company as a director, employee, or agent of the company with authority to exercise a power that a director, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power;

(d) A document issued on behalf of a company by a director, employee, or agent of the company with actual or usual authority to issue the document is not valid or not genuine –

unless the person has, or ought to have by virtue of his or her position with or relationship to the company, knowledge of the matters referred to in any of paragraphs (a) to (d).

(2) Subsection (1) applies even though a person of the kind referred to in that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired property, rights, or interests from the company has actual knowledge of the fraud or forgery.

(3) A person is not affected by, or deemed to have notice or knowledge of the contents of, the rules of, or any other document relating to, a company merely because the rules or document are –

(a) Registered on the Niue register; or
(b) Available for inspection by that person under subpart 2.

111 Transactions in which directors are interested

(1) A transaction entered into by a company in which a director is directly or indirectly materially interested is voidable at the option of the company, unless –

(a) This Act or the company's rules expressly authorise entry into the transaction despite such an interest; or
(b) The transaction has been entered into with the approval of shareholders under section 51 following disclosure of the nature and extent of the director's interest to all shareholders who were not otherwise aware of those matters; or
(c) The other party to the transaction is a person other than the director or a person associated with the director and either –
(i) that person did not know of the interest of the director; or
(ii) the company received fair value under the transaction.

(2) For the purposes of this section and section 112, a person is associated with a director if the director –

(a) Is the parent, child, or spouse of that person; or
(b) Is a director, employee, or trustee of that person; or
(c) Has a material financial interest in that other person.

112 Transactions entered into by directors in breach of certain duties

A transaction entered into by a company as the result of action taken by a director in breach of sections 65, 66, or 67 is voidable at the option of the company if –

(a) The other party to the transaction is the director or a person associated with the director; or

(b) The other party to the transaction is a person with knowledge of the circumstances giving rise to the breach of sections 65, 66, or 67, and the company did not receive fair value under the transaction.

113 Effect on third parties

The setting aside of a transaction under sections 111 or 112 does not affect the title or interest of a person in or to property that the person has acquired if the property was acquired –

(a) From a person other than the company; and

(b) For valuable consideration; and

(c) Without knowledge of the circumstances that entitle the company to set aside the transaction under which the property was acquired from the company.

Pre-incorporation contracts

114 Pre-incorporation contracts may be ratified

(1) In this section and in sections 115 and 116, pre-incorporation contract means –

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

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

(2) Despite any enactment or rule of law, a pre-incorporation contract may be ratified by the company within any period that may be specified in the contract, or if no period is specified, within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.

(3) A pre-incorporation contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.

(4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 107.

(5) Despite any other Act, if a pre-incorporation contract has not been ratified by a company, or validated by the Court under section 116, the company may not enforce it or take the benefit of it.

115 Warranties implied in pre-incorporation contracts

(1) Despite any enactment or rule of law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company –

(a) That the company will be incorporated within the period specified in the contract or, if no period is specified, within a reasonable time after the making of the contract; and

(b) That the company will ratify the contract within the period specified in the contract or, if no period is specified, within a reasonable time after the incorporation of the company.

(2) The amount of damages recoverable in an action for breach of a warranty implied by subsection (1) is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of any unperformed obligations under the contract if the contract had been ratified.

(3) If, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 114), the liability of a person under subsection (1) (including any liability under an order made by the Court for the payment of damages) is discharged unless a contrary intention is expressed in the pre-incorporation contract.

116 Failure to ratify

(1) A party to a pre-incorporation contract that has not been ratified by the company after its incorporation may apply to the Court for an order –

(a) Directing the company to return to that party property of any kind acquired by the company from that party by virtue of the contract; or

(b) For any other relief in favour of that party relating to the property.

(2) The Court may, if it considers it just and equitable to do so, make any order or grant any relief that it thinks fit and may do so whether or not an order has been made under section 115(2).

Subpart 2 – Company records

117 Company records

(1) Subject to section 119, a company must keep the following documents at its registered office –

(a) The rules of the company;

(b) Minutes of all meetings and resolutions of shareholders within the last 7 years;

(c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;

(d) The full names and residential and postal addresses of the current directors;

(e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports;

(f) The accounting records required by section 129 for the current accounting period and for the last 7 completed accounting periods of the company;

(g) Copies of all financial statements required to be completed under section 130 for the last 7 completed accounting periods of the company;

(h) The share register.

(2) The references in subsection (1)(b), (c), and (e) to 7 years and the references in subsection (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company.

(3) If a company fails to comply with subsection (1) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

118 Form of records

(1) The records of a company must be kept –
  (a) In written form; or
  (b) In a form or in a manner that allows the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to –
  (a) Prevent the records being falsified; and
  (b) Detect any falsification of them.

(3) If the directors fail to comply with subsection (2), every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

119 Alternative locations of records

(1) The records referred to in section 117(1)(a) to (g) may be kept at a place in Niue other than the company's registered office, provided that notice of that place is given to the Registrar in accordance with subsection (7).

(2) The share register may, if expressly permitted by the rules, be divided into 2 or more registers kept in different places.

(3) The principal register must be kept in Niue. Any other share register may be kept at a place outside Niue.

(4) If a share register is divided into 2 or more registers kept in different places –
  (a) Notice of the place where each register is kept must be delivered to the Registrar in accordance with subsection (7) within 10 working days after the share register is divided or any place where a register is kept is altered; and
  (b) A copy of every register must be kept at the same place as the principal register; and
  (c) If an entry is made in a register other than the principal register, a corresponding entry must be made within 10 working days in the copy of that register kept with the principal register.

(5) In this section, principal register, in relation to a company, means –
  (a) If the share register is not divided into 2 or more registers, the share register; or
  (b) If the share register is divided into 2 or more registers, the register described as the principal register in the last notice sent to the Registrar under this section.

(6) A company need not keep its accounting records in Niue, but if the records are not kept in Niue –
  (a) The company must ensure that accounts and returns for the operations of the company that –
    (i) disclose with reasonable accuracy the financial position of the company at intervals not exceeding 6 months; and
    (ii) will enable the preparation in accordance with this Act of the company's financial statements and any other document required by this Act –

are sent to, and kept at, a place in Niue; and

(b) Notice of the place where –

(i) The accounting records; and

(ii) the accounts and returns required under paragraph (a) –

are kept must be given to the Registrar in accordance with subsection (7).

(7) If any records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar of the places where the records are kept.

(8) If a company fails to comply with subsections (3), (4), (6), or (7) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

120 Inspection of records by directors

(1) Subject to subsection (2), every director of a company is entitled, on giving reasonable notice, to inspect the records of the company –

(a) In written form; and

(b) Without charge; and

(c) At a reasonable time specified by the director.

(2) The Court may, on application by the company, direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit if it is satisfied that –

(a) It would not be in the company's interests for a director to inspect the records; or

(b) The proposed inspection is for a purpose that is not properly connected with the director's duties.

121 Inspection of records by shareholders

(1) A company must keep the following records available for inspection in the manner prescribed in section 123 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company –

(a) Minutes of all meetings and resolutions of shareholders;

(b) Copies of written communications to all shareholders or to all holders of a class of shares during the preceding 7 years, including annual reports and financial statements;

(c) The records that must be available for public inspection under section 122.

(2) If a company fails to comply with subsection (1) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

122 Inspection of records by public

(1) A company must keep the following records available for inspection in the manner prescribed in section 123 by any person who serves written notice of intention to inspect on the company –

(a) The certificate of incorporation or registration of the company;

(b) The rules of the company, if they differ from the model rules;

(c) The share register;

(d) The full names and residential addresses of the directors;
(e) Details of the registered office of the company and of its postal address, if different from the registered office;
(f) Details of any place other than the registered office at which records are kept in accordance with section 119.

(2) If a company fails to comply with subsection (1) –
(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

123 Manner of inspection

(1) Documents that may be inspected under sections 121 or 122 must be available for inspection at the place at which the company's records are kept between the hours of 9.00 am and 4.00 pm on each working day during the inspection period.

(2) In this section, inspection period means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

(3) A person may require a copy of, or extract from, a document that is available for inspection by him or her under sections 121 or 122 to be sent to him or her –
(a) Within 5 working days after he or she has made a request in writing for the copy or extract; and
(b) If he or she has paid a reasonable copying and administration fee prescribed by the company.

(4) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (3) –
(a) The company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

Subpart 3 – Documents to be sent to Registrar and shareholders

124 Annual returns

(1) The directors of a company must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return –
(a) In the prescribed form or in a form approved by the Registrar by public notice or in a form approved by the Registrar for use by the company under subsection (8), or as near to it as circumstances allow; and
(b) Containing the prescribed information or the information approved by the Registrar by public notice; and
(c) Accompanied by the prescribed annual return fee.

(2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar, and the information required to be contained in it must be compiled as at that date.

(3) The annual return must be signed by a director of the company or by a solicitor or public accountant authorised for that purpose.

(4) On registration of a company under Part 2 or reregistration under Part 14, the Registrar must allocate a month to the company for the purposes of this section.

(5) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (4).

(6) Despite subsection (1) –

(a) A company need not make an annual return in the calendar year of its incorporation; and

(b) A subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.

(7) Different forms of annual return may be prescribed or approved by the Registrar by public notice in respect of different classes of companies.

(8) The Registrar may, on the application of any person, approve the use, by such company or companies as the Registrar may specify, of a form of annual return different from that prescribed or approved by the Registrar by public notice, and may at any time revoke, in whole or in part, that approval.

(9) If the directors of a company fail to comply with subsections (1) or (2), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

125 Registrar may send annual return form to company

(1) The Registrar may send to a company an annual return form that sets out the prescribed information as it appears on the Niue register –

(a) For approval in accordance with section 124(3) if the information set out in the form is current as at a date in the month in which the return is required to be made; or

(b) For such correction as may be required, and approval of the corrected information in accordance with section 124(3).

(2) If the annual return contains –

(a) An address of the registered office of the company; or

(b) A postal address of the company –

that is different from the address of the registered office or the postal address of the company entered on the Niue register, the Registrar may alter the Niue register accordingly.

126 Other documents to be sent to Registrar

In addition to the annual return required under section 124, a company must send the following documents to the Registrar under this Act –

(a) Notice of the adoption of new rules by a company, or the alteration of the rules of a company, under section 14;

(b) Notice of a change in the registered office or postal address of the company under section 18;

(c) Notice of the issue of shares by the company, under section 26;

(d) Notice of the acquisition by the company of its own shares under section 31;

(e) Notice of the redemption of a share under section 35;

(f) Notice of a change in the directors of the company, or of a change in the name or residential address of a director, under section 88;

(g) Notice of the making of an order under section 102 altering or adding to the rules of a company;

(h) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119;
(i) documents requested by the Registrar under section 311.

127 Annual report to shareholders

An annual report must be sent to shareholders in accordance with section 56.

128 Other documents to be sent to shareholders

In addition to any annual report required under section 56, a company must send the following documents to shareholders –

(a) Notice of any repurchase of shares to which section 31(4) applies;
(b) Notice of a written resolution approved under section 52;
(c) Financial statements required to be sent under section 130;
(d) A written statement by an auditor under section 136;
(e) A report by an auditor under section 138.

Subpart 4 – Accounting and audit

129 Accounting records to be kept

(1) The directors of a company must ensure accounting records are kept that –

(a) Correctly record and explain the transactions of the company; and
(b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
(c) Will enable the directors to ensure that the financial statements of the company comply with section 130 and with any regulations made under this Act; and
(d) Will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subsection (1), the accounting records must contain –

(a) Entries of money received and spent each day and the matters to which it relates; and
(b) A record of the assets and liabilities of the company; and
(c) If the company's business involves dealing in goods –
(i) a record of goods bought and sold, and relevant invoices; and
(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
(d) If the company's business involves providing services, a record of services provided and relevant invoices.

(3) If a company sells goods or provides services for cash in the ordinary course of carrying on a retail business –

(a) Invoices need not be kept in respect of each retail transaction for the purposes of subsection (2); and
(b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subsection (2) in respect of those transactions.

(4) The accounting records must be kept –

(a) In a form permitted under section 118; and
(b) At the registered office of the company, or any other place permitted under section 119.

(5) If the directors of a company fail to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

130 Financial statements to be prepared

(1) The directors of every company must ensure that –

(a) Within 4 months after the balance date of the company, or within any extended period applicable under subsection (3), financial statements that comply with subsection (2) are completed in relation to the company and that balance date; and

(b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report in accordance with section 56.

(2) The financial statements of a company must –

(a) Give a true and fair view of the matters to which they relate; and

(b) Comply with any applicable regulations made under this Act; and

(c) be dated and signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

(3) The period within which a private company must comply with the requirements of subsection (1)(a) may be extended by special resolution to a period not greater than 7 months.

(4) The following periods must not exceed 15 months –

(a) The period between the date of incorporation of a company and its first balance date;

(b) The period between any 2 balance dates of a company.

(5) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

131 Application

(1) This section and sections 132 to 134 apply to a company in respect of an accounting period if –

(a) It is registered as a public company at any time during that accounting period; or

(b) The company's rules require it to appoint an auditor in respect of that accounting period; or

(c) A shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of the accounting period requiring the financial statements of the company for that period to be audited.

(2) If this section and sections 132 to 134 apply to a company in respect of an accounting period, but do not apply in respect of a subsequent accounting period –

(a) The financial statements of the company for the accounting period in respect of which this section applies must be audited; and

(b) The directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that this section and sections 132 to 134 no longer apply to the company, and that the auditor will cease to hold office unless a notice is given

by shareholders under subsection (1)(c) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and

(c) If a notice has been given under paragraph (b), and no notice under subsection (1)(c) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of –

(i) The date specified in the notice; or

(ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

132 Appointment of auditor

(1) A company to which this section applies must appoint an auditor –

(a) To hold office as auditor until the auditor ceases to hold office under section 133; and

(b) To audit the financial statements of the company.

(2) A company must appoint an auditor –

(a) Within 30 working days of the date on which this section first applies to the company;

(b) Within 30 working days of any vacancy arising in the office of auditor.

133 When auditor ceases to hold office

An auditor ceases to hold office if he or she –

(a) Ceases to hold office under section 131(2); or

(b) Resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or

(c) becomes disqualified from being the auditor of the company under section 135; or

(d) Is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 136(2); or

(e) Dies; or

(f) becomes subject to a trustee order under section 501 of the Niue Act 1966, or an order of medical custody under section 602 of that Act.

134 Registrar may appoint auditor on request of shareholder

(1) The Registrar may, at the request of any shareholder, appoint an auditor if –

(a) This section applies to a company; and

(b) The company has neglected or failed to appoint an auditor.

(2) If the Registrar appoints an auditor, the Registrar may determine the fees to be paid by the company to the auditor.

(3) Any fees determined by the Registrar may be recovered as if they were provided for in a contract between the company and the auditor.

135 Qualifications of auditor

(1) A person must not be appointed or act as an auditor of a company unless –

(a) The person is entitled to practise as an accountant in Niue, and meets any further requirements in respect of practice as an auditor in Niue that may be prescribed by regulations made under this Act; or

(b) If the audit is to be carried out outside Niue, the person is eligible to act as an auditor in the country, state, or territory in which the audit is to be carried out, and –

(i) The person is a member, fellow, or associate of an association of accountants constituted outside Niue that has been approved for the time being for the purposes of this section by the Registrar by public notice; or

(ii) the person has been approved for the time being for the purposes of this section by the Registrar by public notice.

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

(a) A director or secretary or employee of the company, or any other person responsible for keeping the accounting records of the company;

(b) A person who is a partner, or in the employment, of a person referred to in paragraph (a);

(c) A liquidator or administrator or a person who is a receiver in respect of the property of the company;

(d) A corporation;

(e) A person who, by virtue of any of paragraphs (a) to (c), may not be appointed or act as auditor of a related company.

136 Statement by auditor in relation to resignation or removal

(1) If an auditor resigns from office, the directors must, if requested to do so by that auditor –

(a) Distribute to all shareholders, at the expense of the company, a written statement of the auditor's reasons for resigning; or

(b) Permit the auditor or his or her representative to explain at a shareholders' meeting the reasons for the resignation.

(2) A company must not appoint a new auditor in the place of an auditor who is qualified to hold that office, unless –

(a) At least 20 working days' written notice of a proposal to do so has been given to the auditor; and

(b) The auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either in writing or by the auditor or his or her representative speaking at a shareholders' meeting (whichever the auditor may choose).

(3) An auditor is entitled to be paid reasonable fees and expenses by the company for making the representations to shareholders referred to in subsections (1) or (2).

137 Auditor to avoid conflict of interest

An auditor of a company must ensure, in carrying out the duties of an auditor under this Part, that his or her judgment is not impaired by reason of any relationship with, or interest in, the company or any related company.

138 Auditor's report

The auditor of a company to which sections 131 to 134 apply must make a report to the shareholders on the financial statements audited by him or her that states –

(a) The work done by the auditor; and
(b) The scope and limitations of the audit; and
(c) The existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the company or any related company; and
(d) Whether the auditor has obtained all information and explanations that he or she has required; and
(e) Whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the company; and
(f) Whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the company, the financial statements –
  (i) give a true and fair view of the matters to which they relate; and
  (ii) Comply with any applicable regulations made under this Act –
and, if they do not, the respects in which they fail to give such a view or comply with such requirements, as the case may be; and
(g) Any other matter prescribed for the purposes of this section by regulations made under this Act.

139 Access to information

(1) The directors of a company must ensure that an auditor of the company has access at all times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to require from a director or employee of the company such information and explanations that he or she thinks necessary for the performance of his or her duties as auditor.

(3) If the directors of a company fail to comply with subsection (1), every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(4) A director or employee who fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(5) It is a defence to an employee charged with an offence against subsection (4) if the employee proves that –

(a) He or she did not have the information required in his or her possession or under his or her control; or
(b) by reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the explanations required.

140 Auditor's attendance at shareholders' meeting

(1) The directors of a company must ensure that an auditor of the company –

(a) Is permitted to attend a meeting of shareholders of the company; and

(b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and

(c) May be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

(2) If the directors of a company fail to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Subpart 5 – Company charges

141 Charges may be registered

(1) A registrable charge may be, but is not required to be, registered under this Act in accordance with Schedule 7.

(2) Where any property of a company is subject to a registered charge and an unregistered registrable charge, the registered charge has priority unless the person entitled to the benefit of the registered charge –

(a) Has agreed otherwise; or

(b) Had notice at the time that the registered charge was granted that the unregistered charge existed, and applied to the relevant property or class of property.

(3) Where any property of a company is subject to more than 1 registered company charge, those charges rank among themselves according to the date of registration, unless the person entitled to the benefit of one registered company charge (the first registered charge) that was registered before another company charge (the second registered charge) –

(a) Has agreed to accept a lesser priority than this provision would otherwise confer; or

(b) Had notice at the time that the first registered charge was granted that the second registered charge existed, and that it applied to the relevant property or class of property.

PART 8

AMALGAMATIONS, ETC

Subpart 1 – Amalgamations

142 Amalgamations

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

143 Notice of proposed amalgamation

The directors of each amalgamating company must, not less than 20 working days before the amalgamation is proposed to take effect –

(a) Send a copy of the amalgamation proposal to every secured creditor of the company; and

(b) Give public notice of the proposed amalgamation, including a statement that –

(i) copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at any other places specified during normal business hours; and

(ii) a shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal on request to an amalgamating company.

144 Registration of amalgamation proposal

For the purpose of effecting an amalgamation, the following documents must be delivered to the Registrar for registration –

(a) An amalgamation proposal approved in accordance with Schedule 6;

(b) A certificate signed by the directors of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the company's rules;

(c) A document in the prescribed form signed by each of the persons named in the amalgamation proposal as a director of the amalgamated company containing his or her consent to be a director.

145 Certificate of amalgamation

(1) Immediately after receipt of the documents required under section 144, the Registrar must issue a certificate of amalgamation in the prescribed form.

(2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation must be expressed to have effect on the date specified in the amalgamation proposal.

146 Effect of certificate of amalgamation

On the date shown in a certificate of amalgamation –

(a) The amalgamation is effective; and

(b) Subject to section 10, the amalgamated company has the name specified in the amalgamation proposal; and

(c) The amalgamated company is entitled to all the property, rights, powers, and privileges of each of the amalgamating companies; and

(d) The amalgamated company is subject to all the liabilities and obligations of each of the amalgamating companies; and

(e) Proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and

(f) A conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and

(g) Any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

147 Registers

(1) If an amalgamation becomes effective, neither the Registrar of the Land Court nor any other person charged with the keeping of any books or registers is obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.

(2) The presentation to the Registrar of the Land Court or any other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company –

(a) Executed or appearing to be executed by the amalgamated company; and

(b) Relating to any property held immediately before the amalgamation by an amalgamating company; and

(c) Stating that that property has become the property of the amalgamated company by virtue of this subpart –

is, in the absence of evidence to the contrary, sufficient evidence that the property has become the property of the amalgamated company.

(3) Without limiting subsections (1) or (2), if any security issued by any person or any rights or interests in property of any person become, by virtue of this subpart, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the amalgamated company, stating that that security or any such rights or interests have, by virtue of this subpart, become the property of the amalgamated company, must, despite any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.

(4) Except as expressly provided in this section, nothing in this subpart derogates from the provisions of the Land Act 1969.

148 Powers of Court in relation to amalgamations

(1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, of that person, make any order it thinks fit in relation to the proposal, and may, without limiting the generality of this section, make an order –

(a) Directing that effect must not be given to the proposal;

(b) Modifying the proposal in such manner as may be specified in the order;

(c) Directing the company or its directors to reconsider the proposal or any part of it.

(2) An order may be made under subsection (1) on any conditions that the Court thinks fit.

Subpart 2 – Approval of amalgamations, etc, by Court

149 Interpretation

In this subpart, unless the context otherwise requires –

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

company –

(a) Means a company; and
(b) Includes an overseas company that is registered on the overseas register.

150 Approval of amalgamations, etc

(1) Subject to section 150, but despite any other provision or the rules of a company, the Court may, on the application of a company or any shareholder or creditor of a company, order that an amalgamation, arrangement, or compromise is binding on the company and on any other persons or classes of persons specified by the Court.

(2) The order may be made on any conditions that the Court thinks fit.

(3) An order made under this section has effect on and from the date specified in the order.

151 When Court may approve amalgamations, etc

(1) An amalgamation, arrangement, or compromise may be approved under this subpart only if it is not practicable for the amalgamation, arrangement, or compromise to be effected under subpart 1 or subpart 2 of Part 9, or under both.

(2) To avoid doubt, it is not impracticable for an amalgamation, arrangement, or compromise to be effected under subpart 1 or under subpart 2 of Part 9 by reason only that the compromise has not been, or would not be likely to be, approved in accordance with the procedure set out in those subparts.

152 Initial Court orders

(1) Before making an order under section 150(1), the Court may, on the application of the company or any shareholder or creditor or other person who appears to the Court to be interested, or of its own motion, make any 1 or more of the following orders –

(a) An order that notice of the application, together with such information relating to it as the Court thinks fit, be given in the form and manner and to any persons or classes of persons specified by the Court;
(b) An order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or any class of creditors of a company to consider and, if thought fit, to approve, in such manner as the Court may specify, the proposed arrangement or amalgamation or compromise and, for that purpose, the Court may determine the shareholders or creditors that constitute a class of shareholders or creditors of a company;
(c) An order requiring that a report on the proposed arrangement or amalgamation or compromise be prepared for the Court by a person specified by the Court and, if the Court thinks fit, be supplied to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the Court to be interested;
(d) An order as to the payment of the costs incurred in the preparation of the report;
(e) An order specifying the persons who are entitled to appear and be heard on the application to approve the amalgamation, arrangement, or compromise.

(2) In making an order under subsection (1), the Court must have regard to the procedures for amalgamations under subpart 1 and for compromises under subpart 2 of Part 9.

(3) An order made under this section has effect on and from the date specified in the order.

153 Court may make additional orders

(1) Without limiting section 150, the Court may, for the purpose of giving effect to any amalgamation, arrangement, or compromise approved under that section, either by the order approving the amalgamation, arrangement, or compromise, or by any later order, provide for, and prescribe terms and conditions relating to –

(a) The transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements;
(b) The issue of shares, securities, or policies of any kind;
(c) The continuation of legal proceedings;
(d) The liquidation of any company;
(e) The provisions to be made for persons who voted against the amalgamation, arrangement, or compromise at any meeting called in accordance with any order made under section 152(1)(b) or who appeared before the Court in opposition to the application to approve the amalgamation, arrangement, or compromise;
(f) Any other matters that are necessary or desirable to give effect to the amalgamation, arrangement, or compromise.

(2) An order made under this section has effect on and from the date specified in the order.

154 Copy of orders to be delivered to Registrar

(1) Within 10 working days of an order being made by the Court under this subpart, the company must ensure that a copy of the order is delivered to the Registrar for registration.

(2) If a company fails to comply with subsection (1), every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

155 Application of section 209

Section 209 applies, with the necessary modifications, to any compromise approved under section 151.

PART 9
INSOLVENT COMPANIES
Subpart 1–Administrations
PURPOSE

156 Purpose

(1) The purpose of this subpart and Schedules 8 to 12 is to provide for the business, property, and affairs of an insolvent company to be administered in a way that –

(a) Maximises the chances of the company, or the whole or any part of its business, continuing in existence as a viable business; or
(b) Results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

(2) The provisions relating to administrations are set out in –
(a) This subpart; and
(b) Schedules 8 and 9, which apply to administrators; and
(c) Schedule 10, which sets out the effect of administration; and
(d) Schedule 11, which applies to creditors' committees; and
(e) Schedule 12, which, with the necessary modifications, applies to meetings of creditors.

Beginning of administration

157 When administration begins

The administration of a company begins when an administrator of the company is appointed.

Restrictions on appointment of administrator

158 Restrictions on appointment of administrator

(1) The following persons must not be appointed as an administrator –
(a) A person who must not be appointed as an administrator under clause 1 of Schedule 9, unless the Court orders otherwise;
(b) A person who has not consented in writing to his or her appointment as an administrator.

(2) Every person who acts as an administrator in contravention of subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

How administrator may be appointed

159 Who may appoint administrator

(1) An administrator of a company may be appointed by –
(a) The board of directors of a company; or
(b) If the company is in liquidation, the liquidator; or
(c) If an interim liquidator has been appointed, the interim liquidator; or
(d) A chargeholder holding a charge over the whole, or substantially the whole, of the company's property; or
(e) The Court.

(2) If the company is already in administration, an administrator may be appointed only by –
(a) The Court; or
(b) The creditors, as a replacement administrator for an administrator that the creditors have removed; or
(c) The appointer of the first administrator, if that administrator has died, resigned, or become disqualified.

160 Directors may appoint administrator

(1) The board of directors of a company may appoint an administrator of the company if the board of directors has resolved at a meeting called under section 71 that –
(a) In the opinion of the directors voting for the resolution, the company is unable, or is likely to become unable, to pay its debts in the normal course of business; and
(b) An administrator of the company should be appointed for the purposes of achieving 1 of the purposes set out in section 156.

(2) Subsection (1) does not apply –
  (a) To a company that is already in liquidation;
  (b) If a receiver has been appointed in respect of the whole of the property of the company, unless the person by whom the receiver was appointed has consented to the appointment of an administrator;
  (c) If an administrator has been appointed on a previous occasion, unless leave of the Court is first obtained.

(3) The appointment must be in writing.

161 Liquidator may appoint administrator

(1) A liquidator or interim liquidator of a company may appoint an administrator of the company if the liquidator or interim liquidator is of the opinion that –
  (a) The company is unable, or is likely to become unable, to pay its debts in the normal course of business; and
  (b) An administrator should be appointed for the purposes of achieving 1 of the purposes set out in section 156.

(2) A liquidator or interim liquidator of a company may appoint himself or herself as an administrator, with the leave of the Court.

(3) The appointment must be in writing.

(4) The appointment of any administrator while the company is in liquidation does not terminate the appointment of the liquidator or interim liquidator unless the Court makes such an order under section 254 on the application of the liquidator or interim liquidator, or of the administrator.

162 Secured creditor may appoint administrator

(1) A person who is entitled to enforce a charge over all of a company's property may appoint an administrator of the company if –
  (a) The charge has become, and is still, enforceable; and
  (b) The secured creditor is of the opinion that an administrator should be appointed for the purposes of achieving 1 of the purposes under section 156.

(2) Subsection (1) does not apply to a company that is already in liquidation.

(3) The appointment must be in writing.

163 Appointment of administrator not to be revoked

The appointment of a person as administrator of a company may be revoked only –
  (a) By order of the Court under section 164; or
  (b) By a decision of creditors under section 180 or under clause 6 of Schedule 9 to appoint someone else as administrator of the company.

164 Court may remove administrator

On the application of the Registrar or of a creditor of the company concerned, the Court may –
  (a) Remove from office the administrator of a company under administration or under a compromise approved under this subpart; and
  (b) Subject to section 158(1), appoint someone else as administrator of the company or under the compromise.

Notices

165 Notices given by administrator

(1) An administrator of a company must –

(a) Lodge a notice of the appointment with the Registrar before the end of the next working day after the appointment; and

(b) Give public notice of the appointment within 10 working days after the appointment; and

(c) Before the end of the next working day after the administrator is appointed, give a written notice of the appointment to –

(i) every person who holds a charge on all of the company's property; and

(ii) every person who holds 1 or more charges on property of the company if the property of the company subject to the charges constitutes all, or substantially all, of the company's property; and

(iii) every secured party who holds a registered charge.

(2) An administrator need not give a notice under subsection (1)(c) to the person who appointed the administrator.

166 Notice given by secured creditor

Before the end of the next working day after appointing an administrator of a company, the secured creditor must give to the company a written notice of the appointment.

167 Requirements for notices given under sections 165 or 166

A notice given under sections 165 or 166 must be in the prescribed form and must contain –

(a) The full name of the administrator; and

(b) The date of appointment of the administrator; and

(c) The administrator's business address, telephone and fax numbers, and email address (if any).

168 Notice of administration

(1) A company under administration must set out, in every agreement entered into or document issued by the company, and in every negotiable instrument, after the company's name where it first appears, the expression "(administrator appointed)" or, if an administrator has been appointed under section 161, the expression "(administrator appointed and in liquidation)".

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 25 penalty units.

Investigation of company's affairs

169 Administrator to investigate company's affairs

As soon as practicable after the administration of a company begins, the administrator must –

(a) Investigate the company's business, property, affairs, and financial circumstances; and

(b) Form an opinion about each of the following matters –

(i) whether it would be in the interests of the company's creditors to approve a compromise binding on the company and its creditors or a class of creditors;

(ii) whether it would be in the creditors' interests for the administration to end;
(iii) whether it would be in the creditors' interests for a liquidator of the company to be appointed.

170 Directors to deliver documents to administrator

As soon as practicable after the administration of a company begins, each director of the company must –

(a) Deliver to the administrator all records and documents in the director's possession that relate to the company and that the director is not entitled, as against the company and the administrator, to retain; and
(b) If the director knows where other records and documents relating to the company are, tell the administrator where they are.

171 Directors to give administrator statement of company's affairs

(1) Within 5 working days after the administration of a company begins, the directors must give to the administrator a statement about the company's business, property, affairs, and financial circumstances.

(2) The administrator may extend the time for compliance with subsection (1).

(3) The administrator must table the directors' statement –
(a) At the first creditors' meeting; or
(b) If the administrator has extended the time for compliance by the directors, at the watershed meeting.

172 Directors must give administrator other information

A director of a company under administration must –

(a) Attend on the administrator at any times that the administrator reasonably requires; and
(b) Give the administrator all information about the company's business, property, affairs, and financial circumstances that the administrator reasonably requires.

173 Offence not to comply with sections 170 to 172

A person who, without reasonable excuse, fails to comply with any of sections 170 to 172 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Administrator's rights to company's documents

174 Restriction on enforcement of lien over company's documents

(1) A person is not entitled, as against the administrator of a company, to –
(a) Retain possession of records and documents of the company; or
(b) Claim or enforce a lien on them.

(2) A lien is not, apart from subsection (1), otherwise prejudiced.

175 Delivery of company's documents held by secured creditor

(1) Section 174 does not apply to a secured creditor who, otherwise than because of a lien, is entitled to possession of records and documents of a company.

(2) Despite subsection (1), an administrator is, at any reasonable time, entitled to inspect, and make copies of, those records and documents.

176 Notice to deliver company's documents to administrator

(1) An administrator may give to a person a written notice requiring the person to deliver to the administrator the records and documents of a company that are specified in the notice and that are in the person's possession.

(2) A notice under subsection (1) must specify a period of at least 3 working days as the period within which the notice must be complied with.

177 Offence not to comply with sections 174 to 176

Every person who fails to comply with any of sections 174 to 176 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

First creditors' meeting

178 Preparation for first creditors' meeting

An administrator of a company must –

(a) Compile and maintain, for each class of creditors of the company, a list of creditors known to the administrator, setting out –

(i) the amount owing or estimated to be owing to each of them; and

(ii) the number of votes that each of them is entitled to cast at a meeting of creditors held under this subpart; and

(b) Within 10 working days after the administration begins, hold a first creditors' meeting.

179 Notice of first creditors' meeting

At least 5 working days before the first creditors' meeting, the administrator must give –

(a) Written notice of the meeting to all secured parties who hold a registered charge over any property of the company; and

(b) Written notice of the meeting to as many of the company's other creditors as reasonably practicable; and

(c) Public notice of the meeting.

180 Proceedings at first creditors' meeting'

(1) At the first creditors' meeting, the company's creditors may, by resolution –

(a) Determine whether to appoint a creditors' committee, and, if so, appoint the committee's members; or

(b) Appoint someone else as administrator of the company; or

(c) End the administration.

(2) Schedule 11 applies to creditors' committees.

(3) Schedule 12 applies, with the necessary modifications, to meetings of creditors held under this subpart (including meetings of creditors' committees).

181 Offence not to comply with sections 178 or 179

Every person who does not comply with sections 178 or 179 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Reports by administrators

182 Reports by administrators

(1) In the circumstances set out in subsection (2), an administrator of a company must –

(a) Lodge a report with the Registrar about the matter as soon as practicable; and

(b) Give the Registrar any information, and access to any facilities for inspecting and taking copies of documents, that the Registrar requires.

(2) The circumstances are that it appears to the administrator that –

(a) A past or present officer, or a shareholder, of the company may have been guilty of an offence in relation to the company; or

(b) A person who has taken part in the formation, promotion, administration, management, or liquidation of the company may have –

(i) misapplied or retained, or may have become liable or accountable for, money or property (in Niue or elsewhere) of the company; or

(ii) been guilty of negligence, default, breach of duty, or breach of trust in relation to the company.

(3) The administrator may also lodge further reports specifying any other matter that, in his or her opinion, should be brought to the Registrar's notice.

183 Court may direct administrator to lodge report

(1) In the circumstances set out in subsection (2), the Court may, on the application of an interested person or of its own motion, direct the administrator to lodge a report.

(2) The circumstances are that –

(a) It appears to the Court that –

(i) a past or present officer, or a shareholder, of a company under administration has been guilty of an offence in relation to the company; or

(ii) a person who has taken part in the formation, promotion, administration, management, or liquidation of a company under administration has engaged in conduct of a kind referred to in section 181(2)(b)(i) or (ii) in relation to the company; and

(b) The administrator has not lodged a report about the matter.

Watershed meeting

184 What is watershed meeting

The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and creditors should enter into a compromise under subpart 2.

185 Administrator must convene watershed meeting

(1) The administrator must convene the watershed meeting within the convening period.

(2) The convening period is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

(3) The Court may, on the administrator's application, extend the convening period, but must not do so if the application is made after the convening period has expired, unless the Court is satisfied that a substantial injustice will result if the convening period is not extended.

186 Notice of watershed meeting

(1) The administrator must convene the watershed meeting by –

(a) Giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

(b) Publishing a notice of the meeting in a national newspaper.

(2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.

(3) The notice given to creditors under subsection (1)(a) must be accompanied by –

(a) A report by the administrator about the company's business, property, affairs, and financial circumstances and setting out the basis of remuneration or proposed remuneration of the administrator; and

(b) A statement setting out the administrator's opinion (including his or her reasons for the opinion) about each of the following matters –

(i) whether it would be in the creditors' interests for the company to enter into a compromise that is binding on the company and its creditors or a class of creditors;

(ii) whether it would be in the creditors' interests for the administration to end;

(iii) whether it would be in the creditors' interests for a liquidator of the company to be appointed; and

(c) If a compromise is proposed, a statement setting out details of the proposed compromise in accordance with section 205(2)(b), but it is not necessary for the administrator to give a separate notice under that section; and

(d) A copy of the list or lists of creditors referred to in section 178.

187 When watershed meeting must be held

(1) The watershed meeting must be held within 5 working days after the end of the convening period or extended convening period, as the case may be.

(2) The watershed meeting may be adjourned, but only to a day that is not more than 30 working days after the first day on which the meeting was held.

(3) However, the Court may, on the administrator's application, order that the meeting be adjourned for more than 30 working days.

188 What creditors may decide at watershed meeting

(1) At a watershed meeting, the creditors may resolve –

(a) To approve a compromise that is binding on its creditors or a class of creditors as specified in the resolution (even if it differs from the proposed compromise (if any), details of which accompanied the notice of meeting, as a result of any amendment adopted at the meeting); or

(b) That the administration should end; or

(c) If the administrator has so recommended, that a liquidator of the company be appointed.

(2) Despite anything in Schedule 12 –

(a) A resolution for the purposes of subsection (1)(a) is adopted if a majority in number and value of the creditors or class of creditors, voting in person or by proxy, vote in favour of the resolution; and
(b) Section 206(3) applies to such a resolution.

End of administration

189 When administration ends

The administration of a company ends on the happening of whichever event of a kind referred to in sections 190 or 191 happens first after the administration begins.

190 Normal way for administration to end

The normal outcome of the administration of a company is that –

(a) A compromise is approved by creditors that is binding on the company and its creditors or a class of creditors; or
(b) The company's creditors resolve that the administration should end; or
(c) The company's creditors resolve that a liquidator of the company be appointed.

191 Other ways in which administration may end

The administration of a company may also end because –

(a) the Court orders that the administration is to end, for example, because the Court is satisfied that the company is solvent; or
(b) The convening period for a watershed meeting ends –
  (i) without the meeting being convened in accordance with section 186; and
  (ii) without an application being made for the Court to extend the convening period for the watershed meeting; or
(c) An application for the Court to extend the convening period is finally determined or otherwise disposed of other than by the Court extending the convening period; or
(d) The convening period, as extended, ends without the meeting being convened in accordance with section 186; or
(e) A watershed meeting called under section 184 ends (whether or not it was earlier adjourned) without a resolution under section 188(1) being passed at the meeting; or
(f) The Court appoints an interim liquidator of the company or appoints a liquidator of the company.

192 Notice of end of administration

If a meeting of the company's creditors resolves that the administration should end, or resolves that a liquidator be appointed, the administrator must, immediately after the declaration of the result of the resolution of creditors –

(a) Lodge a notice with the Registrar that the administration is at an end or that a liquidator has been appointed, as the case may be; and
(b) Cause a public notice to be published that the administration is at an end or that a liquidator has been appointed, as the case may be.

Creditors' resolution approving compromise

193 Effect of creditors' resolution approving compromise

If, at a creditors' meeting, a company's creditors approve a compromise –

(a) The administrator of the company is the administrator under the compromise unless the creditors, by resolution passed at the meeting, appoint someone else to be administrator under the compromise; and

(b) The administrator must prepare a document setting out the terms of the compromise (compromise document).

194 Contents of compromise document

The compromise document must specify all the following –

(a) The administrator of the compromise and the basis for determining his or her remuneration;

(b) The property of the company (whether or not already owned by the company when it executes the deed) that is to be available to pay creditors' claims;

(c) The nature and duration of any moratorium period for which the compromise provides;

(d) To what extent (if any) the company is to be released from its debts;

(e) The conditions (if any) for the compromise to come into operation;

(f) The conditions (if any) for the compromise to continue in operation;

(g) The circumstances in which the compromise terminates;

(h) The order in which proceeds of realising the property referred to in paragraph (b) will be distributed among creditors bound by the compromise;

(i) The day (not later than the day when the administration began) on or before which creditors' claims must have arisen if they are to be admissible under the compromise;

(j) Any other matters prescribed by regulations.

195 Application of subpart 2 to compromise proposed by administrator

The provisions of subpart 2 apply to a compromise proposed by an administrator except as expressly modified or excluded by this subpart.

196 Notice of approval of compromise

(1) Within 10 working days after a compromise is approved at a creditors' meeting, the administrator must –

(a) Send a written notice of the result of the voting of the creditors to –

(i) each creditor of the company; and

(ii) the company; and

(iii) any receiver of the company; and

(iv) any liquidator of the company; and

(b) Give public notice of the result of the voting of the creditors; and

(c) Give written notice of the voting of the creditors to, and lodge a copy of the compromise document with, the Registrar.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

Creditors' resolution approving appointment of liquidator

197 Creditors' resolution approving appointment of liquidator

(1) If a company's creditors approve the appointment of a liquidator –

(a) Subject to subsection (3), the administrator is the liquidator with effect from the date and time at which the resolution is passed; and

(b) The liquidator need not –

(i) call a meeting of creditors; or

(ii) give a notice under section 237(1); or

(iii) give public notice if the liquidator has lodged a notice with the Registrar under section 237(2); but

(c) Except as expressly provided otherwise, subpart 3 applies, with the necessary modifications, to the liquidation.

(2) The administrator must record the time and date at which the resolution was passed or the contravention occurred, and the time and date at which the administration begins.

(3) The creditors may, by resolution, appoint a named person other than the administrator to be the liquidator of the company. If that person has consented in writing to the appointment before it is made, that person is the liquidator with effect from the date and time at which the resolution is passed. Otherwise, that person becomes liquidator with effect from the date and time at which he or she consents in writing to the appointment, and until such time the administrator is the liquidator in accordance with subsection (1).

198 Notice of appointment of liquidator

Within 10 working days after the day on which the liquidator is appointed at a creditors' meeting, the liquidator must lodge with the Registrar a written notice –

(a) Stating that a liquidator of the company has been appointed; and

(b) Specifying the date on which, and time at which, the liquidation begins.

Protection of persons during administration

199 Protection of persons dealing with administrator, etc

(1) A person is entitled, in relation to the person's dealings with an administrator of a company or another person who has, or appears to have, directly or indirectly acquired title to property of the company from the administrator, to assume that –

(a) The company's rules and this Act have been complied with;

(b) Any person who appears, from information provided by the administrator or company that is available to the public, to be an administrator of the company –

(i) has been appointed; and

(ii) has authority to exercise the powers and perform the functions customarily exercised or performed by an administrator of a similar company;

(c) Anyone who is held out by an administrator or the company to be an agent of the administrator or an officer or agent of the company –

(i) has been appointed; and

(ii) has authority to exercise the powers and perform the functions customarily exercised or performed by that kind of officer or agent of a similar company or by that kind of agent of the administrator;

(d) The administrator, officers and agents of the company, and agents of the administrator, properly perform their duties to the company;
(e) A document has been duly executed by the company if the document appears to have been signed by the administrator;
(f) A document has been executed by a company that has a common seal if –
(i) the company's common seal appears to have been fixed to the document; and
(ii) the fixing of the common seal appears to have been witnessed by the administrator;
(g) An administrator of the company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a copy.

(2) Subsection (1) –
(a) Applies even if the administrator or an officer or agent of the company acts fraudulently, or forges a document, in connection with the dealings; but
(b) Does not apply if the person who is entitled to make the assumptions in that subsection knew or suspected that the assumption was incorrect.

200 Validity of things done during administration

A payment made, transaction entered into, or any other act or thing done, in good faith, by, or with the consent of, the administrator of a company under administration –
(a) Is valid and effectual for the purposes of this Act; and
(b) Is not liable to be set aside in a liquidation of the company.

201 General power to make orders

(1) The Court may, on any conditions that it thinks fit, make any order that it thinks appropriate about how this subpart is to operate in relation to the administration of a particular company (for example, that the administration of the company is to end).

(2) An order may be made on the application of –
(a) The company; or
(b) A creditor of the company; or
(c) In the case of a company under administration, the administrator of the company; or
(d) In the case of a company that has entered into a compromise, the administrator (if any) under the compromise; or
(e) The Registrar; or
(f) Any other interested person.

202 Court orders protecting creditors or shareholders

The Court may, on the application of the Registrar or of a creditor or shareholder of a company, make any order that the Court thinks just if the Court is satisfied that the administrator of a company under administration, or under a compromise –
(a) Has managed, or is managing, the company's business, property, or affairs in a way that is prejudicial to the interests of some or all of the company's creditors or shareholders; or
(b) Has acted or has not acted, or proposes to act or not to act, in a way that is or would be prejudicial to those interests.

203 Court orders to protect creditors during administration

(1) The Court may, on the application of the Registrar or of a creditor of a company, make any order that it thinks necessary to protect the interests of the company's creditors while the company is under administration.

(2) An order may be made subject to conditions.

Subpart 2 – Compromises with creditors

204 Compromise proposal

Any of the following persons may propose a compromise under this subpart if that person has reason to believe that a company is or will be unable to pay its debts as they become due in the normal course of business –

(a) The directors of the company;
(b) A receiver appointed in relation to the whole or substantially the whole of the assets and undertaking of the company;
(c) A liquidator or an administrator of the company.

205 Notice of proposed compromise

(1) The proponent must compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out –

(a) The amount owing or estimated to be owing to each of them; and
(b) The number of votes that each of them is entitled to cast on a resolution to approve the compromise.

(2) The proponent must give to each known creditor, the company, any receiver or liquidator, and deliver to the Registrar for registration –

(a) Notice in accordance with Schedule 12 of the intention to hold a meeting of creditors, or any 2 or more classes of creditors, for the purpose of voting on the resolution; and
(b) A statement –
  (i) containing the name and address of the proponent and the capacity in which the proponent is acting; and
  (ii) containing the address and telephone number to which inquiries may be directed during normal business hours; and
  (iii) setting out the terms of the proposed compromise and the reasons for it; and
  (iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved; and
  (v) setting out the extent of any interest of a director in the proposed compromise; and
  (vi) Explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will be binding on all creditors, or on all creditors of that class, if approved in accordance with section 206; and
  (vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and
(c) A copy of the list or lists of creditors referred to in subsection (1).

206 Effect of compromise

(1) A compromise, including any amendment proposed at the meeting, is approved by creditors, or a class of creditors, if, at a meeting of creditors or that class of creditors conducted in accordance with Schedule 12, the compromise, including any amendment, is adopted in accordance with that schedule.

(2) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this subpart is binding on the company and on all creditors, or, if there is more than 1 class of creditors, on all creditors of that class, to whom notice of the proposal was given.

(3) If a resolution proposing a compromise, including any amendment, is put to the vote of more than 1 class of creditors, it is to be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval of the compromise, including any amendment, by every other class voting on the resolution.

(4) The proponent must give written notice of the result of the voting to each known creditor, the company, any receiver or liquidator, and the Registrar.

207 Variation of compromise

(1) An approved compromise may be varied or terminated either –

(a) In accordance with any procedure for variation or termination incorporated in the compromise as approved; or

(b) by the approval of a proposal to vary or terminate the compromise in accordance with this subpart that, for that purpose, applies, with all necessary modifications, as if any the proposal were a proposed compromise.

(2) This subpart applies to any compromise that is varied in accordance with this section.

208 Powers of Court

(1) On the application of the proponent or the company, the Court may –

(a) Give directions in relation to a procedural requirement imposed by this subpart, or waive or vary any such requirement, if it is satisfied that it would be just to do so; or

(b) Order that, during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than 10 working days after the date on which notice was given of the result of the voting on it –

(i) Proceedings in relation to a debt owing by the company be stayed; or

(ii) A creditor refrain from taking any other measure to enforce payment of a debt owing by the company.

(2) Nothing in subsection (1)(b) affects the right of a secured creditor during that period to take possession of, realise, or otherwise deal with, property of the company over which that creditor has a charge.

(3) The Court may order that the creditor is not bound by the compromise or make any other order that it thinks fit if the Court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise, that –

(a) Not enough notice of the meeting or of the matter required to be notified under section 205 was given to that creditor; or

(b) There was some other material irregularity in obtaining approval of the compromise; or

(c) In the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs.

(4) An application under subsection (3) must be made not later than 10 working days after the date on which notice of the result of the voting was given to the creditor.

209 Effect of compromise in liquidation of company

(1) If a compromise is approved, the Court may, on the application of –

(a) The company; or

(b) A receiver appointed in relation to property of the company; or

(c) With the leave of the Court, any creditor or shareholder of the company –

make such order as the Court thinks fit with respect to the extent, if any, to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator of the company.

(2) If a compromise is approved and the company is later put into liquidation, the Court may, on the application of any person described in subsection (3), make any order that the Court thinks fit with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

(3) The persons referred to in subsection (2) are –

(a) The liquidator; or

(b) A receiver appointed in relation to property of the company; or

(c) With the leave of the Court, any creditor or shareholder of the company.

210 Costs of compromise

Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise –

(a) Must be met by the company; or

(b) If incurred by a receiver or an administrator or a liquidator, are a cost of the receivership or administration or liquidation; or

(c) If incurred by any other person, are a debt due to that person by the company.

Subpart 3–Liquidations

PURPOSE

211 Purpose

(1) The purpose of this subpart and Schedules 12 to 18 is to provide for a liquidator of a company –

(a) To take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and

(b) If there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets, in accordance with section 250.

(2) The provisions relating to liquidations are set out in –

(a) This subpart; and

(b) Schedule 12, which, with the necessary modifications, applies to meetings of creditors; and

(c) Schedules 13 and 14, which apply to liquidators; and
(d) Schedule 15, which sets out the effect of liquidation; and
(e) Schedule 16, which applies to liquidation committees; and
(f) Schedule 17, which applies to voidable transactions and charges and recoveries in other cases in a liquidation; and
(g) Schedule 18, which applies to creditors' claims.

Beginning of liquidation

212 When liquidation begins

(1) The liquidation of a company begins on the date on which, and at the time at which, the liquidator is appointed.

(2) The liquidator must be a named person.

(3) If any question arises as to whether, on the date on which a liquidator was appointed, an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

Restrictions on appointment of liquidator

213 Restrictions on appointment of liquidator

(1) Unless the Court orders otherwise, none of the persons referred to in clause 1 of Schedule 14 may be appointed or act as a liquidator of a company.

(2) The appointment of a person as a liquidator is of no effect unless that person has consented in writing to the appointment.

(3) Every person who acts as a liquidator in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

How liquidator may be appointed

214 Board may appoint liquidator

(1) A liquidator may be appointed by the resolution of the board of directors of the company on the occurrence of an event specified in the company's rules.

(2) The board of directors of the company must record, in the document appointing the liquidator, the date on which, and the time at which, the liquidator was appointed.

215 Shareholders may appoint liquidator

(1) A liquidator may be appointed by special resolution of those shareholders entitled to vote and voting on the question.

(2) The shareholders must record in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution was passed.

216 Creditors may appoint liquidator

A liquidator may be appointed by resolution of the creditors of the company under administration in accordance with section 188(1)(c).

217 Court may appoint liquidator

(1) A liquidator may be appointed by the Court on the application of –
(a) The company; or
(b) A director of the company; or
(c) A shareholder of the company; or

(d) A creditor of the company (including any contingent or prospective creditor); or
(e) An administrator under a compromise approved at a creditors' meeting; or
(f) The Registrar.

(2) The Court may appoint a liquidator if it is satisfied that –
(a) The company is unable to pay its debts; or
(b) The company or the directors have persistently or seriously failed to comply with this Act; or
(d) It is just and equitable that the company be put into liquidation.

(3) The Court must record in the order appointing the liquidator the date on which, and the time at which, the order was made.

218 Interim liquidator

(1) If an application has been made to the Court for an order that a company be put into liquidation, the Court may, if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the company, appoint a named person as interim liquidator.

(2) Subject to subsection (3), an interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company, including power to appoint an administrator.

(3) The Court may limit the rights and powers of an interim liquidator in the manner that it thinks fit.

(4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing that interim liquidator is made.

(5) The Court must record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.

(6) If any question arises as to whether, on the date on which an interim liquidator was appointed, an act was done or a transaction was entered into or effected before or after the time at which the interim liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

219 Meaning of unable to pay its debts

Unless the contrary is proved, and subject to section 220, a company is presumed to be unable to pay its debts if –

(a) The company has failed to comply with a statutory demand; or
(b) Execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
(c) A person entitled to a charge over all or substantially all of the property of the company has appointed a receiver under the document creating the charge; or
(d) A compromise between a company and its creditors has been put to a vote in accordance with subpart 2.

220 Evidence and other matters

(1) On an application to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand is not admissible as evidence that a company is unable to pay its debts unless the application is made within 30 working days after the last date for compliance with the demand.

(2) Section 219 does not prevent proof by other means that a company is unable to pay its debts.

(3) Information or records acquired under section 57 or, if the Court so orders, under section 62, may be received as evidence that a company is unable to pay its debts.

(4) In determining whether a company is unable to pay its debts, contingent or prospective liabilities may be taken into account.

(5) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts may be made by a contingent or prospective creditor only with the leave of the Court; and the Court may give such leave, with or without conditions, only if it is satisfied that a prima facie case has been made out that the company is unable to pay its debts.

221 Statutory demand

(1) A statutory demand is a demand by a creditor in respect of a debt owing by a company made in accordance with this section.

(2) A statutory demand must –

(a) be in respect of a debt that is due and is not less than the prescribed amount; and

(b) Be in writing; and

(c) Be served on the company; and

(d) Require the company to do any of the following things to the reasonable satisfaction of the creditor, within 15 working days of the date of service, or any longer period that the Court may order –

(i) pay the debt;

(ii) enter into a compromise under subpart 2;

(iii) otherwise compound with the creditor;

(iv) give a charge over its property to secure payment of the debt.

222 Court may set aside statutory demand

(1) The Court may, on the application of the company, set aside a statutory demand.

(2) The application must be –

(a) Made within 10 working days of the date of service of the demand; and

(b) Served on the creditor within 10 working days of the date of service of the demand.

(3) No extension of time may be given for making or serving an application to have a statutory demand set aside, but, at the hearing of the application, the Court may extend the time for compliance with the statutory demand.

(4) The Court may grant an application to set aside a statutory demand if it is satisfied that –

(a) There is a substantial dispute as to whether or not the debt is owing or is due; or

(b) The company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off, or cross-demand is less than the prescribed amount; or

(c) The demand ought to be set aside on other grounds.

(5) A demand must not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.

(6) In subsection (5), defect includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the demand.

(7) An order under this section may be made subject to conditions.

223 Additional powers of Court on application to set aside statutory demand

(1) If, on the hearing of an application under section 222, the Court is satisfied that there is a debt due by the company to the creditor that is not the subject of a substantial dispute, or is not subject to a counterclaim, set-off, or cross-demand, the Court may, on the ground that the company is unable to pay its debts –

(a) Order the company to pay the debt within a specified period and that, in default of payment, the creditor may make an application to put the company into liquidation; or

(b) Dismiss the application and immediately make an order putting the company into liquidation.

(2) For the purposes of the hearing of an application to put the company into liquidation under an order made under subsection (1)(a), the company is presumed to be unable to pay its debts if it failed to pay the debt within the specified period under the order.

NOTICES

224 Notices given by liquidator

(1) A liquidator must, immediately after being appointed or being notified of his or her appointment, give public notice of –

(a) The liquidator's appointment; and

(b) The date and time of the commencement of the liquidation; and

(c) The address, telephone and fax numbers, and email address to which, during normal business hours, inquiries may be directed by a creditor or shareholder.

(2) A liquidator must, within 10 working days of being appointed or being notified of his or her appointment, deliver to the Registrar for registration a notice of the liquidator's appointment.

225 Documents to state company in liquidation

Every document entered into, made, or issued by a liquidator of a company on behalf of the company must state, in a prominent position, that the company is in liquidation.

Obligations to liquidators

226 Directors, etc, to identify and deliver company property

(1) A present or former director or employee of a company in liquidation must –

(a) Immediately after the company is put into liquidation, give the liquidator details of property of the company in his or her possession or under his or her control; and

(b) On being required to do so by the liquidator, immediately or within any time that may be specified by the liquidator, deliver the property to the liquidator or any other person that the liquidator may direct, or dispose of the property in any manner that the liquidator may direct.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding 250 penalty units, or both.

227 Obligations of suppliers of essential services

(1) Despite any other Act or any contract, a supplier of an essential service must not –

(a) Refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the service in relation to a period before the commencement of the liquidation; or

(b) Make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation; or

(c) Make it a condition of the supply of the service to a company in liquidation that the liquidator personally guarantees payment of the charges that would be incurred for the supply of the service.

(2) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of clause 15(a) of Schedule 18.

Liquidators' rights to company's documents

228 Liquidator may require director, etc, to deliver documents

A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator any records or documents of the company in that person's possession or under that person's control as the liquidator requires.

229 Liquidator may require director, etc, to provide information

(1) A liquidator may, from time to time, by notice in writing, require the following persons to do any of the things specified in subsection (2) –

(a) A director or former director of the company;

(b) A shareholder of the company;

(c) A person who was involved in the promotion or formation of the company;

(d) A person who is, or has been, an employee of the company;

(e) A receiver, administrator, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company;

(f) A person who is acting, or who has at any time acted, as a solicitor for the company.

(2) A person referred to in subsection (1) may be required to –

(a) Attend on the liquidator at such reasonable time or times and at such place as may be specified in the notice;

(b) Provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator requests;

(c) be examined on oath or affirmation by the liquidator or by a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company;

(d) Assist in the liquidation to the best of the person's ability.

(3) Without limiting subsection (2)(a), a person may be required to attend on the liquidator under that subsection at a meeting of creditors of the company.

230 Reasonable expenses may be paid

(1) Without limiting subsection (2), the liquidator may pay to a person referred to in section 229(1)(d), (e), or (f), who is not an employee of the company, reasonable travelling and other expenses in complying with a requirement of the liquidator under that section.

(2) The Court may, on the application of the liquidator or a person referred to in section 229(1)(d), (e), or (f), who is not an employee of the company, order that that person is entitled to receive reasonable remuneration and travelling and other expenses in complying with a requirement of the liquidator under that section.

(3) A person referred to in section 229(1)(d), (e), or (f) is not entitled to refuse to comply with a requirement of the liquidator under that section by reason only that –

(a) An application to the Court to be paid remuneration or travelling and other expenses has not been made or determined; or
(b) Remuneration or travelling and other expenses to which that person is entitled have not been paid in advance; or
(c) The liquidator has not paid that person travelling or other expenses.

231 Examination by liquidator

(1) A liquidator, or a barrister or solicitor acting on behalf of the liquidator, may administer an oath to, or take the affirmation of, a person required to be examined under section 229.

(2) A person required to be examined under section 229 is entitled to be represented by a barrister or solicitor.

(3) A liquidator, or a barrister or solicitor acting on behalf of the liquidator, who conducts an examination under section 229 must ensure that the examination is recorded in writing or by means of a sound recording, video and sound recording, or other similar means.

232 Court may order person to comply with section 228

(1) The Court may, on the application of the liquidator, order a person who has failed to comply with a requirement of the liquidator under section 229 to comply with that requirement.

(2) The Court may, on the application of the liquidator, order a person to whom section 229 applies to –

(a) Attend before the Court and be examined on oath or affirmation by the Court or the liquidator, or a barrister or solicitor acting on behalf of the liquidator, on any matter relating to the business, accounts, or affairs of the company;
(b) Produce any documents relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.

(3) If a person is examined under subsection (2)(a) –

(a) The examination must be recorded in writing; and
(b) The person examined must sign the record.

(4) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under section 78 or this subpart.

233 Self-incrimination no excuse

(1) A person is not excused from answering a question in the course of being examined under sections 229 or 232 on the ground that the answer may incriminate or tend to incriminate that person.

(2) The testimony of the person examined is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

234 Restriction on enforcement of lien over company's documents

(1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over documents of the company.

(2) If the lien arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company under section 249 to the extent of $500 or such greater amount as may be prescribed at the commencement of the liquidation.

(3) Nothing in this section applies to a company that was put into liquidation under sections 214 or 215 if –

(a) The directors of the company passed a resolution of the kind referred to in section 241; and

(b) Section 242 does not apply in relation to the company.

235 Delivery of document held by secured creditor

(1) A person is required to deliver a document to a liquidator under section 228 even though possession of the document creates a charge over property of a company.

(2) Production of the document to the liquidator does not prejudice the existence or priority of the charge, and the liquidator must make the document available to the person entitled to it for the purpose of dealing with, or realising the charge over, the secured property.

236 Documents held by receiver

(1) A receiver is not required to deliver to a liquidator any documents that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to property of a company in liquidation.

(2) The liquidator may, from time to time, by notice in writing, require the receiver –

(a) To make any records and documents available for inspection by the liquidator at any reasonable time or times; and

(b) To provide the liquidator with copies of any records and documents or extracts from them.

(3) The liquidator may take copies of any records and documents made available for inspection or extracts from them.

(4) The liquidator must pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

Meetings

237 Notice of first creditors' meeting

(1) A liquidator must give to every known creditor a notice in writing of a meeting of creditors, and –

(a) If section 246(1) applies, the notice must be given together with the report and notice referred to in that subsection; and

(b) If the liquidator receives a notice under section 243(1)(c) requiring a meeting of creditors to be called, the notice must be given within 10 working days after receiving the notice.

(2) Not less than 5 working days before the creditors' meeting, a liquidator must also give public notice of the meeting.

238 Timing of first creditors' meeting

(1) Except if section 237(1)(b) applies, a meeting of creditors must be held –

(a) In the case of a liquidator appointed under sections 214 or 215, within 10 working days of the liquidator's appointment; or

(b) In the case of a liquidator appointed under section 217, within 30 working days of the liquidator's appointment; or

(c) In either case, within such longer period as the Court may allow.

(2) If section 237(1)(b) applies, a meeting of creditors must be held within 15 working days after the liquidator receives a notice under section 243(1)(c) requiring a meeting of creditors to be called.

239 Purpose of first creditors' meeting

(1) Subject to sections 241 and 243, the liquidator of a company must call a meeting of the creditors of the company for the purpose –

(a) In the case of a liquidator appointed under sections 214 or 215, of resolving whether to confirm the appointment of that liquidator or to appoint another liquidator in place of the liquidator so appointed;

(b) In the case of a liquidator appointed under section 217, of resolving whether to confirm the appointment of that liquidator or to make an application to the Court for the appointment of a liquidator in place of the liquidator so appointed;

(c) In either case, of determining whether to pass a resolution for the purposes of section 245(1)(c).

(2) If the appointment of a liquidator under sections 214 or 215 is not confirmed at a meeting of creditors and another liquidator is not appointed in place of that liquidator, the appointment of the liquidator under either of those sections continues until another liquidator is appointed.

240 Replacement liquidator

(1) If at a meeting of creditors it is resolved to appoint a person as liquidator of the company in place of the liquidator appointed under sections 214 or 215, the person who it is resolved to appoint as liquidator is, subject to section 213, appointed as the liquidator of the company.

(2) If at a meeting of creditors it is resolved to apply to the Court for the appointment of a person as liquidator in place of the liquidator appointed under section 217 –

(a) The liquidator of the company must immediately apply to the Court for the appointment of that person as liquidator; and

(b) The Court may, if it thinks fit, appoint that person as the liquidator of the company.

241 Effect of directors' resolving company able to pay its debts

Nothing in sections 237 to 240 applies to the liquidator of a company appointed under sections 214 or 215 if, within 20 working days before the appointment of the liquidator, the directors of the company resolved that the company would, on the appointment of a liquidator under either of those sections, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration.

242 Other creditors' meetings

(1) Subject to section 243, the liquidator of a company who was not, by reason of section 237, required to call a meeting of creditors of the company, must immediately call a meeting of the creditors of the company for the purpose specified in section 239(1)(a) or (b), if the liquidator is satisfied that –

(a) The directors who voted in favour of a resolution referred to in that subsection did not have reasonable grounds to believe that the company would, on the appointment of a liquidator under section 214 or 215, be able to pay its debts; or

(b) The company is not able to pay its debts.

(2) Section 239 applies with the necessary modifications.

243 Liquidator may dispense with meetings of creditors

(1) A liquidator is not required to call a meeting of creditors under sections 237 or 242, as the case may be, if –

(a) The liquidator considers that no such meeting should be held, having regard to –

(i) the assets and liabilities of the company; and

(ii) the likely result of the liquidation of the company; and

(iii) any other relevant matters; and

(b) The liquidator gives notice in writing to the creditors stating –

(i) that the liquidator does not consider that a meeting should be held; and

(ii) the reasons for the liquidator's view; and

(iii) that no such meeting will be called unless a creditor gives notice in writing to the liquidator, within 10 working days after receiving the notice, requesting a meeting to be called and giving reasons why a meeting should be called; and

(c) No notice requesting a meeting to be called is received by the liquidator within that period or, if a notice requesting a meeting to be called is received within that period, the Court directs the liquidator that, having regard to the reasons given in the notice and the circumstances of the company considered by the liquidator under paragraph (a), it is not necessary for the liquidator to call a meeting.

(2) Notice under subsection (1)(b) must be given to every known creditor –

(a) If section 244(1) applies, together with the report and notice referred to in that section; or

(b) If section 244(1) is not applicable, at the time the liquidator would have been required to send the report and notice referred to in that section if it were applicable.

244 Meetings of creditors or shareholders

(1) At any time in the course of the liquidation, the liquidator may, at the request in writing of any creditor or shareholder or on the liquidator's own motion, call a meeting of creditors or shareholders –

(a) To vote on a proposal that a liquidation committee be appointed to act with the liquidator in accordance with Schedule 16; and

(b) If it is so decided, to choose the members of the committee.

(2) A liquidator may decline a request by a creditor or shareholder to call a meeting on the ground that –

(a) The request is frivolous or vexatious; or

(b) The request was not made in good faith; or

(c) Except if a creditor or shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company's assets.

(3) The decision of a liquidator to decline the request may be reviewed by the Court on the application of any creditor or shareholder, as the case may be.

(4) Subject to subsections (2) and (3), a liquidator who receives a request to call –

(a) A meeting of creditors must immediately call a meeting in accordance with Schedule 12; or

(b) A meeting of shareholders, must immediately call a meeting in accordance with the company's rules, except the liquidator has power to give notice of a meeting of shareholders and to act as, or appoint, the chairperson of the meeting.

(5) The sole shareholder of a company may present to the liquidator a view on any matter that could have been decided at a meeting of shareholders under this section, and that view must, for all purposes, be treated as though it were a decision taken at a meeting of shareholders.

245 Views of creditors and shareholders at meetings to be considered

(1) The liquidator must consider the views of –

(a) Creditors set out in a resolution passed at a meeting convened under subpart 1 at which a resolution under section 188(1)(c) to appoint a liquidator is passed;

(b) The shareholders by whom any special resolution was passed at a meeting held for the purposes of section 215 set out in a resolution passed at that meeting;

(c) Creditors set out in any resolution passed at a meeting held for the purposes of section 239;

(d) Creditors or shareholders set out in a resolution passed at a meeting called in accordance with subsection (2);

(e) Any liquidation committee given in writing to the liquidator.

(2) For the purposes of subsection (1), a liquidator –

(a) Must summon meetings of shareholders at such times as may be specified by any resolution of shareholders passed at a meeting held for the purposes of section 215;

(b) Must summon meetings of creditors at any times that may be specified by any resolution of creditors passed at a meeting held for the purposes of subpart 1 or section 239;

(c) Must summon a meeting of shareholders immediately when required to do so by notice in writing given by shareholders holding not less than 10% of all shares issued by the company;

(d) Must summon a meeting of creditors immediately when required to do so by notice in writing given by creditors to whom is owed not less than 10% of the total amount owed to all creditors of the company;

(e) May, at his or her discretion, summon a meeting of shareholders or creditors of the company.

(3) A liquidator who calls a meeting of creditors or shareholders must call a meeting –

(a) In accordance with the rules of the company, in the case of a meeting of shareholders; or

(b) In accordance with Schedule 12, in the case of a meeting of creditors.

(4) For the purposes of holding a meeting of shareholders under subsection (3)(a), the liquidator is deemed to have power under the company's rules to call a meeting of shareholders despite anything in the company's rules, and references in the company's rules to chairman or chairperson must be read as references to the liquidator.

(5) Nothing in this section limits or prevents a liquidator from exercising his or her discretion in carrying out his or her functions and duties under this Act.

Reports

246 First report

(1) A liquidator must, within the applicable period –

(a) Prepare a list of every known creditor of the company; and

(b) Prepare and send to every known creditor, every shareholder, and the Registrar for registration –

(i) a report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and

(ii) a notice explaining the right of a creditor or shareholder to require the liquidator to call a meeting of creditors or shareholders (as the case may be) under section 244.

(2) For the purposes of subsection (1), applicable period means –

(a) In the case of a liquidator appointed under sections 214, 215, or 216, 5 working days after the liquidator's appointment; or

(b) In the case of a liquidator appointed under section 217, 25 working days after the liquidator's appointment; or

(c) In either case, any longer period that the Court may allow.

247 Six-monthly report

A liquidator must, within 2 months of the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, and send or deliver to the Registrar, a report –

(a) On the conduct of the liquidation during the preceding 6 months; and

(b) Of any further proposals that the liquidator has for completing the liquidation.

248 Exemption from reporting requirements

(1) The Court may, on the application of a liquidator and on any conditions that the Court thinks fit –

(a) Exempt the liquidator from compliance with sections 246 or 247; or

(b) Modify the application of those sections in relation to the liquidator.

(2) The liquidator need not comply with sections 246 or 247 if the liquidator is satisfied that the value of the assets of the company available for distribution to unsecured creditors who are not preferential creditors is not likely to exceed $0.20, or any other prescribed sum, in every dollar owed to those creditors.

(3) If subsection (2) applies, and the liquidator does not intend to comply with sections 246 or 247, the liquidator must give notice to the Registrar that he or she does not intend to comply with those sections.

Creditors' claims

249 Preferential claims

(1) The liquidator must pay out of the assets of the company the expenses, fees, and claims set out in Part 3 of Schedule 18 to the extent and in the order of priority specified in that schedule.

(2) Without limiting clause 18 of Schedule 18, assets in subsection (1) does not include assets subject to a charge unless the charge is surrendered or taken to be surrendered or redeemed under Part 2 of that schedule.

250 Claims of other creditors and distribution of surplus assets

(1) After paying preferential claims in accordance with section 249, the liquidator must apply the assets of the company in satisfaction of all other claims.

(2) The claims referred to in subsection (1) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment abates rateably among all claims.

(3) If, before the commencement of a liquidation, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.

(4) A person whose shares have been repurchased by the company, or a person whose shares have been redeemed by the company, but who has not received payment in full of the repurchase price or redemption price (as the case may be) is taken to have agreed to subordinate his or her claim for any unpaid balance of the repurchase price or redemption price (as the case may be) to the rights of other creditors of the company.

(5) Subject to clause 25 of Schedule 18, after paying the claims referred to in subsections (1) and (3), the liquidator must distribute the company's surplus assets –

(a) In accordance with the company's rules; or

(b) If the company's rules do not provide for the distribution of surplus assets, in accordance with section 23(1)(c) and any preferential rights as to distributions of capital attached to shares issued by the company in accordance with section 23(3)(d).

End of liquidation

251 Completion of liquidation

The liquidation of a company is completed when the liquidator –

(a) Complies with section 252(2); or

(b) Delivers to the Registrar for registration –

(i) a copy of any order made by the Court under section 252(3)(a); or

(ii) a copy of any order made by the Court under section 252(3)(b) together with any documents required to comply with the order.

252 Final report and accounts

(1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must prepare and send to every creditor whose claim has been admitted and to every shareholder –

(a) The final report and statement of realisation and distribution in respect of the liquidation; and

(b) A statement that –

(i) all known assets have been disclaimed, or realised, or distributed without realisation; and

(ii) all proceeds of realisation have been distributed; and

(iii) the company is ready to be removed from the Niue register; and

(c) A summary of the applicable grounds on which the creditor or shareholder may object to the removal of the company from the Niue register under section 261.

(2) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must send or deliver copies of the documents referred to in subsection (1) to the Registrar for registration.

(3) The Court may, on the application of a liquidator and on any conditions that the Court thinks fit –

(a) Exempt the liquidator from compliance with subsections (1) or (2); or

(b) Modify the application of those provisions in relation to the liquidator.

253 Liquidation surplus account

(1) Money representing unclaimed assets of a company standing to the credit of a liquidator must, after completion of the liquidation, be paid to the Registrar to be held on trust and dealt with in accordance with this section.

(2) At the expiration of a period of 12 months after the date on which the money is paid, the Registrar must, after deduction of any amount required to meet the claim of any person that is established within that period, pay the balance into an account entitled the "Liquidation Surplus Account" for distribution in accordance with this section.

(3) Money held in the Liquidation Surplus Account may be invested in accordance with the law as to the investment of trust funds by trustees. Interest on any investment must be distributed in accordance with this section.

(4) Money held in the Liquidation Surplus Account may be –

(a) Paid or distributed to any person entitled to payment or distribution in the liquidation of a company any money representing the surplus assets of which has been credited to the Liquidation Surplus Account; or

(b) Paid, subject to such conditions as the Registrar may impose, in meeting costs incurred in the course of liquidation of a company for the purpose of proceedings brought by the company, including legal or other expert advice, or the costs of any expert witness, if the Registrar is satisfied that it is fair and reasonable for those costs to be met out of the Liquidation Surplus Account.

(5) In making a payment under this section, the Registrar is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

254 Termination of liquidation by Court

(1) The Court may, at any time after the appointment of a liquidator of a company, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company.

(2) An application may be made by –

(a) The liquidator of the company; or
(b) A director of the company; or
(c) A shareholder of the company; or
(d) A creditor of the company or
(e) An administrator of the company under administration or acting under a compromise approved by a resolution of creditors in accordance with section 188(1)(a); or
(f) The Registrar.

(3) The Court may require the liquidator of the company to give a report to the Court with respect to any facts or matters relevant to the application.

(4) If the Court makes an order, the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or any other date specified in the order.

(5) The Court may, on, or at any time after, making an order, make any other order that it thinks fit in connection with the termination of the liquidation.

255 Notice of termination of liquidation

(1) The person who applied for a Court order terminating the liquidation or the liquidator, in the case of the creditors terminating the liquidation, must, within 10 working days after the order was made, or the resolution was passed, (as the case may be), deliver a notice of the order, or the passing of the resolution, to the Registrar for registration.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

256 Effect of compromise on liquidation

Unless the Court orders otherwise under section 254, a company does not cease to be in liquidation and the liquidator continues to hold office subject to the terms of a compromise where –

(a) The liquidator has appointed an administrator of the company; and
(b) A compromise that binds the company and its creditors, or a class of creditors, has been approved by a resolution of creditors in accordance with section 188(1)(a).

PART 10
REMOVAL OF COMPANIES FROM REGISTER

257 Removal from register

A company is removed from the Niue register when a notice signed by the Registrar stating that the company is removed from the Niue register is registered under this Act.

258 Grounds for removal from register

Subject to section 260, the Registrar must remove a company from the Niue register if –

(a) The Registrar is satisfied that –
  (i) the company has ceased to carry on business; and
  (ii) there is no other reason for the company to continue in existence; or

(b) The company has been put into liquidation, and –
  (i) no liquidator is acting; or
  (ii) the prescribed documents confirming that the liquidation of the company has been completed have not been sent or delivered to the Registrar within 6 months after the completion of the liquidation; or
(c) There is sent or delivered to the Registrar a request that the company be removed from the Niue register on either of the grounds specified in section 259(1) made by –
  (i) a shareholder or any other person authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or
  (ii) a director or any other person, if the rules of the company so require or permit; or
(d) A liquidator sends or delivers to the Registrar the prescribed documents confirming that the liquidation of the company has been completed.

259 Request for company to be removed from register

(1) A request that a company be removed from the Niue register under section 258(c) may be made on the grounds that the company –
(a) Has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its rules and this Act; or
(b) Has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the company into liquidation.

(2) A request that a company be removed from the Niue register under section 258(c) must be accompanied by a written notice from the Financial Secretary stating that the Financial Secretary has no objection to the company being removed from the Niue register.

260 Requirements to be met before company must be removed from register

(1) The Registrar must remove a company from the Niue register under section 258(a) only if –
(a) The Registrar has complied with sections 261 and 262; and
(b) The company has not satisfied the Registrar that it is carrying on business or that reason exists for the company to continue in existence; and
(c) The Registrar –
  (i) is satisfied that no person has objected to the removal under section 264; or
  (ii) if an objection to the removal has been received, has complied with section 265.

(2) The Registrar must remove a company from the Niue register under section 258(b), (c), or (d), only if –
(a) The Registrar is satisfied that notice has been given in accordance with section 263; and
(b) The Registrar –
  (i) is satisfied that no person has objected to the removal under section 264; or
  (ii) if an objection to the removal has been received, has complied with section 265.

NOTICES

261 Notice of intention to remove company that has ceased to carry on business

Before a company can be removed from the Niue register under section 258(a), the Registrar must –

(a) Give notice to the company in accordance with section 262(1); and
(b) Give notice of the matters set out in section 262(2) to any person who is entitled to a registered charge in respect of property of the company; and
(c) Give public notice of the matters set out in section 262(2).

262 Contents of notice

(1) The notice to be given under section 261(a) must –
  (a) State the section under, and the grounds on which, it is intended to remove the company from the Niue register; and
  (b) State that the company will be removed from the Niue register unless –
    (i) by the date specified in the notice, which must not be less than 20 working days after the date of the notice, the company satisfies the Registrar by notice in writing that it is still carrying on business or there is other reason for it to continue in existence; or
    (ii) the Registrar does not, in accordance with section 265, proceed to remove the company from the Niue register.

(2) The notice to be given under section 261(b) and (c) must specify –
  (a) The name of the company; and
  (b) The section under which, and the grounds on which, it is intended to remove the company from the Niue register; and
  (c) The date by which an objection to the removal must be delivered to the Registrar, which must not be less than 20 working days after the date of the notice.

263 Notice of intention to remove in other cases

(1) If a company is to be removed from the Niue register under section 258(b), the Registrar must give public notice of the matters set out in subsection (4).

(2) If a company is to be removed from the Niue register under section 258(c) or (d), the applicant, or the liquidator, as the case may be, must give public notice of the matters set out in subsection (4).

(3) If a company is to be removed from the Niue register under section 258(b), the Registrar, or, if it is to be removed from the Niue register under section 258(c), the applicant, as the case may be, must also give notice of the matters set out in subsection (4) to –

  (a) The company; and
  (b) A person who is entitled to a registered charge in respect of property of the company.

(4) The notice to be given under this section must specify –
  (a) The name of the company; and
  (b) The section under which, and the grounds on which, it is intended to remove the company from the Niue register; and
  (c) The date by which an objection to the removal under section 266 must be delivered to the Registrar, which must be not less than 20 working days after the date of the notice.

Objections

264 Objection to removal from Niue register

(1) If a notice is given of an intention to remove a company from the Niue register, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any 1 or more of the following grounds –

(a) That the company is still carrying on business or there is other reason for it to continue in existence;
(b) That the company is a party to legal proceedings;
(c) That the company is in receivership, or liquidation, or both;
(d) That the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company;
(e) That the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Part 6;
(f) That, for any other reason, it would not be just and equitable to remove the company from the Niue register.

(2) For the purposes of subsection (1)(d) –

(a) A claim by a creditor against a company is not an undischarged claim if –
(i) the claim has been paid in full; or
(ii) the claim has been paid in part under a compromise entered into under subpart 2 of Part 9 or by being otherwise compounded to the reasonable satisfaction of the creditor; or
(iii) the claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or
(iv) a receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and
(b) A claim by a shareholder or any other person against a company is not an undischarged claim if –
(i) payment has been made to the shareholder or that person in accordance with a right under the company's rules to receive or share in the company's surplus assets; or
(ii) a receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.

265 Duties of Registrar if objection received

(1) If an objection to the removal of a company from the Niue register is made on a ground specified in section 264(1)(a), (b), or (c), the Registrar must not proceed with the removal unless the Registrar is satisfied that –

(a) The objection has been withdrawn; or
(b) Any facts on which the objection is based are not, or are no longer, correct; or
(c) The objection is frivolous or vexatious.

(2) If an objection to the removal of a company from the Niue register is made on a ground specified in section 264(1)(d), (e), or (f), the Registrar must give notice to the person objecting that the Registrar intends to proceed with the removal, unless notice of an application to the Court by that person for an order –

(a) That the company be put into liquidation; or
(b) Under section 266, that, on any ground specified in section 264, the company not be removed from the Niue register –

is served on the Registrar not later than 20 working days after the date of the notice.

(3) The Registrar must proceed with the removal if –

(a) Notice of such an application to the Court is not served on the Registrar; or

(b) The application is withdrawn; or

(c) On the hearing of such an application, the Court refuses to grant either an order putting the company into liquidation or an order that the company not be removed from the Niue register.

(4) Every person who makes such an application must give the Registrar notice in writing of the decision of the Court within 5 working days of the decision being given.

(5) The Registrar must send to a person who sent or delivered to the Registrar a request that the company be removed from the Niue register under section 258(c) or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 258(d) –

(a) A copy of an objection under section 264; and

(b) A copy of a notice given by or served on the Registrar under this section; and

(c) If the company is removed from the Niue register, notice of the removal.

266 Powers of Court

(1) A person who gives a notice objecting to the removal of a company from the Niue register on a ground specified in section 264(1)(d), (e), or (f) may apply to the Court for an order that the company not be removed from the Niue register on any ground set out in that subsection.

(2) On an application for an order under subsection (1), the Court may make an order that the company is not to be removed from the Niue register if the Court is satisfied that the company should not be removed from the Niue register on any of those grounds.

Effect of removal from register

267 Property of company removed from register

(1) Property that, immediately before the removal of a company from the Niue register, had not been distributed or disclaimed, vests in the Government with effect from the removal of the company from the Niue register.

(2) For the purposes of this section, property of the former company –

(a) Includes leasehold property and all other rights vested in or held on trust for the former company; but

(b) Does not include property held by the former company on trust for any other person.

(3) The Financial Secretary must, immediately on becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and details of the property.

(4) If property is vested in the Government under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before the removal of the company from the Niue register, or any other person claiming through that person, may apply to the Court for an order –

(a) Vesting all or part of the property in that person; or

(b) For payment to that person by the Government of compensation of an amount not greater than the value of the property.

(5) On an application made under subsection (4), the Court may –

(a) Decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among 2 or more applicants; or

(b) Order that the hearing of 2 or more applications be consolidated; or

(c) Order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or

(d) Make an ancillary order.

(6) Compensation ordered to be paid under subsection (4) must be paid out of the Niue Government Account without further appropriation than this section.

268 Disclaimer of property by Government

(1) The Financial Secretary may, by notice in writing, disclaim the Government's title to property vesting in the Government if the property is onerous property.

(2) The Financial Secretary must immediately give public notice of the disclaimer.

(3) Property that is disclaimed under this section is deemed not to have vested in the Government.

(4) Subject to any order of the Court, the Financial Secretary is not entitled to disclaim property unless –

(a) The property is disclaimed within 12 months after the vesting of the property in the Government first comes to the notice of the Financial Secretary; or

(b) If before the expiry of that 12 month period, any person gives notice in writing to the Financial Secretary requiring the Financial Secretary to elect, before the close of such date as is stated in the notice, not being a date that is less than 60 working days after the date on which the notice is received by the Financial Secretary, whether to disclaim the property, the property is disclaimed before the close of that date.

(5) A statement in a notice disclaiming property under this section that the vesting of the property in the Government first came to the notice of the Financial Secretary on a specified date is, in the absence of proof to the contrary, evidence of the fact stated.

(6) For the purposes of this section, onerous property means –

(a) An unprofitable contract; or

(b) Property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

269 Effect of disclaimer

(1) A disclaimer under section 268 –

(a) Brings to an end on and from the date of the disclaimer the rights, interests, and liabilities of the Government in relation to the property disclaimed; and

(b) Does not, except so far as necessary to release the Government from a liability, affect the rights or liabilities of any other person.

(2) A person suffering loss or damage as a result of a disclaimer under section 268 may –

(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); or

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

(3) The Court may make an order under subsection (2)(b) if it is satisfied that it is just that the property should be vested in the applicant.

270 Liability of directors, shareholders, and others to continue

The removal of a company from the Niue register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the Niue register and that liability continues and may be enforced as if the company had not been removed from the Niue register.

271 Liquidation of company removed from Niue register

(1) Despite the fact that a company has been removed from the Niue register, the Court may appoint a liquidator of the company as if the company continued in existence.

(2) If a liquidator is appointed in accordance with subsection (1) –

(a) Subpart 3 of Part 9 applies, with the necessary modifications, to the liquidation;

(b) Section 278 applies, with the necessary modifications, to property of the company that is vested in the Government as if the company had been restored to the Niue register.

Restoration of removed company to Niue register

272 Registrar may restore company to Niue register

(1) Subject to sections 273 and 274, the Registrar must, on the application of a person referred to in subsection (2), and may, on his or her own motion, restore a company that has been removed from the Niue register to the Niue register if he or she is satisfied that, at the time the company was removed from the Niue register –

(a) The company was still carrying on business or other reason existed for the company to continue in existence; or

(b) The company was a party to legal proceedings; or

(c) The company was in receivership, or liquidation, or administration.

(2) Any person may apply under subsection (1) if the person was, at the time the company was removed from the Niue register –

(a) A shareholder or director of the company; or

(b) A creditor of the company; or

(c) An administrator, a liquidator, or a receiver of the property, of the company.

(3) Nothing in this section or sections 273 to 275 limits or affects section 276.

273 Requirements to be met before restoring company to Niue register

(1) Before the Registrar restores a company to the Niue register –

(a) In the case of a company that was removed from the Niue register under section 258(a) or (b), the Registrar must give public notice setting out –

(i) the name of the company; and
(ii) the name and address of the applicant; and
(iii) the section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and
(iv) the date by which an objection to restoring the company to the Niue register must be delivered to the Registrar, not being less than 20 working days after the date of the notice; and

(b) In the case of a company that was removed from the Niue register under section 258(c) or (d), the person who made the application under section 272(1) must give public notice setting out –
(i) The name of the company; and
(ii) the person's name and address; and
(iii) the section under which, and the grounds on which, the application is made; and
(iv) the date by which an objection to restoring the company to the Niue register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.

(2) Before the Registrar restores a company to the Niue register, the Registrar may require any of the provisions of this Act or any other Act or any regulations made under this Act or any other Act, being provisions with which the company had failed to comply before it was removed from the Niue register, to be complied with.

274 Registrar not to restore company to Niue register if objection received

The Registrar must not restore a company to the Niue register if the Registrar receives an objection to the restoration within the period stated in the notice.

275 Court directions

The Court may, on the application of the Registrar or the applicant, give any directions or make any orders that may be necessary or desirable for the purpose of placing a company that is restored to the Niue register under section 272 and any other persons as nearly as possible in the same position as if the company had not been removed from the register.

276 Court may restore company to Niue register

(1) The Court may, on the application of a person referred to in subsection (2), order that a company that has been removed from the Niue register be restored to the Niue register if it is satisfied that –

(a) At the time the company was removed from the Niue register –
(i) the company was still carrying on business or other reason existed for the company to continue in existence; or
(ii) the company was a party to legal proceedings; or
(iii) the company was in receivership, or liquidation, or administration; or
(iv) the applicant was a creditor, or a shareholder, or a person who had an undischarged claim against the company; or
(v) the applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company under Part 6; or

(b) For any other reason it is just and equitable to restore the company to the Niue register.

(2) The following persons may make an application under subsection (1) –

(a) Any person who, at the time the company was removed from the Niue register –

(i) Was a shareholder or director of the company; or

(ii) was a creditor of the company; or

(iii) was a party to any legal proceedings against the company; or

(iv) had an undischarged claim against the company; or

(v) was the administrator, or liquidator, or a receiver of the property of, the company;

(b) The Registrar;

(c) With the leave of the Court, any other person.

(3) Before the Court makes an order restoring a company to the Niue register under this section, it may require any provisions of this Act or any other Act or any regulations made under this Act or under any other Act, being provisions with which the company had failed to comply before it was removed from the Niue register, to be complied with.

(4) The Court may give any directions or make any orders that may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been removed from the Niue register.

277 Restoration to register

(1) A company is restored to the Niue register when a notice signed by the Registrar stating that the company is restored to the Niue register is registered under this Act.

(2) A company that is restored to the Niue register is deemed to have continued in existence as if it had not been removed from the register.

278 Vesting of property in company on restoration to register

(1) Subject to this section, property of a company that is, at the time the company is restored to the Niue register, vested in the Government pursuant to section 267, vests in the company on its restoration to the Niue register as if the company had not been removed from the Niue register.

(2) Nothing in subsection (1) applies to any property vested in the Government under section 267 if the Court has made an order for the payment of compensation to any person under section 267(4)(b) in respect of that property.

(3) Nothing in subsection (1) applies to land or any estate or interest in land that has vested in the Government if transmission to the Government of the land or that estate or interest in land has been registered under the Land Act 1969.

(4) If transmission to the Government of land or any estate or interest in land that has vested in the Government under section 267 has been registered under the Land Act 1969, the Court may, on the application of the company, make an order –

(a) For the transfer of the land or the estate or interest to the company; or

(b) For the payment by the Government to the company of compensation –

(i) Of an amount not greater than the value of the land or the estate or interest as at the date of registration of the transmission; or

(ii) if the land or the estate or interest has been sold or contracted to be sold, of an amount equal to the net amount received or receivable from the sale.

(5) On an application under subsection (4), the Court may decide any question concerning the value of the land or the estate or interest.

(6) Compensation ordered to be paid under subsection (4) must be paid out of the Niue Government Account without further appropriation than this section.

PART 11
OVERSEAS COMPANIES

279 Meaning of carrying on business

For the purposes of this Part –

(a) A reference to an overseas company carrying on business in Niue includes a reference to the overseas company –
  (i) establishing or using a share transfer office or a share registration office in Niue; or
  (ii) administering, managing, or dealing with property in Niue as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner;

(b) An overseas company does not carry on business in Niue merely because in Niue it –
  (i) Is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
  (ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
  (iii) maintains a bank account; or
  (iv) effects a sale of property through an independent contractor; or
  (v) solicits or procures an order that becomes a binding contract only if the order is accepted outside Niue; or
  (vi) creates evidence of a debt or creates a charge on property; or
  (vii) secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or
  (viii) conducts an isolated transaction that is completed within a period of 30 working days, not being one of a number of similar transactions repeated from time to time; or
  (ix) invests its funds or holds property.

280 Name must comply with section 10

(1) An overseas company must not carry on business in Niue on or after the commencement of this Act under a name that could not be registered under section 10.

(2) If an overseas company contravenes this section –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

281 Overseas companies to register under this Act

(1) An overseas company that, on or after the commencement of this Act, commences to carry on business in Niue must apply for registration under this Part in accordance with section 283 within 20 working days of commencing to carry on business.

(2) An overseas company that, immediately before the commencement of this Act, was carrying on business in Niue and, on the commencement of this Act, continues to carry on business in Niue, must apply for registration under this Part in accordance with section 283 within 40 working days of the commencement of this Act.

(3) An overseas company that changes its name must send or deliver to the Registrar a notice in the prescribed form of the change of name within 10 working days of the change of name.

(4) If an overseas company fails to comply with this section –

(a) The overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

282 Validity of transactions not affected

A failure by an overseas company to comply with sections 280 or 281 does not affect the validity or enforceability of any transaction entered into by the overseas company.

283 Application for registration

(1) An application for registration of an overseas company under this Part must be delivered to the Registrar and must be –

(a) In the prescribed form; and

(b) Signed by or on behalf of the overseas company.

(2) Without limiting subsection (1), the application must –

(a) State the name of the overseas company; and

(b) State the full names and residential addresses and postal addresses of the directors of the overseas company at the date of the application; and

(c) State the full address of the place of business in Niue of the overseas company or, if the overseas company has more than 1 place of business in Niue, the full address of the principal place of business in Niue of the overseas company; and

(d) State the postal address in Niue of the overseas company; and

(e) Have attached evidence of incorporation of the overseas company, and, if not in English, a certified translation of that document; and

(f) State the full name of 1 or more persons resident or incorporated in Niue who are authorised to accept service in Niue of documents on behalf of the overseas company, and the postal address and residential or business address of each those persons.

284 Registration of overseas company

(1) If the Registrar receives a properly completed application for registration under this Part of an overseas company, the Registrar must immediately register the overseas company on the overseas register.

(2) If an overseas company is deemed to be registered under this Part, the Registrar must, immediately after the commencement of this Act, transfer the registration of the overseas company to the overseas register.

(3) If the Registrar receives a notice of a change of name of an overseas company in accordance with section 281(5), the Registrar must register the change of name on the overseas register.

285 Use of name by overseas company

(1) Every overseas company that carries on business in Niue must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in –

(a) Written communications sent by, or on behalf of, the company; and
(b) Documents issued or signed by, or on behalf of, the company that evidence or create a legal obligation of the company.

(2) For the purposes of subsection (1), a generally recognised abbreviation of a word or words may be used in the name of an overseas company if it is not misleading to do so.

286 Further information to be provided by overseas company

(1) An overseas company that carries on business in Niue must ensure that, within 20 working days of the change, notice in the prescribed form is given to the Registrar of –

(a) A change in the directors or in the names or residential addresses or postal addresses of the directors of the overseas company; or
(b) A change in the address of the place of business or principal place of business of the overseas company; or
(c) A change in the postal address in Niue of the overseas company; or
(d) A change in any person or in the postal address or residential or business address of any person authorised to accept service in Niue of documents on behalf of the overseas company.

(2) An overseas company must, within 20 working days of being required to do so by the Registrar, deliver to the Registrar –

(a) A certified copy of the document constituting or defining its constitution; or
(b) A certified copy of any alterations to that document since a copy of the document was last provided to the Registrar; and
(c) If the relevant documents are not in English, a certified translation of those documents. The Registrar must require delivery of the relevant documents by the overseas company under this subsection if requested to do so by any creditor of that overseas company in Niue, unless the Registrar considers that the request is frivolous or vexatious.

(3) If an overseas company fails to comply with subsections (1) or (2) –

(a) The overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
(b) Every director of the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

287 Annual return of overseas company

(1) Every overseas company that carries on business in Niue must ensure that the Registrar receives each year, during the month allocated to the overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the overseas register in respect of the overseas company referred to in the return is correct at the date of the return.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.

(3) On registration of an overseas company under this Part, the Registrar must allocate a month to the company for the purposes of this section.

(4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3).

(5) Despite subsection (1), an overseas company that is deemed to be registered under this Part need not make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsections (1) or (2) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and

(b) Every director of the overseas company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

288 Overseas company ceasing to carry on business in Niue

(1) An overseas company registered under this Part that intends to cease to carry on business in Niue must –

(a) Give public notice of that intention; and

(b) Give notice to the Registrar in the prescribed form stating the date on which it will cease to carry on business in Niue.

(2) The Registrar must remove an overseas company from the overseas register as soon as practicable after –

(a) The date specified in the notice given in accordance with subsection (1)(b); or

(b) Receipt of a written notice given by a liquidator that the liquidation of the assets in Niue of the overseas company has been completed.

289 Attorneys of overseas companies

(1) Part XII of the Property Law Act 1952 applies, with the necessary modifications, to a power of attorney executed by an overseas company registered under this Part to the same extent as if the company were a person and as if the commencement of the liquidation of the company was the death of a person within the meaning of Part XII of that Act.

(2) A declaration endorsed on or annexed to a document appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made by one of the directors before a person authorised by section 76 of the Niue Act 1966 to take an affidavit for use in Niue, in the country concerned, to the effect that –

(a) The company is incorporated under the name stated in the document in accordance with the law of the country in which it is so incorporated, the name of which is stated in the declaration; and

(b) The document has been executed, and the powers appearing to be conferred on the attorney are authorised to be conferred under the constitution of the company, or under the Act or document under which the company is incorporated, or by any other document constituting or defining the constitution of the company; and

(c) The person making the declaration is a director of the company –
is conclusive evidence of those facts.

290 Liquidation of assets in Niue

(1) An application may be made to the Court for the liquidation of the assets in Niue of an overseas company in accordance with subpart 3 of Part 9, subject to the modifications and exclusions set out in Schedule 19.

(2) An application may be made under subsection (1) whether or not the overseas company –

(a) Is registered under this Part; or
(b) Has given public notice of an intention to cease to carry on business in Niue; or
(c) Has given notice to the Registrar of the date on which it will cease to carry on business in Niue; or
(d) Has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

291 Exemption from requirements of this Part

Regulations may be made providing for any class or classes of overseas company to be exempted from the application of any or all of the requirements of this Part, or modifying the application of this Part to such overseas companies, on such terms and conditions as may be prescribed in those regulations.

PART 12
Transfer of Registration

292 Overseas companies may be registered as companies under this Act

Subject to this Part, an overseas company may be registered as a company under this Act.

293 Application for registration

(1) An application by an overseas company to register as a company under this Act must be in the prescribed form and must be accompanied by –

(a) A certified copy of its certificate of incorporation or other similar document that evidences its incorporation; and
(b) A certified copy of its rules or other similar document; and
(c) Evidence acceptable to the Registrar that the company is not prevented from being registered as a company under this Act by either sections 294 or 295; and
(d) The documents and information that are required to register a company under this Act; and
(e) Any other documents and information the Registrar may require.

(2) The Registrar may direct that a document that has been delivered to the Registrar or registered under Part 11 need not accompany the application.

294 Overseas companies must be authorised to register

An overseas company must not be registered as a company under this Act unless –

(a) The company is authorised to transfer its incorporation under the law of the country in which it is incorporated; and
(b) The company has complied with the requirements of that law in relation to the transfer of its incorporation; and

(c) If that law does not require its shareholders, or a specified proportion of them, to consent to the transfer of its incorporation, the transfer has been consented to by not less than 75% of its shareholders entitled to vote and voting in person or by proxy at a meeting of which not less than 15 working days' notice is given specifying the intention to transfer the company's incorporation.

295 Overseas companies that cannot be registered

An overseas company must not be registered as a company under this Act if –

(a) The company is in liquidation; or
(b) A receiver or manager has been appointed, whether by a Court or not, in relation to the property of the company; or
(c) The company has entered into a compromise or arrangement with a creditor that is in force; or
(d) An application has been made to a Court and has not been dealt with, whether in Niue or in another country –
  (i) to put the company into liquidation or to wind it up; or
  (ii) For the approval of a compromise or arrangement between the company and a creditor.

296 Registration

(1) As soon as the Registrar receives a properly completed application for registration of an overseas company as a company under this Act, the Registrar must –

(a) Enter the company on the Niue register; and
(b) Issue a certificate of registration in the prescribed form.

(2) A certificate of registration of a company issued under this section is conclusive evidence that –

(a) All the requirements as to registration have been complied with; and
(b) On and from the date of registration stated in the certificate, the company is registered under this Act.

(3) If an application for registration of an overseas company as a company under this Act specifies a date on which the registration is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of registration must be expressed to have effect on the date specified in the application.

297 Effect of registration

(1) The registration of an overseas company under this Act does not –
  (a) Create a new legal entity; or
  (b) Prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or
  (c) Affect the property, rights, or obligations of the company; or
  (d) Affect proceedings by or against the company.

(2) Proceedings that could have been commenced or continued by or against the overseas company before registration under this Act may be commenced or continued by or against the company after registration.

298 Companies may transfer incorporation

Subject to this Part, a company may be removed from the Niue register in connection with becoming incorporated under the law in force in, or in any part of, another country.

299 Application to transfer incorporation

An application by a company for removal from the Niue register in connection with becoming incorporated under the law in force in, or in any part of, another country must be in the prescribed form and must be accompanied by –

(a) Evidence acceptable to the Registrar that sections 300 and 301 have been complied with; and
(b) Evidence acceptable to the Registrar that the removal of the company from the Niue register is not prevented by section 302; and
(c) Written notice from the Financial Secretary that the Financial Secretary has no objection to the company being removed from the Niue register; and
(d) Evidence acceptable to the Registrar that the company is incorporated under that law, or will be incorporated under that law no later than the date on which it is to be removed from the Niue register; and
(e) Any other documents or information that the Registrar may require.

300 Approval of shareholders

A company must not apply to be removed from the Niue register under section 299 unless the making of the application has been approved by special resolution.

301 Company to give public notice

(1) A company must not apply to be removed from the Niue register under section 299 unless –

(a) The company gives public notice –
  (i) stating that it intends, after the date specified in the notice, which must not be less than 20 working days after the date of the notice, to apply under section 299 for the company to be removed from the Niue register in connection with the company becoming incorporated under the law in force in, or in any part of, another country; and
  (ii) specifying the country or part of the country under the law of that it is proposed that the company will become incorporated; and
(b) The application is made after the date specified in the notice.

(2) If the Court is satisfied that the proposed removal of a company from the Niue register under this Part would unfairly prejudice a shareholder or creditor of the company or a person to whom the company is under an obligation, it may, on the application of that person made at any time before the date on which the removal becomes effective, make any of the following orders –

(a) An order restraining the removal of the company from the Niue register under this Part;
(b) An order specifying conditions that must be met by the company before being removed from the Niue register under this Part;

(c) If an order is made under paragraphs (a) or (b), orders granting any consequential or ancillary relief that the Court thinks fit.

302 Companies that cannot transfer incorporation

A company must not be removed from the Niue register under section 303 if –

(a) The company is in administration or liquidation, or an application has been made to the Court to put the company into liquidation; or
(b) A receiver or manager has been appointed, whether by the Court or not, in relation to any property of the company; or
(c) A compromise has been approved by the Court under subpart 2 of Part 8 in relation to the company or an application has been made to the Court to approve a compromise under that subpart; or
(d) The company has entered into a compromise with creditors or a class of creditors under subpart 2 of Part 9 or a compromise has been proposed under that subpart in relation to the company; or
(e) An order restraining its removal from the Niue register has been made under section 301, or any conditions specified in an order made under section 301 have not been satisfied by the company.

303 Removal from register

(1) As soon as the Registrar receives a properly completed application to remove a company from the Niue register, the Registrar must enter on the register a notice signed by the Registrar that the company has been removed from the Niue register in accordance with this Part.

(2) If an application for removal of a company from the Niue register under this Part specifies a date on which the removal is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the application, the notice of removal must be expressed to have effect on the date specified in the application.

304 Effect of removal from register

(1) The removal of a company from the Niue register under section 303 does not –

(a) Prejudice or affect the identity of the body corporate that was constituted under this Act or its continuity as a legal person; or
(b) Affect the property, rights, or obligations of that body corporate; or
(c) Affect proceedings by or against that body corporate.

(2) Proceedings that could have been commenced or continued by or against a company before the company was removed from the Niue register under section 303 may be commenced or continued by or against the body corporate that continues in existence after the removal of the company from the Niue register.

PART 13
REGISTRAR OF COMPANIES
Subpart 1–Registrar
OFFICE

305 Registrar

The Minister must appoint a person to hold office as Registrar of Companies.

306 Deputy Registrars

(1) The Registrar may appoint as many Deputy Registrars of Companies as may be necessary for the purposes of this Act.

(2) Subject to the control of the Registrar, a Deputy Registrar has and may exercise the powers, duties, and functions of the Registrar under this Act.

(3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of his or her authority to do so.

307 Transitional

The person holding office as Registrar of International Business Companies under the International Business Companies Act 1994 immediately before the commencement of this Act is deemed to have been appointed as Registrar of Companies.

Notices by Registrar

308 Notices; general

Section 347 applies, with the necessary modifications, to the giving of notices by the Registrar.

309 Notices to individuals

(1) A notice that the Registrar is required by this Act to give to an individual, must be given in writing and in a manner that the Registrar considers appropriate in the circumstances.

(2) Without limiting subsection (1), the Registrar may give notice to an individual by –

(a) Having it delivered to that person; or
(b) Posting it to that person at his or her last known postal address; or
(c) Faxing it to a fax number used by that person; or
(d) Having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.

310 Admissibility of notices given by Registrar

A document is admissible in legal proceedings if the document –

(a) Appears to be a copy of a notice given by the Registrar; and
(b) Is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means.

POWERS

311 Registrar may require information and copies of documents

(1) The Registrar may give notice to a company requiring that company to provide, by the date specified in the notice –

(a) Corrected or updated details of any matter entered on any of the registers for that company; or
(b) A certified copy of any document that has been or ought to have been delivered to the Registrar for registration under this Act, or under any other Act for that company.

(2) The date specified in the notice must not be less than 10 working days from the date on which the notice is sent to the company.

(3) If a company fails to comply with a notice given under subsection (1) –

(a) The company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units; and
(b) Every director of the company commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(4) In this section and section 312, company includes an overseas company.

312 Registrar may amend registers

If information provided to the Registrar by a company under section 311 differs from the information shown on any of the registers for that company, the Registrar may amend the registers accordingly.

313 Registrar's powers of inspection

(1) The Registrar, or any person authorised by the Registrar, may, for the purposes set out in subsection (2) and if the Registrar considers that it is in the public interest to do so, do any of the following –

(a) Require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control;

(b) Inspect and take copies of relevant documents;

(c) Take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies;

(d) Retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.

(2) The purposes referred to in subsection (1) are to –

(a) Ascertain whether a company or a director of a company is complying, or has complied, with this Act; or

(b) Ascertain whether the Registrar should exercise any of his or her rights or powers under this Act; or

(c) Detect offences against this Act.

(3) Every person who fails to comply with subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

(4) In this section –

company includes an overseas company

relevant document, in relation to a company, means a document that contains information relating to –

(a) The company; or

(b) Money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the company.

314 Registrar not to be obstructed

(1) A person must not obstruct or hinder the Registrar, or a person authorised by the Registrar, while exercising a power conferred by section 313.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

315 Certain Acts not affected by Registrar's power of inspection

Nothing in sections 313 to 314 limits or affects the Income Tax Act 1961.

316 Disclosure of information and reports

(1) A person authorised by the Registrar for the purpose of section 313 must, if directed to do so by the Registrar, give the following documents, information, or reports to the persons described in subsection (2) –

(a) Any document or information obtained in the course of making an inspection under that section; or

(b) Any report prepared in relation to an inspection under that section.

(2) The persons referred to in subsection (1) are –
- (a) The Minister; or
- (b) The Secretary; or
- (c) Any person authorised by the Registrar to receive the document, information, or report for the purposes of, or in connection with, the exercise of powers conferred by this Act; or
- (d) A liquidator for the purposes of the liquidation of a company; or
- (e) Any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting or investigating offences against any Act.

(3) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

317 Information and report to be given to Registrar

(1) A person authorised by the Registrar for the purposes of section 313 must give the following documents, information, or reports to the Registrar or a Deputy Registrar when directed to do so by any person who holds any of those offices –
- (a) Any document or information obtained in the course of making an inspection under that section; or
- (b) Any report prepared in relation to an inspection under that section.

(2) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

318 Restrictions on disclosing information

(1) A person authorised by the Registrar for the purposes of section 313 must not disclose any of the documents, information, or reports referred to in that section except –
- (a) In accordance with that section; or
- (b) Subject to the approval of the Registrar, with the consent of the person to whom it relates; or
- (c) Subject to the approval of the Registrar, for the purposes of, or in connection with, the exercise of powers conferred by this Act; or
- (d) To the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
- (e) Subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a company or the assets of an overseas company; or
- (f) In the course of criminal proceedings; or
- (g) Subject to the approval of the Registrar, for the purpose of detecting offences against any Act.

(2) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

319 Inspector's report admissible in liquidation proceedings

Despite any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 313 is admissible in evidence at the hearing of an application to the Court to appoint a liquidator.

Appeals

320 Appeals

(1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within 15 working days after the date of notification of the act or decision, or within any further time that the Court may allow.

(2) On hearing the appeal, the Court may –

(a) Approve the Registrar's act or decision;

(b) Give any directions that the Court thinks fit;

(c) Make any determination in the matter that the Court thinks fit.

321 Exercise of inspection power not affected by appeal

Subject to section 322, but despite any other provision of any Act or any rule of law, if a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 313, until a decision on the appeal or application is given –

(a) The Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and

(b) No person is excused from fulfilling an obligation under that section by reason of that appeal or application.

322 Destruction and admissibility of Registrar's documents

If an appeal or application to which section 321 applies is allowed or granted, as the case may be –

(a) The Registrar must ensure that, immediately after the decision of the Court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and

(b) No information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

Subpart 2 – Registers kept by Registrar

REGISTERS

323 Registers

(1) The Registrar must ensure that the following registers (registers) are kept in any place in Niue or overseas that the Registrar determines from time to time –

(a) A register of companies (Niue register); and

(b) A register of overseas companies (overseas register); and

(c) A register of charges in the prescribed form (if any) for each company (register of charges).

(2) The registers may be kept in any manner that the Registrar thinks fit including, either wholly or partly, by means of a device or facility –

(a) That records or stores information electronically or by other means; and

(b) That permits the information so recorded or stored to be readily inspected or reproduced in usable form.

Inspection of registers

324 Inspection of registers

(1) A person may, on payment of any prescribed fees, inspect –

(a) A registered document that is part of any of the registers referred to in section 323(1) (registered document);

(b) Details of any registered document that have been entered on any device or facility referred to in section 323(3);

(c) Any registered document of which details have been entered in any such device or facility.

(2) The inspection must take place during the hours when the office of the Registrar is open to the public for the transaction of business on a working day.

325 Certified copies

A person may, on payment of any fees that are prescribed, require the Registrar to give or certify –

(a) A certificate of incorporation of a company; or

(b) A copy of, or extract from, a registered document

(c) Details of any registered document that have been entered in any device or facility referred to in section 323(3); or

(d) A copy of, or extract from, a registered document details of which have been entered in any such device or facility.

326 Evidence

(1) A process must not issue from the Court without the leave of the Court to compel the production of –

(a) A registered document kept by the Registrar; or

(b) Evidence of the entry of details of a registered document in any device or facility referred to in section 323(3).

(2) A process that issues from the Court with the leave of the Court under subsection (1) must have on its face, or attached to it, a statement that it is issued with the leave of the Court.

(3) A copy of, or extract from, a registered document certified to be a true copy or extract by the Registrar is admissible in evidence in legal proceedings to the same extent as the original document.

(4) An extract certified by the Registrar as containing details of a registered document that have been entered in any device or facility referred to in section 323(3) is, in the absence of proof to the contrary, conclusive evidence of the entry of those details.

Registration

327 Registration of documents

As soon as a document is received for registration under this Act, the Registrar must –

(a) Subject to section 328, register the document in the appropriate register; and

(b) In the case of a document that is not an annual return, give written advice of the registration to the person from whom the document was received.

328 Rejection of documents

(1) The Registrar may refuse to register a document that –
- (a) Is not in the prescribed form, if any; or
- (b) Does not comply with this Act or regulations made under this Act; or
- (c) Is not printed or typewritten; or
- (d) If the relevant register is kept wholly or partly by means of a device or facility referred to in section 323(3), is not in a form that enables details to be entered directly by electronic or other means in the device or facility; or
- (e) Has not been properly completed; or
- (f) Contains material that is not clearly legible; or
- (g) Is not accompanied by the prescribed fee.

(2) If subsection (1) applies, the Registrar may require either that –
- (a) The document is submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
- (b) A fresh document is submitted in its place.

329 When document registered

For the purposes of this Act, a document is registered when –
- (a) The document itself becomes part of the register to which it relates; or
- (b) Details of the document are entered in any device or facility referred to in section 323(3).

330 No presumption of validity or invalidity

Neither registration, nor refusal of registration, of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

PART 14
REREGISTRATION OF INTERNATIONAL BUSINESS COMPANIES

331 Period for reregistration

(1) An international business company may reregister under this Act at any time during the transition period.

(2) In this Part, transition period means the period beginning on the date of the commencement of this Part and ending with the close of 31 December 2006.

332 Rules of reregistered company

(1) Subject to subsections (3) and (4), on reregistration –
- (a) The memorandum of association of an international business company is deemed to form part of the articles of association of the company; and to the extent of any inconsistency between the memorandum of association and the articles of association of the company, the memorandum of association prevails; and
- (b) The articles of association of an international business company (which incorporate its memorandum of association in accordance with paragraph (a)) continue as the rules of the company for the purposes of this Act; and

(c) All shares issued by the international business company before reregistration are deemed to be converted into shares of no par value; but that conversion does not affect the rights and obligations attached to the shares, and, in particular, does not affect –

(i) the entitlements of the holder of the shares in respect of distributions, voting, the redemption of any redeemable shares, or the distribution of surplus assets of the company in a liquidation;

(ii) any unpaid liability of a shareholder in respect of a share.

(2) Despite anything in the articles of the international business company, the holder of a share at the time of reregistration is personally liable for any liability (including a liability for calls) attached to the share; and, in the event of a transfer of the share after reregistration, that liability remains with the shareholder at the time of reregistration, and does not pass to the transferee of the share.

(3) An international business company may resolve to adopt the model rules in Schedules 2, 3, or 4 as its rules on reregistration under this Act.

(4) An international business company may resolve to adopt new rules that differ from the model rules on reregistration under this Act.

(5) A resolution under subsections (3) or (4) must be approved before reregistration in the same manner as would be required under the International Business Companies Act 1994 and the company's memorandum of association and articles of association for approval of a resolution altering the company's articles of association.

333 Documents to be filed

(1) An application for reregistration of an international business company under this Act must be made to the Registrar in the prescribed form.

(2) An application for reregistration of a international business company must specify –

(a) The name of the company; and

(b) Whether the company is to be registered under this Act as a private company or a public company; and

(c) The full name and residential address and postal address of every director of the company; and

(d) In the case of a private company, the full name of every shareholder of the company, and the number and class of shares held by each shareholder; and

(e) The registered office of the company; and

(f) The postal address of the company, which may be the postal address of the registered office or any other postal address; and

(g) Details of the location of any records of the company referred to in section 117 that are not kept at the registered office of the company.

(3) An application for reregistration must be accompanied by –

(a) A copy of –

(i) any resolution of the company under section 332(3) or (4); and

(ii) any rules adopted by a company under section 332(4); or

(iii) certified copies of the existing memorandum of association and articles of association of the company, if it is reregistering with its existing constitutional documents under section 332(1); and

(b) The prescribed fee for reregistration.

334 Effect of reregistration

(1) As soon as the Registrar receives an application for reregistration that complies with section 333, the Registrar must –

(a) Enter the company on the Niue register; and

(b) Issue a certificate of reregistration in respect of the company in the prescribed form.

(2) A certificate of reregistration of a company issued under subsection (1) is conclusive evidence that –

(a) All the requirements as to reregistration have been complied with; and

(b) On and from the date of reregistration stated in the certificate, the company is registered under this Act.

(3) The reregistration of an existing company under this Act does not –

(a) Prejudice or affect the identity of the body corporate that was constituted under the International Business Companies Act 1994 or its continuity as a legal person; or

(b) Affect the property, rights, or obligations of that body corporate; or

(c) Affect proceedings by or against that body corporate.

335 Failure to reregister

If an international business company fails to reregister before the expiry of the transition period, the following provisions apply with effect from the expiry of the transition period –

(a) The international business company is deemed to have been dissolved on the last day of the transition period;

(b) The international business company may, despite the expiry of the transition period and its deemed dissolution, reregister in accordance with the procedures set out in this Part, and sections 276 to 278 of this Act apply with the necessary modifications as if the company had been removed from the Niue register under this Act.

PART 15
MISCELLANEOUS
Subpart 1 – Offences

336 Proceedings for offences

(1) Despite anything to the contrary in the Niue Act 1966, any information for an offence under this Act may be laid at any time within 3 years after the date of the offence.

(2) Nothing in this Act affects the liability of any person under any other Act, but no person may be convicted of an offence against this Act and any other Act in respect of the same conduct.

337 False statements on documents

(1) Every person commits an offence who, with respect to a document required by or for the purposes of this Act –

(a) Makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or

(b) Omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular.

(2) Every director or employee of a company commits an offence who makes or provides, or authorises or permits the making or providing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to –

(a) A director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or

(b) An administrator, a liquidator, liquidation committee, or receiver or manager of property of the company; or

(c) If the company is a subsidiary, a director, employee, or auditor of its holding company –

knowing it to be false or misleading.

(3) Every person who commits an offence against subsections (1) or (2) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

(4) For the purposes of this Act, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

338 Fraudulent use or destruction of company property

(1) Every director, employee, or shareholder of a company commits an offence who –

(a) Fraudulently takes or applies property of the company for his or her own use or benefit, or for a use or purpose other than the use or purpose of the company; or

(b) Fraudulently conceals or destroys property of the company.

(2) Every person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

339 Falsification of records

(1) Every director, employee, or shareholder of a company commits an offence who, with intent to defraud or deceive a person –

(a) Destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or

(b) Makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company.

(2) Every person commits an offence who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act –

(a) Records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or

(b) With intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies any matter recorded or stored in the device, or fails or omits to record or store any matter in the device.

(3) Every person who commits an offence against subsections (1) or (2) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

340 Carrying on business fraudulently

(1) Every person commits an offence who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose.

(2) Every director of a company commits an offence who –

(a) By false pretences or other fraud induces a person to give credit to the company; or

(b) With intent to defraud creditors of the company –

(i) gives, transfers, or causes a charge to be given on, property of the company to any person; or

(ii) causes property to be given or transferred to any person; or

(iii) caused or was a party to execution being levied against property of the company.

(3) Every person who commits an offence against subsections (1) or (2) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both.

Subpart 2 – Privileged communications and service of documents

341 Privileged communications

(1) Nothing in this Act requires a legal practitioner to disclose a privileged communication.

(2) For the purposes of this Act, a communication is a privileged communication only if –

(a) It is a confidential communication, whether oral or written, passing between –

(i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or

(ii) a legal practitioner in his or her professional capacity and his or her client –

whether made directly or indirectly through an agent; and

(b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

(c) It is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.

(3) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.

(4) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

342 Service of documents on companies in legal proceedings

A document, including a writ, summons, notice, or order, in any legal proceedings may be served on a company as follows –

(a) By delivery to a person named as a director of the company on the Niue register; or

(b) By delivery to an employee of the company at the company's head office or principal place of business; or

(c) By leaving it at the company's registered office; or
(d) By serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings; or
(e) In accordance with an agreement made with the company; or
(f) By serving it at an address for service given in accordance with the rules of the Court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.

343 Service of other documents on companies

A document, other than a document in any legal proceedings, may be served on a company as follows –

(a) By any of the methods set out in section 342(a), (b), (c), or (e);
(b) By posting it to the company's postal address;
(c) By faxing it to a fax number at the company's registered office or its head office or principal place of business.

344 Service of documents on overseas companies in legal proceedings

A document, including a writ, summons, notice, or order, in any legal proceedings may be served on an overseas company in Niue as follows –

(a) By delivery to a person named in the overseas register as a director of the overseas company and who is resident in Niue;
(b) By delivery to a person named in the overseas register as being authorised to accept service in Niue of documents on behalf of the overseas company;
(c) By delivery to an employee of the overseas company at the overseas company's place of business in Niue or, if the overseas company has more than 1 place of business in Niue, at the overseas company's principal place of business in Niue;
(d) By serving it in accordance with any directions as to service given by the Court having jurisdiction in the proceedings;
(e) In accordance with an agreement made with the overseas company.

345 Service of other documents on overseas companies

A document, other than a document in any legal proceedings, may be served on an overseas company as follows –

(a) By any of the methods set out in section 344(a), (b), (c), or (e);
(b) By posting it to the postal address in Niue of the overseas company;
(c) By posting it to the postal address of a person named in the overseas register as being authorised to accept service in Niue of documents on behalf of the overseas company;
(d) By faxing it to a fax number at the principal place of business in Niue of the overseas company.

346 Service of documents on shareholders and creditors

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

(a) Delivered to that person; or
(b) Posted to that person's postal address; or
(c) Faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 342 or section 344, as the case may be.

(3) A notice, statement, report, accounts, or other document to be sent or given to a creditor that is a body corporate, not being a company or an overseas company, may be –

(a) Delivered to a person who is a principal officer of the body corporate; or
(b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
(c) Delivered in such manner as the Court directs; or
(d) Delivered in accordance with an agreement made with the body corporate; or
(e) Posted to the postal address of the body corporate; or
(f) Faxed to a fax number at the principal office or principal place of business of the body corporate.

347 Additional provisions relating to service

(1) Subject to subsection (2), for the purposes of sections 342 to 346 –

(a) If a document is to be served by delivery to a natural person, service must be made –
(i) by handing the document to the person; or
(ii) if the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person;
(b) A document that is posted is deemed to be received 5 working days after it is posted;
(c) A document that is faxed is deemed to have been received on the working day following the day on which it was faxed;
(d) In proving service of a document by post, it is sufficient to prove that –
(i) the document was properly addressed; and
(ii) all postal or delivery charges were paid; and
(iii) the document was posted;
(e) In proving service of a faxed document, it is sufficient to prove that the document was properly faxed to the person concerned.

(2) A document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Subpart 3 – Regulation-making powers

348 Regulations

(1) Cabinet may make regulations for all or any of the following purposes;

Fees

(a) Prescribing fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act;
(b) Prescribing amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by this Act;
(c) Prescribing fees or other amounts payable to the Registrar in respect of any other matter under this Act;
(d) Prescribing fees or other amounts payable to the Registrar of the High Court in respect of any Court proceedings under this Act;

Forms

(e) Prescribing forms (including Court forms) for the purposes of this Act; and those regulations may require –
  (i) The inclusion in, or attachment to, forms of specified information or documents;
  (ii) forms to be signed by specified persons;

Registration requirements

(f) Prescribing requirements, not inconsistent with this Act, with which documents delivered for registration must comply;

Financial reporting requirements

(g) Regulating the financial reporting of a company, overseas company, or class of companies or overseas companies, including (without limitation) –
  (i) prescribing requirements in respect of the adoption by directors of a balance date for a company;
  (ii) regulating changes to the balance date of a company;
(h) Prescribing requirements, not inconsistent with this Act, in relation to the form or content of financial statements, or any other matters in respect of financial statements, including (without limitation) –
  (i) prescribing different requirements in respect of different classes of company;
  (ii) requiring compliance with standards issued or published by a specified body or bodies, with or without modifications;

Liquidations

(i) regulating, in a manner not inconsistent with this Act, the conduct of liquidations;
(j) Fixing an amount or prescribing a rate or rates in respect of the remuneration of liquidators, and without limiting what may be prescribed by such regulations, those regulations may –
  (i) prescribe an hourly or other rate or rates of remuneration and different rates may be prescribed in respect of work undertaken in the liquidation by different classes of persons;
  (ii) prescribe a rate or rates by reference to the net value of the assets realised by the liquidator, together with any other amounts that may be specified;
  (iii) prescribe a rate or rates in respect of the exercise of a particular function or power;
  (iv) prescribe a rate or rates by reference to any other criteria that may be specified;

Court proceedings under this Act

(k) Providing for and regulating any Court proceedings under this Act;

Exemption from requirements of Part 11

(l) Providing for any class or classes of overseas company to be exempted from the application of any or all of the requirements of Part 11, or modifying the application of Part 11 to such overseas companies, on any terms and conditions;

Transitional and savings provisions

(m) Prescribing transitional and savings provisions relating to the coming into force of this Act;

Modifying Schedules

(n) Amending the model rules in Schedules 2, 3, and 4;
(o) Replacing all or any of the model rules in Schedules 2, 3, and 4;
(p) Specifying the class or classes of companies to which the amended model rules or replaced model rules will apply;
(q) Specifying the date or occasion on which the amended model rules or replaced model rules take effect or will apply;
(r) Without limiting paragraphs (p) and (q), specifying whether the amended model rules or replaced model rules apply to all companies to which the relevant model rules apply, or only to companies incorporated after the date on which the amended model rules or replaced model rules take effect;
(s) Amending the provisions of Schedules 7, 11, 12, 16, 18, and 19;

General

(t) Providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) The Registrar may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.

(3) Any regulations made under subsection (1) may authorise the Registrar to waive, in whole or in part and on any conditions that may be prescribed, payment of any amount referred to in paragraph (b) of that subsection.

(4) If the Registrar requires a company to change its name, no fee is payable in respect of an application to change the name of the company.

(5) Any fee or amount payable to the Registrar is recoverable by the Registrar in any Court of competent jurisdiction as a debt due to the Government.

Subpart 4–Repeals and transitional provisions

349 International business companies

(1) No company may be incorporated under the International Business Companies Act 1994 after this section comes into force, despite section 3 of that Act.

(2) The International Business Companies Act 1994 is repealed on, and with effect from, 31 December 2006.

350 Repeals and revocations

(1) The enactments specified in Schedule 20 are repealed on the expiry of the transition period.

(2) The regulations specified in Schedule 21 are revoked on the expiry of the transition period.

SCHEDULE 1

s 3

INTERPRETATION

1 Definitions
2 Meaning of subsidiary
3 Meaning of holding company
4 Meaning of related company
5 Solvency test

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1 Definitions

In this Act, unless the context otherwise requires –

accounting period, in relation to a company, means a year ending on a balance date of the company and, if as a result of the date of the registration of the company or a change of the balance date of the company, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period

administrator means an administrator appointed under subpart 1 of Part 9

alteration document means a document that provides for the alteration of a registered charge

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

assignee means the person to whom the benefit of a registered charge is assigned

assignment document means a document that provides for the assignment of a registered charge

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

board and board of directors, in relation to a company, means –

(a) Directors of the company who number not less than the required quorum acting together as a board of directors; or

(b) If the company has only 1 director, that director –

broadcasting means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus; but does not include any such transmission of programmes –

(a)Made on the demand of a particular person for reception only by that person; or

(b) Made solely for performance or display in a public place

charge document –

(a) Means a document that creates, or provides for, a company charge; and

(b) In the case of an issue by a company of a series of debentures, includes a deed that contains, or refers to, a charge created by the company that entitles the debenture holders of the series to rank equally

committee of creditors, in relation to a company under administration, means a committee of creditors of the company appointed under subpart 1 of Part 9

company means a company registered or reregistered under this Act

compromise means a compromise between a company and its creditors, including a compromise –

(a) Cancelling all or part of a debt of the company; or

(b) Varying the rights of its creditors or the terms of a debt; or

(c) Relating to an alteration of a company's rules that affects the likelihood of the company being able to pay a debt

convening period, in relation to an administration of a company –

(a) means a period of 20 working days commencing on the day when the administration begins; and

(b) Includes any extension to that period granted by the Court

court officer means a constable or the Registrar or other officer of the Court

creditor –

(a) in subpart 2 of Part 8 (approval of amalgamations, etc, by Court), subpart 1 of Part 9 (administrations), and subpart 2 of Part 9 (compromises with creditors) includes –

(i) a person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and

(ii) a secured creditor;

(b) In subpart 3 of Part 9 (liquidations) –

(i) Means a person who, in a liquidation, would be entitled to claim in accordance with clause 2 of Schedule 18 that a debt is owing to that person by the company; and

(ii) includes a secured creditor only –

(A) For the purposes of sections 217, 221, and 254 and clause 5 of Schedule 15; or

(B) To the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under Part 2 of Schedule 18 as an unsecured creditor

decision period, in relation to a charge on property of a company under administration, means the period –

(a) Beginning on the day when –

(i) if notice of the appointment of the administrator must be given to the secured creditor, the notice is given; or

(ii) otherwise, the administration begins; and

(b) Ending at the end of 15 working days after that day

director, in relation to a company –

(a) includes a person occupying the position of director of the company by whatever name called; but

(b) Does not include a receiver

directors has the same meaning as the definitions of board and board of directors

distribution, in relation to a distribution by a company to a shareholder, means –

(a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder; or

(b) The incurring of a debt to or for the benefit of the shareholder –

in relation to shares held by that shareholder, whether by means of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or some other means

document –

(a) means information in written or electronic form, or both; and
(b) Includes anything from which information may be reproduced (with or without the aid of anything else)

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

enforce, in relation to a charge on property of a company under administration, includes –
(a) Appointing a receiver of property of the company under a power contained in a charge document; and
(b) Obtaining an order for the appointment of a receiver of the property for the purpose of enforcing the charge; and
(c) Entering into possession, or assuming control, of the property for that purpose; and
(d) Appointing a person to enter into possession or to assume control (whether as agent for the secured creditor or for the company); and
(e) Exercising, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under the charge document, under a written or unwritten law, or otherwise

enforcement process, in relation to property, means –
(a) Execution against that property; or
(b) Any other enforcement process in relation to that property that involves a Court

essential service means –
(a) the retail supply of electricity;
(b) The retail supply of fuel and other similar consumable items necessary for the generation of electricity;
(c) The retail supply of gas;
(d) The supply of water;
(e) Telecommunications services

existing charge means a charge that was created by an existing company or overseas company, as the case may be, before the commencement of this Act

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

information includes information (whether in its original form or otherwise)

that is in the form of a document, a signature, a seal, data, text, images, sound, or speech

international business company means a company registered under the International Business Companies Act 1994

liquidator means a liquidator appointed under subpart 3 of Part 9

major transaction has the meaning set out in section 50(2)

model rules means the model rules of incorporation set out in Schedules 2, 3, or 4

Minister means the Minister responsible for the administration of this Act

Niue register means the register kept by the Registrar under section 323(1)(a)

onerous property means –

(a) An unprofitable contract; or

(b) Property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act

overseas company means a corporation that is incorporated outside Niue, whether or not it is registered under Part 11

overseas register means the register kept by the Registrar under section 323(1)(b)

preferential claim means a claim referred to in Part 3 of Schedule 18 (except clause 15 of that schedule)

prescribed form means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar

priority document means a document that has the effect of postponing the priority of a registered charge

private company means a company that is registered as a private company on the Niue register

property includes –

(a) Real and personal property; and

(b) An estate or interest in real or personal property; and

(c) A debt; and

(d) Any thing in action; and

(e) Any other rights, interests, and claims of any kind in relation to property

proponent means a person who proposed a compromise in accordance with subpart 2 of Part 9

public company means a company that is registered as a public company on the Niue register

receiver means a receiver, or a manager, or a receiver and manager in respect of any property appointed –

(a) By or under any deed or agreement; or

(b) By the Court in the exercise of a power conferred on the Court or in the exercise of its inherent jurisdiction –

whether or not the person appointed is empowered to sell any of the property in receivership; but does not include –

(c) A mortgagee who, whether personally or through an agent, exercises a power –

(i) to receive income from mortgaged property; or

(ii) to enter into possession or assume control of mortgaged property; or

(iii) to sell or otherwise alienate mortgaged property; or

(d) An agent of any such mortgagee

registered charge means a charge registered in accordance with Schedule 7

registered document means a document –

(a) that forms part of any of the registers referred to in section 323(1);

(b) Details of which have been entered in any device or facility referred to in section 323(3)

registered office, in relation to a company, has the meaning set out in section 17

registrable charge has the meaning set out in clause 1 of Schedule 7

Registrar means the Registrar of Companies appointed under section 305

rules means the rules of a company

Secretary means the Financial Secretary

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

solvency test means the solvency test referred to in clause 5

special resolution means a resolution –

(a) Approved in accordance with section 52; or

(b) Approved at a meeting of shareholders called to consider that resolution on not less than 10 working days' notice –

(i) by a majority of 75% (or such higher majority as may be specified in the rules) of the votes of shareholders entitled to vote and voting on the question; and

(ii) in accordance with any additional requirements specified in the rules in respect of such resolutions

telecommunications services –

(a) means the conveyance by electromagnetic means from 1 device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but

(b) Does not include any conveyance that constitutes broadcasting.

2 Meaning of subsidiary

(1) For the purposes of this Act, a company is a subsidiary of another company if, but only if –

(a) That other company –

(i) controls the composition of the board of the company; or

(ii) is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that may be exercised at a meeting of the company; or

(iii) holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(iv) is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(b) The company is a subsidiary of a company that is that other company's subsidiary.

(2) In subsection (1), company includes a corporation.

3 Meaning of holding company

(1) For the purposes of this Act, a company is another company's holding company if that other company is its subsidiary.

(2) In subsection (1), company includes a corporation.

4 Meaning of related company

(1) For the purposes of this Act, a company is related to another company if –

(a) The other company is its holding company or subsidiary; or

(b) More than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or

(c) More than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) The businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or

(e) There is another company to which both companies are related; –

and related company has a corresponding meaning.

(2) In subsection (1), company includes a corporation.

5 Solvency test

(1) For the purposes of this Act, a company satisfies the solvency test if –

(a) The company is able to pay its debts as they become due in the normal course of business; and

(b) The value of the company's assets is not less than the value of its liabilities.

(2) A person required to consider whether a company satisfies the solvency test in subsection (1) may have regard to –

(a) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; and

(b) Valuations of assets or liabilities; and

(c) Such other information in relation to the financial position of the company as is reasonable in all the circumstances.

(3) If the rules of a company provide for a solvency margin that must be maintained by the company, subsection (1)(b) applies in relation to that company as if that solvency margin were a liability of the company, except where the surplus assets of the company are being distributed –

(a) In a liquidation; or

(b) Before the removal of the company from the Niue register in accordance with Part 10.

SCHEDULE 2

s 15(1)

Model Rules for Private Company

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General provisions

1 Name of company
2 Private company
3 Rules

PART 2

Shares and shareholders

General provisions

4 Number of shares
5 Rights attaching to shares
6 Issue of shares
7 Process for issuing shares
8 Transferability of shares

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10 Form and location of share register
11 Status of registered shareholder

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19 Selling shareholder not obliged to sell some shares
20 Directors may require evidence of terms

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21 Transfer of shares
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23 Meetings of shareholders
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75 Service of documents on shareholders
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PART 1
GENERAL PROVISIONS

1 Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration or for reregistration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of all shareholders.

2 Private company

(1) The company is a private company.

(2) The company must not offer any of its shares or other securities to the public.

(3) The company must not have more than 100 shareholders.

(4) If a share transfer is presented to the company for entry on the share register that would result in a breach of this restriction, the directors must decline to register the transfer.

3 Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act –

(a) These rules have effect and may be enforced as if they constituted a contract –

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) The shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2
SHARES AND SHAREHOLDERS
General provisions

4 Number of shares

(1) At the time of registration under the Act, the company has the number of shares specified in the application for registration or reregistration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to any person named in the application

for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

5 Rights attaching to shares

Subject to clause 7(2), each share carries the following rights –

(a) The right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to –
  (i) appoint or remove a director or auditor;
  (ii) adopt new rules;
  (iii) alter the company's rules;
  (iv) approve a major transaction;
  (v) approve an amalgamation of the company;
  (vi) approve reregistration of the company as a public company;
  (vii) put the company into liquidation;
  (viii) approve the transfer of registration of the company to another country;
(b) The right to an equal share in dividends paid by the company;
(c) The right to an equal share in the distribution of the surplus assets of the company in a liquidation.

6 Issue of shares

The directors may issue shares –

(a) In accordance with clause 7; or
(b) To shareholders or any other persons on any other basis, with the prior approval of all shareholders.

7 Process for issuing shares

(1) The directors may issue shares in accordance with the following process –

(a) The shares must first be offered to all shareholders proportionally, on such terms as the directors think fit, pursuant to an offer that, if accepted by all shareholders, would not affect relative voting or distribution rights. The shareholders must have a reasonable opportunity to consider and respond to the offer;
(b) Any shares not accepted by the shareholders to whom they were offered under paragraph (a) must then be offered to those shareholders who did accept the shares offered to them under paragraph (a), on a fair and equitable basis determined by the directors and on the same terms and conditions as the offer made under paragraph (a);
(c) Any shares offered under paragraph (b), but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).

(2) With the prior approval of all shareholders, the company may issue more than 1 class of shares. In particular, shares may be issued that –

(a) Are redeemable; or
(b) Confer preferential rights to distributions of capital or income; or
(c) Confer special, limited, or conditional voting rights; or
(d) Do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8 Transferability of shares

The shares of the company are, subject to clauses 12(1) and 21(4) and their terms of issue, transferable by entry in the share register in accordance with subclauses 21(1) to (3).

Share register

9 Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states –

(a) The names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) The number of shares of each class held by each shareholder within the last 7 years; and

(c) The date of any –

(i) issue of shares to; or

(ii) repurchase or redemption of shares from; or

(iii) transfer of shares by or to –

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

10 Form and location of share register

The share register must be kept –

(a) In a form that complies with clause 65; and

(b) At the company's registered office, or at any other place in Niue notice of which has been given to the Registrar under section 119 of the Act.

11 Status of registered shareholder

(1) The company must treat the registered holder of a share as the only person entitled to –

(a) Exercise the right to vote attaching to the share; and

(b) Receive notices; and

(c) Receive a distribution in respect of the share; and

(d) Exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.

(4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency, or incapacity of a shareholder may be registered

as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

Pre-emptive rights

12 Restriction on selling shares

(1) A shareholder is not entitled to sell or otherwise dispose of his or her shares in the company without first offering to sell them to the other holders of shares of the same class in accordance with the procedure set out in clauses 13 to 20, unless all the other shareholders agree otherwise.

(2) Any share transfer delivered to the company by a shareholder who has not complied with subclause (1) is of no effect, and the transfer must not be entered on the share register.

13 Selling shareholder to give written notice to company

A shareholder who wishes to dispose of some or all of his or her shares (selling shareholder) must give written notice to the company of –

(a) The number of shares to be sold; and

(b) The price at which the selling shareholder is willing to sell the shares.

14 Company to give written notice to shareholders

The company must, within 10 working days, give a copy of the written notice referred to in clause 13 to each shareholder, together with a notice advising each holder of shares of the same class –

(a) That that shareholder is entitled to purchase a proportional number of the shares that the selling shareholder wishes to sell (rounded in an appropriate manner determined by the directors); and

(b) That, if that shareholder wishes to purchase those shares, he or she must give written notice to that effect to the company within 10 working days of the date of the notice.

15 Written notice is offer by selling shareholder

The notice referred to in clause 14 is deemed to be an offer by the selling shareholder to the recipient to sell the number of shares referred to in the notice at the price specified by the selling shareholder in the notice given under clause 13, on the terms set out in these rules.

16 Notice agreeing to purchase shares given within specified time

Subject to clause 19, if a notice is given by a shareholder within the specified time agreeing to purchase the shares offered to that shareholder in a notice given under clause 14 –

(a) There is deemed to be a contract between that shareholder and the selling shareholder for the sale and purchase of the relevant number of shares; and

(b) The company must immediately advise the selling shareholder of the acceptance, and send him or her a copy of –

(i) the notice given under clause 14 by the company; and

(ii) the notice of acceptance given by the shareholder in question.

17 Notice agreeing to purchase shares not given within specified time

(1) If any shareholder does not give notice agreeing to purchase the shares offered to that shareholder within the specified time, the shares that were offered to that shareholder must be offered to those shareholders who did accept the shares offered to them, on a fair and equitable basis determined by the directors.

(2) Clauses 15 and 16 apply to any notice given to a shareholder, and to any notice of acceptance given by a shareholder, under this clause.

18 No shareholder wishes to purchase selling shareholder's shares

If no shareholder wishes to purchase the selling shareholder's shares at the specified price, the selling shareholder may, at any time in the 12 months following the giving of notice by the selling shareholder, sell some or all of those shares to any other person at a price not less than the specified price.

19 Selling shareholder not obliged to sell some shares

(1) The selling shareholder is not obliged to sell all of the shares that he or she wishes to dispose of.

(2) In the event that the selling shareholder has not been notified under clause 16 of acceptances by other shareholders in respect of all the shares referred to in the notice given under clause 13 within 40 working days of the date on which that notice was given to the company, the selling shareholder may, at his or her option, give written notice to the company terminating the offer to sell the shares to the other shareholders.

(3) If such a notice is given, clause 18 applies as if no shareholder had wished to purchase the selling shareholder's shares.

20 Directors may require evidence of terms

The directors may require reasonable evidence of the terms (including price) on which the shares were sold to accompany any share transfer in respect of those shares.

Transfer of shares

21 Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

(3) Subject to clause 12 and subclause (4), the company must immediately on receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.

(4) If any amount payable to the company by the shareholder is due but unpaid, the directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

22 Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subclause (1), the company must, within 20 working days after receiving the application –

(a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by –

(a) The share certificate relating to the share; or

(b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

Meetings of shareholders

23 Meetings of shareholders

(1) Clauses 24 to 32 set out the procedure to be followed at, and in relation to, meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

24 Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 10 working days before the meeting.

(2) The notice must set out –

(a) The nature of the business to be transacted at the meeting in enough detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) The text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

25 Methods of holding meetings

A meeting of shareholders may be held either –

(a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

26 Quorum

(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

27 Chairperson

(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be the chairperson of the meeting.

28 Voting

(1) In the case of a meeting of shareholders held under clause 25(a), unless a poll is demanded, voting at the meeting must take place by whichever of the following methods is determined by the chairperson of the meeting –

(a) Voting by voice; or

(b) Voting by show of hands.

(2) In the case of a meeting of shareholders held under clause 25(b), unless a poll is demanded, voting at the meeting must take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by –

(a) Not fewer than 5 shareholders having the right to vote on the question at the meeting; or

(b) A shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

29 Votes of joint shareholders

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

30 Proxies

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder.

(4) The notice must state whether the appointment is for a particular meeting, or for a specified term.

(5) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

31 Corporations may act by representatives

(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

32 Minutes

(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

Miscellaneous

33 Annual meetings and special meetings of shareholders

(1) Subject to subclause (3) and clause 34(3), the directors must call an annual meeting of the company to be held –

(a) Once in each calendar year; and

(b) Not later than 5 months after the balance date of the company (or, if the time for completing the financial statements of the company has been extended under clause 70(1)(a), not later than 20 working days after the financial statements are required to be completed); and

(c) Not later than 15 months after the previous annual meeting.

(2) The meeting must be held on the date on which it is called to be held.

(3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.

(4) A special meeting of shareholders entitled to vote on an issue –
(a) May be called at any time by a director; and
(b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

34 Written resolutions of shareholders

(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

(5) A resolution may be signed under subclause (1) without any prior notice being given to shareholders.

35 Voting in interest groups

If the company proposes to take action that affects the rights attached to shares within the meaning of section 54 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 54(3) of the Act.

36 Shareholders entitled to receive distributions

(1) The shareholders who are entitled to receive distributions are –
(a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
(b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the distribution is approved.

(2) A date fixed under subclause (1) must not precede by more than 20 working days the date on which the proposed action will be taken.

37 Shareholders entitled to exercise pre-emptive rights

The shareholders who are entitled to pre-emptive rights to acquire shares in accordance with clause 12 are those shareholders whose names are registered in the share register on the day on which notice is given to the company by the selling shareholder under clause 13.

38 Shareholders entitled to attend and vote at meetings

(1) The shareholders who are entitled to receive notice of a meeting of shareholders are –
(a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;
(b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under subclause (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder –

(a) If a date has been fixed under subclause (1)(a), as at that date; or

(b) If no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.

(4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that –

(a) That person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and

(b) The transferee of those shares has been registered as the holder of those shares, and has requested before the commencement of the meeting that his or her name be entered on the list prepared under subclause (3).

(5) A shareholder may, on 2 working days' notice, examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

39 Distributions to shareholders

(1) The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made –

(a) The company will be able to pay its debts as they become due in the normal course of business; and

(b) The value of the company's assets will not be less than the value of its liabilities.

(2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders –

(a) Of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or

(b) On any other basis, with the prior approval of all shareholders.

(3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 29 of the Act.

40 Company may acquire its own shares and provide financial assistance

(1) The company may agree to acquire its own shares from a shareholder –

(a) With the prior approval of all shareholders; and

(b) Subject to the solvency test in clause 39(1).

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if –

(a) After providing the assistance, the company will satisfy the solvency test in clause 39(1); and

(b) All shareholders have approved the giving of the assistance.

41 Annual report to shareholders

(1) Subject to subclause (2), the directors of the company must, within 20 working days after the date on which the company is required to complete its financial statements under section 130 of the Act –

(a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) Send a copy of that report to each shareholder.

(2) The directors are only required to prepare an annual report in respect of an accounting period if a shareholder has given written notice to the company before the end of that accounting period requiring such a report to be prepared.

(3) If the directors are not required to prepare an annual report in respect of an accounting period, they must send a notice to each shareholder to that effect within the period referred to in subclause (1).

(4) Every annual report for the company must –

(a) Be in writing and be dated; and

(b) Include financial statements for the accounting period that comply with section 130 of the Act; and

(c) If an auditor's report is required in relation to the financial statements included in the report, include that auditor's report; and

(d) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

(e) Contain any other information that may be required by regulations made under the Act; and

(f) Be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

42 Deemed approval by all shareholders for certain purposes

For the purposes of clauses 6, 7(2), and 40(1) and (3), a decision is deemed to have been approved by all shareholders if –

(a) Notice of the proposed decision has been given to all shareholders in accordance with clause 75; and

(b) No shareholder has responded within 10 working days objecting to that decision; and

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

PART 3
DIRECTORS

43 Appointment and removal of directors

(1) The shareholders may by ordinary resolution fix the number of directors of the company.

(2) A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 34(1).

(3) A director vacates office if he or she –

(a) Is removed from office in accordance with subclause (2); or

(b) Resigns in accordance with clause 44; or

(c) Becomes disqualified from being a director under section 85 of the Act; or

(d) Dies.

44 Resignation of director

(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), a notice of resignation is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign –

(a) Until that director has called a meeting of shareholders to receive notice of the resignation; or

(b) If the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(4) A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of the appointment of another director of the company or –

(a) The time and date for which the meeting of shareholders is called under subclause (3)(a); or

(b) If the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

45 Notice of change in directors

(1) The company must ensure that notice in the prescribed form of the following is delivered to the Registrar –

(a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;

(b) A change in the name or the residential address of a director of the company.

(2) In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

46 Powers and duties of directors

(1) Subject to section 50 of the Act (which relates to major transactions), the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

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

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular –

(a) Each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

47 Standard of care of directors

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

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

48 Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 71 of the Act, if the director –

(a) Believes that the company is unable to pay its debts as they fall due; or
(b) Is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 71 of the Act, the directors must consider whether to –

(a) Appoint an administrator or liquidator; or
(b) Continue to carry on the business of the company.

49 Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power ,unless –

(a) The Act expressly authorises the director to exercise the relevant power despite such an interest; or
(b) The director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either –
  (i) these rules expressly authorise the director to exercise the relevant power despite such an interest; or
  (ii) the matter in question has been approved by shareholders under section 51 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing –

(a) If there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction, to the directors of the company; or
(b) If paragraph (a) does not apply, to all shareholders other than the director.

(3) A director may give a general disclosure in writing to all other shareholders that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person. That general disclosure is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of subclause (2).

(4) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 111 of the Act.

(5) A transaction entered into by the company as the result of action taken by a director in breach of sections 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

50 Use and disclosure of company information

(1) A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except –

(a) In the interests of the company; or

(b) As required by law; or

(c) If there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action –

(i) is approved by all shareholders under section 51 of the Act; or

(ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by shareholders by ordinary resolution.

(2) No director may vote on a resolution to approve such terms in relation to himself or herself.

51 Indemnities and insurance for directors or employees

(1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of –

(a) Shareholders by ordinary resolution.; or

(b) All shareholders under section 51 of the Act.

(2) No director may vote on a resolution concerning an indemnity or insurance to be provided for the director.

(3) In this clause –

director includes –

(a) A person who is liable under any of sections 65 to 67 of the Act by virtue of section 73 of the Act; and

(b) A former director

indemnify includes relieve or excuse from liability, whether before or after the liability arises; and indemnity has a corresponding meaning.

52 Remuneration of directors

(1) Directors may receive remuneration and other benefits from the company with the approval of –

(a) Shareholders by ordinary resolution; or

(b) All shareholders under section 51 of the Act.

(2) No director may vote on a resolution concerning remuneration or benefits to be received by the director.

53 Procedure at meetings of directors

(1) Clauses 54 to 60 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

54 Chairperson

(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

55 Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to every director who is in Niue, or who can readily be contacted outside Niue.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

56 Methods of holding meetings

A meeting of directors may be held either –

(a) By a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

57 Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

58 Voting

(1) Every director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

59 Minutes

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

60 Unanimous resolution

(1) A resolution in writing, signed or assented to by all directors, is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

61 Managing director and other executive directors

(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may at any time cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

62 Delegation to managing director

(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(2) Any such delegation may at any time be withdrawn or varied by the directors.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

63 Remuneration of managing director and director

(1) Subject to shareholder approval in accordance with clause 52, the managing director, or a director (other than the managing director) who is employed by the company, may be paid such remuneration as he or she may agree with the directors.

(2) The remuneration may be by way of salary, commission, participation in profits, or any combination of these methods, or any other method of fixing remuneration.

PART 4
COMPANY RECORDS

64 Company records

(1) The company must keep all the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 119 of the Act –

(a) The rules of the company;
(b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
(c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
(d) The full names and residential and postal addresses of the current directors;
(e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;
(f) Copies of all financial statements required to be completed under section 130 of the Act for the last 7 completed accounting periods of the company;

(g) The accounting records required by section 129 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;

(h) The share register.

(2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company, in accordance with section 117(2) of the Act.

65 Form of records

(1) The records of the company must be kept –

(a) In written form; or

(b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to –

(a) Prevent the records being falsified; and

(b) Detect any falsification of them.

66 Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

(2) A shareholder of the company is entitled –

(a) To inspect the documents referred to in section 121 of the Act, in the manner specified in section 123 of the Act; and

(b) To require copies of, or extracts from, any document that he or she may inspect within 5 working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company.

(3) The fee may be determined by any director, subject to any directions from the directors.

67 Documents to be sent to Registrar

In addition to any annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act –

(a) Notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;

(b) Notice of a change in the registered office or postal address of the company under section 18 of the Act;

(c) Notice of the issue of shares by the company, under section 26 of the Act;

(d) Notice of the acquisition by the company of its own shares, under section 31 of the Act;

(e) Notice of the redemption of a share, under section 35 of the Act;

(f) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;

(g) Notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;

(h) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;

(i) documents requested by the Registrar under section 311 of the Act.

68 Documents to be sent to shareholders

In addition to any annual report required under section 56 of the Act, the company must send all the following documents to shareholders under the Act –

(a) Notice of any repurchase of shares to which section 31(4) of the Act applies;
(b) Notice of a written resolution approved under section 52 of the Act;
(c) Financial statements required to be sent under section 130 of the Act;
(d) Any written statement by an auditor under section 136 of the Act;
(e) Any report by an auditor under section 138 of the Act.

PART 5
ACCOUNTS AND AUDIT

69 Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that –

(a) Correctly record and explain the transactions of the company; and
(b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
(c) Will enable the directors to ensure that the financial statements of the company comply with section 130 of the Act; and
(d) Will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting clause 68, the accounting records must contain –

(a) Entries of money received and spent each day and the matters to which it relates; and
(b) A record of the assets and liabilities of the company; and
(c) If the company's business involves dealing in goods –
  (i) a record of goods bought and sold, and relevant invoices;
  (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
(d) If the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business –

(a) Invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and
(b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept –

(a) In a form permitted under clause 65; and
(b) At the registered office of the company, or any other place permitted under section 119 of the Act.

70 Financial statements to be prepared

(1) The directors must ensure that –

(a) Within 4 months after the balance date of the company, or with the approval of shareholders by special resolution, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and

(b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 56 of the Act.

(2) The financial statements of the company must –

(a) Give a true and fair view of the matters to which they relate; and

(b) Comply with any applicable regulations made under the Act; and

(c) Be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The following periods must not exceed 15 months –

(a) The period between the date of incorporation of the company and its first balance date;

(b) The period between any 2 balance dates of the company.

(4) In this clause, financial statements, in relation to the company and a balance date, means –

(a) A statement of financial position for the entity as at the balance date; and

(b) In the case of –

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) If required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) Any notes or documents giving information relating to the statement of financial position and other statements.

71 Appointment of auditor

(1) If required to do so under subclause (2), the company must appoint an auditor who is qualified to hold that office under section 135 of the Act to –

(a) Audit the financial statements of the company in respect of an accounting period; and

(b) Hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office under subclause (3).

(2) The company must appoint an auditor within 30 working days if –

(a) A shareholder or shareholders holding shares that together carry the right to receive more than 20% of distributions made by the company give written notice to the company before the end of an accounting period requiring the financial statements of the company for that period to be audited; or

(b) A vacancy in the office of auditor arises before the financial statements in respect of a period for which an audit is required have been audited.

(3) An auditor ceases to hold office if he or she –

(a) Resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or

(b) Is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 133 of the Act; or

(c) Becomes disqualified from being the auditor of the company under section 135 of the Act; or

(d) Dies; or

(e) Becomes subject to a trustee order under section 501 of the Niue Act 1966, or an order of medical custody under section 602 of that Act; or

(f) Ceases to hold office under subclause (5); or

(g) Is removed by all shareholders in accordance with subclause (6).

(4) An auditor may be appointed –

(a) By ordinary resolution; or

(b) If the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must, within 10 working days, give notice of the appointment to all shareholders.

(5) If the company is required to appoint an auditor in respect of an accounting period but is not required to do so in respect of a subsequent accounting period –

(a) The audit of the financial statements of the company for the accounting period in respect of which an audit is required must be completed in accordance with this section; and

(b) The directors may give notice to all shareholders within 4 months of the commencement of a subsequent accounting period that the company is no longer required to appoint an auditor, and that the auditor will cease to hold office unless a notice is given by shareholders under subclause (2)(a) by a date specified in the notice, which must be not less than 30 working days from the date on which the notice is given; and

(c) If a notice has been given under paragraph (b), and no notice under subclause (2)(a) is received by the company by the date specified in that notice, the auditor ceases to hold office on the later of –

(i) the date specified in the notice; or

(ii) the date on which the audit of the financial statements of the company for the previous accounting period is completed.

(6) Despite the other provisions of this clause, all shareholders may agree, in writing –

(a) To dispense with an audit for any accounting period; and

(b) To remove the auditor of the company.

(7) The fees payable to the auditor must be agreed between the auditor and the directors.

72 Auditor's attendance at shareholders' meeting

The directors must ensure that an auditor of the company –

(a) Is permitted to attend a meeting of shareholders of the company; and

(b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and

(c) May be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6

LIQUIDATION AND REMOVAL FROM REGISTER

73 Resolution to appoint liquidator

(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

74 Distribution of surplus assets

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose, the liquidator may set such value as he or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

PART 7

MISCELLANEOUS

75 Service of documents on shareholders

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

(a) Delivered to that person; or

(b) Posted to that person's postal address; or

(c) Faxed to a fax number used by that person.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 342 or 344 of the Act, as the case may be.

76 Interpretation

(1) In these rules, Act means the Companies Act 2005.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

SCHEDULE 3

s 15(3)

Model Rules for Single Shareholder Company

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PART 1
General provisions

1 Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration or for reregistration, as the case may be.

(2) The name of the company may be changed in accordance with section 11 of the Act only with the prior approval of the shareholder.

2 Private company with 1 shareholder

(1) The company is a private company.

(2) The company must not offer any of its shares or other securities to the public.

(3) The company has 1 shareholder.

(4) These rules are designed for a company with 1 shareholder; if the company proposes to increase the number of shareholders, it must first adopt new rules.

(5) The company must not have more than 1 shareholder.

(6) If a share transfer is presented to the company for entry on the share register that would result in a breach of this restriction, the directors must decline to register the transfer.

3 Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act –

(a) These rules have effect and may be enforced as if they constituted a contract –

(i) between the company and the shareholder; and

(ii) between the company and each director; and

(b) The shareholder and the directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2
SHARES AND SHAREHOLDERS

4 Shares

(1) At the time of registration under the Act, the company has the number of shares specified in the application for registration or reregistration, as the case may be.

(2) If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to the person named in the application for registration as the shareholder the number of shares specified in the application as being the number of shares to be issued to that person.

(3) With the prior approval of the shareholder, the company may –

(a) Issue shares to the shareholder; and

(b) Issue more than 1 class of shares.

(4) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.

(5) If the rights attached to the shares differ from those set out in section 23 of the Act, the notice must be accompanied by a document setting out the terms of issue of the shares.

(6) The shares of the company are, subject to clause 8(4) and their terms of issue, transferable by entry in the share register in accordance with clause 8(1) to (3).

5 Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states –

(a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) The number of shares of each class held by each shareholder within the last 7 years; and

(c) The date of any –
(i) issue of shares to; or
(ii) repurchase or redemption of shares from; or
(iii) transfer of shares by or to –

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

6 Form and location of share register

The share register must be kept –

(a) In a form that complies with clause 32; and
(b) At the company's registered office, or at any other place in Niue notice of which has been given to the Registrar under section 119 of the Act.

7 Status of registered shareholder

(1) The company must treat the registered holder of a share as the only person entitled to –

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

(2) If a shareholder dies, that shareholder's legal representative is the only person recognised by the company as having any title to, or interest in, the share.

(3) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

8 Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

(3) Subject to subclause (4), the company must, immediately on receipt of a properly executed share transfer, enter the name of the transferee in the share register as holder of the shares transferred.

(4) If any amount payable to the company by the shareholder is due but unpaid, the directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer.

(5) If the directors resolve to refuse to register a transfer under subclause (4), they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

9 Share certificates

(1) The shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate, the company must, within 20 working days after receiving the application –

(a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the shareholder into separate parcels: 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by –

(a) The share certificate relating to the share; or

(b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

10 Shareholder decisions and exercise of shareholder powers

A resolution in writing signed by the shareholder is as valid as if it had been passed at a meeting of shareholders.

11 Distributions to shareholders

(1) The payment of a dividend or the making of any other distribution must be approved by the shareholder.

(2) The company must not make a distribution to the shareholder unless there are reasonable grounds for believing that, after that distribution is made –

(a) The company will be able to pay its debts as they become due in the normal course of business; and

(b) The value of the company's assets will not be less than the value of its liabilities.

(3) A distribution made in breach of subclause (2) may be recovered by the company from the shareholder, in accordance with section 29 of the Act.

12 Company may acquire its own shares and provide financial assistance

(1) The company may agree to acquire its own shares from the shareholder, subject to the solvency test in clause 11(2).

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to the shareholder for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if after providing the assistance the company will satisfy the solvency test in clause 11(2).

13 Annual report to shareholders

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

PART 3
DIRECTORS

14 Appointment and removal of directors

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

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

(3) A director vacates office if he or she –

(a) Is removed from office in accordance with subclause (2); or

(b) Resigns in accordance with subclause (4); or

(c) Becomes disqualified from being a director under section 85 of the Act; or

(d) Dies.

(4) A director may resign by delivering a signed written notice of resignation to the registered office of the company and to the shareholder. Subject to subclause (5), the notice is effective when it is received at the registered office, or at any later time specified in the notice.

(5) If the company has only 1 director, that director may not resign until that director has given not less than 10 working days' written notice of the resignation to the shareholder. A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of –

(a) The expiry of 10 working days after written notice of the resignation has been given to the shareholder; or

(b) The appointment of another director of the company.

(6) The company must ensure that notice in the prescribed form of all the following is delivered to the Registrar –

(a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;

(b) A change in the name or the residential address of a director of the company.

(7) In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

15 Powers and duties of directors

(1) The business and affairs of the company must be managed by, or under the direction or supervision of, the directors subject to –

(a) Section 50 of the Act, which relates to major transactions; and

(b) Any directions given to the board in writing by the shareholder.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate to a committee of directors, or to a director or employee, any of their powers. The directors must monitor, by means of reasonable methods properly used, the exercise of powers by any delegate.

(4) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(5) The directors have the duties set out in the Act, and, in particular –

(a) Each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

16 Standard of care of directors

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

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

17 Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 71 of the Act, if the director –

(a) Believes that the company is unable to pay its debts as they fall due; or
(b) Is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 71 of the Act, the directors must consider whether to –

(a) Appoint an administrator or liquidator; or
(b) Continue to carry on the business of the company.

18 Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless the matter in question has been approved by the shareholder.

(2) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 111 of the Act.

(3) A transaction entered into by the company as the result of action taken by a director in breach of sections 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

19 Use and disclosure of company information

A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except –

(a) In the interests of the company; or
(b) As required by law; or
(c) To the shareholder; or
(d) If there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action –
  (i) is approved by the shareholder; or
  (ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been approved by the shareholder.

20 Indemnities and insurance for directors or employees

(1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of the shareholder.

(2) In subclause (1) –

director includes –

(a) A person who is liable under any of sections 65 to 71 of the Act by virtue of section 73 of the Act; and

(b) A former director

indemnify includes relieve or excuse from liability, whether before or after the liability arises; and

indemnity has a corresponding meaning.

21 Remuneration of directors

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

22 Procedure at meetings of directors

(1) Clauses 23 to 29 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

23 Chairperson

(1) The shareholder may appoint a director as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is appointed, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

24 Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours notice of a meeting of directors must be given to every director who is in Niue, or who can readily be contacted outside Niue.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

25 Methods of holding meetings

A meeting of directors may be held either –

(a) By a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

26 Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

27 Voting

(1) Every director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the board is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

28 Minutes

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

29 Unanimous resolution

(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

30 Managing director and other executive directors

(1) The shareholder may from time to time appoint a director as managing director for such period and on such terms as the shareholder thinks fit.

(2) The remuneration of the managing director must be approved by the shareholder.

(3) Subject to the terms of a managing director's appointment, the shareholder may at any time cancel the appointment of a director as managing director.

(4) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

(5) The directors may, with the prior approval of the shareholder, delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(6) Any such delegation may at any time be withdrawn or varied by the directors. The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

(7) A director other than the managing director who is employed by the company may be paid such remuneration as may be approved by the shareholder.

PART 4
COMPANY RECORDS

31 Company records

(1) The company must keep all the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 119 of the Act –

(a) The rules of the company;
(b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
(c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
(d) The full names and residential and postal addresses of the current directors;
(e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;
(f) Copies of all financial statements required to be completed under section 130 for the last 7 completed accounting periods of the company;
(g) The accounting records required by section 129 for the current accounting period and for the last 7 completed accounting periods of the company;
(h) The share register.

(2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company, in accordance with section 117(2) of the Act.

32 Form of records

(1) The records of the company must be kept –
  (a) In written form; or
  (b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.
(2) The directors must ensure that adequate measures exist to –
  (a) Prevent the records being falsified; and
  (b) Detect any falsification of them.

33 Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

(2) The shareholder of the company is entitled to access to the company's records as if that shareholder were a director.

34 Documents to be sent to Registrar

In addition to the annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act –

(a) Notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14 of the Act;
(b) Notice of a change in the registered office of the company, under section 18 of the Act;

(c) Notice of the issue of shares by the company, under section 26 of the Act;
(d) Notice of the acquisition by the company of its own shares, under section 31 of the Act;
(e) Notice of the redemption of a share, under section 35 of the Act;
(f) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;
(g) Notice of the making of an order under section 102 of the Act altering or adding to the rules of a company;
(h) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;
(i) Documents requested by the Registrar under the Act.

35 Documents to be sent to shareholders

In addition to any annual report required under section 56 of the Act, the company must send all the following documents to the shareholder under the Act –

(a) Financial statements required to be sent under section 130 of the Act;
(b) Any written statement by an auditor under section 136 of the Act;
(c) Any report by an auditor under section 138 of the Act.

PART 5
ACCOUNTS AND AUDIT

36 Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that –

(a) Correctly record and explain the transactions of the company; and
(b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
(c) Will enable the directors to ensure that the financial statements of the company comply with section 130 of the Act; and
(d) Will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain –

(a) Entries of money received and spent each day and the matters to which it relates; and
(b) A record of the assets and liabilities of the company; and
(c) If the company's business involves dealing in goods –
  (i) a record of goods bought and sold, and relevant invoices; and
  (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
(d) If the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business –

(a) Invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and
(b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to

comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept –

(a) In a form permitted under clause 32; and

(b) At the registered office of the company, or any other place permitted under section 119 of the Act.

37 Financial statements to be prepared

(1) The directors of every company must ensure that within 4 months after the balance date of the company or, if the shareholder agrees in writing, within an extended period not exceeding 7 months after the balance date of the company, financial statements that comply with subclause (2) are –

(a) Completed in relation to the company and that balance date; and

(b) Given to the shareholder.

(2) The financial statements of the company must –

(a) Give a true and fair view of the matters to which they relate; and

(b) Comply with any applicable regulations made under the Act; and

(c) Be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The period between –

(a) The date of incorporation of the company and its first balance date; or

(b) Any 2 balance dates of the company –

must not exceed 15 months.

(4) In this clause, financial statements, in relation to the company and a balance date, means –

(a) A statement of financial position for the entity as at the balance date; and

(b) In the case of –

(i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) If required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) Any notes or documents giving information relating to the statement of financial position and other statements.

38 Appointment of auditor

(1) The shareholder may, by notice in writing to the company, appoint an auditor who is qualified to hold that office under section 135 of the Act to –

(a) Hold office as auditor for the period specified in the notice; and

(b) Audit the financial statements of the company.

(2) The shareholder may remove an auditor by notice in writing to the company and to that auditor.

39 Auditor's attendance at shareholders' meeting

The directors of the company must ensure that an auditor of the company –

(a) Is permitted to attend a meeting of shareholders of the company; and

(b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings and resolutions of shareholders; and

(c) May be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6
LIQUIDATION AND REMOVAL FROM REGISTER

40 Resolution to appoint liquidator

(1) The shareholder may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act if they consider that the company is unable to meet its debts as they become due in the normal course of business.

(3) The directors must give not less than 5 working days' notice to the shareholder of any meeting called under section 71 of the Act, and must permit the shareholder to attend and speak at that meeting.

41 Distribution of surplus assets

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed to the shareholder.

(2) The liquidator may, with the approval of the shareholder, distribute the surplus assets of the company to the shareholder in kind.

PART 7
MISCELLANEOUS

42 Service of documents on shareholder

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

(a) Delivered to that person; or

(b) Sent by any other method approved in writing by that shareholder.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 342 or 344 of the Act, as the case may be.

43 Interpretation

(1) In these rules, Act means the Companies Act 2005.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

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s 15(2)
Model rules for public companies

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PART 1
GENERAL PROVISIONS

1 Name of company

(1) The name of the company at the time of registration under the Act appears on the application for registration or for reregistration, as the case may be.

(2) The name of the company may be changed in accordance with section 10 of the Act with the prior approval of the directors.

2 Public company

The company is a public company.

3 Rules

(1) The company may adopt new rules in place of these rules by special resolution, in accordance with section 14(2) of the Act.

(2) Subject to the Act –

(a) These rules have effect and may be enforced as if they constituted a contract –

(i) between the company and its shareholders; and

(ii) between the company and each director; and

(b) The shareholders and directors of the company have the rights, powers, duties, and obligations set out in these rules.

PART 2
SHARES AND SHAREHOLDERS
General provisions

4 Number of shares

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

5 Rights attaching to shares

Subject to clause 7(4), each share carries all the following rights –

(a) The right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to –
  (i) appoint or remove a director or auditor;
  (ii) adopt new rules;
  (iii) alter the company's rules;
  (iv) approve a major transaction;
  (v) approve an amalgamation of the company;
  (vi) approve reregistration of a public company as a private company, or of a private company as a public company;
  (vii) put the company into liquidation;
  (viii) approve the transfer of registration of the company to another country; and

(b) The right to an equal share in dividends paid by the company; and

(c) The right to an equal share in the distribution of the surplus assets of the company in a liquidation.

6 Initial issue of shares

If the company was first registered under Part 2 of the Act, the company must immediately after its registration issue to any person named in the application for registration as a shareholder the number of shares specified in the application as being the number of shares to be issued to that person or those persons.

7 Process for issuing shares

(1) The directors may issue shares –

(a) Pursuant to an offer made to all shareholders proportionally, that, if accepted by all shareholders, would not affect relative voting or distribution rights, on such terms as the directors think fit (including issuing shares without consideration, or instead of dividends). The shareholders must have a reasonable opportunity to consider and respond to the offer; or

(b) To shareholders or any other persons for a consideration determined by the directors. The directors must use reasonable endeavours to obtain the best price reasonably obtainable for those shares.

(2) The directors may issue more than 1 class of shares. In particular, shares may be issued that –

(a) Are redeemable; or

(b) Confer preferential rights to distributions of capital or income; or

(c) Confer special, limited, or conditional voting rights; or

(d) Do not confer voting rights.

(3) If the company issues shares, it must give the prescribed notice to the Registrar under section 26(2) of the Act within 10 working days of the issue of any shares.

(4) If the rights attached to the shares differ from those set out in clause 5, the notice must be accompanied by a document setting out the terms of issue of the shares.

8 Transferability of shares

The shares of the company are, subject to clause 7(4) and their terms of issue, transferable by entry in the share register in accordance with clauses 12(1) to (3).

Share register

9 Company to keep share register

(1) The company must maintain a share register that records the shares issued by the company and states –

(a) The names, alphabetically arranged, and the last known address of each person who is, or has within the last 7 years been, a shareholder; and

(b) The number of shares of each class held by each shareholder within the last 7 years; and

(c) The date of any –

(i) issue of shares to; or

(ii) repurchase or redemption of shares from; or

(iii) transfer of shares by or to –

each shareholder within the last 7 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.

(2) No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

(3) The company may appoint an agent to maintain the share register.

10 Form and location of share register

The share register must be kept –

(a) iIn a form that complies with clause 76; and

(b) At the company's registered office, or at any other place in Niue notice of which has been given to the Registrar under section 119 of the Act.

11 Status of registered shareholders

(1) The company must treat the registered holder of a share as the only person entitled to –

(a) Exercise the right to vote attaching to the share; and

(b) Receive notices; and

(c) Receive a distribution in respect of the share; and

(d) Exercise the other rights and powers attaching to the share.

(2) If a joint holder of a share dies, the remaining holders must be treated by the company as the holders of that share.

(3) If the sole holder of a share dies, that shareholder's legal representative is the only person recognised by the company as having any title to or interest in the share.

(4) Any person who becomes entitled to a share as a consequence of the death, bankruptcy or insolvency or incapacity of a shareholder may be registered as the holder of that shareholder's shares on making a request in writing to the company to be so registered, accompanied by proof satisfactory to the directors of that entitlement.

Transfer of shares and share certificates

12 Transfer of shares

(1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.

(2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

(3) Subject to subclause (4), the company must, immediately on receipt of a properly executed share transfer, enter the name of the transferee in the share register as holder of the shares transferred.

(4) The directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer, if any amount payable to the company by the shareholder is due but unpaid.

(5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

13 Share certificates

(1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.

(2) On receipt of an application for a share certificate under subclause (1), the company must, within 20 working days after receiving the application –

(a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) the name of the company; and

(ii) the class of shares held by the shareholder; and

(iii) the number of shares held by the shareholder to which the certificate relates.

(3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by –

(a) The share certificate relating to the share; or

(b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

(4) If shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.

Meetings of shareholders

14 Meetings of shareholders

(1) Clauses 15 to 27 set out the procedure to be followed at, and in relation to, meetings of shareholders.

(2) A meeting of shareholders may determine its own procedure to the extent that it is not governed by these rules.

15 Notice of meetings

(1) Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than 15 working days before the meeting.

(2) The notice must set out –

(a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and

(b) The text of any special resolution to be submitted to the meeting.

(3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

(4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.

(5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

16 Methods of holding meetings

A meeting of shareholders may be held either –

(a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

17 Quorum

(1) Subject to subclause (3), no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if 5 or more shareholders or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint.

(4) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum.

18 Chairperson

(1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.

(2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be the chairperson of the meeting.

19 Voting

(1) In the case of a meeting of shareholders held under clause 16(a), unless a poll is demanded, voting at the meeting will take place by whichever of the following methods is determined by the chairperson of the meeting –

(a) Voting by voice;

(b) Voting by show of hands.

(2) In the case of a meeting of shareholders held under clause 16(b), unless a poll is demanded, voting at the meeting will take place by shareholders signifying individually their assent or dissent by voice.

(3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).

(4) At a meeting of shareholders a poll may be demanded by –

(a) Not fewer than 5 shareholders having the right to vote on the question at the meeting; or

(b) A shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.

(5) A poll may be demanded either before or after a vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

20 Votes of joint shareholders

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

21 Proxies

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a shareholder is entitled to attend and participate in a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder. The notice must state whether the appointment is for a particular meeting, or for a specified term.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is given to the company at least 24 hours before the start of the meeting.

22 Corporations may act by representatives

(1) A corporation that is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf by notice in writing signed by a director or secretary of the corporation.

(2) The notice must state whether the appointment is for a particular meeting, or for a specified term.

23 Postal votes

(1) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this clause.

(2) The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the directors to receive and count postal votes at that meeting.

(3) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

(4) A shareholder who has submitted a postal vote on any resolution –
(a) May attend and speak at the meeting; and
(b) Must not vote on that resolution in person at the meeting.

24 Duty of person authorised to receive and count postal votes

(1) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.

(2) It is the duty of a person authorised to receive and count postal votes at a meeting –
(a) To collect together all postal votes received by him or her or by the company; and
(b) In relation to each resolution to be voted on at the meeting, to count –
(i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
(ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
(c) To sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) and that sets out the results of the counts required by paragraph (b); and
(d) To ensure that the certificate required by paragraph (c) is presented to the chairperson of the meeting.

25 Duty of chairperson concerning postal votes

(1) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must –
(a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and
(b) On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

(2) The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes, that he or she believes, that if a poll is taken, the result may differ from that obtained on a show of hands.

(3) The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

26 Minutes

(1) The directors must ensure that minutes are kept of all proceedings at meetings of shareholders.

(2) Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

Miscellaneous

27 Annual meetings and special meetings of shareholders

(1) Subject to subclause (3) and clause 28(3), the directors must call an annual meeting of the company to be held –
(a) Once in each calendar year; and
(b) Not later than 5 months after the balance date of the company; and
(c) Not later than 15 months after the previous annual meeting.

(2) The meeting must be held on the date on which it is called to be held.

(3) The company need not hold its first annual meeting in the calendar year of its incorporation, but must hold that meeting within 18 months of its incorporation.

(4) A special meeting of shareholders entitled to vote on an issue –

(a) May be called at any time by a director; and

(b) Must be called by the directors on the written request of shareholders holding shares carrying together not less than 5% of the votes that may be cast on that issue.

28 Written resolutions of shareholders

(1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more shareholders.

(3) The company need not hold an annual meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclause (1).

(4) Within 5 working days of a resolution being passed under subclause (1), the company must send a copy of the resolution to every shareholder who did not sign it.

(5) A resolution may be signed under subclause (1) without any prior notice being given to shareholders.

29 Voting in interest groups

If the company proposes to take action that affects the rights attached to shares within the meaning of section 54 of the Act, the action may not be taken unless it is approved by a special resolution of each interest group, as defined in section 54(3) of the Act.

30 Shareholders entitled to receive dividends

(1) The shareholders who are entitled to receive dividends are –

(a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;

(b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register on the day on which the dividend is approved.

(2) A date fixed under subclause (1)(a) must not precede by more than 20 working days the date on which the proposed action will be taken.

31 Notice of meetings and voting

(1) The shareholders who are entitled to receive notice of a meeting of shareholders are –

(a) If the directors fix a date for this purpose, those shareholders whose names are registered in the share register on that date;

(b) If the directors do not fix a date for this purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

(2) A date fixed under subclause (1)(a) must not precede by more than 30 working days the date on which the meeting is to be held.

(3) Before a meeting of shareholders, the company may prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order, and showing the number of shares held by each shareholder –

(a) If a date has been fixed under subclause (1)(a), as at that date; or

(b) If no such date has been fixed, as at the close of business on the day immediately preceding the day on which the notice is given.

(4) A person named in a list prepared under subclause (3) is entitled to attend the meeting and vote in respect of the shares shown opposite his or her name in person or by proxy, except to the extent that –

(a) That person has, since the date on which the shareholders entitled to receive notice of the meeting were determined, transferred any of his or her shares to some other person; and

(b) The transferee of those shares has been registered as the holder of those shares, and has requested, before the commencement of the meeting, that his or her name be entered on the list prepared under subclause (3).

(5) A shareholder may on 2 working days' notice examine any list prepared under subclause (3) during normal business hours at the registered office of the company.

32 Distributions to shareholders

(1) The company must not pay a dividend or make any other distribution to shareholders unless there are reasonable grounds for believing that, after that distribution is made –

(a) The company will be able to pay its debts as they become due in the normal course of business; and

(b) The value of the company's assets will not be less than the value of its liabilities.

(2) Subject to subclause (1) and to the terms of issue of any shares, the company may pay a dividend to shareholders –

(a) Of the same amount in respect of each share of the same class, if the payment of the dividend is authorised by the directors; or

(b) On any other basis, with the prior approval of all shareholders.

(3) A distribution made in breach of subclauses (1) or (2) may be recovered by the company from the recipients or from the persons approving the distribution, in accordance with section 29 of the Act.

(4) No dividend or other distribution bears interest against the company unless the applicable terms of issue of a share expressly provide otherwise.

(5) All dividends and other distributions unclaimed for 1 year after the due date for payment may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(6) The company is entitled to mingle the unclaimed distribution with other money of the company and is not required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, must pay the distribution to the person producing evidence of entitlement to receive it.

33 Company may acquire its own shares and provide financial assistance

(1) Subject to the solvency test, the company may agree to acquire its own shares from a shareholder –

(a) Pursuant to an offer to acquire shares made to all holders of shares of the same class that would, if accepted by all persons to whom the offer is made, leave unaffected relative voting and distribution rights; or

(b) On any other basis, with the prior approval of shareholders by special resolution.

(2) If the company acquires its own shares, those shares are deemed to be cancelled immediately on acquisition.

(3) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, whether directly or indirectly, only if –

(a) The company gives the assistance in the normal course of its business and on usual terms and conditions; or

(b) The giving of the assistance is authorised by the directors or by all shareholders under section 51 of the Act, and there are reasonable grounds for believing that, after providing the assistance, the company will satisfy the solvency test.

34 Annual report to shareholders

(1) The directors of the company must, within 5 months after the balance date of the company –

(a) Prepare an annual report on the affairs of the company during the accounting period ending on that date; and

(b) Send a copy of that report to each shareholder.

(2) Every annual report for the company must –

(a) Be in writing and be dated; and

(b) Include financial statements for the accounting period that comply with section 130 of the Act; and

(c) Include the auditor's report required under section 138 of the Act; and

(d) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and

(e) Contain such other information as may be required by regulations made under the Act; and

(f) Be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

Compulsory acquisitions

35 Compulsory acquisition of minority holdings below 10%

(1) A shareholder who holds 90% of the voting shares of the company (majority shareholder) may give a notice to the other holders of voting shares (minority shareholders) in accordance with this clause, requiring the minority shareholders to sell their voting shares to the majority shareholder.

(2) The majority shareholder must also give the notice to the company, and give public notice of the fact that such a notice has been given.

(3) A notice may be given under subclause (1) by a majority shareholder at any time within 6 months after that majority shareholder first becomes interested in not less than 90% of the voting shares of the company.

36 Price for voting share

(1) The majority shareholder must pay a price for each voting share that is –

(a) Equal to the highest price paid for a voting share by that majority shareholder in an arms length sale and purchase of such shares during the 6-month period ending on the date on which the majority shareholder first became interested in not less than 90% of the voting shares; or

(b) If the majority shareholder so elects, a price to be fixed by an independent arbitrator.

(2) The majority shareholder must ask the directors of the company to nominate an independent arbitrator for this purpose.

(3) If the directors fail to do so within 10 working days of receiving such a request, the majority shareholder may nominate the arbitrator.

37 Notice under clause 35: general requirements

(1) A notice given under clause 35 must specify –

(a) The name of the majority shareholder; and

(b) The date on which the majority shareholder first became interested in not less than 90% of the voting shares of the company; and

(c) If the price to be paid for each voting share has been determined under clause 36(1)(a), that price, which must be certified by the majority shareholder as meeting the requirements of clause 36(1)(a); and

(d) If the price to be paid for each voting share is to be fixed by an arbitrator under clause 36(1)(b), the name of the arbitrator and the date on which and place at which the arbitration is to be held; and

(e) The rights of minority shareholders under clause 39.

(2) The date referred to in subclause (1)(d) must not be less than 60 working days from the date on which the notice is given to minority shareholders.

38 Requirements for price for voting share determined under clause 36(1)(a)

If the price to be paid for each voting share has been determined under clause 36(1)(a), a notice given under clause 35 must also –

(a) Specify a date not less than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (transfer date); and

(b) Advise the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company; and

(c) Require the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder; and

(d) Advise shareholders that payment may be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

39 Requirements for price for voting share determined under clause 36(1)(b)

(1) If the price to be paid for each voting share is to be determined under clause 36(1)(b) and, if any minority shareholder considers that the arbitrator is not suitably qualified to value the shares, or is not independent, the minority shareholder may give notice to the company within 10 working days requiring the company to apply to the Court for appointment of another person as arbitrator.

(2) If a notice under subclause (1) is received, the company must immediately apply to the Court for the appointment of an arbitrator.

(3) If a notice is given under subclause (1), or if for any other reason the arbitration does not proceed on the date and at the place specified in the notice, not less than 40 working days' notice of the altered date and place must be given to each minority shareholder.

(4) Each minority shareholder is entitled to attend the arbitration and to be heard, in person or by a representative (who may, but need not, be a lawyer or a public accountant).

(5) The arbitrator must expeditiously determine a fair and reasonable price per share for the shares to be acquired.

(6) The price must not include any discount or premium to reflect the size of the parcels of shares to be acquired, or the circumstances of the acquisition.

(7) The costs of the arbitration must be paid by the majority shareholder.

40 Notice of determination of price by arbitrator

Within 10 working days of the determination by the arbitrator, the company must give a notice to each minority shareholder that –

(a) Advises the shareholder of the price that has been determined by the arbitrator; and

(b) Specifies a date not less than 10 working days and not more than 20 working days from the date of the notice on which the price will be paid, and the shares will be acquired by the majority shareholder (transfer date); and

(c) Advises the shareholder that no payment will be received by the shareholder until any share certificate that has been issued in respect of the voting shares has been delivered to the company; and

(d) Requires the shareholder to specify the manner in which payment for the voting shares is to be made to that shareholder; and

(e) Advises the shareholders that payment may be made by cheque to be collected from the company at a specified address, or posted to a postal address specified by the shareholder, and may provide for other payment options.

41 Requirements on transfer date

(1) On the transfer date –

(a) The majority shareholder must pay the full amount of the price for all voting shares held by minority shareholders to the company, to be held on trust by the company for the benefit of those shareholders. The payment must be made in cleared funds; and

(b) All voting shares held by minority shareholders are deemed to be transferred to the majority shareholder on payment to the company in accordance with paragraph (a), and the company must register the majority shareholder as the holder of those shares despite any outstanding share certificates in respect of those shares.

(2) Subject to subclause (5), within 3 working days of the transfer date the company must pay each minority shareholder the price for that shareholder's voting shares, in the manner specified by that shareholder.

(3) If the shareholder has specified that a cheque will be collected from the company by that shareholder, the cheque must be held ready for collection from that date.

(4) If the company fails to make a payment, or to make it available for collection, the company must pay interest to the shareholder from the due date to the date on which the payment is made, or is made available for collection, at the rate of 15% per annum, accruing daily and compounding monthly.

(5) If a share certificate has been issued in respect of voting shares held by a minority shareholder, no payment may be made to that minority shareholder until the minority shareholder delivers to the company –

(a) The share certificate; or

(b) Evidence as to its loss or destruction and, if required, an indemnity in a form determined by the directors.

Exit rights

42 Application of exit rights

(1) Subject to subclause (2), this clause and clauses 43 to 48 apply to a shareholder (acquirer) who –

(a) Acquires shares in the company or otherwise becomes interested in shares in the company (acquisition); and

(b) Before the acquisition, was interested in less than 50% of the voting shares of the company; and

(c) Following the acquisition, is interested in 50% or more of the voting shares of the company.

(2) A person may be exempted from the application of this clause and clauses 43 to 48, either with or without conditions, by a special resolution of holders of voting shares other than –

(a) Voting shares in which that person is interested; and

(b) Voting shares in which any other person is interested, where that other person is interested in not less than 50% of the company's voting shares.

43 Acquirer to give notice to company

An acquirer must, within 10 working days of first becoming a shareholder to whom this clause applies, give notice to the company –

(a) Advising the company that the acquirer is a shareholder to whom this clause applies; and

(b) Identifying the names of the holders of all voting shares in which the acquirer is interested, and the number of shares held by each of them in which the acquirer is interested; and

(c) Offering to purchase all voting shares in which the acquirer is not interested (remaining shares) on the terms set out in clause 44.

44 Consideration for remaining shares

A notice given under clause 43 must be signed by the acquirer or, if the acquirer is a corporation, by a director of that corporation, and must –

(a) Specify the highest price paid for any voting share in the company by the acquirer, or by any person holding shares in which the acquirer is interested, from the date 6 months before the date on which the acquirer first became a person to whom this clause applies up to the date of the notice; and

(b) If any shares in which the acquirer is interested were acquired during this period for a non-cash consideration, describe that consideration and state an assessment of the cash value to which that consideration corresponds; and

(c) Specify the consideration offered by the acquirer for each remaining share, which may, but need not, be a cash consideration (consideration); and
(d) Specify the date on which the acquirer will provide the consideration for any remaining shares in respect of which the offer is accepted, which must be not less than 20 working days nor more than 40 working days from the date on which the notice is given to the company (transfer date); and
(e) Specify the rights of the holders of remaining shares under clause 47.

45 Independent report

A notice given under clause 43 must be accompanied by a report from an independent, appropriately qualified person previously approved by the company, confirming that the consideration offered is a fair and reasonable consideration for a share, without any discount or premium to reflect the size of the parcels of shares to be acquired or the circumstances of the acquisition.

46 Notice to holders of remaining shares

(1) Within 10 working days of receiving a notice under clause 43, the company must forward the notice to all holders of remaining shares.

(2) The notice under subclause (1) may, but need not, be accompanied by –
(a) Additional information provided by the directors in relation to the offer;
(b) A recommendation by the directors as to whether or not the offer should be accepted.

(3) The company must also immediately give public notice of the notice given to shareholders.

47 Rights of holders of remaining shares

(1) A shareholder to whom a notice is given under clause 46 –
(a) Is not required to accept the offer;
(b) May accept the offer by notice in writing to the company within 20 working days of the date on which the notice was given to the shareholder.

(2) If a shareholder gives notice accepting an offer in accordance with subclause (1)(b), there is deemed to be a contract between the acquirer and the shareholder for the purchase by the acquirer of the remaining shares held by that shareholder –
(a) On the transfer date; and
(b) For the consideration.

48 When voting rights not to be exercised

(1) If a shareholder to whom this clause applies fails to give the notice required under clause 43 within the time specified in that clause, no voting rights may be exercised in respect of any shares in which that acquirer is interested until that notice has been given.

(2) If a person who is not a shareholder becomes interested in 40% or more of the voting shares of the company, no voting rights may be exercised in respect of any voting shares in which that person is interested unless that person –
(a) Is exempted by a special resolution under clause 42(2); or
(b) Undertakes to the company to make an offer as if that person were an acquirer, and complies with that undertaking.

PART 3
DIRECTORS

49 Number of directors

(1) The minimum number of directors is 2.

(2) The maximum number of directors is 10.

(3) The shareholders may, by ordinary resolution, vary the minimum or maximum number of directors of the company.

50 Appointment and removal of directors

A director may be appointed or removed by ordinary resolution passed at a meeting called for the purpose, or by a written resolution in accordance with clause 28(1).

51 Term of office

(1) The resolution appointing a director may specify the period for which the director is to hold office.

(2) On the expiry of any period specified in this manner, the director ceases to hold office unless reappointed.

52 When director vacates office

A director vacates office if he or she –

(a) Is removed from office in accordance with clause 50; or

(b) Ceases to hold office in accordance with clause 51; or

(c) Resigns in accordance with clause 53; or

(d) Becomes disqualified from being a director under section 85 of the Act; or

(e) Dies; or

(f) Is absent from 3 consecutive meetings of the directors without leave being granted by a resolution of the directors, and the directors resolve that that director has vacated office.

53 Resignation of director

(1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.

(2) Subject to subclauses (3) and (4), the notice is effective when it is received at the registered office, or at any later time specified in the notice.

(3) If the company has only 1 director, that director may not resign –

(a) Until that director has called a meeting of shareholders to receive notice of the resignation; or

(b) If the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.

(4) A notice of resignation given by the sole director of the company does not take effect, despite its terms, until the earlier of the appointment of another director of the company or –

(a) The time and date for which the meeting of shareholders is called under subclause (3)(a); or

(b) If the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

54 Casual vacancies

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

55 Notice of changes in directors

(1) The company must ensure that notice in the prescribed form of the following is delivered to the Registrar –

(a) A change in the directors of the company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both;

(b) A change in the name or the residential address of a director of the company.

(2) In the case of the appointment of a new director, a consent by that person to act as a director, in the prescribed form, must also be delivered to the Registrar.

56 Powers and duties of directors

(1) Subject to section 50 of the Act (which relates to major transactions) the business and affairs of the company must be managed by, or under the direction or supervision of, the directors.

(2) The directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) The directors may delegate any of their powers to a committee of directors, or to a director or employee.

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

(5) The provisions of these rules relating to proceedings of the directors also apply to proceedings of any committee of directors, except to the extent the directors determine otherwise.

(6) The directors have the duties set out in the Act, and, in particular –

(a) Each director must act in good faith and in a manner that the director believes to be in the interests of the company; and

(b) A director must not act, or agree to the company acting, in a manner that contravenes the Act or these rules.

57 Standard of care of directors

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

(a) The nature of the company; and

(b) The nature of the decision; and

(c) The position of the director and the nature of the responsibilities undertaken by him or her.

58 Obligations of directors in connection with insolvency

(1) A director of the company must call a meeting of directors within 10 working days to consider whether the directors should appoint an administrator or liquidator, in accordance with section 71 of the Act, if the director –

(a) Believes that the company is unable to pay its debts as they fall due; or

(b) Is aware of matters that would put any reasonable person on inquiry as to whether the company is unable to pay its debts as they fall due.

(2) At a meeting called under section 71 of the Act the directors must consider whether to appoint an administrator or liquidator, or to continue to carry on the business of the company.

59 Interested directors

(1) A director must not exercise any power as a director in circumstances where that director is directly or indirectly materially interested in the exercise of that power unless –

(a) The Act expressly authorises the director to exercise the relevant power despite such an interest; or

(b) The director has reasonable grounds for believing that the company will satisfy the solvency test after that power is exercised, and either –

(i) these rules expressly authorise the director to exercise the relevant power despite such an interest, and the interest has been disclosed in accordance with clause 63(4); or

(ii) the matter in question has been approved by shareholders under section 51 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.

(2) A transaction entered into by the company in which a director is directly or indirectly materially interested is voidable at the election of the company in accordance with section 111 of the Act.

(3) A transaction entered into by the company as the result of action taken by a director in breach of sections 65, 66, or 67 of the Act is voidable at the option of the company in accordance with section 112 of the Act.

60 Use and disclosure of company information

A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except –

(a) In the interests of the company; or

(b) As required by law; or

(c) If there are reasonable grounds for believing that the company will satisfy the solvency test after the director takes that action, and that action –

(i) is approved by all shareholders under section 51 of the Act; or

(ii) is authorised by any contract of employment entered into between that director and the company, the relevant terms of which have been disclosed in the interests register referred to in clause 63.

61 Indemnities and insurance for directors or employees

(1) Subject to section 74 of the Act, the company may provide an indemnity or purchase insurance for a director of the company or of a related company with the approval of –

(a) The directors; but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or

(b) Shareholders by ordinary resolution; but no director may vote on a resolution concerning an indemnity or insurance to be provided for him or her; or

(c) All shareholders under section 51 of the Act.

(2) In subclause (1) –

director includes –

(a) A person who is liable under any of sections 65 to 71 of the Act by virtue of section 73 of the Act; and

(b) A former director

indemnify includes relieve or excuse from liability, whether before or after the liability arises; and

indemnity has a corresponding meaning.

62 Remuneration of directors

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

(a) The directors; but no director may vote on a resolution concerning remuneration or other benefits to be provided for him or her; or

(b) Shareholders by ordinary resolution; but no director may vote on a resolution concerning remuneration or benefits to be received by him or her; or

(c) All shareholders under section 51 of the Act.

63 Disclosure of interests by directors

(1) The company must –

(a) Maintain an interests register; and

(b) Permit any director or shareholder to inspect the interests register as if sections 120 and 121 of the Act applied to the interests register.

(2) The annual report of the company under section 56 of the Act in respect of any accounting period must contain all entries made in the interests register in the course of that accounting period.

(3) The directors must enter in the interests register details of any –

(a) Contract of employment to which clause 60(c) applies; and

(b) Indemnity or insurance provided for a director under clause 61; and

(c) Details of any remuneration or other benefits provided to directors under clause 62; and

(d) Disclosure by a director under subclauses (4) or (5).

(4) A director who is in any way directly or indirectly materially interested in a transaction or proposed transaction with the company must, within 10 working days of becoming aware of that interest –

(a) Disclose that interest in writing to the directors; and

(b) Ensure that details of that disclosure are entered in the interests register.

(5) A director may disclose to the other directors, and enter in the interests register, a general disclosure that the director is a director or employee or shareholder of another company, or is otherwise associated with another company or another person.

(6) Disclosure under subclause (5) is disclosure of the director's interest in any transaction entered into with that other company or person for the purposes of subclause (4).

64 Procedure at meetings of directors

(1) Clauses 65 to 74 set out the procedure to be followed at meetings of directors.

(2) A meeting of directors may determine its own procedure, to the extent that it is not governed by these rules.

65 Chairperson

(1) The directors may elect 1 of their number as chairperson of directors and may determine the period for which the chairperson is to hold office.

(2) If no chairperson is elected, or if at a meeting of the directors the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose 1 of their number to be the chairperson of the meeting.

66 Notice of meeting

(1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.

(2) Not less than 24 hours' notice of a meeting of directors must be given to every director who is in Niue, or who may readily be contacted outside Niue.

(3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.

67 Methods of holding meetings

A meeting of directors may be held either –

(a) By a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

(b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

68 Quorum

(1) A quorum for a meeting of directors is a majority of the directors.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

69 Voting

(1) Every director has 1 vote.

(2) The chairperson has a casting vote.

(3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.

(4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from or votes against the resolution at the meeting.

70 Minutes

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

71 Unanimous resolution

(1) A resolution in writing signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the directors duly convened and held.

(2) Any such resolution may consist of several documents (including fax or other similar means of communication) in like form, each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of the directors' proceedings.

72 Managing director and other executive directors

(1) The directors may, from time to time, appoint a director as managing director for such period and on such terms as they think fit.

(2) Subject to the terms of a managing director's appointment, the directors may, at any time, cancel the appointment of a director as managing director.

(3) A director who holds office as managing director ceases to hold office as managing director if he or she ceases to be a director of the company.

73 Delegation to managing director

(1) The directors may delegate to the managing director, subject to any conditions or restrictions that they consider appropriate, any of their powers that may be lawfully delegated.

(2) Any such delegation may at any time be withdrawn or varied by the directors.

(3) The delegation of a power of the directors to the managing director does not prevent the exercise of the power by the directors, unless the terms of the delegation expressly provide otherwise.

74 Remuneration of managing director and executive directors

(1) The managing director may be paid such remuneration as he or she may agree with the directors.

(2) A director (other than the managing director) who is employed by the company may be paid such remuneration as may be agreed between that director and the other directors.

(3) The remuneration referred to in subclauses (1) and (2) may be by way of salary, commission, participation in profits or any combination of these methods, or any other method of fixing remuneration.

PART 4
COMPANY RECORDS

75 Company records

(1) The company must keep all the following documents at its registered office or at some other place notice of which has been given to the Registrar in accordance with section 119 of the Act –

(a) The rules of the company;
(b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
(c) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
(d) The full names and residential and postal addresses of the current directors;

(e) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 56 of the Act;
(f) Copies of all financial statements required to be completed under section 130 of the Act for the last 7 completed accounting periods of the company;
(g) The accounting records required by section 129 of the Act for the current accounting period and for the last 7 completed accounting periods of the company;
(h) The share register.

(2) The references in subclause (1)(b), (c), and (e) to 7 years and the references in subclause (1)(f) and (g) to 7 completed accounting periods include any lesser periods that the Registrar may approve by notice in writing to the company, in accordance with section 117(2) of the Act.

(3) The interests register required to be kept under clause 63 must be –
(a) Kept at the same place as the written communications to shareholders referred to in clause 75(1)(e); and
(b) Kept in a form that complies with clause 76; and
(c) Made available to shareholders in the same manner as records to which clause 76(2) applies.

76 Form of records

(1) The records of the company must be kept –
(a) In written form; or
(b) In a form or in a manner that allows the documents and information that comprise the records to be readily accessible so as to be usable for subsequent reference, and convertible into written form.

(2) The directors must ensure that adequate measures exist to –
(a) Prevent the records being falsified; and
(b) Detect any falsification of them.

77 Access to records

(1) The directors of the company are entitled to access to the company's records in accordance with section 120 of the Act.

(2) A shareholder of the company is entitled –
(a) To inspect the documents referred to in section 121 of the Act, in the manner specified in section 123 of the Act; and
(b) To require copies of or extracts from any document that he or she may inspect within 5 working days of making a request in writing for the copy or extract, on payment of any reasonable copying and administration fee prescribed by the company.

(3) The fee may be determined by any director, subject to any directions from the directors.

78 Documents to be sent to Registrar

In addition to the annual return required under section 124 of the Act, the company must send all the following documents to the Registrar under the Act –
(a) Notice of the adoption of new rules by the company, or the alteration of the rules of the company, under section 14;
(b) Notice of a change in the registered office of the company, under section 17 of the Act;
(c) Notice of the issue of shares by the company, under section 26 of the Act;

(d) Notice of the acquisition by the company of its own shares, under section 31 of the Act;
(e) Notice of the redemption of a share, under section 35 of the Act;
(f) Notice of a change in the directors of the company, or of a change in the name or residential address or postal address of a director, under section 88 of the Act;
(g) Notice of the making of an order under section 103 of the Act altering or adding to the rules of a company;
(h) Notice of any place other than the registered office of the company where records are kept, or of any change in the place where records are kept, under section 119 of the Act;
(i) Documents requested by the Registrar under the Act.

79 Documents to be sent to shareholders

In addition to the annual report required under section 56 of the Act, the company must send all the following documents to shareholders under the Act –

(a) Notice of any repurchase of shares to which section 31(4) of the Act applies;
(b) Notice of a written resolution approved under section 53 of the Act;
(c) Financial statements required to be sent under section 130 of the Act;
(d) Any written statement by an auditor under section 136 of the Act
(e) The report by the auditor under section 138 of the Act.

PART 5
ACCOUNTS AND AUDIT

80 Accounting records to be kept

(1) The directors of the company must cause accounting records to be kept that –

(a) Correctly record and explain the transactions of the company; and
(b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
(c) Will enable the directors to ensure that the financial statements of the company comply with section 130 of the Act; and
(d) Will enable the financial statements of the company to be readily and properly audited.

(2) Without limiting subclause (1), the accounting records must contain –

(a) Entries of money received and spent each day and the matters to which it relates; and
(b) A record of the assets and liabilities of the company; and
(c) If the company's business involves dealing in goods –
(i) a record of goods bought and sold, and relevant invoices; and
(ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
(d) If the company's business involves providing services, a record of services provided and relevant invoices.

(3) If the company sells goods or provides services for cash in the ordinary course of carrying on a retail business –

(a) Invoices need not be kept in respect of each retail transaction for the purposes of subclause (2); and

(b) A record of the total money received each day in respect of the sale of goods or provision of services, as the case may be, is sufficient to comply with subclause (2) in respect of those transactions.

(4) The accounting records must be kept –

(a) In a form permitted under clause 76; and

(b) At the registered office of the company, or any other place permitted under section 119 of the Act.

81 Financial statements to be prepared

(1) The directors must ensure that –

(a) Within 4 months after the balance date of the company, financial statements that comply with subclause (2) are completed in relation to the company and that balance date; and

(b) Within 20 working days of the date on which the financial statements must be completed under paragraph (a), those financial statements are sent to all shareholders. This requirement may be satisfied by sending the financial statements to shareholders in an annual report, in accordance with section 56 of the Act.

(2) The financial statements of the company must –

(a) Give a true and fair view of the matters to which they relate; and

(b) Comply with any applicable regulations made under the Act; and

(c) Be dated and signed on behalf of the directors by 2 directors of the company, or, if the company has only 1 director, by that director.

(3) The period between –

(a) The date of incorporation of the company and its first balance date; or

(b) Any 2 balance dates of the company –

must not exceed 15 months.

(4) In this clause, financial statements, in relation to the company and a balance date, means –

(a) A statement of financial position for the entity as at the balance date; and

(b) In the case of –

(i) A company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and

(ii) A company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and

(c) If required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and

(d) Such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and

(e) Any notes or documents giving information relating to the statement of financial position and other statements.

82 Appointment of auditor

(1) The company must appoint an auditor who is qualified to hold that office under section 135 of the Act to –

(a) Audit the financial statements of the company in respect of an accounting period; and
(b) Hold office until those financial statements have been audited in accordance with the Act or until he or she ceases to hold office.

(2) The company must appoint an auditor within 30 working days in the event of a vacancy in the office of auditor.

(3) An auditor ceases to hold office if he or she –
(a) Resigns by delivering a written notice of resignation to the registered office of the company not less than 20 working days before the date on which the notice is expressed to be effective; or
(b) Is replaced as auditor by an ordinary resolution appointing another person as auditor in his or her place, following notice to the auditor in accordance with section 133 of the Act; or
(c) Becomes disqualified from being the auditor of the company; or
(d) Becomes subject to a trustee order under section 501 of the Niue Act 1966, or an order of medical custody under section 602 of that Act; or
(e) Dies.

(4) An auditor may be appointed –
(a) By ordinary resolution; or
(b) If the office of auditor is vacant, by the directors. If an auditor is appointed by the directors, the directors must, within 10 working days, give notice of the appointment to all shareholders.

(5) The fees payable to the auditor must be agreed between the auditor and the directors.

83 Auditor's attendance at shareholders' meeting

The directors must ensure that an auditor of the company –
(a) Is permitted to attend a meeting of shareholders of the company; and
(b) Receives the notices and communications that a shareholder is entitled to receive relating to meetings or resolutions of shareholders; and
(c) May be heard at a meeting of shareholders that he or she attends on any part of the business of the meeting that concerns him or her as auditor.

PART 6
LIQUIDATION AND REMOVAL FROM REGISTER

84 Resolution to appoint liquidator

(1) The shareholders may resolve to liquidate the company by special resolution.

(2) The directors may resolve to liquidate the company at a meeting called under section 71 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

85 Distribution of surplus assets

(1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.

(2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind.

(3) For the purposes of subclause (2), the liquidator may –

(a) Set such value as he or she considers fair on any property to be divided; and

(b) Determine how the division will be carried out as between the shareholders or different classes of shareholders.

PART 7
MISCELLANEOUS

86 Service of documents on shareholders

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

(a) Delivered to that person; or

(b) Posted to that person's postal address; or

(c) Faxed to a fax number used by that person for the transmission of documents.

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 342 or section 344 of the Act, as the case may be.

87 Interpretation

(1) In these rules, Act means the Companies Act 2005.

(2) Unless the context otherwise requires, any term or expression that is defined in the Act or any regulations made under the Act and used, but not defined, in these rules has the same meaning as in the Act or the regulations.

(3) For the purposes of these rules –

(a) Voting share means a share that confers on its holder the right to vote on a resolution to amend the rules;

(b) The percentage of voting shares held by any person is treated as equal to the percentage of votes that that person is entitled to cast on such a resolution.

(4) For the purposes of these rules, a person is interested in a voting share if that person –

(a) Is a beneficial owner of the share; or

(b) Has the power to exercise any right to vote attached to the share; or

(c) Has the power to control the exercise of any right to vote attached to the share; or

(d) Has the power to acquire or dispose of the share; or

(e) Has the power to control the acquisition or disposition of the share by another person; or

(f) Under, or by virtue of, any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it, and whether or not it is legally enforceable) may, at any time, have the power to –

(i) exercise any right to vote attached to the share; or

(ii) control the exercise of any right to vote attached to the share; or

(iii) acquire or dispose of, the share; or

(iv) control the acquisition or disposition of the share by another person.

(5) A person who has, or may have, a power referred to in subclause (4)(b) to (f) is interested in a share, regardless of whether the power is –

(a) Express or implied;
(b) Direct or indirect;
(c) Legally enforceable or not;
(d) Related to a particular share or not;
(e) Subject to restraint or restriction or is capable of being made subject to restraint or restriction;
(f) Exercisable presently or in the future;
(g) Exercisable only on the fulfilment of a condition;
(h) Exercisable alone or jointly with another person or persons.

SCHEDULE 5

s 55

MINORITY BUY-OUT PROCEDURE

1 Shareholder may give notice requiring purchase of shares
2 Directors' duties on receipt of notice requiring purchase
3 Directors to nominate and give notice of price for shares
4 Objection to share price
5 Nominated price payable if no objection
6 Expert determination of price
7 Purchase of shares by third party
8 Inability of company to pay purchase price

1 Shareholder may give notice requiring purchase of shares

A shareholder of a company who is entitled to require the company to purchase shares by virtue of section 55 may –

(a) Within 10 working days of the passing of the resolution at a meeting of shareholders; or
(b) If the resolution was passed under section 53, within 10 working days of the date on which notice of the passing of the resolution is given to the shareholder –

give a written notice to the company requiring the company to purchase those shares

2 Directors' duties on receipt of notice requiring purchase

Within 20 working days of receiving a notice under clause 1, the directors must –

(a) Agree to the purchase of the shares by the company; or
(b) Arrange for some other person to agree to purchase the shares; or
(c) Arrange, before taking the action concerned, for the resolution to be rescinded or decide in the appropriate manner not to take the action concerned, as the case may be; and
(d) Give written notice to the shareholder of the directors' decision.

3 Directors to nominate and give notice of price for shares

(1) If the directors agree under clause 2(a) to the purchase of the shares by the company, the directors must, on giving notice under that clause or within 5 working days after giving that notice –

(a) Nominate a date on which the shares will be acquired by the company (purchase date), which must not be less than 10 working days or more than 20 working days from the date of giving notice to the shareholder; and
(b) Nominate a fair and reasonable price for the shares to be acquired; and
(c) Give notice of the price to the holder of those shares.

(2) On the purchase date –
(a) The shares are deemed to be transferred to the company; and
(b) The company is liable to pay for the shares in accordance with this clause, subject to section 28.

(3) For the purposes of this schedule, a price for a share is a fair and reasonable price if it is a fair and reasonable price for a share in the company as at the purchase date, disregarding –
(a) Any premium or discount in respect of the size of parcels of shares to be acquired;
(b) The fact that the shares are being acquired under section 55;
(c) The effect or likely effect on the value of the company and its shares of the company approving the resolution, the approval of which entitled the shareholder to require the company to purchase his or her shares.

4 Objection to share price

(1) A shareholder who considers that the price nominated by the directors is not fair or reasonable must, within 10 working days, give notice of objection to the company.

(2) If, within 10 working days of giving notice to a shareholder under clause 3(1), an objection to the price has been received by the company, the company must –
(a) Refer the question of what is a fair and reasonable price to determination by an expert in accordance with clause 6; and
(b) On the purchase date, pay a provisional price in respect of each share equal to the price nominated by the directors.

5 Nominated price payable if no objection

If, within 10 working days of giving notice to a shareholder under clause 3(1), no objection to the price has been received by the company, the price to be paid for the shares is the nominated price.

6 Expert determination of price

(1) If the company is required to refer the price for shares to expert determination in accordance with clause 4(2)(a), the company must, within 10 working days, nominate an independent person with appropriate expertise as the expert to determine the price, and give notice of that appointment to the shareholder.

(2) The shareholder may, within 10 working days of receiving the notice referred to in subclause (1), give notice to the company that he or she objects to the expert nominated by the company, on the grounds that that person –
(a) Is not independent; or
(b) Does not have the appropriate expertise.

(3) If, within 10 working days of receipt of notice by a shareholder under subclause (1), no objection to the expert has been received by the company, the

expert must expeditiously determine a fair and reasonable price for the shares to be purchased.

(4) If, within 10 working days of receipt of notice by a shareholder under subclause (1), an objection to the expert has been received by the company, the company must immediately apply to the Court for the appointment of an expert. The Court may appoint the person nominated by the company, or any person nominated by the shareholder, or such other independent person with appropriate expertise as the Court may think fit. The expert appointed by the Court must, immediately on being appointed, proceed to expeditiously determine a fair and reasonable price for the shares to be purchased.

(5) If the price determined by the expert –

(a) Exceeds the provisional price, the company must, subject to section 28, immediately pay the balance owing to the shareholder;

(b) Is less than the provisional price paid, the company may recover the excess paid from the shareholder.

(6) The expert may award interest on any balance payable or excess to be repaid under subclause (5) at such rate as he or she thinks fit.

(7) The determination by the expert is final and is made by the expert as an expert, and not as an arbitrator.

7 Purchase of shares by third party

(1) Clauses 3 to 6 apply to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with clause 2(b), subject to such modifications as may be necessary and, in particular, as if references in that section to the directors and the company were references to that person.

(2) Every holder of shares that are to be purchased in accordance with the arrangement is indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

8 Inability of company to pay purchase price

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

SCHEDULE 6

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AMALGAMATIONS

1 Approval of amalgamation proposal
2 Contents of amalgamation proposal
3 Process for approving amalgamation proposal
4 Short form amalgamation

1 Approval of amalgamation proposal

(1) Subject to subclause (2), an amalgamation proposal must be approved in accordance with clause 3 and the rules of each amalgamating company.

(2) An amalgamation proposal that relates to the amalgamation –

(a) Of a company with 1 or more other companies that is or that are

directly or indirectly wholly owned by it; or

(b) Of 2 or more companies each of which is directly or indirectly wholly owned by the same person –

may be approved in accordance with clause 4.

2 Contents of amalgamation proposal

(1) An amalgamation proposal must set out the terms of the amalgamation and, in particular –

(a) The name of the amalgamated company, which may be the name of 1 of the amalgamating companies, or a new name that complies with section 10; and

(b) Whether the amalgamated company is a private company or a public company; and

(c) The full name and residential address and postal address of every proposed director of the amalgamated company; and

(d) The registered office of the amalgamated company; and

(e) The postal address of the company, which may be either the postal address of the registered office or any other postal address; and

(f) The manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company; and

(g) If shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company; and

(h) Any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g); and

(i) Details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(2) The amalgamation proposal must –

(a) Specify whether the rules of the amalgamated company will be the model rules in Schedules 2, 3, or 4; or

(b) Include a copy of the rules of the amalgamated company, if they differ from the model rules.

(3) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

(4) If shares of 1 of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal –

(a) Must provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective; and

(b) Must not provide for the conversion of those shares into shares of the amalgamated company.

3 Process for approving amalgamation proposal

(1) The directors of each amalgamating company must send to each shareholder of the company, not less than 20 working days before the amalgamation is proposed to take effect –

(a) A copy of the amalgamation proposal; and

(b) A statement setting out the rights of shareholders under section 148; and

(c) A statement of any material interests of the directors in the proposal, whether in that capacity or otherwise; and
(d) Any further information and explanation that may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.

(2) The amalgamation proposal must be approved –
(a) By the shareholders of each amalgamating company by special resolution, as if the proposal were a proposal to alter the rules of the company; and
(b) If a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's rules or otherwise proposed in relation to that company, require the approval of an interest group, by –
(i) a special resolution of each interest group; or
(ii) all shareholders under section 51.

4 Short form amalgamation

(1) An amalgamation proposal in relation to a company (parent company) and 1 or more other companies that is or that are directly or indirectly wholly owned by it may be approved by a resolution of the directors of each amalgamating company, if the amalgamation proposal provides that –
(a) The shares of each amalgamating company, other than the parent company, will be cancelled without payment or other consideration; and
(b) The rules of the amalgamated company will be the same as the rules of the parent company.

(2) An amalgamation proposal in relation to 2 or more companies, each of which is directly or indirectly wholly owned by the same person, may be approved by a resolution of the directors of each amalgamating company, if the amalgamation proposal provides that –
(a) The shares of all but 1 of the amalgamating companies will be cancelled without payment or other consideration; and
(b) The rules of the amalgamated company will be the same as the rules of the amalgamating company whose shares are not cancelled.

SCHEDULE 7

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COMPANY CHARGES

Preliminary provisions
1 Meaning of registrable charge
2 Charges that are not registrable charges
3 Constructive notice of registered documents

Rectification of register and extension of time
4 Court orders
5 Grounds for Court orders

Registration
6 Registrable documents
7 Who may apply for registration
8 Time for submitting registrable documents
9 What must accompany copy of registrable

Rejection of non-complying document
10 Registrar may reject non-complying document
11 Consequences of rejecting non-complying document

Registration of document
12 When document is registered
13 Certificate of registration
14 No presumption of validity

Satisfaction of company charge, etc
15 Entries of satisfaction and release of property from registered charge
16 Prescribed time for submitting notices
17 Matters on which notices may be deferred
18 Registrar must enter memorandum of satisfaction in register
19 Court may order entry of memorandum in register

PRELIMINARY PROVISIONS

1 Meaning of registrable charge

In this Act, registrable charge means –

(a) A charge for the purpose of securing an issue of debentures;
(b) In the case of an existing company, a charge on uncalled share capital of the company;
(c) A charge created or evidenced by a document that, if executed by an individual, would require registration under the Chattels Transfer Act 1975;
(d) A charge on any motor vehicle of the company;
(e) A floating charge on any property of the company;
(f) A charge on book debts of the company;
(g) A charge on amounts payable on issued shares of the company, but not paid;
(h) A charge on a ship or any share in a ship;
(i) A charge on any aircraft;
(j) A charge on goodwill, on a patent or a licence under a patent, on a trade mark or a licence under a trade mark, or on a copyright or a licence under a copyright.

2 Charges that are not registrable charges

(1) Despite clause 1, the following are not registrable charges for the purposes of this schedule –

(a) A charge under a charging order issued by a Court in favour of a judgment creditor;
(b) If a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the negotiable instrument for the purposes of securing an advance to the company;
(c) A charge in so far as it relates to land or other real property.

(2) Where a charge relates to land or other real property and to other property, it may be registered despite subclause (1)(c). Such a charge is treated for the purposes of this schedule as if it related solely to that other property.

3 Constructive notice of registered documents

Registration of a document under this Act –

(a) Constitutes notice to all persons of the details of the document entered in the register; but
(b) Does not in itself constitute notice to any person of the contents of the document.

Rectification of register and extension of time

4 Court orders

(1) The Court may, on the application of the company or any interested person, order that the omission or misstatement of any information registered under this schedule be rectified.

(2) An order may be made on any conditions that the Court thinks fit.

5 Grounds for Court orders

The Court may make an order under clause 4 only if the Court is satisfied that –

(a) The omission or misstatement of anything registered under this schedule was accidental, due to misadventure or some other sufficient cause, or was not of a nature to prejudice the position of creditors or shareholders of the company; or

(b) On other grounds, it is just and equitable to grant relief.

Registration

6 Registrable documents

The following documents may be registered under this Act –

(a) A copy of a charge document executed by the company;

(b) In the case of a series of debentures for which there is no charge document, a copy of 1 of the debentures of the series;

(c) A copy of a charge document over property acquired by the company that would, if the charge had been created by the company, have been capable of being registered under this Act;

(d) A copy of an alteration document executed by the company;

(e) A copy of a document assigning the benefit of a company charge;

(f) A copy of a priority document.

7 Who may apply for registration

(1) The following persons may submit a registrable document for registration –

(a) In the case of an assignment document, the assignee;

(b) In the case of a priority document, a party to that document;

(c) In all cases, the company or any other interested person.

(2) An interested person is entitled to recover from the following persons the amount of any fees paid by that person to the Registrar for the registration of the registrable document –

(a) In the case of an assignment of charge, the assignee;

(b) In all cases, the company.

8 Time for submitting registrable documents

A copy of a registrable document may be submitted to the Registrar at any time.

9 What must accompany copy of registrable document

Every copy of a registrable document must be accompanied by –

(a) The applicable certificate of execution in the prescribed form (if any); and

(b) The prescribed fee (if any).

Rejection of non-complying document

10 Registrar may reject non-complying document

The Registrar may reject a document that is submitted for registration if it –

(a) Does not comply with this Act;
(b) Is not in a form that may be entered in the register.

11 Consequences of rejecting non-complying document

(1) If the Registrar rejects a document, the Registrar must inform the person who submitted the document of the Registrar's reasons for rejecting the document, and request the person to –

(a) Amend the rejected document so that it complies with this Act and submit the amended document to the Registrar within the time allowed by the Registrar; or
(b) Submit to the Registrar a new document in its place that complies with this Act within the time allowed by the Registrar.

(2) If the person submits to the Registrar an amended or new document, this schedule, with the necessary modifications, applies to the document.

(3) If the person does nothing, the rejected document must be treated as if it had never been submitted to the Registrar for registration.

Registration of document

12 When document is registered

(1) A document or information is registered when the document or information is entered in the register.

(2) The Registrar may –

(a) Accept as correct the information in any certificate submitted to the Registrar for the purposes of this Schedule; and
(b) Enter the certified information in the register.

13 Certificate of registration

(1) The Registrar must give a certificate of the registration (certificate of registration) of any document that is registered under this Act.

(2) A certificate of registration is conclusive evidence that the registration requirements in this Act have been met.

14 No presumption of validity

Neither registration, nor the rejection, of a document by the Registrar under this schedule affects, or creates a presumption about, the validity of the document or the correctness of the information contained in it.

Satisfaction of company charge, etc

15 Entries of satisfaction and release of property from registered charge

(1) A company must submit to the Registrar the prescribed fee (if any) and –

(a) A notice in the prescribed form (if any) signed by the secured party of any of the applicable matters specified in subclause (2); or
(b) A notice in any other form approved by the Registrar of any of those applicable matters; or
(c) Provide any other evidence to the satisfaction of the Registrar of any of those applicable matters.

(2) The matters referred to in subclause (1) are that –
- (a) The registered charge has been satisfied in whole or part; or
- (b) The secured property has been released; or
- (c) The secured property has been disposed of subject to the registered charge.

16 Prescribed time for submitting notices

A notice or evidence to which clause 15 applies must be submitted to the Registrar within 20 working days after –
- (a) The debt for which the registered charge was given has been paid or satisfied in whole or in part; or
- (b) All or any part of the secured property has been released from the registered charge; or
- (c) All or any part of the secured property has been disposed of subject to the registered charge.

17 Matters on which notice may be deferred

Until a final discharge is signed by the secured party, the company need not submit to the Registrar a notice or evidence to which clause 15 applies on the occurrence of –
- (a) Any sum being paid to the secured party; or
- (b) Any account between the company and the secured party being in credit.

18 Registrar must enter memorandum of satisfaction in register

On receipt of a notice or other evidence to which clause 19 applies and on payment of the prescribed fee (if any), the Registrar must enter in the register –
- (a) A memorandum of the full or partial satisfaction of the registered charge;
- (b) A memorandum of the fact that all or any part of the secured property has been released from the registered charge; or
- (c) A memorandum of the fact that all or any part of the secured property has ceased to belong to the company.

19 Court may order entry of memorandum in register

(1) The Court may order that a memorandum under clause 18 be entered in the register.

(2) If the Court makes an order under subclause (1), the Registrar must enter the memorandum in the register.

SCHEDULE 8

s 156

Powers, functions, and liabilities of administrators

PART 1
Preliminary provisions
1 Administrator is company's agent
2 Administrator has qualified privilege
3 Administrator may seek directions
4 Exercise of powers, etc, by 2 or more administrators
5 Exercise of powers, etc, by 2 or more administrators under compromise

PART 2
Powers and functions of administrators
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7 Limitations on administrator's powers
8 Dealing with property subject to floating charge that has become fixed charge
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PART 3
General liability
10 Administrator not liable in damages for refusing consent
11 Liability of administrator for company's debts
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14 Liability of administrator for rent
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16 Effect of notice
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18 Administrator is entitled to indemnity
19 Administrator's indemnity has priority over unsecured debts, etc
20 Exception for debts secured by floating charge
21 Extent of administrator's indemnity when floating charge has priority

PART 1
Preliminary provisions

1 Administrator is company's agent

When exercising a power, or performing a function, as administrator of a company, the administrator is taken to be acting as the company's agent.

2 Administrator has qualified privilege

A person who is, or has been, the administrator of a company has qualified privilege in respect of a statement that he or she has made, whether orally or in writing, in the course of exercising his or her powers, or performing his or her functions, as administrator of the company.

3 Administrator may seek directions

(1) The administrator of a company, or any person who chairs a meeting of creditors held under subpart 1 of Part 9, may apply to the Court for directions about a matter arising in connection with the exercise of his or her powers or the performance of his or her functions.

(2) The administrator under a compromise approved under subpart 1 of Part 9 may apply to the Court for directions about a matter arising in connection with the operation of, or giving effect to, the compromise.

4 Exercise of powers, etc, by 2 or more administrators

(1) If subpart 1 of Part 9 provides for an administrator of a company to be appointed, 2 or more persons may be appointed as administrators of the company.

(2) If there are 2 or more administrators of a company –

(a) A function or power of an administrator of the company may be performed or exercised by any 1 of them, or by any 2 or more of them together, except so far as the document or resolution appointing them otherwise provides; and

(b) A reference in this Act to an administrator, or to the administrator, of a company is a reference to whichever 1 or more of those administrators the case requires.

5 Exercise of powers, etc, by 2 or more administrators under compromise

If there are 2 or more administrators of a compromise approved under subpart 1 of Part 9 –

(a) A function or power of an administrator under the compromise may be performed or exercised by any 1 of them, or by any 2 or more of them together, except so far as the document or resolution appointing them otherwise provides; and

(b) A reference in this Act to an administrator under a compromise is a reference to whichever 1 or more of those administrators the case requires.

PART 2
Powers and Functions of Administrators

6 General powers of administrator

While a company is under administration, the administrator has control of the company's business, property, and affairs and may –

(a) Carry on the company's business;

(b) Manage the company's property and affairs;

(c) Terminate or dispose of all or any part of the company's business;

(d) Dispose of all or any part of the company's property;

(e) Exercise any power, and perform any function, that the company or any of its officers could perform or exercise if the company were not under administration;

(f) With leave of the Court, remove from office a director of the company;

(g) With leave of the Court, appoint a person as a director of the company, whether to fill a vacancy or not;

(h) Execute a document, bring or defend proceedings, or do anything else, in the company's name and on its behalf;

(i) Do whatever else is necessary for the purposes of subpart 1 of Part 9.

7 Limitations on administrator's powers

(1) If clause 23 of Schedule 10 applies, the administrator's powers and functions are subject to the powers and functions of –

(a) The secured creditor; or

(b) A receiver or person of a kind referred to in clause 23 of Schedule 10 (even if appointed after the decision period).

(2) If clause 19 of Schedule 10 applies, then, so far as concerns perishable property of the company, the administrator's powers and functions are subject to the powers and functions of –

(a) The secured creditor; or

(b) A receiver or person appointed (at any time) as mentioned in paragraphs (a), (b), or (d) of the definition of

enforce in clause 1 of Schedule 1.

(3) If clauses 14, 15, or 20 of Schedule 10 apply, then, so far as concerns the property referred to in those clauses, the administrator's powers and functions are subject to the powers and functions of the secured creditor, receiver, or other person.

8 Dealing with property subject to floating charge that has become fixed charge

If a floating charge over property of a company has become a fixed charge, then, subject to this schedule, the administrator may deal with any of that property as if the charge were still a floating charge.

9 When administrator may dispose of encumbered property

(1) The administrator of a company must not dispose of –

(a) Property of the company that is subject to a charge; or

(b) Property that is used or occupied by, or is in the possession of, the company but of which someone else is the owner or lessor.

(2) Subclause (1) does not prevent a disposal –

(a) In the ordinary course of the company's business if it is authorised by the terms of the relevant charge, agreement authorising use or possession, lease or without agreement of the secured creditor, owner, or lessor; or

(b) With the written consent of the secured creditor, owner, or lessor, as the case may be; or

(c) With the leave of the Court.

(3) The Court may give leave under subclause (2)(c) only if it is satisfied that arrangements have been made to protect adequately the interests of the secured creditor, owner, or lessor, as the case may be.

PART 3

LIABILITY OF ADMINISTRATORS

General liability

10 Administrator not liable in damages for refusing consent

A company's administrator is not liable to an action or other proceeding for damages for refusing to give an approval or consent under subpart 1 of Part 9.

11 Liability of administrator for company's debts

Except as expressly provided in subpart 1 of Part 9 or in this schedule, the administrator of a company is not liable for the company's debts.

12 Liability of administrator for debts incurred by administrator

(1) The administrator of a company is liable for the debts that the administrator incurs in the exercise of his or her powers, or performance of his or her functions, as administrator for –

(a) Services rendered;

(b) Goods bought;

(c) Property hired, leased, used, or occupied.

(2) Subclause (1) has effect despite any agreement to the contrary, but without prejudice to the administrator's rights against the company or anyone else.

Liability for rent, etc

13 Application of clauses 14 to 17

Clauses 14 to 17 apply if, under an agreement made before the administration of a company began, the company continues to use or occupy, or to be in possession of, property of which someone else is the owner or lessor.

14 Liability of administrator for rent

(1) Subject to this clause, the administrator is liable for that part of the rent or other amounts payable by the company under the agreement referred to in clause 13 for any period –

(a) That begins more than 10 working days after the administration began; and

(b) Throughout which –

(i) the company continues to use or occupy, or to be in possession of, the property; and

(ii) the administration continues.

(2) Subclause (1) does not apply to so much of a period that elapses after –

(a) A receiver of the property is appointed; or

(b) A secured creditor appoints an agent, under the provisions of a charge on the property, to enter into possession, or to assume control, of the property; or

(c) a secured creditor takes possession, or assumes control, of the property under the provisions of a charge on the property.

(3) Subclause (1) does not apply in so far as a Court, by order, excuses the administrator from liability.

(4) Subclauses (2) and (3) do not affect the liability of the company.

(5) The administrator is not taken, because of subclause (1) –

(a) To have adopted the agreement; or

(b) To be liable under the agreement otherwise than as mentioned in subclause (1).

15 Notice stating company does not propose to exercise rights over property

Within 10 working days after the beginning of the administration, the administrator may give to the owner or lessor a notice that –

(a) specifies the property; and

(b) States that the company does not propose to exercise rights in relation to the property.

16 Effect of notice

Despite clause 14, the administrator is not liable for so much of the rent or other amounts payable by the company under the agreement that is attributable to a period during which a notice under clause 15 is in force, but such a notice does not affect a liability of the company.

17 When notice ceases to have effect

(1) A notice under clause 15 ceases to have effect if –

(a) The administrator revokes it in writing given to the owner or lessor; or

(b) The company exercises, or appears to exercise, a right in relation to the property.

(2) For the purposes of subclause (1), the company does not exercise, or appear to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company –

(a) Also uses the property; or

(b) Asserts a right, as against the owner or lessor, so to continue.

Indemnity

18 Administrator is entitled to indemnity

(1) The administrator of a company is entitled to be indemnified out of the company's property for –

(a) The debts for which the administrator is liable under this Act; and

(b) The costs incurred in relation to holding a meeting of creditors under subpart 1 of Part 9; and

(c) His or her remuneration.

(2) To secure the administrator's indemnity, the administrator has a lien on the company's property.

(3) An administrator's lien has priority over a charge to the extent that the indemnity has priority over debts secured by the charge.

19 Administrator's indemnity has priority over unsecured debts, etc

Subject to claims having preference under Part 3 of Schedule 18, an administrator's indemnity has priority over –

(a) All the company's unsecured debts; and

(b) Subject to clauses 20 and 21, debts of the company secured by a floating charge on property of the company.

20 Exception for debts secured by floating charge

An administrator's indemnity does not have priority over debts secured by a floating charge if –

(a) Before the beginning of the administration, the secured party –

(i) appointed a receiver of property of the company under a power contained in the floating charge document concerned; or

(ii) obtained an order for the appointment of a receiver of property of the company for the purpose of enforcing the charge; or

(iii) Entered into possession, or assumed control, of property of the company for the purpose of enforcing the charge; or

(iv) appointed a person so to enter into possession or assume control (whether as agent for the secured creditor or for the company); and

(b) The receiver or person is still in office, or the secured party is still in possession or control of the property.

21 Extent of administrator's indemnity when floating charge has priority

The extent to which a floating charge has priority over an administrator's indemnity is limited to debts incurred, or remuneration accruing, after the secured party gave written notice to the administrator of the matter specified in clause 20(a) that gave the secured party priority over the indemnity.

SCHEDULE 9

s 158(1)(a)

OFFICE OF ADMINISTRATOR

Restrictions on appointment of administrators
1 Who may not be appointed or act as administrator
2 Validity of acts of administrators
3 Person must consent to being appointed administrator
4 Court may declare whether administrator validly appointed

Vacancy in office of administrator
5 Vacancy in office of administrator
6 Replacement administrator to hold creditors' meeting
7 Court order if vacancy in office ofadministrator
8 Vacancy in office of administrator under compromise

Administrators' remuneration
9 Remuneration of administrator

Restrictions on appointment of administrators

1 Who may not be appointed or act as administrator

None of the following may be appointed or act as an administrator of a company or under a compromise –

(a) A corporation;
(b) A person who is under 21 years of age;
(c) A creditor of the company under administration;
(d) A person who has, within the 2 years immediately before the commencement of the administration, been a shareholder, director, auditor, or receiver of the company or of a related company;
(e) An undischarged bankrupt;
(f) A person in respect of whom a trustee order is in force under section 501 of the Niue Act 1966, or in respect of whom an order of medical custody is in force under section 602 of that Act;
(g) A person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under this Act;
(h) A person who is prohibited from acting as a liquidator under this Act.

2 Validity of acts of administrators

The acts of a person as an administrator are valid even though that person may not be qualified to act as an administrator.

3 Person must consent to being appointed administrator

(1) A person must not be appointed as administrator of a company or under a compromise unless the person has consented in writing to the appointment.

(2) The administrator must deliver a copy of his or her consent to appointment to the Registrar with the notice of his or her appointment.

4 Court may declare whether administrator validly appointed

(1) If there is doubt on a specific ground about whether the appointment of a person as administrator of a company is valid, the person, the company, or any of the company's creditors may apply to the Court for an order under subclause (2).

(2) The Court may, on application, make an order declaring whether or not the appointment was valid on the ground specified in the application or on some other ground.

Vacancy in office of administrator

5 Vacancy in office of administrator

(1) The person who appointed an administrator of a company may appoint someone else as administrator of the company if the administrator –

(a) Dies; or

(b) Becomes prohibited from acting as administrator of the company; or

(c) Resigns by notice in writing given to his or her appointer and to the company.

(2) Where the board of directors of a company appointed the administrator of the company, an appointment under subclause (1) may be made by the board despite clause 2 of Schedule 10.

(3) If a company is under administration, but for some reason no administrator is acting, the Court may appoint a person as administrator on the application of the Registrar or a creditor or shareholder of the company or, despite clause 2 of Schedule 10, of an officer of the company.

6 Replacement administrator to hold creditors' meeting

(1) Within 10 working days after being appointed as administrator of a company under clause 5 otherwise than by the Court, the administrator must hold a meeting of the company's creditors in accordance with Schedule 12 so that they may determine whether to appoint someone else as administrator of the company.

(2) At least 5 working days before a creditors' meeting is held under this clause, the administrator must give –

(a) Written notice of the meeting to every secured party who holds a registered charge over the property of the company; and

(b) Written notice of the meeting to as many of the company's other creditors as is reasonably practicable; and

(c) Public notice of the meeting.

7 Court order if vacancy in office of administrator

(1) The Court may make such order as it thinks just if the Court is satisfied that –

(a) A company is under administration but –

(i) there is a vacancy in the office of administrator of the company; or

(ii) no administrator of the company is acting; or

(b) A compromise approved under subpart 2 of Part 9 has not yet terminated; but –

(i) there is a vacancy in the office of administrator under the compromise; or

(ii) no administrator under the compromise is acting.

(2) The Registrar, or a creditor or shareholder of the company, are the only persons who may apply for an order under subclause (1).

8 Vacancy in office of administrator under compromise

(1) The Court may appoint someone else as administrator under a compromise if the administrator –

(a) Dies; or

(b) Becomes prohibited from acting as administrator under the compromise; or

(c) Resigns by notice in writing given to the company.

(2) If a compromise has not yet terminated, but for some reason no administrator under the compromise is acting, the Court may appoint a person as administrator under the compromise.

(3) An appointment may be made on the application of the Registrar or of an officer, shareholder, or creditor of the company.

Administrators' remuneration

9 Remuneration of administrator

(1) The administrator of a company under administration, or acting under a compromise approved by creditors in accordance with section 188(1)(a), is entitled to –

(a) Any remuneration that is –

(i) fixed by a resolution of the company's creditors passed at a meeting convened under section 184; or

(ii) specified by the document setting out the terms of the compromise; or

(b) If no remuneration is fixed, any remuneration that the Court fixes on the application of the administrator.

(2) Despite clause 2 of Schedule 10, if remuneration is fixed under subclause (1)(a), the Court may review the remuneration and confirm, increase, or reduce it on the application of –

(a) The administrator of the company; or

(b) A director of the company; or

(c) A shareholder of the company; or

(d) A creditor of the company.

SCHEDULE 10

s 156(2)(c)

EFFECT OF ADMINISTRATION

PART 1

PRELIMINARY PROVISION

1 Time for doing act does not run while act prevented by administration

PART 2

EFFECT ON COMPANY'S OFFICERS AND SHAREHOLDERS, ETC

2 Functions and powers of company officers suspended

3 Effect on company's shareholders

4 Restrictions on putting company into liquidation

PART 3

EFFECT ON PROCEEDINGS, ETC

5 Stay of civil proceedings

6 Suspension of enforcement process

7 Duties of court officer in relation to property of company

8 Court officer must deliver company property, etc, to administrator

9 Good faith buyer under execution process gets good title

PART 4
RESTRICTIONS ON DEALING WITH COMPANY'S PROPERTY
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10 Only administrator may deal with company's property
11 Offence for company officer to enter into
12 Order for compensation
13 Owner or lessor not to recover property used by company
14 Exception: perishable property
15 Exception: recovery of property before administration
16 Court may limit powers of receiver, etc, in relation to property used by company
17 Giving notice relating to property used by company

Secured creditors
18 Charge unenforceable
19 Exception: charge on perishable property
20 Exception: enforcement of charge before administration
21 Court may limit powers of secured creditor, etc, in relation to charged property
22 Giving notice under charge
23 When secured creditor acts before or during decision period

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EFFECT ON GUARANTEES
24 Administration not to trigger liability under guarantee
25 Court orders
26 Grounds for making order under clause 25
27 Interim order
28 No undertaking as to damages
29 Variation or discharge of order
30 Operation of orders

PART 1
PRELIMINARY PROVISIONS

1 Time for doing act does not run while act prevented by administration

If, for any purpose, an act must or may be done within a particular period or before a particular time, and this Act prevents the act from being done within that period or before that time, the period is extended, or the time is deferred, according to how long this Act prevented the act from being done.

PART 2
EFFECT ON COMPANY'S OFFICERS AND SHAREHOLDERS, ETC

2 Functions and powers of company officers suspended

(1) Subject to clauses 19, 20(2), 22, and 23(3), while a company is under administration, no person (other than the administrator) may, without the administrator's written approval, perform a function, or exercise a power, as an officer of the company.

(2) Subsection (1) does not have the effect of removing an officer of a company from his or her office.

3 Effect of administration on company's shareholders

A transfer of shares in a company, or an alteration in the status of shareholders of a company, that is made during the administration of the company is void except –

(a) With the consent of the administrator; or
(b) So far as the Court otherwise orders.

4 Restrictions on putting company into liquidation

If a company is under administration –

(a) The shareholders and the directors of the company must not appoint a liquidator;

(b) If the Court is satisfied that it is in the interests of the company's creditors for the company to continue under administration, rather than for a liquidator or an interim liquidator to be appointed, as the case may be –

(i) the Court must adjourn the hearing of an application for an order to appoint a liquidator; and

(ii) the Court must not appoint an interim liquidator.

PART 3
EFFECT ON PROCEEDINGS, ETC

5 Stay of civil proceedings

During the administration of a company, a civil proceeding in a Court against the company or in relation to any of its property must not be started or proceeded with, except with –

(a) The administrator's written consent; or

(b) The leave of the Court and in accordance with any conditions that the Court imposes.

6 Suspension of enforcement process

During the administration of a company, any enforcement process in relation to property of the company must not be started or proceeded with, except –

(a) With the leave of the Court; and

(b) In accordance with any conditions that the Court imposes.

7 Duties of court officer in relation to property of company

A court officer who receives written notice of the fact that a company is under administration must not –

(a) Take action to sell property of the company under a process of execution; or

(b) Pay to a person who is not the administrator –

(i) proceeds of selling property of the company (at any time) under a process of execution; or

(ii) money of the company seized (at any time) under a process of execution; or

(iii) money paid (at any time) to avoid seizure or sale of property of the company under a process of execution; or

(c) Take action in relation to the attachment of a debt due to the company; or

(d) Pay to a person (other than the administrator) money received because of the attachment of such a debt.

8 Court officer must deliver company property, etc, to administrator

(1) The court officer must –

(a) Deliver to the administrator any property of the company that is ever in the court officer's possession under a process of execution; and

(b) Pay to the administrator all proceeds or money of a kind referred to in clause 7(b) or (d) that –

(i) are in the court officer's possession; or

(ii) have been paid into the Court and have not since been paid out.

(2) The costs of the execution or attachment are a first charge on property delivered, or proceeds or money paid, to the administrator.

(3) In order to give effect to a charge on proceeds or money, the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds or money as the court officer thinks necessary.

(4) The Court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or to make a payment, that would otherwise be prevented.

9 Good faith buyer under execution process gets good title

Despite anything in clauses 7 and 8, a person who buys property in good faith under a sale under a process of execution gets a good title to the property as against the company and the administrator.

PART 4

RESTRICTIONS ON DEALING WITH COMPANY'S PROPERTY

General provisions

10 Only administrator may deal with company's property

(1) A transaction or dealing that affects property of a company under administration is void unless –

(a) The administrator entered into it on the company's behalf; or

(b) The administrator consented to it in writing before it was entered into; or

(c) It was entered into under an order of the Court.

(2) Subclause (1) has effect subject to any order that the Court makes after the transaction or dealing.

11 Offence for company officer to enter into void transaction or dealing

(1) Every officer of a company that is under administration commits an offence if the officer of the company –

(a) Purported to enter into a void transaction or dealing on the company's behalf; or

(b) Was in any other way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the void transaction or dealing.

(2) Every officer of a company who commits an offence against subclause (1) is liable on conviction to a fine not exceeding 50 penalty units.

12 Order for compensation

(1) The Court may order a person who has been convicted of an offence against clause 11(1) to pay compensation of a specified amount to the company or other person who has suffered loss or damage as a result of the offence.

(2) An order under subclause (1) may be enforced as if it were a judgment of the Court.

(3) The defences available under section 76 to relieve a person from liability for an offence referred to in that section extend to relieving a person from liability to be ordered under this clause to pay compensation.

13 Owner or lessor not to recover property used by company

During the administration of a company, the owner or lessor of property that is used or occupied by, or is in the possession of, the company must not take possession of the property or otherwise recover it, except –

(a) Eith the administrator's written consent; or
(b) With the leave of the Court.

14 Exception: perishable property

(1) Nothing in clauses 2 or 13 prevents a person from taking possession of, or otherwise recovering, perishable property.

(2) Clause 10 does not apply in relation to a transaction or dealing that –
(a) Affects perishable property; and
(b) Is entered into for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it.

15 Exception: recovery of property before administration

If, before the beginning of the administration of a company, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of property that is used or occupied by, or in possession of, the company, enters into possession or assumes control of, or exercises any other power in relation to, the property –
(a) Nothing in clauses 2 or 13 prevents the receiver or other person from performing a function, or exercising a power, in relation to the property; and
(b) Clause 10 does not apply in relation to a transaction or dealing that affects the property and is entered into in the performance of a function, or exercise of a power, of the receiver or other person.

16 Court may limit powers of receiver, etc, in relation to property used by company

(1) Despite clauses 14 and 15, the Court may, on application by the administrator of a company, order a person not to perform specified functions, or exercise specified powers, in relation to property –
(a) That is used or occupied by, or in the possession of, the company; and
(b) In respect of which the person, for the purpose of enforcing a right as owner or lessor of the property, has entered into possession, assumed control, or exercised any other power.

(2) The Court may make an order only if it is satisfied that what the administrator proposes to do during the administration will adequately protect the interests of the owner or lessor.

(3) An order may be made under this clause, and has effect, only during the administration of the company.

17 Giving notice relating to property used by company

Nothing in clauses 2 or 13 prevents a person from giving a notice to a company under an agreement relating to property that is used or occupied by, or is in the possession of, the company.

Secured creditors

18 Charge unenforceable

Subject to clauses 20, 22, and 23, during the administration of a company, a person must not enforce a charge on property of the company, except –
(a) With the administrator's written consent; or
(b) With the leave of the Court.

19 Exception: charge on perishable property

Despite anything in this schedule, a secured creditor who has a charge over perishable property of a company under administration, or a receiver or other appointed person who is entitled to enforce the charge, may –

(a) Enforce the charge on the perishable property;

(b) Enter into a transaction or dealing that affects the perishable property.

20 Exception: enforcement of charge before administration

(1) If, before the beginning of the administration of a company, a secured creditor, receiver, or other person, has, for the purpose of enforcing a charge on property of the company, done any of the things specified in subclause (2) –

(a) Nothing in clauses 2 or 18 prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property; and

(b) Clause 10 does not apply in relation to a transaction or dealing that affects the property and is entered into –

(i) in the exercise of a power of the secured creditor as secured creditor; or

(ii) in the performance of a function, or exercise of a power, of the receiver or other person.

(2) The things referred to in subclause (1) are the secured creditor as secured creditor or the receiver or other person has –

(a) Entered into possession, or assumed control, of property of the company; or

(b) Entered into an agreement to sell the property; or

(c) Made arrangements for the property to be offered for sale by public auction; or

(d) Publicly invited tenders for the purchase of the property; or

(e) Exercised any other power in relation to the property.

21 Court may limit powers of secured creditor, etc, in relation to charged property

(1) Despite clauses 19 and 20, the Court may, on application by the administrator of a company, order a secured creditor, receiver, or other person not to perform specified functions or exercise specified powers if, for the purpose of enforcing a charge on property of a company, the secured creditor, receiver, or other person, does an act of a kind referred to in clause 19.

(2) Subclause (1) does not apply in a case to which clause 23 applies.

(3) The Court may make an order only if it is satisfied that what the administrator proposes to do during the administration will adequately protect the secured creditor's interests.

(4) An order may be made under this clause, and has effect, only during the administration of the company.

22 Giving notice under charge

Nothing in clauses 2 or 18 prevents a person from giving a notice under the charge.

23 When secured creditor acts before or during decision period

(1) This clause applies if –

(a) All of the property of a company under administration is subject to a charge; and

(b) Before or during the decision period, the secured creditor enforced the charge in relation to all property of the company subject to the charge, whether or not the charge was enforced in the same way in relation to all that property.

(2) This clause also applies if –

(a) A company is under administration; and

(b) The same person is the secured creditor in relation to each of 2 or more charges on property of the company; and

(c) The property of the company subject to the respective charges together constitutes all, or almost all, of the company's property; and

(d) Before or during the decision period, the secured creditor enforced the charges in relation to all the charged property –

(i) whether or not the charges were enforced in the same way in relation to all the charged property; and

(ii) whether or not any of the charges were enforced in the same way in relation to all the property of the company subject to that charge; and

(iii) in so far as the charges were enforced in relation to property of the company in a way referred to in paragraphs (a), (b), or (d) of the definition of enforce in clause 1 of Schedule 1, whether or not the same person was appointed in respect of all of that property.

(3) Nothing in clauses 2 or 18 prevents any of the following from enforcing the charge, or any of the charges –

(a) The secured creditor entitled to the charge or charges;

(b) A receiver or person referred to in paragraphs (a), (b), or (d) of the definition of enforce in clause 1 of Schedule 1, as that definition applies in relation to the charge or any of the charges (even if appointed after the decision period).

(4) Clause 10 does not apply in relation to a transaction or dealing that affects property of the company and is entered into by the secured creditor, a receiver, or person of a kind referred to in subclause (3)(b), in the performance of a function, or exercise of a power, as secured creditor, or as a receiver, or person, as the case may be.

PART 5

EFFECT ON GUARANTEES

24 Administration not to trigger liability under guarantee

Except with the leave of the Court and in accordance with any conditions that the Court imposes, during the administration of a company –

(a) A guarantee of a liability of the company must not be enforced as against –

(i) a director or shareholder of the company who is a natural person; or

(ii) a spouse or relative of the director or shareholder; and

(b) Without limiting paragraph (a), a proceeding, in relation to a guarantee, must not be started against a director, shareholder, spouse, or relative.

25 Court orders

(1) Despite clause 24, the Court may, on application by the creditor, make 1 or more of the following orders –

(a) An order prohibiting a person who is indebted to the guarantor or to an associate of the guarantor from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(b) An order prohibiting a person holding money, securities, futures contracts or other property, on behalf of the guarantor, or on behalf of an associate of the guarantor, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities, futures contracts or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, futures contracts or other property, is or are held;

(c) An order prohibiting the taking or sending out of the jurisdiction of Niue by a person, money of the guarantor or of an associate of the guarantor;

(d) An order prohibiting the taking, sending or transfer by a person of securities, futures contracts or other property of the guarantor, or of an associate of the guarantor –

(i) from a place under the jurisdiction of Niue to a place outside the jurisdiction (including the transfer of securities from a register in the jurisdiction of Niue to a register outside that jurisdiction); or

(ii) from a place in Niue to a place outside Niue (including the transfer of securities from a register in Niue to a register outside Niue);

(e) An order appointing, a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of a person who is an individual;

(f) An order appointing a receiver, having such powers as the Court orders, of all or any part of the property of a guarantor who is a body corporate;

(g) An order prohibiting a guarantor who is an individual from leaving Niue without the consent of the Court.

(2) A reference in subclause (1)(d), (e), or (f) to property of a person includes reference to property that the person holds otherwise than as sole beneficial owner, for example –

(a) As trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) In a fiduciary capacity.

(3) An order under subclause (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

26 Grounds for making order under clause 25

The Court may make an order under clause 25 if the Court considers it necessary or desirable to do so for the purpose of protecting the interests of the creditor to whom a guarantor is liable, or may become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for securities, futures contracts, or other property.

27 Interim order

If an application is made to the Court for an order under clause 25, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order (being an order of the kind applied for) that is expressed to have effect pending the determination of the application.

28 No undertaking as to damages

On an application under clause 25, the Court must not require the applicant or any other person, as a condition of granting an interim order, to give an undertaking as to damages.

29 Variation or discharge of order

If the Court has made an order on a person's application under clause 25, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first order.

30 Operation of orders

An order made under clauses 25 or 27 may be expressed to operate for a specified period or until the order is discharged by a further order.

SCHEDULE 11

s 156

Creditors' Committees

1 Functions of committees of creditors

(1) The functions of a committee of creditors of a company under administration are –

(a) To consult with the administrator about matters relating to the administration; and

(b) To receive and consider reports by the administrator.

(2) A committee must not give directions to the administrator, except as provided in subclause (3).

(3) As and when a committee reasonably requires, the administrator must report to the committee about matters relating to the administration.

(4) Schedule 12, with the necessary modifications, applies to meetings of committees of creditors.

2 Membership of committee

A person may be a member of a committee of creditors of a company under administration if, and only if, he or she is –

(a) A creditor of the company; or

(b) The attorney of such a creditor because of a general power of attorney; or

(c) Authorised in writing by such a creditor to be such a member.

SCHEDULE 12

ss 156, 205, 206, 211

MEETINGS OF CREDITORS

General provisions
1 Procedure generally
2 Effect of irregularity or defect

Methods of holding meetings
3 Methods of holding meetings

Notice of meeting
4 Notice of meeting
5 Contents of notice
6 Effect of irregularity, etc, in notice

Meeting
7 Adjournment of meeting
8 Chairperson
9 Quorum
10 Corporations may act by representatives
11 Keeping of record of attendance and minutes

Proxies
13 Administrator or liquidator may act as proxy
14 Irregularity in notice of proxy
15 Limits on holder of proxy

Voting
16 Entitlement to vote, etc, determined by chairperson
17 Voting by secured creditors
18 When resolution adopted

Postal voting
19 Who may cast postal vote
20 Postal vote cast in respect of different resolution
21 Person authorised to receive and count postal votes
22 How to cast postal vote
23 Duty of person authorised to receive and count postal votes
24 Duty of chairperson

General provisions

1 Procedure generally

Except as provided in this schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

2 Effect of irregularity or defect

(1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the Court orders otherwise.

(2) The Court may, on the application of the administrator or liquidator, as the case may be, or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

Methods of holding meetings

3 Methods of holding meetings

A meeting of creditors may be held –

(a) By assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting by the person convening the meeting as being in his or her opinion the most convenient place, date, and time for the majority of creditors; or

(b) By means of audio, or audio and visual, communication by which all creditors participating may simultaneously hear each other throughout the meeting; or

(c) By conducting a postal ballot, in accordance with clauses 19 to 24, of those creditors entitled to take part.

Notice of meeting

4 Notice of meeting

At least 5 working days before a creditors meeting, written notice must be sent to every creditor entitled to attend the meeting of –

(a) The time and place of every meeting to be held under clause 3(a); or

(b) The time and method of communication for every meeting to be held under clause 3(b); or

(c) The time and address for the return of voting papers for every meeting to be held under clause 3(a), (b), or (c).

5 Contents of notice

The notice must –

(a) State the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and

(b) Set out the text of any resolution to be submitted to the meeting; and

(c) Include a voting paper in respect of each such resolution and voting and mailing instructions; and

(d) State that if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting –

(i) the creditor's postal vote is invalid in respect of that different resolution; but

(ii) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.

6 Effect of irregularity, etc, in notice

An irregularity in or a failure to receive a notice of a meeting of creditors does not invalidate anything done by a meeting of creditors if –

(a) The irregularity or failure is not material; or

(b) All the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or

(c) All such creditors agree to waive the irregularity or failure.

Meeting

7 Adjournment of meeting

(1) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.

(2) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.

(3) If a meeting of creditors under clause 3(a) or (b) is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

8 Chairperson

(1) If an administrator or liquidator, as the case may be, has been appointed and is present, or if the administrator or liquidator has appointed a nominee and the nominee is present, he or she must act as the chairperson of a meeting held in accordance with clause 3(a) or (b).

(2) At any meeting of creditors, if the administrator or liquidator or any nominee of the administrator or liquidator, as is applicable, is not present, or if there is no administrator or liquidator holding office for the time being, the creditors participating must choose 1 of their number to act as the chairperson of the meeting.

(3) The person convening a meeting under clause 3(c) must do everything necessary that would otherwise be done by the person chairing a meeting.

9 Quorum

(1) A quorum for a meeting of creditors is present if –

(a) 3 creditors who are entitled to vote or their proxies are present or have cast postal votes; or

(b) If the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote or their proxies are present or have cast postal votes.

(2) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairperson may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

10 Corporations may act by representatives

A body corporate that is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

11 Keeping of record of attendance and minutes

(1) The chairperson of a meeting of creditors, or in the case of a meeting held under clause 3(c), the person convening the meeting must –

(a) Ensure that an accurate record is kept of all creditors present or represented at the meeting, including –

(i) the name of each creditor present or represented; and

(ii) whether the creditor has made a claim, and the amount of the claim; and

(iii) whether the creditor has filed a proxy or is present in person; and

(iv) the total number of creditors present or represented; and

(b) Ensure that minutes are kept of all proceedings.

(2) Records of attendance or minutes that have been signed correct by the chairperson or the person convening the meeting are prima facie evidence of the details recorded and proceedings of the meeting.

Proxies

12 Proxies

(1) A creditor may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.

(3) A proxy must be appointed by notice in writing signed by the creditor and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the administrator or liquidator, as the case may be,

or, if no administrator or liquidator is acting in respect of a company in administration or liquidation, to the person by whom the notice convening the meeting was given, not less than 2 working days before the start of the meeting.

13 Administrator or liquidator may act as proxy

(1) A creditor may appoint any person, including the administrator or liquidator or, if there is no administrator or liquidator, the chairperson of a meeting, to act as his or her proxy.

(2) Subject to a direction of a meeting of creditors, an administrator or liquidator must not solicit for proxies.

(3) Without limiting the orders that a Court may make, if an administrator or liquidator, as the case may be, has not complied with subclause (2), the Court may –

(a) Order that the administrator or liquidator is not entitled to his or her remuneration;
(b) Make an order removing the administrator or liquidator from office;
(c) Make an order declaring any transaction entered into by the administrator or liquidator to be void or overturning any vote, and granting such consequential relief as the Court thinks fit.

14 Irregularity in notice of proxy

If an irregularity that is not material is contained in the notice of proxy, the administrator or liquidator or chairperson of a meeting, as the case may be, may accept the proxy as being valid for voting purposes, if he or she is satisfied that the proxy holder represents the creditor.

15 Limits on holder of proxy

(1) Subject to subclause (2), no person acting under a proxy may vote in favour of or against any resolution that would place that person, either directly or indirectly, in a position to receive any benefit out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.

(2) Any person who holds a proxy to vote for the appointment of an administrator or liquidator, as the case may be, may use the proxy to vote in favour of the appointment of himself or herself as administrator or liquidator if it is not inconsistent with the terms of the proxy to do so.

(3) If an administrator or liquidator, as the case may be, who holds a proxy cannot attend a meeting of creditors called under this Act, he or she may, in writing, nominate his or her partner (if the administrator or liquidator or the administrator or liquidator is a member of a partnership) or some person in his or her employment, to use the proxy on his or her behalf and in such manner as he or she may direct.

(4) Nothing in subclause (3) authorises the person nominated to vote in a manner that would be in contravention of subclauses (1) and (2) if the administrator or liquidator had acted under the proxy personally.

Voting

16 Entitlement to vote, etc, determined by chairperson

(1) For the purpose of determining whether a person is allowed to vote at a meeting and the value of the person's claim for voting purposes, the chairperson has the power to determine, for the purpose of the meeting –

(a) That the person is a creditor of the company; and
(b) The value of a creditor's claim against the company.

(2) If the chairperson is uncertain as to whether a person is a creditor of the company or as to the value of the person's claim against the company, the chairperson must allow the person to vote subject to the vote being subsequently declared invalid in whole or in part by the chairperson.

(3) A creditor who is not entitled to vote, may, with the leave of the administrator or liquidator, attend and speak at a meeting of creditors.

(4) A creditor chairing the meeting does not have a casting vote.

17 Voting by secured creditors

(1) In the case of a meeting of creditors held under subpart 1 of Part 9 (administrations) –

(a) A secured creditor is entitled to vote at the meeting;

(b) A secured creditor who votes at the meeting is not taken to have surrendered his or her charge over any property of the company.

(2) In the case of a meeting of creditors held under subpart 3 of Part 9 (liquidations) –

(a) A secured creditor is entitled to vote –

(i) for the whole debt if he or she surrenders the charge to the liquidator for the general benefit of creditors; or

(ii) in respect of the balance of the debt if he or she values the charge and claims as an unsecured creditor for the balance due; or

(iii) in respect of the balance of the debt if he or she realises property subject to a charge and claims as an unsecured creditor for any balance due after deducting the net amount realised;

(b) Subject to this Act, if a secured creditor votes in respect of the creditor's whole debt, the creditor is taken to have surrendered his or her charge;

(c) A creditor who is not entitled to vote may, with the leave of the liquidator, attend and speak at the meeting.

18 When resolution adopted

At any meeting of creditors or a class of creditors, a resolution is adopted if a majority in number and value of the creditors or the class of creditors voting in person or by proxy or by postal vote, vote in favour of the resolution.

Postal voting

19 Who may cast postal vote

A creditor entitled to vote at a meeting of creditors held in accordance with clause 3(a), (b), or (c) may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.

20 Postal vote cast in respect of different resolution

If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting –

(a) The creditor's postal vote is invalid in respect of that different resolution; but

(b) The creditor may vote, in respect of that different resolution, either by being present in person or by proxy.

21 Person authorised to receive and count postal votes

(1) The notice of meeting must state the name of the person authorised to receive and count postal votes in relation to that meeting.

(2) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being so authorised in the notice of the meeting, the administrator or liquidator is deemed to be so authorised.

22 How to cast postal vote

A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under clause 3(c), not later than the date named for the return of the voting paper.

23 Duty of person authorised to receive and count postal votes

(1) It is the duty of a person authorised to receive and count postal votes in relation to a meeting –

(a) To collect together all postal votes received by him or her; and

(b) In relation to each resolution to be voted on –

(i) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and determine the total amount of the debts owed by the company to those creditors; and

(ii) to count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and

(c) To sign a certificate –

(i) that he or she has carried out the duties set out in paragraphs (a) and (b); and

(ii) stating the results of the counts and determinations required by paragraph (b); and

(d) To ensure that the certificate required by paragraph (c) is presented to the person chairing or convening the meeting.

(2) A certificate given under subclause (1) in relation to the postal votes cast in respect of a meeting of creditors must be annexed to the minutes of the meeting.

24 Duty of chairperson

If a vote is taken at a meeting held under clause 3(a) or (b) on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.

SCHEDULE 13

s 211

Powers, Functions, and Liabilities of Liquidators

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Preliminary provisions
1 Power to appoint 2 or more liquidators
2 Liquidators to act jointly
3 When liquidator not required to act

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PART 4
Court supervision of liquidations
22 Court orders
23 Court orders are additional to other Court powers
24 Defence to act in accordance with Court direction

PART 1
Preliminary provisions

1 Power to appoint 2 or more liquidators

For the purposes of this Act, the power to appoint a liquidator of a company includes the power to appoint 2 or more persons as liquidators of a company.

2 Liquidators to act jointly

If 2 or more persons are appointed as liquidators of a company, those persons must act jointly unless the special resolution of shareholders, the resolution of the directors of the company, or the order of the Court appointing the liquidators states that the liquidators may exercise their powers individually.

3 When liquidator not required to act

Despite anything in this Act, except if the charge is surrendered or taken to be surrendered or redeemed, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge.

PART 2
Powers of liquidators

4 Liquidator controls company's assets

With effect from the commencement of the liquidation of a company, the liquidator has custody and control of the company's assets.

5 General powers

A liquidator has the powers –

(a) Necessary to carry out the functions and duties of a liquidator under this Act; and

(b) Conferred on a liquidator by this Act.

6 Specific powers

Without limiting clause 5, a liquidator of a company has power to –

(a) Commence, continue, discontinue, and defend legal proceedings;
(b) Carry on the business of the company, to the extent necessary for the liquidation;
(c) Appoint a solicitor;
(d) Pay any class of creditors in full;
(e) Make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not;
(f) Compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts, and claims, present or future, actual or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to, or affecting the assets or the liquidation of, the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge;
(g) Sell or otherwise dispose of the property of the company;
(h) Act in the name and on behalf of the company and enter into deeds, contracts, and arrangements in the name and on behalf of the company;
(i) Prove, rank, and claim in the bankruptcy or insolvency of a shareholder for any balance against that person's estate, and to receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
(j) Draw, accept, make, and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
(k) Borrow money on the security of the company's assets;
(l) Take out, in his or her name as liquidator, letters of administration to a deceased shareholder, and to do in that name any other act necessary for obtaining payment of money due from a shareholder or his or her estate, that cannot be conveniently done in the name of the company. In all such cases, the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator;
(m) Call a meeting of creditors or shareholders for –
  (i) the purpose of informing creditors or shareholders of progress in the liquidation;
  (ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation;
  (iii) such other purpose connected with the liquidation as the liquidator thinks fit;
(n) Appoint an agent to do anything that the liquidator is unable to do.

7 Liquidator may enforce liability of shareholders

A liquidator may enforce the liability of the shareholder or former shareholder in respect of any shares issued to the shareholder or former shareholder.

8 Liquidator may disclaim onerous property

(1) Subject to clause 9, a liquidator may disclaim onerous property even though the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.

(2) A disclaimer –

(a) Brings to an end, on and from the date of the disclaimer, the rights, interests, and liabilities of the company in relation to the property disclaimed;

(b) Does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.

(3) A liquidator who disclaims onerous property must, within 10 working days of the disclaimer, give notice in writing of the disclaimer to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(4) A person suffering loss or damage as a result of a disclaimer under this clause may –

(a) Claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of an 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.

(5) The Court may make an order under subclause (4)(b) if it is satisfied that it is just that the property should be vested in the applicant.

9 Liquidator may be required to elect whether to disclaim onerous property

A liquidator is not entitled to disclaim onerous property if –

(a) A person whose rights would be affected by the disclaimer of onerous property gives the liquidator notice in writing requiring the liquidator to elect whether to disclaim the onerous property before the close of a date specified in the notice, which must be at least 20 working days after the date on which the notice is received by the liquidator; and

(b) The liquidator does not disclaim the onerous property before the close of that date.

PART 3

DUTIES OF LIQUIDATORS

10 Principal duties of liquidator

The principal duties of a liquidator of a company are, in a reasonable and efficient manner –

(a) To take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and

(b) If there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets, in accordance with section 250.

11 Restriction on purchase of company's assets by liquidator

(1) Subject to the leave of the Court, a liquidator must not, either directly or indirectly, become a purchaser of any part of the company's assets.

(2) The Court may set aside any purchase made contrary to this clause, and grant any consequential relief that it thinks fit.

(3) The Court may give its leave on any conditions that it thinks fit.

12 Restriction on purchase of goods or services from persons connected with liquidator

(1) Subject to the leave of the Court, a liquidator must not purchase goods or services for the purposes of the liquidation from any person whose connection with him or her would result in the liquidator directly or indirectly obtaining any benefit arising out of the transaction.

(2) The Court may disallow or recover any benefit made contrary to this clause.

(3) The Court may give its leave on any conditions that it thinks fit.

13 Deposit of company funds

A liquidator must deposit the funds of a company under his or her administration in a bank account to the credit of the company or in a trust account at a bank on trust for the benefit of the company.

14 Investment of funds

(1) Despite clause 13, in any liquidation all or any part of the balance standing to the credit of the company in any bank account or trust account kept by the liquidator, and not required for the time being to meet claims made against the company, may be invested in any bank or in any Government securities or, if authorised by the Court, any other securities.

(2) All dividends, interest, and other profits from investments must immediately on being received be paid into the bank account or trust account kept by the liquidator under clause 13.

15 Duties in relation to accounts

(1) Subject to subclause (2), the liquidator of a company must –

(a) Keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records in the company, to be inspected by –

(i) any appointed liquidation committee, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and

(ii) if the Court so orders, a creditor or shareholder; and

(b) Retain the accounts and records of the liquidation and of the company for not less than 1 year after completion of the liquidation; and

(c) If a liquidator carries on the business of the company, keep accounting records for the carrying on of the business of the company that comply with section 129 to the extent that that section is applicable.

(2) The Registrar may, whether before or after the completion of the liquidation –

(a) Authorise the disposal of any accounts and records; and

(b) Require any accounts or records to be retained for longer than 1 year after the completion of the liquidation.

16 Meaning of failure to comply

In clauses 17 to 19, failure to comply means a failure of a liquidator to comply with a relevant duty arising –

(a) Under this or any other Act or rule of law or rules of Court; or

(b) Under any order or direction of a Court other than an order to comply made under clause 17.

17 Failure to comply

If the Court is satisfied that there is, or has been, a failure to comply, the Court may –

(a) Relieve the liquidator of the duty to comply wholly or in part; or

(b) Without prejudice to any other remedy that may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

18 Consequences of non-compliance with Court order

A Court may, in relation to a person who fails to comply with an order made under clause 17, or is or becomes disqualified to become or remain a liquidator –

(a) Remove the liquidator from office; or

(b) Order that the person may be appointed and act, or may continue to act, as liquidator, despite being disqualified to act as liquidator.

19 Prohibition order

(1) The Court must make, in relation to a person, a prohibition order for a period not exceeding 5 years if it is shown to the satisfaction of a Court that the person is unfit to act as liquidator by reason of –

(a) Persistent failures to comply; or

(b) The seriousness of a failure to comply.

(2) A person to whom a prohibition order applies must not –

(a) Act as a liquidator in a current or other liquidation; or

(b) Act as a receiver in a current or other receivership; or

(c) Act as an administrator of a company under subpart 1 of Part 9.

(3) The following is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this clause –

(a) Evidence that on 2 or more occasions within the preceding 5 years, a Court has made an order to comply under this clause in respect of the same person;

(b) Evidence that on 2 or more occasions within the preceding 5 years, an application for an order to comply under this clause has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing.

(4) A copy of every prohibition order must, within 10 working days of the order being made, be delivered by the applicant to the Registrar, who must keep it on a file indexed by reference to the name of the liquidator concerned.

20 Who may apply for orders under clauses 17 to 19

(1) An application for an order under this Part may be made by –

(a) A liquidator;

(b) A person seeking appointment as a liquidator;

(c) A liquidation committee;

(d) A creditor, shareholder or a director of the company in liquidation;
(e) A receiver appointed in relation to property of the company in liquidation;
(f) The Registrar.

(2) No application may be made to a Court by a person other than a liquidator in relation to a failure to comply unless notice of the failure to comply has been served on the liquidator not less than 5 working days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

21 Court orders under clauses 17 to 19: general

(1) In making an order under this clause, a Court may, if it thinks fit –
(a) Make an order extending the time for compliance; or
(b) Impose terms or conditions; or
(c) Make an ancillary order.

PART 4

COURT SUPERVISION OF LIQUIDATIONS

22 Court orders

On the application of the liquidator, a liquidation committee, or, with the leave of the Court, a creditor, shareholder, or director of a company in liquidation, the Court may –
(a) Give directions in relation to any matter arising in connection with the liquidation;
(b) Confirm, reverse, or modify an act or decision of the liquidator;
(c) Order an audit of the accounts of the liquidation;
(d) Order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with the information concerning the conduct of the liquidation that the auditor requests;
(e) In respect of any period, review or fix the remuneration of the liquidator at a level that is reasonable in the circumstances;
(f) To the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount;
(g) Declare whether or not the liquidator was validly appointed or validly assumed custody or control of property;
(h) Make an order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

23 Court orders are additional to other Court powers

The powers given by clause 22 –
(a) Are in addition to any other powers a Court may exercise in its jurisdiction relating to liquidators under this Act; and
(b) May be exercised –
(i) In relation to a matter occurring either before or after the commencement of the liquidation or the removal of the company from the Niue register; and
(ii) whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

24 Defence to act in accordance with Court direction

(1) Subject to subclause (2), a liquidator is entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction if the liquidator has –

(a) Obtained a direction of a Court with respect to a matter connected with the exercise of the powers or functions of liquidator; and

(b) Acted in accordance with the direction.

(2) A Court may, on the application of any person, order that, by reason of the circumstances in which a direction by the Court was obtained, the liquidator does not have the protection given by subclause (1).

SCHEDULE 14

s 211

OFFICE OF LIQUIDATOR

RESTRICTIONS ON APPOINTMENT OF LIQUIDATORS

1 Who may not be appointed or act as liquidator
2 Validity of acts of liquidators
3 Person must consent to being appointed liquidator
4 Court may declare whether liquidator validly appointed

Vacancy in office of liquidator

5 Vacancy in office of liquidator
6 How liquidator may resign
7 Court may review appointment of
8 Vacancy not caused by resignation
9 Appointment of liquidator until successor appointed
10 Appointment of successor by Court
11 Notice of appointment given by successor
12 Vacating liquidator's successor to be helped
13 Liquidator ceases to hold office oncompletion of liquidation

Liquidators' remuneration

14 Remuneration of liquidators
15 Expenses and remuneration payable out of assets of company

Restrictions on appointment of liquidators

1 Who may not be appointed or act as liquidator

None of the following may be appointed or act as a liquidator of a company –

(a) A corporation;

(b) A person who is under 21 years of age;

(c) A creditor of the company;

(d) A person who has, within the 2 years immediately before the beginning of the liquidation, been a shareholder, director, auditor, or receiver of the company or of a related company;

(e) An undischarged bankrupt;

(f) A person in respect of whom a trustee order is in force under section 501 of the Niue Act 1966, or in respect of whom an order of medical custody is in force under section 602 of that Act;

(g) A person who is prohibited from being a director or promoter, or being concerned or taking part in the management, of a company under this Act;

(h) A person who is prohibited from acting as an administrator under this Act.

2 Validity of acts of liquidators

(1) The acts of a person as a liquidator are valid even though that person may not be qualified to act as a liquidator.

(2) No defect or irregularity in the appointment of a liquidator invalidates any act done by him or her in good faith.

3 Person must consent to being appointed liquidator

A person must not be appointed as liquidator of a company unless –

(a) The person has consented in writing to the appointment; and

(b) As at the time of the appointment, the person has not withdrawn the consent.

4 Court may declare whether liquidator validly appointed

(1) If there is doubt on a specific ground about whether the appointment of a person as liquidator of a company is valid, the person, the company, or any of the company's creditors may apply to the'Court for an order under subclause (2).

(2) The Court may, on application, make an order declaring whether or not the appointment was valid on the ground specified in the application or on some other ground.

Vacancy in office of liquidator

5 Vacancy in office of liquidator

The office of liquidator becomes vacant if the person holding office resigns, dies, or is or becomes disqualified to act as liquidator.

6 How liquidator may resign

A person may resign from the office of liquidator by appointing another person as his or her successor and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration.

7 Court may review appointment of successor

The Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who could be appointed as liquidator under sections 214, 215, or 217, as the case may be, to be the liquidator of the company.

8 Vacancy not caused by resignation

If, for any reason other than resignation, a vacancy occurs in the office of liquidator, written notice of the vacancy must immediately be sent or delivered to the Registrar by the person vacating office or, if that person is unable to act, by his or her personal representative.

9 Appointment of liquidator until successor appointed

If, as the result of the vacation of office by a liquidator, no person is acting as liquidator, the Registrar may appoint a person to act as liquidator until a successor is appointed under this clause.

10 Appointment of successor by Court

If a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under clause 9, as the case may be, the Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of

the company, or the Registrar, appoint any person who could be appointed as liquidator under sections 214, 215, or 217, as the case may be, to be the liquidator of the company.

11 Notice of appointment given by successor

A liquidator appointed under clause 10 must, within 10 working days of being appointed or being notified of his or her appointment, deliver a notice of his or her appointment to the Registrar for registration.

12 Vacating liquidator's successor to be helped

(1) A person vacating the office of liquidator must, if practicable, provide such information and give such assistance to that person's successor as he or she reasonably requires in taking over the duties of liquidator.

(2) A person vacating the office of liquidator must immediately, or within any reasonable time that may be specified by that person's successor, deliver to his or her successor the following things that are in his or her possession or under his or her control –

(a) Any records or documents of the company;
(b) Other property of the company;
(c) All claims;
(d) Accounts and records of the liquidation.

13 Liquidator ceases to hold office on completion of liquidation

(1) A liquidator ceases to hold office on the completion of the liquidation.
(2) Subclause (1) does not limit Parts 3 or 4 of Schedule 13.

Liquidators' remuneration

14 Remuneration of liquidators

(1) Subject to clause 22(f) of Schedule 13, every liquidator appointed under sections 214 or 215 is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as liquidator.

(2) Unless the Court otherwise orders, every liquidator appointed under section 217 must charge remuneration either –

(a) Of an amount equal to the amount fixed under regulations made under this Act; or
(b) At, or in accordance with, such rate or rates as may be prescribed under regulations made under this Act.

15 Expenses and remuneration payable out of assets of company

The expenses and remuneration of the liquidator are payable out of the assets of the company.

SCHEDULE 15

s 211

Effect of Liquidation

PART 1
Preliminary Provision
1 Company's rules not to be altered

PART 2
Effect on Company's Officers and Shareholders, etc
2 Functions and powers of company's directors suspended
3 Effect on company's shareholders

PART 3
4 Legal proceedings not to be commenced or continued
5 Effect on proceedings commenced before commencement of liquidation
6 No enforcement of rights overcompany's property
7 Restriction on rights of creditors to complete execution, distraint, or attachment
8 Duties of court officer in execution process

PART 4
Effect on Certain Conduct
9 Certain conduct prohibited

PART 1
Preliminary provision

1 Company's rules not to be altered

With effect from the commencement of the liquidation of a company, the rules of the company cannot be altered.

PART 2
Effect on Company's Officers and Shareholders, etc

2 Functions and powers of company's directors suspended

With effect from the commencement of the liquidation of a company, the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Act.

3 Effect on company's shareholders

With effect from the commencement of the liquidation of a company –

(a) Unless the Court orders otherwise, a share in the company must not be transferred;

(b) An alteration must not be made to the rights or liabilities of a shareholder or former shareholder of the company;

(c) A shareholder must not exercise a power under the rules of the company or this Act, except for the purposes of this Act.

PART 3
Effect on Proceedings

4 Legal proceedings not to be commenced or continued

With effect from the commencement of the liquidation of a company, a person must not, unless the liquidator agrees or the Court orders otherwise, commence or continue legal proceedings against the company or in relation to its property.

5 Effect on proceedings commenced before commencement of liquidation

(1) At any time after the making of an application to the Court to appoint a liquidator of a company and before a liquidator is appointed, the company or any creditor or shareholder of the company may –

(a) In the case of any application or proceeding against the company that is pending in the Court or Court of Appeal, apply to the Court or Court of Appeal, as the case may be, for a stay of the application or proceeding;

(b) In the case of any other application or proceeding pending against the company in any Court or tribunal, apply to the Court to restrain the application or proceeding.

(2) The Court or Court of Appeal, as the case may be, may stay or restrain the application or proceedings on any terms that it thinks fit.

6 No enforcement of rights over company's property

(1) With effect from the commencement of the liquidation of a company, a person must not, unless the liquidator agrees or the Court orders otherwise, exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company.

(2) Nothing in subclause (1) or in clause 4 affects the right of a secured creditor to take possession of, realise or otherwise deal with, property of the company over which that creditor has a charge.

7 Restriction on rights of creditors to complete execution, distraint, or attachment

(1) Subject to subclauses (2) and (3), a creditor is not entitled to retain the benefit of any execution process, distress, or attachment over or against the property of a company unless the execution process, distress, or attachment is completed before –

(a) The passing of a special resolution appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or

(b) The passing of a resolution by the directors of a company appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or

(c) The making of an application to the Court to appoint a liquidator of the company.

(2) Despite subclause (1) –

(a) A person who, in good faith, purchases property of a company from a court officer charged with an execution process acquires a good title as against the liquidator of the company;

(b) A person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.

(3) The Court may set aside the application of subclause (1) to the extent and on any conditions that the Court thinks fit.

(4) For the purposes of this clause –

(a) An execution or distraint against personal property is completed by seizure and sale;

(b) An attachment of a debt is completed by receipt of the debt;

(c) An execution against land is completed by sale, and, in the case of an equitable interest, by the appointment of a receiver.

(5) Nothing in this section limits or affects Part 2 of Schedule 17.

8 Duties of court officer in execution process

(1) A court officer must, on being required by a liquidator of a company to do so, deliver or transfer the company's property and any money received in satisfaction or partial satisfaction of an execution or paid to avoid a sale of the property, as the case may be, to the liquidator if –

(a) The property has been taken in an execution process; and

(b) Before completion of the execution process, the court officer charged with the execution process receives notice that the liquidator of the company has been appointed.

(2) The costs of the execution process are a first charge on any property or money delivered or transferred to the liquidator under subclause (1) and the liquidator may sell all or some of the property to satisfy that charge.

(3) The court officer must retain the proceeds of sale or the money paid for 10 working days if –

(a) Property of a company is sold in an execution process in respect of a judgment for a sum exceeding $500; or

(b) Money is paid to the court officer charged with the execution process to avoid a sale of the property.

(4) The court officer must deduct from the amount the costs of the execution process and pay the balance to the liquidator if –

(a) Within the period of 10 working days, the court officer has notice of –

(i) the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or

(ii) the calling of a meeting of the directors at which a resolution is proposed to appoint a liquidator or of a meeting of the directors at which the appointment of a liquidator is to be considered; or

(iii) the making of an application to the Court to appoint a liquidator; and

(b) The company is put into liquidation.

(5) A liquidator to whom money is paid under subclause (4) is entitled to retain it as against the execution creditor.

(6) The Court may set aside the application of this section to the extent, and on any conditions, that it thinks fit.

PART 4

Effect on certain conduct

9 Certain conduct prohibited

(1) If a company is in liquidation, or an application has been made to the Court for an order that a company be put into liquidation, as the case may be, no person may –

(a) Leave Niue with the intention of –

(i) avoiding payment of money due to the company; or

(ii) avoiding examination in relation to the affairs of the company; or

(iii) avoiding compliance with an order of the Court or some other obligation under this Part in relation to the affairs of the company; or

(b) Conceal or remove property of the company with the intention of preventing or delaying the liquidator taking custody or control of it; or

(c) Destroy, conceal, or remove records or other documents of the company.

(2) A person who does not comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding 250 penalty units or to imprisonment for a term not exceeding 2 years, or both.

SCHEDULE 16

ss 211, 244

Liquidation Committees

PART 1

Liquidation committee

1 Appointment of members
2 Membership
3 Powers
4 Application of company's rules
5 Inability to act
6 Restriction on purchase of company's assets by liquidation committee
7 Members not entitled to benefit from dealings with company's assets
9 Disallowance or recovery of benefits or payments

PART 2

Proceedings at meetings

10 Frequency of meetings
11 Majorities
12 Resignation
13 Office becoming vacant
14 Removal of member
15 Vacancy filled
16 Committee with vacancy may act

PART 1
Liquidation Committee

1 Appointment of members

(1) The members of a liquidation committee chosen by a meeting of creditors or of shareholders take office immediately.

(2) The liquidator must refer the matter to the Court, and the Court may make any decision that it thinks fit, if there is a difference between the decisions of meetings of creditors and meetings of shareholders on –

(a) The question of appointing a liquidation committee; or

(b) The membership of a liquidation committee.

2 Membership

A liquidation committee must consist of not fewer than 3 persons who are –

(a) Creditors or shareholders; or

(b) Persons holding general powers of attorney from creditors or shareholders; or

(c) Authorised directors or representatives of companies that are creditors or shareholders of the company in liquidation.

3 Powers

A liquidation committee has the power to –

(a) Call for reports from the liquidator on the progress of the liquidation; and

(b) Call a meeting of creditors or of shareholders; and

(c) Apply to the Court under Parts 3 or 4 of Schedule 13; and

(d) Assist the liquidator, as appropriate, in the conduct of the liquidation.

4 Application of company's rules

A meeting of shareholders called under clause 3(b) must be held in accordance with the company's rules (except that the liquidator has power to give notice of a meeting of shareholders and to act as, or appoint, the chairperson of the meeting).

5 Inability to act

If, by reason of vacancies in a liquidation committee, the committee is unable to act, the liquidator must call attention to the situation in the next six-monthly report required to be prepared and sent under section 247.

6 Restriction on purchase of company's assets by liquidation committee

(1) Subject to the leave of the Court, a member of a liquidation committee of a company must not, either directly or indirectly, become a purchaser of any part of the company's assets.

(2) The Court may set aside any purchase made contrary to this regulation, and grant any consequential relief that it thinks fit.

(3) The Court may give its leave on any conditions that it thinks fit.

7 Members not entitled to benefit from dealings with company's assets

(1) Subject to the leave of the Court, no member of a liquidation committee may directly or indirectly be entitled to –

(a) Derive any benefit from any transaction arising out of the assets of the company; or

(b) Receive out of the assets of the company any payment for services rendered by him or her in connection with the administration of the assets, or for any goods supplied by him or her to the liquidator for, or on account of, the company; or

(c) Directly or indirectly become the purchaser of any part of the company's assets.

(2) If the leave of the Court is sought under subclause (1) in respect of any payment for services, the leave may be given only if the services performed are of a special nature and the order must specify the nature of the services for which leave is given.

8 No remuneration

Except by the leave of the Court, no remuneration may, under any circumstances, be paid to a member of a liquidation committee for services rendered by him or her in the discharge of the duties attaching to his or her office as a member of the committee.

9 Disallowance or recovery of benefits or payments

(1) The Court may disallow or recover any benefit or payment made contrary to clauses 7 or 8.

(2) The Court may give leave under clauses 7 or 8 on any conditions that it thinks fit.

PART 2
PROCEEDINGS AT MEETINGS

10 Frequency of meetings

(1) The committee must meet at the times as it from time to time appoints.

(2) The liquidator or a member of the committee may also call a meeting of the committee as and when necessary.

11 Majorities

The committee may act by a majority of its members present at a meeting, but may not act unless a majority of the committee are present.

12 Resignation

A member of the committee may resign by notice in writing signed by the member and delivered to the liquidator.

13 Office becoming vacant

The office of a member of the committee becomes vacant if the member –

(a) Becomes bankrupt; or

(b) Compounds or arranges with his or her creditors; or

(c) Is absent from 3 consecutive meetings of the committee without the leave of those members who together with that member represent the creditors or shareholders, as the case may be.

14 Removal of member

(1) A member of the committee may be removed by a resolution –

(a) Carried at a meeting of creditors if the member represents creditors; or

(b) Carried at a meeting of shareholders if the member represents shareholders.

(2) At least 5 working days' notice of the resolution must be given, which states the object of the meeting.

15 Vacancy filled

A vacancy in the committee may be filled by the appointment to the committee of –

(a) A creditor or shareholder, as the case may be; or

(b) A person holding a general power of attorney from, or being an authorised director or representative of, a company that is a creditor or shareholder, as the case may be.

16 Committee with vacancy may act

The continuing members of the committee, if not less than 2, may act even though a vacancy exists in the committee.

SCHEDULE 17

s 211

VOIDABLE TRANSACTIONS AND CHARGES AND RECOVERIES IN OTHER CASES

PART 1
VOIDABLE TRANSACTIONS AND CHARGES
Voidable transactions
1 Definitions
2 Voidable transactions

Voidable charges
3 Definitions
4 Voidable charges
5 Exception: certain kinds of substituted charges
6 Exception: charge that secures unpaid purchase price
7 Payments received by secured party

Procedure for setting aside voidable transactions and charges
8 Procedure
9 Other orders
10 Additional provisions relating to setting aside transactions and charges

PART 2
RECOVERY IN OTHER CASES
Transactions at undervalue
11 Definitions

Transactions for inadequate or excessive consideration with directors, etc
13 Definitions
14 Transactions for excessive consideration with directors, etc
15 Transactions for inadequate consideration with directors, etc

Court may set aside certain securities and charges
16 Court may set aside certain securities and charges
17 Certain securities exempted
18 Other orders, etc

Contribution for not keeping proper accounting records
19 Contribution for not keeping proper accounting records
20 When Court may not make declaration under clause 19

Court may require persons to repay money or return property
21 Court may require persons to repay money or return property

Pooling of assets
22 Pooling of assets of related companies
23 Guidelines for orders

PART 1
VOIDABLE TRANSACTIONS AND CHARGES
Voidable transactions

1 Definitions

In clause 2 –

restricted period means –

(a) The period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and

(b) In the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and

(c) The period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if –

(i) an application was made to the Court to put a company into liquidation; and
(ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and

(d) In the case of a liquidator appointed under section 188(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

specified period means –

(a) The period of 2 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
(b) In the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order was made; and
(c) The period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if –
(i) an application was made to the Court to put a company into liquidation; and
(ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and
(d) In the case of a liquidator appointed under section 188(1)(c), the period of 2 years before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

transaction, in relation to a company, means –

(a) A conveyance or transfer of property by the company;
(b) The giving of a security or charge over the property of the company;
(c) The incurring of an obligation by the company;
(d) The acceptance by the company of execution under a judicial proceeding;
(e) The payment of money by the company, including the payment of money under a judgment or order of a Court.

2 Voidable transactions

(1) A transaction by a company is voidable on the application of the liquidator if the transaction –

(a) Was made –
(i) at a time when the company was unable to pay its due debts; and
(ii) within the specified period; and
(b) Enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation.

(2) Subclause (1) does not apply if the transaction took place in the ordinary course of business.

(3) Unless the contrary is proved, a transaction that took place within the restricted period is presumed to have been made –

(a) At a time when the company was unable to pay its debts; and
(b) Otherwise than in the ordinary course of business.

(4) In determining whether a transaction took place in the ordinary course of business, no account is, unless that other person knew that that was the intent or purpose of the company, to be taken of any intent or purpose on the part of a company –

(a) To enable another person to receive more towards satisfaction of a debt than the person would otherwise receive or be likely to receive in the liquidation; or
(b) To reduce or cancel the liability, whether in whole or in part, of another person in respect of a debt incurred by the company; or
(c) To contribute towards the satisfaction of the liability, whether in whole or in part, of another person in respect of a debt incurred by the company.

Voidable charges

3 Definitions

In clause 4 –

restricted period means –

(a) The period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
(b) In the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
(c) The period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if –
  (i) an application was made to the Court to put a company into liquidation; and
  (ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and
(d) In the case of a liquidator appointed under section 188(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

specified period means –

(a) The period of 1 year before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
(b) In the case of a company that was put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
(c) The period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if –

(i) an application was made to the Court to put a company into liquidation; and
(ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and

(d) In the case of a liquidator appointed under section 188(1)(c), the period of 1 year before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed.

4 Voidable charges

(1) A charge over any property or undertaking of a company is voidable on the application of the liquidator if the charge was given within the specified period, unless –

(a) The charge secures –
(i) money actually advanced or paid; or
(ii) the actual price or value of property sold or supplied to the company; or
(iii) any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after, the giving of the charge; or

(b) Immediately after the charge was given, the company was able to pay its due debts; or

(c) The charge is in substitution for a charge given before the specified period.

(2) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its due debts immediately after giving the charge.

5 Exception; certain kinds of substituted charges

Clause 4(1)(c) does not apply to the extent that –

(a) The amount secured by the substituted charge exceeds the amount secured by the existing charge; or

(b) The value of the property subject to the substituted charge at the date of the substitution exceeds the value of the property subject to the existing charge at that date.

6 Exception; charge that secures unpaid purchase price

Nothing in clause 4 applies to a charge given by a company that secures the unpaid purchase price of property, whether or not the charge is given over that property, if –

(a) The charge document is executed not later than 30 days after the sale of the property; or

(b) In the case of the sale of an estate or interest in land, the charge document is executed not later than 30 days after the final settlement of the sale.

7 Payments received by secured party

For the purposes of clauses 4(1)(a) and 6, if a charge was given by the company within the period specified in clause 4, all payments received by the secured party entitled to the charge after it was given are deemed to have been appropriated so far as may be necessary –

(a) Towards repayment of money actually advanced or paid by the secured party to the company on or after the giving of the charge; or

(b) Towards payment of the actual price or value of property sold by the secured party to the company on or after the giving of the charge; or

(c) Towards payment of any other liability of the company to the secured party in respect of any other valuable consideration given in good faith on or after the giving of the charge.

Procedure for setting aside voidable transactions and charges

8 Procedure

(1) A liquidator who wishes to have a transaction that is voidable or a charge that is voidable set aside must –

(a) File in the Court a notice to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover, and also the effect of subclauses (2), (3), and (4); and

(b) Serve a copy of the notice on the other party to the transaction or the secured creditor entitled to the charge and on every other person from whom the liquidator wishes to recover.

(2) A person –

(a) Who would be affected by the setting aside of the transaction or charge specified in the liquidator's notice; and

(b) Who considers that the transaction or charge is not voidable –

may file in the Court a notice objecting to the transaction or charge being set aside, and serve a copy of that notice on the liquidator, within 20 working days after the service of the liquidator's notice.

(3) Unless a person on whom the liquidator's notice was served has given notice under subclause (2), the transaction or charge is set aside on the 20th working day after the date of service of the notice.

(4) If 1 or more persons have given notice under subclause (2), the liquidator may apply to the Court for an order that the transaction or charge be set aside. That application must be served on every person referred to in paragraph (b) of subclause (1), whether or not that person gave a notice under subclause (2).

9 Other orders

If a transaction or charge is set aside, the Court may make 1 or more of the following orders –

(a) An order requiring a person to pay to the liquidator, in respect of benefits received by that person as a result of the transaction or charge, such sums as fairly represent those benefits;

(b) An order requiring property transferred as part of the transaction to be restored to the company;

(c) An order requiring property to be vested in the company if it represents in a person's hands the application, either of the proceeds of sale of property, or of money, so transferred;

(d) An order releasing, in whole or in part, a charge given by the company;

(e) An order requiring security to be given for the discharge of an order made under this clause;

(f) An order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this clause is entitled to claim as a creditor in the liquidation.

10 Additional provisions relating to setting aside transactions and charges

(1) The setting aside of a transaction or an order made under clause 9 does not affect the title or interest of a person in property that the person has acquired –

(a) From a person other than the company; and
(b) For valuable consideration; and
(c) Without knowledge of the circumstances under which the property was acquired from the company.

(2) The setting aside of a charge or an order made under clause 9 does not affect the title or interest of a person in property that the person has acquired –

(a) As the result of the exercise of a power of sale by the secured creditor entitled to the charge; and
(b) For valuable consideration; and
(c) Without knowledge of the circumstances relating to the giving of the charge.

(3) Recovery by the liquidator of property or its equivalent value, whether under clause 9 or any other provision of this Act, or under any other enactment, or in equity or otherwise, may be denied wholly or in part if –

(a) The person, from whom recovery is sought, received the property in good faith and has altered his or her position in the reasonably held belief that the transfer to that person was validly made and would not be set aside; and
(b) In the opinion of the Court, it is inequitable to order recovery or recovery in full.

(4) Nothing in the Land Act 1969 restricts the operation of this clause or clauses 4 to 9.

PART 2
RECOVERY IN OTHER CASES
Transactions at undervalue

11 Definitions

In clause 12 –

specified period means –

(a) The period of 1 year before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
(b) In the case of a company that was put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
(c) The period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if –
  (i) an application was made to the Court to put a company into liquidation; and
  (ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and

(d) In the case of a liquidator appointed under section 188(1)(c), the period of 1 year before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

transaction includes the giving of a guarantee by a company.

12 Transactions at undervalue

(1) A liquidator of a company may recover from any other party to a transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company if –

(a) The transaction was entered into by a company within the specified period; and

(b) The value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and

(c) When the transaction was entered into, the company –

(i) Was unable to pay its due debts; or

(ii) was engaged, or about to engage, in business for which its financial resources were unreasonably small; or

(iii) incurred an obligation knowing that the company would not be able to perform the obligation when required to do so; and

(d) When the transaction was entered into, the other party to the transaction knew or ought to have known of the matter referred to in paragraph (c).

(2) A liquidator of a company may recover from any other party to a transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company if –

(a) The transaction was entered into by a company within the specified period; and

(b) The value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and

(c) The company became unable to pay its due debts as a result of the transaction; and

(d) When the transaction was entered into, the other party to the transaction knew or ought to have known that the company would become unable to pay its due debts as a result of the transaction.

Transactions for inadequate or excessive consideration with directors, etc

13 Definitions

(1) In clause 14, specified period means –

(a) The period of 3 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and

(b) In the case of a company that was put into liquidation by the Court, the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and

(c) The period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if –
  (i) an application was made to the Court to put a company into liquidation; and
  (ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and
(d) In the case of a liquidator appointed under section 188(1)(c), the period of 3 years before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed.

(2) For the purposes of clause 14 –
(a) The value of a business or property includes the value of any goodwill attaching to the business or property;
(b) Without limiting the circumstances in which a company may be taken to be controlled by a person, a company is controlled by a person, if that person may, by exercising a power exercisable by that person (whether with or without the consent or concurrence of any other person), appoint or remove all the directors of the company, or any number of directors as together hold a majority of voting rights at a meeting of directors.

14 Transactions for excessive consideration with directors, etc

A liquidator of a company may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value of the business, property, or services at the time of the acquisition if, within the specified period, the company has acquired a business or property from, or the services of –

(a) A person who was, at the time of the acquisition, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
(b) A person, or a relative of a person, who, at the time of the acquisition, had control of the company; or
(c) Another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of, or a trustee for, or a trustee for a relative of, a director of the company; or
(d) Another company that was, at the time of the acquisition, a related company.

15 Transactions for inadequate consideration with directors, etc

A liquidator of a company may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the business, property, or services, or the value of the shares, at the time of the disposition, provision, or issue exceeded the value of any consideration received by the company if, within the specified period, a company has disposed of a business or property, or provided services, or issued shares, to –

(a) A person who was, at the time of the disposition, provision, or issue, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or

(b) A person, or a relative of a person, who, at the time of the disposition, provision, or issue, had control of the company; or
(c) Another company that was, at the time of the disposition, provision, or issue, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
(d) Another company that, at the time of the disposition, provision, or issue, was a related company.

Court may set aside certain securities and charges

16 Court may set aside certain securities and charges

(1) The Court may, on the application of the liquidator of a company, order that a security or charge, or part of it, created by the company over any of its property in favour of any of the persons referred to in subclause (2) must, so far as any security on the property is conferred, be set aside as against the liquidator if –
(a) The company is unable to meet all its debts; and
(b) The Court considers that, having regard to the circumstances in which the security or charge was created, the conduct of the person, relative, company, or related company, as the case may be, in relation to the affairs of the company, and any other relevant circumstances, it is just and equitable to make the order.

(2) The persons referred to in subclause (1) are as follows –
(a) A person who was, at the time the security or charge was created, a director of the company, or a nominee or relative of, or a trustee for, or a trustee for a relative of, a director of the company; or
(b) A person, or a relative of a person, who, at the time when the security or charge was created, had control of the company; or
(c) Another company that was, when the security or charge was created, controlled by a director of the company, or a nominee or relative of, or a trustee for, or a trustee for a relative of, a director of the company; or
(d) Another company, that at the time when the security or charge was created, was a related company.

17 Certain securities exempted

Clause 16 does not apply to a security or charge that has been transferred by the person (person A) in whose favour it was originally created and has been purchased by another person (whether or not from person A) if –
(a) At the time of the purchase, the purchaser was not a person specified in that clause; and
(b) The purchase was made in good faith and for valuable consideration.

18 Other orders, etc

(1) The Court may make any other orders that it thinks proper for the purpose of giving effect to an order under this clause.

(2) Nothing in the Land Act 1969 restricts the operation of this clause or clauses 16 and 17.

Contribution for not keeping proper accounting records

19 Contribution for not keeping proper accounting records

(1) The Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any 1 or more of the directors and former directors of a company is, or are, personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company that the Court may direct if –

(a) The company that is in liquidation and is unable to pay all its debts has failed to comply with –

(i) section 129 (which relates to the keeping of accounting records); or

(ii) section 130 (which relates to the preparation of financial statements); and

(b) The Court considers that –

(i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly liquidation; or

(ii) for any other reason it is proper to make a declaration.

(2) The Court may give any direction it thinks fit for the purpose of giving effect to the declaration.

(3) The Court may make a declaration under this clause even though the person concerned is liable to be convicted of an offence.

20 When Court may not make declaration under clause 19

The Court must not make a declaration under clause 19 in relation to a person if the Court considers that the person –

(a) Took all reasonable steps to secure compliance by the company with clause 19(1)(a); or

(b) Had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

Court may require persons to repay money or return property

21 Court may require persons to repay money or return property

(1) The Court may, on the application of the liquidator or a creditor or shareholder, do any of the things set out in subclause (2) if, in the course of the liquidation of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, administrator, receiver, or officer of the company, has –

(a) Misapplied, or retained, or become liable or accountable for, money or property of the company; or

(b) Been guilty of negligence, default, or breach of duty or trust in relation to the company.

(2) The Court may –

(a) Inquire into the conduct of the promoter, director, manager, liquidator, administrator, receiver, or officer; and

(b) Order that person –

(i) to repay or restore the money or property or any part of it with interest at a rate the Court thinks just; or

(ii) to contribute such sum to the assets of the company by way of compensation as the Court thinks just; or

(c) If the application is made by a creditor, order that person to pay or transfer the money or property or any part of it, with interest at a rate the Court thinks just, to the creditor.

(3) This clause has effect even though the conduct may constitute an offence.

Pooling of assets

22 Pooling of assets of related companies

(1) On the application of the liquidator, or a creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that –

(a) A company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation;

(b) If 2 or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were 1 company to the extent that the Court so orders and subject to such terms and conditions as the Court may impose.

(2) The Court may make any other order or give any directions to facilitate giving effect to an order under subclause (1) that it thinks fit.

23 Guidelines for orders

(1) In deciding whether it is just and equitable to make an order under clause 22(1)(a), the Court must consider the following matters –

(a) The extent to which the related company took part in the management of the company in liquidation;

(b) The conduct of the related company towards the creditors of the company in liquidation;

(c) The extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company;

(d) Any other matters as the Court thinks fit.

(2) In deciding whether it is just and equitable to make an order under clause 22(1)(b), the Court must consider the following matters –

(a) The extent to which any of the companies took part in the management of any of the other companies;

(b) The conduct of any of the companies towards the creditors of any of the other companies;

(c) The extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies;

(d) The extent to which the businesses of the companies have been combined;

(e) Any other matters that the Court thinks fit.

(3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under clause 22.

SCHEDULE 18

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Creditors' Claims

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PART 1
Preliminary provisions

1 Admissible claims

(1) Subject to subclause (2), a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages, may be admitted as a claim against a company in liquidation.

(2) Fines, monetary penalties, and costs to which clause 4 applies are not claims that may be admitted against a company in liquidation.

2 Ascertainment of amount of claim

(1) The amount of a claim must be ascertained as at the date and time of commencement of the liquidation.

(2) The amount of a claim based on a debt or liability denominated in a currency other than the currency of Niue must be converted into the currency of Niue at the rate of exchange on the date of commencement of the liquidation.

3 Claim not of ascertained amount

(1) If a claim is subject to a contingency, or is for damages, or, if for some other reason the amount of the claim is not certain, the liquidator may –

(a) Make an estimate of the amount of the claim; or
(b) Refer the matter to the Court for a decision on the amount of the claim.

(2) On the application of the liquidator, or of a claimant who is aggrieved by an estimate made by the liquidator, the Court may determine the amount of the claim as it thinks fit.

4 Fines and penalties

Nothing in this Act limits or affects the recovery of –

(a) A fine imposed on a company, whether before or after the commencement of the liquidation of the company, for the commission of an offence; or
(b) A monetary penalty payable to the Government imposed on a company by a Court, whether before or after the commencement of the liquidation of the company, for the breach of any enactment; or
(c) Costs ordered to be paid by the company in relation to proceedings for the offence or breach.

5 Claims relating to debts payable after commencement of liquidation

(1) A claim in respect of a debt that, but for the liquidation, would not be payable until a date that is 6 months, or later than 6 months, after the date of commencement of the liquidation is to be treated, for the purposes of this Part, as a claim for the present value of the debt.

(2) For the purposes of subclause (1), the present value of a debt is to be determined by deducting from the amount of the debt interest at an appropriate rate for the period from the date on which the company is put into liquidation to the date when the debt is due.

6 Claims by unsecured creditors

(1) A claim by an unsecured creditor against a company in liquidation must be made in the prescribed form and must –

(a) Contain full details of the claim; and
(b) Identify any documents that evidence or substantiate the claim.

(2) The liquidator may require the production of a document referred to in subclause (1)(b).

(3) The liquidator –

(a) Must, as soon as practicable, either admit or reject a claim in whole or in part; and
(b) If the liquidator later considers that a claim has been wrongly admitted or rejected in whole or in part, may revoke or amend that decision; and
(c) Must record in writing any decision made under this subclause.

(4) If a liquidator rejects a claim, whether in whole or in part, he or she must immediately give notice in writing of the rejection to the creditor.

(5) The costs of making a claim under subclause (1) or producing a document under subclause (2) must be met by the creditor making the claim.

(6) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding 250 penalty units, or both, if the person –

(a) Makes, or authorises the making of, a claim under this clause that is false or misleading in a material particular knowing it to be false or misleading; or

(b) Omits, or authorises the omission, from a claim under this clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

PART 2
Secured claims

7 Powers of secured creditors

(1) A secured creditor may –

(a) Realise property subject to a charge, if entitled to do so; or

(b) Value the property subject to the charge and claim in the liquidation as an unsecured creditor for the balance due, if any; or

(c) Surrender the charge to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole debt.

(2) A secured creditor may exercise the power referred to in subclause (1)(a) whether or not the secured creditor has exercised the power referred to in subclause (1)(b).

8 Realising secured property

A secured creditor who realises secured property –

(a) May, unless the liquidator has accepted a valuation and claim by the secured creditor under clause 10, claim as an unsecured creditor for any balance due after deducting the net amount realised;

(b) Must account to the liquidator for any surplus remaining from the net amount realised after satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction, and after making any proper payments to the holder of any other charge over the property subject to the charge.

9 Valuation of security

(1) If a secured creditor values the security and claims as an unsecured creditor for the balance due, if any, the valuation and any claim must be made in the prescribed form and –

(a) Contain full details of the valuation and any claim; and

(b) Contain full details of the charge including the date on which it was given; and

(c) Identify any documents that substantiate the claim and the charge.

(2) The liquidator may require production of any document referred to in subclause (1)(c).

10 Liquidator's duties on receipt of claim by secured creditor

If a claim is made by a secured creditor under clause 9, the liquidator must –

(a) Accept the valuation and claim; or

(b) Reject the valuation and claim, in whole or in part, but –

(i) If a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within 10 working days of receiving notice of the rejection; and

(ii) the liquidator may, if he or she later considers that a valuation and claim was wrongly rejected, in whole or in part, revoke or amend that decision; and

(c) Record in writing any decision made by the liquidator under this clause.

11 Liquidator may redeem security

The liquidator may, unless the secured creditor has realised the property, at any time, redeem the security on payment of the assessed value if the liquidator –

(a) Accepts a valuation and claim under clause 10(a); or
(b) Accepts a revised valuation and claim under clause 10(b)(i); or
(c) Accepts a valuation and claim on revoking or amending a decision to reject a claim under clause 10(b)(ii).

12 Liquidator may require secured creditor to exercise powers

(1) The liquidator may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to –

(a) Elect which of the powers referred to in clause 7 the creditor wishes to exercise; and
(b) If the creditor elects to exercise the power referred to in clause 7(1)(b) or (c), exercise the power within that period.

(2) A secured creditor on whom notice has been served under subclause (1) who fails to comply with the notice, is to be taken as having surrendered the charge to the liquidator under clause 7(1)(c) for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.

(3) A secured creditor who has surrendered a charge under clause 7(1)(c) or who is taken as having surrendered a charge under subclause (2) may, with the leave of the Court or the liquidator and subject to any conditions that the Court or the liquidator thinks fit, at any time before the liquidator has realised the property charged –

(a) Withdraw the surrender and rely on the charge; or
(b) Submit a new claim under this clause.

13 Offence to make false or misleading claim

Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding 1000 penalty units, or both if the person –

(a) Makes, or authorises the making of, a claim under clause 9 that is false or misleading in a material particular knowing it to be false or misleading; or
(b) Omits, or authorises the omission, from a claim under that clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

PART 3
PREFERENTIAL CLAIMS

14 Definitions

For the purposes of this Part –

remuneration in respect of a period of holiday or of absence from work through sickness or other good cause must be treated as wages in respect of services rendered to the company during that period

paid annual leave, in relation to a person, means all sums payable to that person by the company that by or under any Act or any award, agreement, or contract of service are payable to that person by the company as holiday pay.

15 First priority claims

The liquidator must first pay, in the order of priority in which they are listed –

(a) The fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator;

(b) The reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the Court;

(c) The actual out-of-pocket expenses necessarily incurred by a liquidation committee.

16 Second priority claims

(1) After paying the claims referred to in clause 15, the liquidator must next pay the following claims;

Employees' wages or salary

(a) Subject to subclause (2), all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the 4 months before the commencement of the liquidation;

Employees' annual leave

(b) Subject to subclause (2), paid annual leave becoming payable to an employee (or if the employee has died, to any other person in the employee's right) on the termination of the employment before or by reason of the commencement of the liquidation;

Accident compensation

(c) Amounts due in respect of any compensation or liability for compensation payable to an employee or to the dependents of an employee that accrued before the commencement of the liquidation;

Amounts deducted by company from employees' wages or salary

(d) Subject to subclause (2), amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee;

Preferential claims under section 234

(e) Amounts that are preferential claims under section 234(2);

Superannuation contributions

(f) Any contributions payable by the company to a superannuation scheme of an employee;

Priority payments under other enactments

(g) All sums that by any other enactment are required to be paid in accordance with the priority established by this clause;

Workers' compensation

(h) Unless the company is being liquidated merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has at the commencement of the liquidation under such a contract of insurance rights capable of being transferred to and vested in the worker, all amounts due in respect of any workers compensation or liability for workers compensation accrued before the relevant date.

(2) The total sum to which priority is to be given under subclause (1)(a), (b), (d), (e), or (f) must not, in the case of any 1 employee, exceed $3,000 or any greater amount that is prescribed at the commencement of the liquidation.

(3) If a payment has been made to the following persons out of money advanced by some person for that purpose, the person by whom the money was advanced has, in a liquidation, the same right of priority in respect of the money advanced as the employee, or other person receiving the payment in right of the employee, would have if the payment had not been made –

(a) An employee of a company on account of wages or salary;

(b) Any such employee or, if the employee has died, to any other person in the employee's right, on account of holiday pay.

17 Third priority claims

After paying the sums referred to in clause 16, the liquidator must next pay the following to the extent that the amount is for the time being unpaid to the Financial Secretary or to the Collector of Customs, as the case may require;

Income tax

(a) Tax payable by the company;

Tax deductions

(b) Tax deductions made by the company in respect of the earnings of employees of the company;

Non-resident withholding tax,

(c) Tax deducted by a company on behalf of an agent, absentee or non-resident;

Customs and excise duty

(d) Duty payable within the meaning of the Customs Act 1966.

18 Ranking of claims in clauses 16 and 17

(1) The claims listed in each of clauses 16 and 17 –

(a) Rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

(b) So far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of persons in respect of assets that are subject to a floating charge and must be paid accordingly out of those assets.

(2) To the extent that the claims to which subclause (1) applies are paid out of assets referred to in paragraph (b) of that subclause, the amount so paid is an unsecured debt due by the company to the secured party.

19 When landlord or other person has distrained on goods, etc

If a landlord or other person has distrained on goods or effects of the company within the month before the commencement of the liquidation –

(a) The claims to which priority is given by this Part are a first charge on the goods or effects so distrained on, or the proceeds from their sale; but

(b) If any money is paid to a claimant under any such charge, the landlord or other person has the same rights of priority as that claimant.

PART 4
MUTUAL CREDIT AND SET-OFF

20 Definitions

In this Part –

related person includes a related company and includes a director of the company in liquidation

restricted period means –

(a) The period of 2 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and

(b) In the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and

(c) The period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of an application and ending on the date and at the time of the commencement of the liquidation if –

(i) the application was made to the Court to put a company into liquidation; and

(ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and

(d) In the case of a liquidator appointed under section 188(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed

specified period means –

(a) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and

(b) In the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and

(c) The period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of an application and ending on the date and at the time of the commencement of the liquidation if –

(i) the application was made to the Court to put a company into liquidation; and

(ii) after the making of the application to the Court a liquidator was appointed under sections 214 or 215; and

(d) In the case of a liquidator appointed under section 188(1)(c), the period of 6 months before the administration begins together with the period commencing on that date and ending at the time the liquidator is appointed.

21 Mutual credit and set-off

If there have been mutual credits, mutual debts, or other mutual dealings between a company and a person who seeks or, but for the operation of this clause, would seek to have a claim admitted in the liquidation of the company –

(a) An account must be taken of what is due from the one party to the other in respect of those credits, debts, or dealings; and

(b) An amount due from one party must be set off against an amount due from the other party; and

(c) Only the balance of the account may be claimed in the liquidation, or is payable to the company, as the case may be.

22 Proof for person who is not related person

Unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the company was unable to pay its debts as they became due, a person who is not a related person is not entitled to claim the benefit of a set-off arising from –

(a) A transaction made within the specified period, being a transaction by which the person gave credit to the company or the company gave credit to the person; or

(b) The assignment within the specified period to that person of a debt owed by the company to another person.

23 Proof for person who is related person

Unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the company was unable to pay its debts as they became due, the related person is not entitled to claim the benefit of a set-off arising from –

(a) A transaction made within the restricted period, being a transaction by which the related person gave credit to the company or the company gave credit to the related person; or

(b) The assignment within the restricted period to that person of a debt owed by the company to another person.

24 Exception for amounts paid or payable by shareholder

Clauses 21 to 23 do not apply to an amount paid or payable by a shareholder or former shareholder –

(a) As the consideration, or part of the consideration, for the issue of a share; or

(b) In satisfaction of a call in respect of an outstanding liability of the shareholder made by the directors or by the liquidator.

PART 5
MISCELLANEOUS

25 Interest on claims

(1) The amount of a claim may include interest up to the date of commencement of the liquidation –

(a) At such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or

(b) In the case of a judgment debt, at such rate as is payable on the judgment debt.

(2) If any surplus assets remain after the payment of all admitted claims, interest must be paid at the prescribed rate on those claims from the date of commencement of the liquidation to the date on which each claim is paid, and if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment must abate rateably among all claims.

(3) If any surplus assets remain after the payment of interest in accordance with subclause (2), interest must be paid on all admitted claims referred to in subclause (1) from the date of commencement of the liquidation to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subclause (1)(a), as the case may be, and, if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment must abate rateably among all claims.

(4) For the purposes of this clause, prescribed rate means the rate prescribed in regulations made under this Act or, if no such rate is prescribed, the rate at which interest is payable on money due under a judgment of the Court.

26 Trade discounts

A creditor making his or her claim must deduct all trade discounts that he or she would otherwise have given if the company had not gone into liquidation.

27 Periodical payments

(1) When any payment (including rent) falls due at stated periods, and liquidation commences at any time other than at the beginning of 1 of those periods, the persons entitled to the payment may claim up to the date of commencement of liquidation as if the payment accrued on a daily basis.

(2) Nothing in subclause (1) affects the right of the lessor of the property to claim rent that accrues on or after the commencement of liquidation.

28 Employees' claims

(1) A person may make a claim on behalf of all or a number of employees of the company.

(2) A schedule setting out the names of the employees, and the amounts due to each of them, must be attached to the claim.

(3) Any claim made in compliance with this regulation has the same effect as if separate claims had been made by each of the employees.

29 Notice to creditors to claim

(1) Subject to the provisions of the Act, and unless otherwise ordered by the Court, the liquidator may fix a certain day, which must not be less than 10 working days from the date of the notice, on or before which the creditors of the company are to make their claims, and to establish any priority their claims may have under Part 3.

(2) The liquidator must give public notice of the day fixed in accordance with subclause (1).

30 Failure to claim by day fixed for claims

(1) Subject to subclause (2), any creditor who fails to make a claim on or before the day fixed in accordance with clause 29 will be excluded from the benefit of any distribution made before his or her claim is made.

(2) A creditor who makes a claim after the day fixed in accordance with clause 29 and whose claim is admitted is entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

31 Failure to establish priority by day fixed for claims

(1) Subject to subclause (2), any creditor who fails to establish any priority that the creditor's claim may have on or before the day fixed in accordance with clause 29 must be excluded from objecting to any distribution made before the priority of that claim is established.

(2) The liquidator may, in making any distribution after the claim is admitted, make an assumption as to the priority that the claim may have and accord the creditor the benefit of the distribution accordingly.

(3) A creditor who establishes the priority of the creditor's claim after the day fixed in accordance with clause 29 is entitled to receive the benefit of any distribution from which the creditor was previously excluded (if any) if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

32 Dividends in respect of rejected claims

(1) If any creditor applies to the Court for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the liquidator may in any such case make provision for the dividend on the claim, and the probable cost of the application in the event of the claim being admitted.

(2) If no notice of an application has been given within the time specified in this Act or in regulations made under this Act for appeals to the Court from a decision of the liquidator, the liquidator must exclude all claims that have been rejected from participation in the dividend.

33 Costs of proceedings relating to liquidator's decision on claim

If any creditor applies to the Court for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the Court may, if it thinks fit –

(a) Allow any costs of any creditor to be added to the creditor's claim;

(b) Allow any costs of any party to be paid out of the assets of the company, such costs being deemed to be expenses of the liquidator;

(c) Order any costs to be paid by any party to the proceedings other than the liquidator.

SCHEDULE 19

s 290(1)

LIQUIDATION OF ASSETS OF OVERSEAS COMPANIES

1 Modified application of subpart 3 of Part 9

Subpart 3 of Part 9 applies to the liquidation of the assets in Niue of an overseas company, with the following modifications and exclusions –

(a) References to assets are to be taken as references to assets in Niue;
(b) References to a company are to be taken as references to an overseas company;
(c) References to removal from the Niue register are to be taken as references to ceasing to carry on business in Niue;
(d) The following provisions do not apply to such a liquidation;
  (i) clause 6 of Schedule 13;
  (ii) clauses 1 and 3 of Schedule 15;
(e) Clause 2 of Schedule 15 does not affect the tenure of directors of an overseas company, but the overseas company and its directors cease to have any powers, functions, or duties in relation to the company's assets in Niue, other than those required or permitted to be exercised by subpart 3 of Part 9;
(f) Section 252 applies to such a liquidation, but instead of making the statement required by subsection (1)(b)(iii) of that section, the liquidator must state that the company has ceased to carry on business in Niue and is ready to be removed from the overseas register.

2 Rights of action not affected

Nothing in this Act excludes the right of a creditor of an overseas company in relation to the assets of which a liquidator has been appointed –

(a) To bring proceedings outside Niue against the overseas company in relation to a debt not claimed in the liquidation or the balance of a debt remaining unpaid after the completion of a liquidation; or
(b) To bring an action in Niue in relation to the balance of a debt remaining unpaid after the completion of a liquidation.

SCHEDULE 20
[Spent]

SCHEDULE 21
[Spent]