

NIUE LAWS

TAU FAKATUFONO-TOHI A NIUE

LEGISLATION AS AT 31 DECEMBER 2019

VOLUME 1 TOHI 1

STATUTES A-C

Niue Legislation 2019

Government of Niue
Alofi 2020

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VOLUME ONE

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FOREWORD

EDITORIAL NOTE

The *Niue Legislation 2019* was prepared under the Reprint of Statutes Act 1991 as a statement of the legislation of Niue as at 31 December 2019. This is a four volume collection:

Volumes 1, 2 and 3 presents the consolidated statutes.

Volume 4 presents the consolidated subsidiary legislation.

The four volumes are complemented by a volume with the Constitution and related materials, and by a booklet of Legislation Tables as at 31 December 2019.

The six books supersede the *Niue Laws 2006* and the two reprints of 2007 – the Criminal Law Code and the Family Law Code.

Exceptionally, some legislation has not been reproduced in the four volumes of this reprint. Where that is the case, the text is annotated at the appropriate place. The prime examples of omissions are Acts which deal with treaty arrangements. In such cases, the texts are not of everyday use to the operation of the legal system and are readily available for public access on the internet. Other examples of omissions are the substantial bodies of law which deal in detail with particular areas of administration.

APPROPRIATION (ANNUAL) ACT 2019

348/2019 – 6 August 2019

An Act to appropriate certain sums of money out of the Niue Assembly account to the services for the year ending 30th of June 2020 and to appropriate the supplies granted in that year.

1 Title

This is the Appropriation (Annual) Act 2019.

2 Commencement

(1) This Act shall relate to the financial year ending on 30 June 2020 (hereinafter referred to as "the financial year").

(2) [Spent]

3 Grant and Appropriation of Expenditure

There may be issued and supplied from the Niue Assembly Account towards making good the supplies granted for the services of the financial year:

- (a) for Recurrent Operational Expenditure, Capital Projects and Investment and Development Projects a sum of which does not exceed \$26,735,000 in total; and
- (b) for development partner Investment and Development projects a sum which does not exceed \$20,595,000 in total

particulars of which are set out under the relevant headings in the Schedules hereto.

SCHEDULE A

TABLE 1: 2019-20 BUDGET SUMMARY

(\$'000)	Voted 2017-18	Actual 2017-18	Voted 2018-19	Actual 2018-19	Estimate 2019-20
Total Niue Recurrent Revenues	-28,157	-24,622	-26,138	-26,218	-28,735
Total Niue Recurrent Expenses	28,414	24,427	25,326	24,900	28,173
Total Niue Funded Capital	100	21	100	61	100
Niue Funded I&D	812	377	712	708	462
Total Appropriation	29,326	24,825	26,138	25,669	28,735
Niue Budget Surplus/Deficit	1,169	203	0	-547	0
Donor I&D Revenue	-9,670	-5,536	-18,250	-12,850	-20,595
Donor I&D Expenditure	9,670	5,536	18,250	12,850	20,595
Total Revenue	-37,827	-30,158	-44,388	-39,068	-49,330
Total Expenses	38,996	30,361	44,388	38,519	49,330
Surplus (-ve) / Deficit (+ve)	1,169	203	0	-547	0

Note: Numbers presented in tables within this document show revenues with a -ve number, and expenses with a +ve number.

Niue Legislation 2019

SCHEDULE B

GOVERNMENT OF NIUE 2019-20 BUDGET RECURRENT EXPENDITURE BY MINISTRIES						
Entity	Department	2017-18 Voted	2017-18 Actual	2018-19 Voted	2018-19 Actual	2019-20 Estimate
CENTRAL AGENCIES	Cabinet and Parliamentary Services	1,742,000	1,775,228	1,808,000	1,474,953	2,204,000
	Premiers Department	606,000	663,759	671,000	730,333	755,000
	Project Management Coordination Unit	287,000	246,082	291,000	261,220	347,000
	Crown Law	399,000	376,358	398,000	462,818	450,000
	Niue Public Service Commission and Secretariat	1,326,000	1,204,774	1,295,000	1,145,311	1,378,000
	Finance and Planning	5,494,000	1,592,131	1,351,000	1,213,530	1,619,000
	Police	610,000	566,985	733,000	582,449	720,000
	Sub total: Central agencies	10,464,000	6,425,317	6,547,000	5,870,614	7,473,000
MINISTRY OF SOCIAL SERVICES	Education Department	2,721,000	2,652,496	2,773,000	2,794,300	3,052,000
	Health Department	2,290,000	2,406,662	2,407,000	2,445,246	2,639,000
	Justice Department (Inc Com Affairs)	4,033,000	4,024,373	4,369,000	4,120,035	4,402,000
	Taoga Niue	272,000	217,479	305,000	246,160	384,000
	Sub total: Ministry of Social Services	9,316,000	9,301,010	9,854,000	9,605,741	10,477,000
MINISTRY OF NATURAL RESOURCES	DAFF	899,000	762,866	885,000	765,982	1,028,000
	Environment Department	332,000	322,429	328,000	339,366	395,000
	Met Office	202,000	177,996	204,000	190,222	231,000
	Sub total: Ministry of Natural Resources	1,433,000	1,263,291	1,417,000	1,295,569	1,654,000
MINISTRY OF INFRASTRUCTURE	Utilities	862,000	790,820	829,000	709,821	1,008,000
	Transport	1,497,000	1,218,813	1,346,000	1,298,285	1,496,000
	Sub total: Ministry of Infrastructure	2,359,000	2,009,633	2,175,000	2,008,105	2,504,000
COMMERCIAL AND TRADING	Niue Tourism Authority	477,000	375,914	356,000	374,662	436,000
	Bulk Fuel	4,365,000	4,960,752	4,986,000	5,746,005	5,629,000
	Sub total: Commercial and Trading	4,842,000	5,336,665	5,342,000	6,120,667	6,065,000
TOTAL RECURRENT EXPENDITURE		28,414,000	24,335,916	25,335,000	24,900,697	28,173,000

GOVERNMENT OF NIUE 2019-20 BUDGET RECURRENT REVENUE BY MINISTRIES						
Entity	Department	2017-18 Voted	2017-18 Actual	2018-19 Voted	2018-19 Actual	2019-20 Estimate
CENTRAL AGENCIES	Cabinet and Parliamentary Services	0	-1,000	-2,000	0	-2,000
	Premiers Department	-2,000	-1,852	-2,000	-9,370	-10,000
	Crown Law	0	-738	-1,000	-1,147	-1,000
	Niue Public Service Commission and Secretariat	0	0	0	0	0
	Finance and Planning	-19,390,000	-16,187,349	-16,726,000	-15,715,120	-18,177,000
	Project Management Coordination Unit	-301,000	0	-206,000	-27,222	-150,000
	Police	-183,000	-157,611	-183,000	-150,442	-173,000
	Sub total: Central agencies	-19,876,000	-16,348,550	-17,120,000	-15,903,301	-18,513,000
MINISTRY OF SOCIAL SERVICES	Education Department	-5,000	-4,809	-6,000	-25,587	-28,000
	Health Department	-45,000	-50,194	-59,000	-50,458	-71,000
	Justice Department (Inc Com Affairs)	-105,000	-60,867	-113,000	-49,466	-67,000
	Taoga Niue	-7,000	-8,024	-27,000	-46,610	-37,000
	Sub total: Ministry of Social Services	-162,000	-123,894	-205,000	-172,122	-203,000
MINISTRY OF NATURAL RESOURCES	DAFF	-1,198,000	-1,317,907	-1,309,000	-1,917,286	-1,963,000
	Environment Department	-1,000	-2,965	-1,000	-8,192	-6,000
	Met Office	-2,000	-560	-1,000	-2,855	-1,000
	Sub total: Ministry of Natural Resources	-1,201,000	-1,321,432	-1,311,000	-1,928,333	-1,970,000
MINISTRY OF INFRASTRUCTURE	Utilities	-38,000	-8,965	-11,000	-6,786	-10,000
	Transport	-1,632,000	-1,669,088	-1,857,000	-1,488,067	-1,918,000
	Sub total: Ministry of Infrastructure	-1,670,000	-1,678,053	-1,868,000	-1,494,853	-1,928,000
COMMERCIAL AND TRADING	Niue Tourism Authority	-48,000	-26,652	-48,000	-26,477	-48,000
	Bulk Fuel	-5,200,000	-6,395,470	-5,586,000	-6,693,638	-6,073,000
	Sub total: Commercial and Trading	-5,248,000	-6,422,123	-5,634,000	-6,720,116	-6,121,000
TOTAL RECURRENT REVENUE		-28,157,000	-25,894,052	-26,138,000	-26,218,725	-28,735,000

Appropriation (Annual) Act

SCHEDULE C

Schedule C

GOVERNMENT OF NIUE 2019-20 BUDGET

RECURRENT EXPENDITURE BY VOTE & NNSP PILLAR					
DEPARTMENTS	VOTE	NNSP Pillar	2018/19 Voted	2018/19 Actual	2019/20 Estimate
TREASURY	Finance	1. Fin. Stability	\$766,000	\$565,792	\$917,000
TREASURY	Taxation	1. Fin. Stability	\$0	\$0	\$0
1. Fin. Stability Total			\$766,000	\$565,792	\$917,000
CABINET/PARLIAMENT	Corporate Services	2. Governance	\$324,000	\$182,479	\$266,000
CABINET/PARLIAMENT	Cabinet Services	2. Governance	\$637,000	\$583,885	\$905,000
CABINET/PARLIAMENT	Legislature	2. Governance	\$847,000	\$708,589	\$1,033,000
OFFICE SOG	Niue High Commission	2. Governance	\$256,000	\$226,332	\$254,000
OFFICE SOG	External Affairs	2. Governance	\$415,000	\$504,002	\$501,000
PMCU	Project Management Unit	2. Governance	\$291,000	\$261,220	\$347,000
CROWN LAW	Crown Law Office	2. Governance	\$398,000	\$462,818	\$450,000
NPSC and Secretariat	Corporate Services/HRMIS	2. Governance	\$841,000	\$731,562	\$887,000
NPSC and Secretariat	Strategic Human Resource	2. Governance	\$69,000	\$42,611	\$69,000
NPSC and Secretariat	Manpower Supplementation	2. Governance	\$122,000	\$124,164	\$148,000
TREASURY	Customs (fly Customs/Taxatic	2. Governance	\$349,000	\$438,382	\$462,000
TREASURY	Statistics and Immigration	2. Governance	\$177,000	\$162,653	\$181,000
DAFF	Quarantine	2. Governance	\$136,000	\$133,635	\$142,000
JUSTICE	Administraton & Registry	2. Governance	\$206,000	\$111,561	\$192,000
JUSTICE	Civil/Criminal Court	2. Governance	\$84,000	\$77,793	\$83,000
JUSTICE	Land Court	2. Governance	\$112,000	\$100,105	\$111,000
POLICE	Administration	2. Governance	\$544,000	\$489,250	\$568,000
POLICE	Prison	2. Governance	\$61,000	\$24,408	\$40,000
POLICE	Disaster Management	2. Governance	\$128,000	\$88,790	\$112,000
2. Governance Total			\$5,997,000	\$5,434,239	\$6,751,000
TREASURY	Economic Development	3. Econ. Dev.	\$59,000	\$46,703	\$59,000
TRANSPORT	Civil Aviation	3. Econ. Dev.	\$251,000	\$229,738	\$263,000
TRANSPORT	Rescue Fire Services	3. Econ. Dev.	\$242,000	\$212,130	\$245,000
NPSC and Secretariat	Employment Relations	3. Econ. Dev.	\$47,000	\$47,536	\$49,000
DAFF	Administration	3. Econ. Dev.	\$306,000	\$314,827	\$409,000
DAFF	Fisheries	3. Econ. Dev.	\$118,000	\$69,638	\$154,000
DAFF	Crop Research & Animal Heal	3. Econ. Dev.	\$170,000	\$125,164	\$168,000
DAFF	Crop Extension Services	3. Econ. Dev.	\$92,000	\$64,829	\$91,000
JUSTICE	Land Management	3. Econ. Dev.	\$287,000	\$213,584	\$262,000
UTILITIES	Administration	3. Econ. Dev.	\$167,000	\$163,580	\$163,000
UTILITIES	Regulatory and Compliance U	3. Econ. Dev.	\$178,000	\$102,359	\$331,000
UTILITIES	Water Supply	3. Econ. Dev.	\$484,000	\$443,882	\$514,000
TRANSPORT	Maritime	3. Econ. Dev.	\$35,000	\$35,501	\$64,000
TOURISM	Tourism Authority	3. Econ. Dev.	\$356,000	\$374,662	\$436,000
3. Econ. Dev. Total			\$2,792,000	\$2,444,132	\$3,208,000
NPSC and Secretariat	Human Resource Developmei	4. Social	\$216,000	\$199,438	\$225,000
COMMUNITY AFFAIRS	Administration	4. Social	\$373,000	\$292,487	\$371,000
COMMUNITY AFFAIRS	Community Devel. & Social W	4. Social	\$3,307,000	\$3,324,506	\$3,383,000
EDUCATION	Administration	4. Social	\$793,000	\$760,568	\$765,000
EDUCATION	Niue Primary School	4. Social	\$650,000	\$728,557	\$743,000
EDUCATION	Niue High School	4. Social	\$1,255,000	\$1,269,887	\$1,329,000
EDUCATION	Aoga Ofaga Tolotolopulu	4. Social		\$0	\$175,000
EDUCATION	National Library	4. Social	\$75,000	\$35,287	\$40,000
HEALTH	Administration	4. Social	\$578,000	\$479,427	\$594,000
HEALTH	Medical	4. Social	\$734,000	\$890,073	\$893,000
HEALTH	Nursing	4. Social	\$492,000	\$480,800	\$515,000
HEALTH	Public Health	4. Social	\$385,000	\$382,083	\$386,000
HEALTH	Dental	4. Social	\$218,000	\$212,864	\$251,000
4. Social Total			\$9,076,000	\$9,055,977	\$9,670,000
DAFF	Forestry	5. Environ.	\$63,000	\$57,890	\$64,000
ENVIRONMENT	Administration	5. Environ.	\$319,000	\$339,366	\$395,000
MET SERVICE	Administration	5. Environ.	\$204,000	\$190,222	\$231,000
5. Environ. Total			\$586,000	\$587,477	\$690,000
TAOGA NIUE	Administration	6. Taoga Niue	\$305,000	\$246,160	\$384,000
6. Taoga Niue Total			\$305,000	\$246,160	\$384,000
BULK FUEL	Bulk Fuel	3. Econ. Dev.	\$4,986,000	\$5,746,005	\$5,629,000
TRANSPORT	Transport Administration	3. Econ. Dev.	\$124,000	\$115,934	\$131,000
TRANSPORT	Outside Services	3. Econ. Dev.	\$499,000	\$520,632	\$527,000
TRANSPORT	Heavy Plant	3. Econ. Dev.	\$195,000	\$184,349	\$266,000
Trading Operations			\$5,804,000	\$6,566,920	\$6,553,000
TOTAL RECURRENT EXPENDITURE			\$25,326,000	\$24,900,697	\$28,173,000

Niue Legislation 2019

GOVERNMENT OF NIUE 2019-20 BUDGET

RECURRENT REVENUE BY VOTE & NNSP PILLAR					
DEPARTMENTS	VOTE	NNSP Pillar	2018/19 Voted	2018/19 Actual	2019/20 Estimate
TREASURY	Finance	1. Fin. Stability	-\$8,555,000	-\$6,510,277	-\$8,553,000
TREASURY	Taxation	1. Fin. Stability	-\$6,307,000	-\$4,839,675	-\$5,612,000
1. Fin. Stability Total			-\$14,862,000	-\$11,349,952	-\$14,165,000
CABINET/PARLIAMENT	Corporate Services	2. Governance	-\$1,000	\$0	-\$1,000
CABINET/PARLIAMENT	Cabinet Services	2. Governance	\$0	\$0	\$0
CABINET/PARLIAMENT	Legislature	2. Governance	-\$1,000	\$0	-\$1,000
OFFICE SOG	Niue High Commission	2. Governance	-\$2,000	-\$9,370	-\$10,000
OFFICE SOG	External Affairs	2. Governance	\$0	\$0	\$0
PMCU	Project Management Unit	2. Governance	-\$206,000	-\$27,222	-\$150,000
CROWN LAW	Crown Law Office	2. Governance	-\$1,000	-\$1,147	-\$1,000
NPSC and Secretariat	Corporate Services/HRMIS	2. Governance	\$0	\$0	\$0
NPSC and Secretariat	Strategic Human Resource	2. Governance	\$0	\$0	\$0
NPSC and Secretariat	Manpower Supplementation	2. Governance	\$0	\$0	\$0
TREASURY	Customs (fly Customs/Taxatic	2. Governance	-\$1,828,000	-\$4,315,773	-\$3,960,000
TREASURY	Statistics and Immigration	2. Governance	-\$35,000	-\$47,951	-\$51,000
DAFF	Quarantine	2. Governance	-\$28,000	-\$32,055	-\$32,000
JUSTICE	Administraton & Registry	2. Governance	-\$15,000	-\$20,694	-\$20,000
JUSTICE	Civil/Criminal Court	2. Governance	-\$10,000	-\$210	-\$6,000
JUSTICE	Land Court	2. Governance	-\$15,000	-\$7,259	-\$15,000
POLICE	Administration	2. Governance	-\$183,000	-\$150,442	-\$173,000
POLICE	Prison	2. Governance	\$0	\$0	\$0
2. Governance Total			-\$2,325,000	-\$4,612,123	-\$4,420,000
TREASURY	Economic Development	3. Econ. Dev.	-\$1,000	-\$1,444	-\$1,000
TRANSPORT	Civil Aviation	3. Econ. Dev.	-\$508,000	-\$305,230	-\$508,000
TRANSPORT	Fire and Rescue	3. Econ. Dev.	-\$12,000	-\$11,520	-\$15,000
DAFF	Administration	3. Econ. Dev.	-\$14,000	-\$11,186	-\$12,000
DAFF	Fisheries	3. Econ. Dev.	-\$1,240,000	-\$1,859,400	-\$1,894,000
DAFF	Crop Research & Animal Heal	3. Econ. Dev.	-\$13,000	-\$6,100	-\$16,000
DAFF	Crop Extension Services	3. Econ. Dev.	-\$11,000	-\$5,477	-\$6,000
JUSTICE	Land Management	3. Econ. Dev.	-\$73,000	-\$21,303	-\$26,000
UTILITIES	Administration	3. Econ. Dev.	\$0	\$0	\$0
UTILITIES	Building & Engineering	3. Econ. Dev.	-\$5,000	-\$1,780	-\$3,000
UTILITIES	Water Supply	3. Econ. Dev.	-\$6,000	-\$5,006	-\$7,000
TRANSPORT	Maritime	3. Econ. Dev.	-\$400,000	-\$443,974	-\$450,000
TOURISM	Tourism Authority	3. Econ. Dev.	-\$48,000	-\$26,477	-\$48,000
3. Econ. Dev. Total			-\$2,331,000	-\$2,698,897	-\$2,986,000
EDUCATION	Administration	4. Social	-\$1,000	-\$22,855	-\$25,000
EDUCATION	Niue Primary School	4. Social	-\$1,000	-\$311	\$0
EDUCATION	Niue High School	4. Social	-\$3,000	-\$2,421	-\$3,000
EDUCATION	National Library	4. Social	-\$1,000	\$0	\$0
HEALTH	Administration	4. Social	-\$50,000	-\$36,882	-\$55,000
HEALTH	Medical	4. Social	-\$6,000	-\$9,892	-\$11,000
HEALTH	Public Health	4. Social	\$0	-\$1,072	-\$2,000
HEALTH	Dental	4. Social	-\$3,000	-\$2,613	-\$3,000
4. Social Total			-\$65,000	-\$76,045	-\$99,000
DAFF	Forestry	5. Environ.	-\$3,000	-\$3,068	-\$3,000
ENVIRONMENT	Administration	5. Environ.	-\$1,000	-\$8,192	-\$6,000
MET SERVICE	Administration	5. Environ.	-\$1,000	-\$2,855	-\$1,000
5. Environ. Total			-\$5,000	-\$14,115	-\$10,000
TAOGA NIUE	Administration	6. Taoga Niue	-\$27,000	-\$46,610	-\$37,000
6. Taoga Niue Total			-\$27,000	-\$46,610	-\$37,000
BULK FUEL	Bulk Fuel	3. Econ. Dev.	-\$5,586,000	-\$6,693,638	-\$6,073,000
TRANSPORT	Outside Services	3. Econ. Dev.	-\$925,000	-\$727,344	-\$925,000
TRANSPORT	Heavy Plant	3. Econ. Dev.	-\$12,000	\$0	-\$20,000
Trading Operations			-\$6,523,000	-\$7,420,981	-\$7,018,000
TOTAL RECURRENT REVENUE			-\$26,138,000	-\$26,218,724	-\$28,735,000
RECURRENT OPERATIONAL SURPLUS/(DEFICIT)			\$812,000	\$1,318,026	\$562,000
GON RECURRENT CAPITAL EXPENDITURE			-\$100,000	-\$61,699	-\$100,000
GON RECURRENT INVESTMENT & DEVELOPMENT PROJECTS			-\$712,000	-\$708,563	-\$462,000
GON BUDGET BALANCE (-ve = Deficit, +ve = Surplus)			\$0	\$547,764	\$0

ARBITRATION ACT 1908

1908/8 (NZ) – 4 August 1908

1	Short title		
2	Interpretation		
			<i>References Under Order of Court</i>
		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
			<i>References by Consent out of Court</i>
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		
			<i>General</i>
		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 writ 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.

Arbitration Act

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.

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	11	Statement of case by arbitrator or umpire
2	Interpretation	12	Entry of judgment in terms of award
3	Submission not to be discharged by death of party	13	Interest on awards
4	[Repealed]	14	Provision as to costs
5	Power of Court where arbitrator is removed or appointment of arbitrator is revoked	15	Taxation of arbitrator's or umpire's fees
6	Appointment of three arbitrators	16	Power of Court to give relief where arbitrator is not impartial or dispute referred involves question of fraud
7	Provisions relating to umpires	17	[Spent]
8	Arbitrators and umpires to use due dispatch	18	Limitation of time for commencing arbitration proceedings
9	[Spent]	19-21	[Repealed]
10	Additional powers of Court		

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]

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

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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 expired, 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]

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 subjectmatter 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 2
		ENFORCEMENT OF FOREIGN ARBITRAL AWARDS
	PART 1	4 Application of Part 2
	PROTOCOL ON ARBITRATION CLAUSES	5 Effect of foreign awards
2	Interpretation	6 Conditions for enforcement
3	Stay of court proceedings	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

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- (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.

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.

Arbitration Clauses (Protocol) Act

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,

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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.

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.

Archives Act

(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 of 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 advice 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.

16A Deposit of Niue documents concerning tāoga Niue

(1) A person who makes a document publicly available must provide 2 copies of the document to the Archivist for deposit in the Archives office –

- (a) within 4 weeks after making the document publicly available; and
- (b) free of charge.

(2) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

(3) This section applies despite anything in any copyright legislation or in any other intellectual property right or law.

(4) In this section –

“document”

- (a) means a document that –
 - (i) is printed in Niue, or whose author or publisher is resident in Niue; and
 - (ii) concerns or refers to tāoga Niue; and
- (b) includes –
 - (i) books; and
 - (ii) serials; and
 - (iii) pamphlets; and
 - (iv) sheets of letter press or music; and
 - (v) plans, maps, charts, or tables; and
 - (vi) audio visual materials; and
 - (vii) documents that are in microform or digital form; and
 - (viii) any part of a document; and
 - (ix) each edition of a document;

“publicly available” includes issuing a document –

- (a) in hard copy format; or
- (b) in electronic format, whether online or offline;

“tāoga Niue” has the same meaning as in section 3(1) of the Tāoga Niue Act 2012.

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	14	Obstruction of police
2	Interpretation	15	Arrest of offenders
3	Permits for import of firearms	16	Occupier of premises deemed to be in possession of arms
4	Permits for possession	17	Search of suspected persons
5	Sale to and possession by young persons	18	Search of land or building for arms
6	Registration of firearms	19	Application to Government
7	Registration may be refused or existing certificate revoked	20	Restoration of articles seized under this Act
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10	Carriage or possession of arms	23	Persons acting under authority
11	Unlawful acquisition of firearms	24	Regulations
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13A	Offence to discharge firearm near residence		

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 Niue Government Account 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]

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 of20..... .

Arms Officer

SCHEDULE

Type Country of Origin

Gauge or Calibre Lawful/Unlawful (delete that which is..... inapplicable)

Conditions

Arms Act

Form 1B

PERMIT TO IMPORT AMMUNITION
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 ammunition described in the Schedule.

Arms Officer

SCHEDULE

QuantityCalibre..... Country of Origin
.....Conditions

SCHEDULE 2

Form 2

PERMIT FOR POSSESSION
ARMS ACT 1975 SECTION 4

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
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Dated at Alofi this..... day of20..... .

Arms Officer

SCHEDULE 4

Permit to import firearm	\$80.00
Certificate to register firearm for the first time	\$30.00
Annual licence	\$15.00

ASIAN DEVELOPMENT BANK MEMBERSHIP ACT 2018

344/2018 – 25 December 2018

1	Title	9	Authority to issue non-negotiable or non-interest bearing notes
2	Commencement		
	PART 1 <i>Preliminary Matters</i>		PART 4 <i>Incorporation of Certain Provisions into Law</i>
3	Interpretation	10	Incorporation of certain provisions into law
4	Act binds the Government		PART 5 <i>Government's Power to Carry out Obligations</i>
	PART 2 <i>Authorization for Membership in the Asian Development Bank</i>	11	Authority to issue directives
5	Authority to accept membership		PART 6 <i>General and Miscellaneous Provisions</i>
6	Authority to execute and deposit instruments	12	Regulations
7	Designated channel of communication		SCHEDULE Agreement Establishing the Asian Development Bank
	PART 3 <i>Financial Provisions</i>		
8	Authority to borrow, acquire and pay		

An Act to provide for the membership of Niue to the Asian Development Bank.

- 1 Title**
This Act is the Asian Development Bank Membership Act 2018.
- 2 [Spent]**

PART 1 *Preliminary Matters*

- 3 Interpretation**
In this Act, unless the context otherwise requires,
"ADB" means the Asian Development Bank
"the Charter" means the Agreement establishing the Asian Development Bank.
- 4 Act binds the Government**
This Act binds the Government.

PART 2 *Authorization for Membership in the Asian Development Bank*

- 5 Authority to accept membership**
Cabinet is authorized on behalf of Niue to accept membership in the Asian Development Bank (ADB) by accepting the Agreement Establishing the Asian Development Bank (the Charter) which is set out in the Schedule, and by accepting the terms and conditions of the Resolution of the Board of Governors of ADB, relating to the membership of Niue in ADB (the Resolution).

6 Authority to execute and deposit instruments

Cabinet is authorized to execute and deposit any instrument of acceptance and other documents that may be required for accepting membership in ADB.

7 Designated channel of communication

Cabinet shall designate a channel of communication as required under Article 38.1 of the Charter.

PART 3

Financial Provisions

8 Authority to borrow, acquire and pay

Cabinet is authorized to borrow or otherwise acquire, by any appropriate means, and to pay on behalf of Niue, the amounts that are payable from time to time to ADB under the terms and conditions of the Resolution and under the Charter.

9 Authority to issue non-negotiable or non-interest bearing notes

Cabinet is authorized to issue, in accordance with the Charter, any non-negotiable, non-interest bearing notes which may be necessary or appropriate in respect of Niue's membership in ADB.

PART 4

Incorporation of Certain Provisions into Law

10 Incorporation of certain provisions into law

Articles 48 through 58 of the Charter are hereby incorporated into this Act and shall have the force of law in Niue.

PART 5

Government's Power to Carry out Obligations

11 Authority to issue directives

Cabinet is authorized to issue any directives to do all things necessary to comply with the Charter and the terms and conditions of the Resolution and to carry out the obligations of Niue to ADB.

PART 6

General and Miscellaneous Provisions

12 Regulations

- (1) Cabinet may make regulations for the purposes of this Act.
- (2) In particular, regulations may be made for all or any of the following purposes—
 - (a) prescribing forms to be used for the purposes of this Act;
 - (b) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect,

SCHEDULE

[Not reproduced. See <https://www.adb.org/documents/agreement-establishing-asian-development-bank-adb-charter>]

ASSEMBLY MEMBERS' SUPERANNUATION ACT 1984

1984/98 – 1 April 1984

1	Short title	5	Subsidy from Niue Government Account
2	Interpretation	6	Retiring allowance
3	Assembly Members Superannuation Account	7	Death of a Member
4	Contributions by Members	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 Member's 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 remarriage 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	10	Cabinet may mine
2	Interpretation	11	[Repealed]
3	[Repealed]	12	No person to possess fissionable substances
4	Notification of discovery	13	Experimental work
4A	Grant of rewards	14	Restriction on trading
4B	Grants to assist	15	Entry on land and premises
5	Cabinet may control mining	16	Granting of consents
6	Disposition of prescribed substances	17	Service of notices
7	Importation of prescribed substances	18	Offences
8	Uranium to be property of Crown	19	Regulations
9	No compensation for uranium		

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]

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 anyone 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 Act 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]

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	9	Application of sections 3, 4 and 5
2	Interpretation	10	Powers of aircraft commander
3	Hijacking	11	Arrest of persons delivered to Police
4	Offences in connection with hijacking	12	Cabinet's consent required for prosecution
5	Other offences relating to aircraft	13	Aircraft in military, customs, or police service
5A	Offences relating to airports		
6	[Spent]	14	Joint registration of aircraft
7	Offences deemed to be included in extradition treaties	15	Other Acts not affected
8	Surrender of offenders		

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 if –
 - (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; or
- (g) Performs an act of violence against a person at an airport serving international civil aviation that causes or is likely to cause serious injury or death; or
- (h) Destroys or seriously damages the facilities of an airport serving international civil aviation or an aircraft not in service located there or disrupts the services of an airport.

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.

[* Note that the Extradition Act 1965 (NZ) was repealed in New Zealand by the Extradition Act 1999 and was repealed in Niue by the Extradition Act 2007. The Extradition Act 2007 is the current law of Niue]

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.

[*See above note at section 7]

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 act 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 of any person charged with a crime against sections 3, 4 or 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 Immigration Act 2011 or of the Criminal Law Code.

BILLS OF EXCHANGE ACT 1908

1908/15 (NZ) – 4 August 1908

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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:
 - 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.

Bills of Exchange Act

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 given;
- (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;

Bills of Exchange Act

(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) Negating 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 general or 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 fulfilment 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.

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;

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- (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 give neither 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 face 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;

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- (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 the 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 aware 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 may 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, at 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 drawn 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

Bills of Exchange Act

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]

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 sections 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 by 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 its 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 the Schedule 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.

SCHEDULE

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.)

Witnesses

J.K.)

[NB. The bill itself should be annexed, or a copy of the bill and all that is written on it should be underwritten.]

BIOLOGICAL WEAPONS CONVENTION ACT 2018

2018/342 – 16 May 2018

1	Title	8	Designation of inspectors
2	Commencement	9	Entry and inspection
	PART 1	10	Warrant to enter dwelling-house
	<i>Preliminary matters</i>	11	Search and seizure
3	Interpretation	12	Obstruction and false statements
4	Act binds the Government	13	Directions requiring disposal of dangerous substances
5	Application	14	Penalties
	PART 2	15	Liability of directors and others
	<i>Implementation of the Convention</i>		PART 3
6	Prohibitions		<i>Miscellaneous</i>
	<i>Enforcement</i>	16	Regulations
7	National Authority		SCHEDULE

Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

An Act to Implement in the law of Niue the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction

1 Title

This Act is the Biological Weapons Convention 2018.

2 [Spent]

PART 1

Preliminary matters

3 Interpretation

(1) In this Act, unless the context otherwise requires –
“Convention” means the 1972 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction set out in the Schedule;

“Minister” means the Minister for External Affairs;

“person” or any term descriptive of a person includes an actual person, a corporation sole, a body corporate, and an unincorporated body.

(2) Terms that are not defined in this Act have the meaning given in the Convention.

4 Act binds the Government

This Act binds the Government.

5 Application

- (1) This Act applies to—
- (a) acts done in Niue by any person; and
 - (b) acts done outside Niue—
 - (i) by a resident of Niue; or
 - (ii) by any person on board a sea vessel or aircraft registered in Niue or belonging to, or in the possession of, Niue.
- (2) In subsection (1)(b)(i), “resident of Niue” —
- (a) means a person who normally resides in Niue; or
 - (b) means a person who, having been actually resident in Niue with the intention of residing there indefinitely, is outside of Niue, and ever since being outside Niue, has had the intention to return to Niue to reside indefinitely; but
 - (c) does not include a person who has resided outside Niue for a continued period of more than 3 years regardless of his or her intention to return to Niue, unless for substantially the entire period the person is –
 - (i) outside Niue for the purposes of undergoing a course of education or technical training or instruction; or
 - (ii) is in the service of the Niue Government.

PART 2

Implementation of the Convention

6 Prohibitions

- (1) No person may develop, produce, manufacture, possess, stockpile, otherwise acquire or retain, transfer to any recipient directly or indirectly, or use —
- (a) any microbial or other biological agent or any toxin, whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes; or
 - (b) any weapon, equipment, or means of delivery designed to use such an agent or toxin for hostile purposes or in armed conflict.
- (2) No person may in any way assist, encourage, or induce any State, group of States, or international organizations to manufacture or otherwise acquire any of the things specified in subsection (1).
- (3) Any person who does anything described in subsection (1) or (2) commits an offence, and is liable on conviction to the penalty set out in section 14(1).

Enforcement

7 National Authority

The Office of the Secretary to the Government is the National Authority for the purposes of the Convention.

8 Designation of inspectors

- (1) The Minister may designate a suitable person or class of persons as an inspector for the purpose of the enforcement of this Act, and set conditions applicable to the person's inspection activities,
- (2) The Minister must consult any other Minister who has powers in relation to microbial or other biological agents or toxins before designating any person under subsection (1).

Biological Weapons Convention Act

(3) The Minister must give a certificate of designation to any inspector designated under subsection (1) that states the privileges and immunities that apply to the person and any powers under section 9 or 10.

(4) An inspector must, on entering any place under this Act, produce the certificate of designation at the request of any individual in charge of that place.

9 Entry and inspection

(1) For the purpose of ensuring compliance with this Act, an inspector may enter and inspect, at any reasonable time, any place in which the inspector believes on reasonable grounds there is —

- (a) any microbial or other biological agent or any toxin; or
- (b) any weapon, equipment, or means of delivery designed to use such an agent or toxin; or
- (c) any information relevant to the administration of this Act.

(2) An inspector carrying out an inspection may do any of the following:

- (a) require the attendance of, and question, any person who the inspector considers will be able to assist in the inspection:
- (b) examine, take samples of, detain, or remove any thing referred to in subsection (1):
- (c) require any person to produce for inspection, or to copy, any document that the inspector believes contains any information relevant to the administration of this Act:
- (d) require that any individual in charge of the place take any measures that the inspector considers appropriate:
- (e) use or cause to be used any computer or data processing system to examine any data contained in or available to the computer or system:
- (f) reproduce or cause to be reproduced any record from the data, in the form of a printout or other intelligible output, and remove the printout or other output for examination or copying:
- (g) use or cause to be used any equipment at the place to make copies of any data or any record, book of account, or other document.

(3) An inspector carrying out an inspection must be accompanied by a Police Officer in uniform and any other person appointed by the Minister.

10 Warrant to enter dwelling-house

(1) An inspector may not enter a dwelling-house except with the consent of the occupant or under the authority of a warrant issued under subsection (2).

(2) A Commissioner of the High Court may issue a warrant authorising an inspector to enter a dwelling-house on conditions specified in the warrant. if the Commissioner is satisfied that —

- (a) the conditions for entry described in section 9(1) exist in relation to the dwelling-house; and
- (b) entry into the dwelling-house is necessary for any purpose relating to the administration of this Act; and
- (c) entry into the dwelling-house has been refused or there are reasonable grounds to believe that entry will be refused.

(3) An inspector may not use force to execute the warrant unless its use is specifically authorised in the warrant.

(4) An inspector may enter and inspect a dwelling-house without a warrant if the conditions for obtaining a warrant exist but by reason of urgency it would not be practical to obtain a warrant.

11 Search and seizure

An inspector who searches, seizes and detains any thing must, as soon as practicable, advise its owner or the person having the possession, care, or control of it at the time of its seizure of the reason for the seizure.

12 Obstruction and false statements

(1) A person must not obstruct, hinder, or knowingly make any false or misleading statement either orally or in writing to an Inspector carrying out duties under this Act.

(2) The owner or person in charge of a place entered under section 9 or 10, and every person present in that place, must give an inspector all reasonable assistance to enable the inspector to perform his or her duties, and must supply the inspector with any information related to the administration of this Act that the inspector reasonably requests.:

(3) Except with the authority of an inspector, a person must not remove, alter, or interfere in any way with anything seized under this Act.

(4) Any person who breaches or fails to comply with subsection (1), (2), or (3) commits an offence and is liable on conviction to the penalty set out in section 14(2).

13 Directions requiring disposal of dangerous substances

(1) If the Minister has reasonable grounds for believing that adequate measures to ensure the security of any dangerous substance kept or used at any premises are not being taken and are unlikely to be taken, the Minister may give a direction to an inspector requiring the inspector to dispose of the substance.

(2) The direction must specify the manner in which, and time by which, the dangerous substance must be disposed of.

(3) Any person who fails to comply with a direction commits an offence and is liable on conviction to the penalty set out in section 14(2).

14 Penalties

(1) The penalty for an offence under section 6(3) is:

- (a) in the case of an individual, imprisonment for a term not exceeding 10 years, or to a fine not exceeding 10 000 penalty units, or both;
- (b) in any other case, a fine not exceeding 10 000 penalty units.

(2) The penalty for an offence under section 12(4) and section 13(3) is:

- (a) in the case of an individual, imprisonment for a term, not exceeding 12 months, or to a fine not exceeding 1000 penalty units or both;
- (b) in any other case, a fine not exceeding 1000 penalty units.

15 Liability of directors and others

(1) This section applies to any director, manager, secretary or other similar officer of a body corporate or any person who was purporting to act in such capacity.

(2) If a body corporate is convicted of an offence under this Act, then if it is proved that the offence was committed with the consent and connivance of, or is attributable to any negligence on the part of, a person to whom this section applies, that

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person, as well as the body corporate, is guilty of that offence and is liable to the appropriate penalty under section 14.

PART 3

Miscellaneous

16 Regulations

Cabinet may make regulations —

- (a) identifying substances or things that are, or are not, microbial or biological agents, toxins, equipment or means of delivery for the purposes of this Act;
- (b) publishing the criteria for the designation of inspectors;
- (c) prescribing the privileges and immunities of inspectors;
- (d) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving full effect.

Schedule .

Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

The States Parties to this Convention,

Determined to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction, and convinced that the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons and their elimination, through effective measures, will facilitate the achievement of general and complete disarmament under strict and effective international control,

Recognising the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Reaffirming their adherence to the principles and objectives of that Protocol and calling upon all States to comply strictly with them,

Recalling that the General Assembly of the United Nations has repeatedly condemned all actions contrary to the principles and objectives of the Geneva Protocol of 17 June 1925,

Desiring to contribute to the strengthening of confidence between peoples and the general improvement of the international atmosphere,

Desiring also to contribute to the realisation of the purposes and principles of the Charter of the United Nations,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Recognising that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons, and determined to continue negotiations to that end,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimise this risk,

Have agreed as follows:

ARTICLE I

Each State Party to this Convention undertakes never in any circumstances to develop, produce, stockpile or otherwise acquire or retain:

1. microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
2. weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

ARTICLE II

Each State Party to this Convention undertakes to destroy, or to divert to peaceful purposes, as soon as possible but not later than nine months after the entry into force of the Convention, all agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, which are in its possession or under its jurisdiction or control. In implementing the provisions of this Article all necessary safety precautions shall be observed to protect populations and the environment.

ARTICLE III

Each State Party to this Convention undertakes not to transfer to any recipient whatsoever, directly or indirectly, and not in any way to assist, encourage, or induce any State, group of States or international organisations to manufacture or otherwise acquire any of the agents, toxins, weapons, equipment or means of delivery specified in Article I of the Convention.

ARTICLE IV

Each State Party to this Convention shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of the agents, toxins, weapons, equipment and means of delivery specified in Article I of the Convention, within the territory of such State, under its jurisdiction or under its control anywhere.

ARTICLE V

The States Parties to this Convention undertake to consult one another and to cooperate in solving any problems which may arise in relation to the objective of, or in the application of the provisions of, the Convention. Consultation and cooperation pursuant to this Article may also be undertaken through appropriate international procedures within the framework of the United Nations and in accordance with its Charter.

ARTICLE VI

(1) Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.

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(2) Each State Party to this Convention undertakes to co-operate in carrying out any investigation which the Security Council may initiate, in accordance with the provisions of the Charter of the United Nations, on the basis of the complaint received by the Council. The Security Council shall inform the States Parties to the Convention of the results of the investigation.

ARTICLE VII

Each State Party to this Convention undertakes to provide or support assistance, in accordance with the United Nations Charter, to any Party to the Convention which so requests, if the Security Council decides that such Party has been exposed to danger a result of violation of the Convention.

ARTICLE VIII

Nothing in this Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

ARTICLE IX

Each State Party to this Convention affirms the recognised objective of effective prohibition of chemical weapons and, to this end, undertakes to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes.

ARTICLE X

(1) The State Parties to this Convention undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the use of bacteriological (biological) agents and toxins for peaceful purposes. Parties to the Convention in a position to do so shall also co-operate in contributing individually or together with other States or international organisations to the further development and application of scientific discoveries in the field of bacteriology (biology) for the prevention of disease, or for other peaceful purposes.

(2) This Convention shall be implemented in a manner designed to avoid hampering the economic or technological development of States Parties to the Convention or international co-operation in the field of peaceful bacteriological (biological) activities, including the international exchange of bacteriological (biological) agents and toxins and equipment for the processing, use or production of bacteriological (biological) agents and toxins for peaceful purposes in accordance with the provisions of the Convention.

ARTICLE XI

Any State Party may propose amendments to this Convention. Amendments shall enter into force for each State Party accepting the amendments upon their acceptance by a majority of the States Parties to the Convention and thereafter for each remaining State Party on the date of acceptance by it.

ARTICLE XII

Five years after the entry into force of this Convention, or earlier if it is requested by a majority of Parties to the Convention by submitting a proposal to this effect to the Depositary Governments, a conference of States Parties to the Convention shall be held at Geneva, Switzerland, to review the operation of the Convention, with a view to assuring that the purposes of the preamble and the provisions of the Convention, including the provisions concerning negotiations on chemical weapons, are being realised. Such review shall take into account any new scientific and technological developments relevant to the Convention.

ARTICLE XIII

(1) This Convention shall be of unlimited duration.

(2) Each State Party to this Convention shall in exercising its national sovereignty have the right to withdraw from the Convention if it decides that extraordinary events, related to the subject matter of the Convention, have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other States Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

ARTICLE XIV

(1) This Convention shall be open to all States for signature. Any State which does not sign the Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

(2) This Convention shall be subject to ratification by signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

(3) This Convention shall enter into force after the deposit of instruments of ratification by twenty-two Governments, including the Governments designated as Depositaries of the Convention.

(4) For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

(5) The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or of accession and the date of the entry into force of this Convention, and of the receipt of other notices.

(6) This Convention shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

ARTICLE XV

This Convention, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of the Convention shall be transmitted by the Depositary Governments to the Governments of the signatory and acceding States.

BIOSECURITY ACT 2016.

2016/337 – 24 December 2016

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An Act to state the law relating to the importing, exporting, and internal control of animals, plants, and other things for the purposes of preventing and managing biosecurity risks to Niue

1 Title
This Act is the Biosecurity Act 2016.:

2 [Spent]

PART 1 PRELIMINARY MATTERS

3 Interpretation

In this Act, unless the context otherwise requires —
“animal” —

- (a) means any member of the animal kingdom (other than a human being), whether alive or dead; and
- (b) includes —
 - (i) the egg, embryo, ova, semen, or other organic animal tissue from which another animal could be produced; and
 - (ii) the hide, skin, hair, feathers, shell, horns, hoof, viscera, or any other part or of the body of an animal;

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“animal product” —

- (a) means any thing derived from an animal whether or not treated or sterilised to the stage where it is rendered free from any viable form of any organism capable of causing disease; and
- (b) includes —
 - (i) meat, fat, milk, whey, cream, butter, cheese, eggs, and any other foodstuffs derived from an animal; and
 - (ii) the dung, urine, faeces, saliva, bone, or blood of an animal, or any article or substance derived from the dung, urine, faeces, saliva, bone, or blood of an animal; and
 - (iii) the secretions of an animal; and
 - (iv) any product or biological preparation derived from tissue or secretions of an animal;

“area of Niue” means any area of —

- (a) Crown or Niuean land in Niue, including any buildings, premises, or private homes on that land; and
- (b) the territorial sea or contiguous zone of Niue (as defined in the Maritime Zones Act 2013);

“baggage” —

- (a) means any item that accompanies an individual on a vessel or an aircraft; and
- (b) includes the clothing and any thing attached or otherwise connected to the body or clothing of the individual;

“Biosecurity Authority”, or “Authority”, means the Niue Biosecurity Authority established by section 35;

“biosecurity clearance agent” means a resident of Niue appointed in accordance with section 80 to carry out, on behalf of a person, one or more of the person's duties under this Act;

“biosecurity holding area” means any territorial waters or land designated under section 53 as a biosecurity holding area;

“biosecurity officer” means the Director, the chief biosecurity officer, the senior biosecurity officer, and those individuals appointed or designated as biosecurity officers under section 40;

“biosecurity risk” means the risk of harm or adverse to animals, plants, human beings, the environment, or economic activities;

“biosecurity risk assessment” —

- (a) means an evaluation by a suitably qualified scientific expert of the biosecurity risk posed by the thing to which the assessment relates; and
- (b) includes an assessment of whether the thing should be regulated under this Act (for example, by prohibiting or restricting its importation into Niue);

“captain” —

- (a) in relation to a vessel, means the person for the time being having command or charge, or apparent command or charge, of the vessel, other than a pilot for the vessel;
- (b) in relation to an aircraft, means the person for the time being having command or charge, or apparent command or charge, of the aircraft;

“chief biosecurity officer” means the individual appointed under section 38 as the chief biosecurity officer;

“clearance”, in respect of an individual, a vessel, an aircraft, an item, or any other thing, means the permit or permits that must be obtained, and the requirements and processes that must be complied with, under this Act before the individual, vessel,

- aircraft, item, or other thing may enter, remain in, or depart from Niue, as the case may be;
- “contaminated”, in relation to a thing or place, means a living pest or disease is or has been present in, on, or at the thing or place country of origin includes a country where an item is opened and repacked or repackaged before it arrives in Niue;
- “Department” means —
- (a) the Department of Agriculture, Forestry and Fisheries; or
 - (b) if another government department is responsible for the administration of this Act, that department;
- “Director” means —
- (a) the Director of the Department of Agriculture, Forestry and Fisheries; or
 - (b) if another government department is responsible for the administration of this Act, the Director of that government department;
- “disease”, in relation to an animal or plant —
- (a) means any unhealthy condition in the animal or plant that is known or suspected to be caused by an organism; and
 - (b) includes —
 - (i) a disease transmissible from an animal or plant to a human being; and
 - (ii) a disease capable of harming the environment; and
 - (iii) exposure to a causal agent of a disease;
- “diseased” —
- (a) in relation to an animal or plant, means that the animal or plant is or has been affected by a disease;
 - (b) in relation to an animal product or plant product, means that the product is derived from an animal or plant that is or has been affected by a disease;
- “environment” means —
- (a) all natural and physical elements; and
 - (b) includes —
 - (i) land, marine areas, freshwater supplies, and air; and
 - (ii) ecosystems and their constituent parts, including people and communities; and
 - (iii) the natural and physical qualities and characteristics of an area that contributes to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes (commonly known as amenity values);
- “export specification”, in relation to a restricted item, means the requirements under section 18 that must be satisfied before the item may be exported;
- “exporter”, in relation to an item, means the person who sends or causes the item to be sent from Niue, and includes a person who sends an item from Niue as baggage; and export has a corresponding meaning;
- “genetic material” means any material containing functional units of heredity, whether of plant, animal, microbial, or other origin;
- “host material” means packing material, containers, fittings, litter, manure, fodder, or any other thing that may, in the normal course of events, have contact with animals, plants, animal products, or plant products;
- “import specification”, in relation to a restricted item, means the requirements specified in regulations made under section 8 that must be satisfied before the item may be imported;

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“importer”, in relation to an item, means the person who brings or causes the item to be brought into Niue, and includes a person who brings an item into Niue as baggage; and import has a corresponding meaning;

“infected”, in relation to a thing or place, means that the thing or place has been in direct or indirect contact with a diseased animal, animal product, plant, or plant product;

“infested”, in relation to a thing or place, means that a living pest or disease is present in, on, or at the thing or place;

“item” —

- (a) means human remains and any kind of moveable property; and
- (b) without limiting the ordinary meaning of moveable property, includes —
 - (i) animals, plants, animal products, and plant products; and
 - (ii) soil, sand, gravel, aggregate, and other industrial rocks and building stones; and
 - (iii) genetic material; and
 - (iv) host material; and
 - (v) rubbish;
- (c) includes a container of any description or kind in which human remains are encased or stored; and
- (d) includes a container of any description or kind in which moveable property is encased or stored; and
- (e) in relation to items arriving in Niue other than as baggage, includes a quantity or consignment of items, whether the same as each other or different, that arrive in or depart from Niue in the same vessel or aircraft and share one or more common characteristics (for example, the items are imported or exported by the same person, are to be received at their destination by the same person, or are packaged together);

“living modified organism or LMO” —

- (a) means a living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology techniques (being techniques, not used in traditional breeding and selection, that overcome natural physiological reproductive barriers or recombination barriers); and
- (b) includes agricultural crops (such as taro) that have been genetically modified for greater productivity or for resistance to pests or disease;

“Minister” means —

- (a) the Minister for Agriculture, Forestry and Fisheries; or
- (b) if another government department is responsible for the administration of this Act, the Minister responsible for that department;

“non-complying” —

- (a) in relation to an LMO, means an LMO —
 - (i) for which permission to import is subject to regulations made under section 6; and
 - (ii) that does not comply or fully comply with the requirements of those regulations; and
- (b) in relation to a restricted item, means a restricted item —
 - (i) for which permission to import is subject to regulations made under section 8 or for which permission to export is subject to clearance under section 18, and
 - (ii) that does not comply or fully comply with the requirements of those regulations or the clearance;

“organism” —

- (a) means any organism capable of transferring or replicating genetic material; and
- (b) includes —
 - (i) sterile organisms; and
 - (ii) viruses, viroids, plasmids, and bacteriophages; and
 - (iii) micro-organisms; and
 - (iv) subject to paragraph (c), a genetic structure that is capable of replicating itself (whether that structure comprises all or only part of an entity, and whether it comprises all or only part of the total genetic structure of the entity); and
 - (v) a reproductive cell or developmental stage of an organism; and
 - (vi) any particle that is a prion; but
- (c) does not include a human or a genetic structure derived from a human;

“owner”, in relation to a vessel or aircraft, means the owner or charterer of the vessel or aircraft;

“permit” means a permit, consent, certificate, or other authorisation that may be obtained or granted under this Act;

“pest” means any organism that causes disease or is detrimental to, or capable of harming or adversely affecting, one or more animals, plants, animal products, plant products, or human beings, or the environment;

“phytosanitary” certificate means a certificate relating to a plant or plant product that —

- (a) is issued by the appropriate government authority of the country of origin; and
- (b) certifies that the plant or plant product is substantially free from plant pests and diseases and meets the plant health import requirements of the receiving country; and
- (c) is patterned after the model certificates issued by the Food and Agriculture Organization, the body responsible for the International Plant Protection Convention (commonly known as IPPC);

“plant” —

- (a) means all species, varieties, or types of vegetation, or parts of them;
- (b) includes —
 - (i) stems, branches, tubers, bulbs, cultures, corms; stocks, budwood, cuttings, layers, slips, suckers, roots, leaves, flowers, fruit, seeds, and spores; and
 - (ii) any other plant growth; and
- (c) includes any dead thing referred to in paragraph (a) or (b);

“plant product” —

- (a) means any product manufactured wholly or partly from one or more plants; and
- (b) includes timber (including round wood, sawn wood, wood chips, and dunnage, with or without bark);

“private home” means a building or part of a building that is occupied exclusively as the home or residence of a household;

“prohibited item” means, as the case may be —

- (a) an item the importation of which is prohibited by regulations made under section 7;
- (b) an item the exportation of which is prohibited by regulations made under section 9;

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“prohibited pest or disease” means a pest or disease the importation of which is prohibited by regulations made under section 5;

“quarantine area” means territorial waters or land designated under section 54 as a quarantine area;

“quarantine station” means land designated under section 55 as a quarantine station;

“receiving country” means the country that is the intended destination of an individual, item, or other thing;

“register” means the register kept by the Biosecurity Authority in accordance with section 58;

“restricted item” means, as the case may be —

(a) an item the importation of which is subject to regulations made under section 8; or

(b) an item the exportation of which is subject to clearance under section 18;

“rubbish” means organic and inorganic waste of any kind;

“sanitary certificate” means an international health certificate relating to an animal or animal product that —

(a) is issued by the country of origin of the animal or animal product; and

(b) certifies that the animal or animal product is substantially free from pests and diseases and in other respects meets the animal health import requirements of the receiving country; and

(c) complies with the relevant requirements of, as the case may be —

(i) the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (commonly known as the SPS Agreement); or

(ii) any other relevant international standard; or

(iii) the country of origin;

“senior biosecurity officer” means the individual appointed under section 39 as the senior biosecurity officer;

“treatment” —

(a) means any procedure for the killing, removal, modification, or rendering infertile or non-viable of a pest or disease by way of cleansing, fumigation, inoculation, disinfection, decontamination, or otherwise; and

(b) includes sampling for 1 or more pests or diseases;

“vehicle” includes a bicycle (whether motorised or not) and any other wheeled conveyance;

“vessel” includes a ship, hovercraft, boat, ferry, raft, yacht, canoe, or pontoon that is used as a conveyance in or on water, whether or not it is self-propelled;

“warrant” means a warrant issued in accordance with section 72.

4 Act binds the Government

This Act binds the Government.

PART 2

CABINET POWERS OF PROHIBITION AND REGULATION

5 Cabinet may prohibit importation of pest or disease

(1) Cabinet may make regulations prohibiting the importation of a pest or disease, whether or not the pest or disease is already present in Niue.

(2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the pest or disease.

(3) A person who imports or attempts to import a pest or disease prohibited by regulations made under subsection (1) commits an offence and is liable on conviction —

- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, to a fine not exceeding 2 500 penalty units.

6 Cabinet may prohibit or regulate importation of LMO

(1) Cabinet may make regulations —

- (a) prohibiting the importation of an LMO; or
- (b) permitting the importation of an LMO subject to the conditions specified in the regulations.

(2) Subsection (1) applies whether or not the LMO is already present in Niue.

(3) Before acting under subsection (1), Cabinet shall consult the Biosecurity Authority, which shall, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the LMO.

(4) A person who imports or attempts to import an LMO prohibited by regulations made under subsection (1)(a), or imports or attempts to import an LMO in breach of any conditions specified in regulations made under subsection (1)(b) commits an offence and is liable on conviction to —

- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, a fine not exceeding 2 500 penalty units.

7 Cabinet may prohibit importation of items

(1) Cabinet may make regulations prohibiting the importation of one or more items if Cabinet considers that their presence in Niue would pose an unacceptable biosecurity risk.

(2) The regulations may apply to items irrespective of country of origin or to items from one or more countries of origin specified in the regulations.

(3) Cabinet must review regulations made under this section at not more than 12-monthly intervals, the first interval beginning on the date on which the regulations come into force.

(4) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the item or items.

(5) A person who imports or attempts to import an item prohibited from being imported by regulations made under subsection (1) commits an offence and is liable on conviction to —

- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, a fine not exceeding 2 500 penalty points.

(6) A person who owns or possesses an item imported in breach of regulations made under subsection (1) commits an offence and is liable on conviction to —

- (a) in the case of an individual, a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, a fine not exceeding 2 500 penalty units.

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(7) However, subsections (5) and (6) do not apply if the item was imported or was in the process of being imported (for example the item was on board a vessel or an aircraft destined for Niue) before the regulations prohibiting its importation came into force.

(8) Despite (7), the Biosecurity Authority may require the item to be inspected and, if necessary, treated or destroyed, at the owner's expense. If the item is destroyed, the owner is not entitled to compensation for its destruction.

8 Cabinet may regulate importation of items

(1) Cabinet may make regulations requiring that one or more of the following be satisfied before an item may be imported:

- (a) the granting of an import permit for the item under section 76;
- (b) treatment of the item on arrival (which must be no more than is reasonably necessary to reduce or eliminate any biosecurity risk that may arise from allowing the item to be imported);
- (c) if the item is an animal or animal product, a sanitary certificate;
- (d) if the item is a plant or plant product, a phytosanitary certificate.

(2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the item or items and, in doing so, must have regard to—

- (a) the requirements of any relevant international instrument such as the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (commonly known as the SPS Agreement; and
- (b) any generally accepted principle of international law relating to biosecurity.

(3) A person who imports or attempts to import an item in breach of regulations made under subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, to a fine not exceeding 2 500 penalty units.

(4) A person who owns or possesses an item imported in breach of regulations made under subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, to a fine not exceeding 2 500 penalty units.

(5) However, subsection (4) does not apply if the item was imported or was in the process of being imported (for example, the item was on board a vessel or an aircraft destined for Niue) before the regulations prohibiting its importation came into force.

(6) Despite subsection (5), the Biosecurity Authority may require the item to be inspected and, if necessary, treated or destroyed, at the owner's expense. If the item is destroyed, the owner is not entitled to compensation for its destruction.

9 Cabinet may prohibit exportation of items

(1) Cabinet may make regulations prohibiting the exportation of one or more items if the Minister has consulted the Biosecurity Authority and it has confirmed that—

(a) dealings with the item or items are prohibited under generally accepted international law; or .

(b) the receiving country for the item or items prohibits their importation and the country has notified the Biosecurity Authority of that fact. .

(2) The Biosecurity Authority must review regulations made under this section at not more than 12-monthly intervals, the first interval beginning on the date on which the regulations come into force, and make any recommendations for change to Cabinet.

(3) A person who exports or attempts to export an item prohibited under subsection (1) commits an offence and is liable on conviction —

(a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;

(b) in any other case, to a fine not exceeding 2 500 penalty units.

10 Cabinet may regulate pests, diseases, and LMOs already present in Niue

(1) Cabinet may make regulations setting rules in respect of a pest, disease, or LMO already present in Niue.

(2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority, which must, as part of the consultation, provide Cabinet with a biosecurity risk assessment for the pest, disease, or LMO.

(3) A person who acts in breach of any rule made under subsection (1) commits an offence and is liable on conviction —

(a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;

(b) in any other case, to a fine not exceeding 2 500 penalty units.

PART 3

BIOSECURITY CONTROLS RELATING TO ARRIVALS, DEPARTURES, AND TRANSITS

Arrivals

11 Incoming passengers and crew

(1) Every person who arrives in Niue on board a vessel or an aircraft, including the crew, must complete a passenger arrival declaration in a form prescribed by the Director and provide it to a biosecurity officer.

(2) A biosecurity officer may, before granting entry to the person, detain the person for questioning or search or detain any baggage in the possession of the person for inspection.

(3) A person who fails to make a declaration as required by subsection (1), or provides false or misleading information in a declaration, commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both.

(4) Nothing in this section limits or affects section 16.

12 Incoming vessels and aircraft

(1) The captain of a vessel or an aircraft arriving in Niue must —

(a) make an arrival declaration in the prescribed form; and

(b) obtain clearance for the vessel or aircraft in accordance with subsection (3).

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- (2) An arrival declaration —
- (a) must be made
 - (i) not less than 72 hours before the estimated time of arrival for a scheduled visit; or
 - (ii) not less than 12 hours before the estimated time of arrival for an unscheduled visit; and
 - (b) may be made by electronic means, in accordance with any directions of the chief biosecurity officer; and
 - (c) may be made through a biosecurity clearance agent; and
 - (d) may be made in conjunction with or as part of a declaration made for the purposes of customs or other border matters.
- (3) For the purposes of subsection (1)(b), the captain must, immediately on arrival —
- (a) take the vessel or aircraft to the seaport or airport biosecurity holding area and permit a biosecurity officer to board and search it; and
 - (b) provide to the biosecurity officer any of the following documents that he or she requests:
 - (i) the log, cargo manifest, bill of lading, stores list, passenger list, or crew list for the vessel or aircraft;
 - (ii) any other document relating to the vessel or aircraft that the officer believes on reasonable grounds is necessary for him or her to inspect for the purposes of deciding whether to grant clearance for the vessel or aircraft; and
 - (c) complete a clearance application in the prescribed form and pay the prescribed fee.
- (4) A biosecurity officer may grant clearance for a vessel or an aircraft if he or she is satisfied that —
- (a) there is no prohibited pest or disease, prohibited or non-complying LMO, or prohibited or non-complying restricted item in or on the vessel or aircraft; and
 - (b) there is no other thing in or on the vessel or aircraft that may pose a biosecurity threat to Niue; and
 - (c) the prescribed fee has been paid (or will be paid in accordance with any payment schedule previously agreed between the Biosecurity Authority and the owner of the vessel or aircraft).
- (5) A clearance may be granted unconditionally or subject to specified conditions. If the clearance is granted subject to specified conditions, the owner of the vessel or aircraft must pay a bond in the prescribed amount.
- (6) Without limiting subsection (5) —
- (a) the captain of a vessel may be required to clean the outside of the vessel before being permitted to bring the vessel into port and, for that purpose, the chief may direct the captain to take the vessel a minimum specified distance offshore before the cleaning begins;
 - (b) the captain of an aircraft may be required to clean the outside of the aircraft and, for that purpose, the chief biosecurity officer may direct the captain to park the aircraft in a particular location before the cleaning begins.
- (7) No person or thing may leave a vessel or an aircraft without the permission of a biosecurity officer until clearance has been granted for it.
- (8) The captain of a vessel or an aircraft commits an offence who —
- (a) fails to make an arrival declaration or knowingly provides false or misleading information for the purposes of the declaration; or

(b) fails to obtain clearance or fails to comply with any conditions of clearance imposed under subsection (5); or

(c) knowingly allows any person or thing to leave a vessel or an aircraft in breach of subsection (7).

(9) A biosecurity agent who fails to make an arrival declaration or knowingly provides false or misleading information for the purposes of a declaration commits an offence.

(10) A person who leaves a vessel or an aircraft without the permission of a biosecurity officer before clearance has been granted for the vessel or aircraft commits an offence.

(11) A person convicted of an offence against any of subsections (8) to (10) is liable —

(a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both:

(b) in any other case, to a fine not exceeding 2 500 penalty units.

13 Quarantine of vessels and aircraft .

(1) The chief biosecurity officer may, by written notice, order the captain of a vessel or an aircraft to move it to a quarantine area, on its arrival or during or after inspecting it for clearance purposes, if the chief biosecurity officer believes on reasonable grounds that the vessel or aircraft —

(a) is infected, contaminated, or infested with or by a prohibited pest or disease; or

(b) is carrying one or more prohibited or non-complying LMOs; or

(c) is carrying one or more prohibited or non-complying restricted items; or

(d) is carrying one or more things permitted under section 79 in breach of any conditions of that permission; or

(e) is carrying any other thing that the chief biosecurity officer believes on reasonable grounds may pose a biosecurity threat to Niue.

(2) The notice must give the reasons why the order has been made.

(3) However, if the chief biosecurity officer believes on reasonable grounds that a vessel or an aircraft poses a serious biosecurity threat to Niue that cannot adequately be mitigated at a quarantine area —

(a) the Director must immediately inform the Minister; and

(b) the Minister may order the vessel or aircraft to leave Niue having first consulted the director of the government department responsible for the movement of vessels or aircraft, as the case may be. .

(4) The owner of a quarantined vessel or aircraft is responsible for any costs incurred as a result of its quarantining, including any treatment of the aircraft or vessel or, as the case may be, the costs associated with the vessel or aircraft being required to leave Niue. .

14 Management of quarantined vessel or aircraft

(1) The chief biosecurity officer must give written directions to the captain of a quarantined vessel or aircraft on the following matters: .

(a) the movement of the vessel or aircraft while quarantined and, if applicable, the movement of passengers and crew who arrived on the vessel or aircraft; and

(b) any treatment to be taken in relation to the vessel or aircraft.

(2) A vessel or an aircraft may be released from a quarantine area only if the chief biosecurity officer is satisfied that —

- (a) it is substantially free from the biosecurity risk for which it was . quarantined (including the suitable containment on the vessel or aircraft of any thing that is to be reconsigned); and
- (b) any quarantine costs incurred have been paid.

(3) The release may be unconditional or subject to specified conditions, in which case the owner of the vessel or aircraft must pay a bond in the prescribed amount.

(4) The captain of a vessel or an aircraft who fails to take all reasonable . steps to comply with any directions given under subsection (1) commits an offence and is liable on conviction to a fine not exceeding . 500 penalty units or a term of imprisonment not exceeding 15 months, or both.

15 Obligations of captains while vessel or aircraft in Niue

(1) The captain of a vessel must, while the vessel is berthed in, or moored off, Niue, ensure that —

- (a) all necessary steps are taken to prevent any animal on board the vessel from making contact with any animal on shore, unless permitted by and then only as directed by the officer; and .
- (b) rodent guards are secured on the vessel's mooring lines when berthing or mooring and during the vessel's stay; and
- (c) the vessel complies with any prescribed rat extermination requirements; and
- (d) all hatches, holds, and enclosed cargo areas are sealed during the hours of darkness, other than when necessary for the working of . the vessel, including when necessary for the care of the vessel's cargo; and
- (e) all rubbish generated on the vessel is stored in securely fastened and leak-proof containers; and
- (f) no sewage, bilge, ballast, or other wastewater is discharged into . the sea; and
- (g) no stores are removed from the vessel, except in accordance with the directions of a biosecurity officer.

(2) The captain of an aircraft must, while the aircraft is landed in Niue, ensure that —

- (a) all necessary steps are taken to prevent any animal on board the aircraft from making contact with any animal outside the aircraft, unless permitted by a biosecurity officer, and then only as directed by the officer; and
- (b) all rubbish generated on the aircraft is stored in securely fastened and leak-proof containers; and
- (c) no sewage or other wastewater is discharged from the aircraft; and
- (d) no stores are removed from the aircraft, except in accordance with the directions of a biosecurity officer.

(3) Rubbish on a vessel that is berthed in or moored off Niue, or on an aircraft landed in Niue, may be removed and disposed of only in accordance with the . directions of a biosecurity officer, and all the costs of disposal, including those relating to the biosecurity officer performing his or her functions, are the responsibility of the owner of the vessel or aircraft and must be paid before it leaves (unless payment has been otherwise agreed between the Biosecurity Authority and the owner).

(4) A captain of a vessel or an aircraft who breaches subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both.

(5) A person who breaches subsection (3) commits an offence and is liable on conviction —

- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, to a fine not exceeding 2 500 penalty units.

16 Incoming items

(1) Every item arriving in Niue other than as baggage must be accompanied by —

- (a) an import clearance application in a form prescribed by the Director and be accompanied by the prescribed fee; and
- (b) if the item is a restricted item, evidence of compliance with the import specifications for the item.

(2) On arrival, any item may be inspected by a biosecurity officer and, for that purpose, the importer of the item must be present and, at the request of the officer, must —

- (a) open the container holding the item or enable the officer to do so; and
- (b) permit the officer to inspect the item; and
- (c) permit the officer to take samples, conduct tests, or take any other action reasonable in the circumstances for the purpose of the officer deciding whether the item may be imported.

(3) A biosecurity officer may do one of the following in relation to an incoming item —

- (a) grant clearance for the item, if he or she is satisfied that —
 - (i) the item is not a prohibited item; and
 - (ii) if the item is a restricted item, the import specifications have been complied with; and
 - (iii) if the item is one to which subsection (1) applies, the application is correctly made and the prescribed fee has been paid;
- (b) grant clearance for the item subject to conditions, including a condition that the item be quarantined, if he or she is satisfied that —
 - (i) the item satisfies the requirements of paragraph (a) but, despite that, a biosecurity risk still exists (for example, because the item, during its transportation, has been or is suspected of being infected, contaminated, or infested with or by a prohibited pest or disease); or
 - (ii) the item satisfies the requirements of paragraph (a)(i) and (iii) but only partly satisfies the requirements of paragraph (a)(ii);
- (c) refuse to grant clearance, in which case the item must be —
 - (i) reconstituted on the vessel or aircraft on which it arrived or, in the case of an item that has arrived by post, placed on the next available vessel or aircraft that carries postal items from Niue; or
 - (ii) destroyed if the chief biosecurity officer considers that the biosecurity risk posed by the item is such that reconstituting it is insufficient to adequately deal with the risk.

(4) The costs associated with the granting of an import clearance are the responsibility of the importer of the item.

(5) The owner of an item who fails to comply a requirement of subsection (1) commits an offence.

(6) A person who fails to comply with a request of a biosecurity officer under subsection (2) commits an offence.

- (7) A person convicted of an offence against subsection (5) or (6) is liable —
- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
 - (b) in any other case, to a fine not exceeding 2 500 penalty units.
- (8) To avoid doubt, subsections (2), (3), (4), (6), and (7) apply to all items that enter Niue, whether as baggage or otherwise.

Departures

17 Export of items

- (1) Any item to be exported from Niue may be inspected by a biosecurity officer before its departure, including for the purpose of determining whether —
- (a) the item is a prohibited item; or
 - (b) the item is subject to section 18 and, if so, whether clearance has been granted for the item under that section.
- (2) For the purpose of subsection (1), the exporter of the item must, on the request of a biosecurity officer —
- (a) open the container holding the item or enable the officer to do so; and
 - (b) permit the officer to inspect the item; and
 - (c) permit the officer to take samples, conduct tests, or take any other action reasonable in the circumstances for the purpose of the officer deciding whether the item may be exported.
- (3) A person commits an offence who —
- (a) exports, or attempts to export, a prohibited item; or
 - (b) exports, or attempts to export, an item subject to section 18 without clearance being granted under that section; or
 - (c) fails to comply with a request of a biosecurity officer under subsection (2).
- (4) A person convicted on an offence against subsection (3) is liable—
- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 12 months, or both;
 - (b) in any other case, to a fine not exceeding 2 500 penalty units.
- (5) To avoid doubt, this section applies to all items that leave Niue, whether as baggage or otherwise.

18 Clearance required for certain items

- (1) An item must not leave Niue if either or both of the following apply unless it is granted export clearance under this section —
- (a) the receiving country requires a sanitary certificate or phytosanitary certificate before the item may be exported to that country;
 - (b) the receiving country requires the item to be treated before it may be exported to that country.
- (2) An application for export clearance must —
- (a) be in a form prescribed by the Director and be accompanied by the prescribed fee; and
 - (b) be made before the item reaches its departure point from Niue; and
 - (c) be made, in accordance with subsection (3), no later than —
 - (i) 7 days before departure (unless otherwise agreed with the chief biosecurity officer) if the item will be outgoing by aircraft;
 - (ii) 14 days before departure (unless otherwise agreed with the chief biosecurity officer) if the item will be outgoing by sea.

- (3) The person must —
 - (a) present the item, the application, and the fee to a biosecurity officer at a location specified by the Biosecurity Authority; and
 - (b) permit the officer to take samples, conduct tests, or take any other action reasonable in the circumstances for the purpose of deciding whether the requirements of the receiving country have been satisfied.
- (4) The costs associated with the granting of an export clearance are the responsibility of the exporter of the item, and a biosecurity officer may withhold granting export clearance and any relevant certificate until those costs have been paid.
- (5) To avoid doubt, this section applies to all items that leave Niue, whether as baggage or otherwise.

19 Departing passengers and crew

- (1) Every person who leaves Niue on board a vessel or an aircraft, including the crew, must, before leaving —
 - (a) submit for inspection, on the request of a biosecurity officer, any item on the person or in the person's baggage; and
 - (b) permit the officer to search the person's baggage.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.
- (3) Nothing in this section limits or affects sections 17 and 18.

20 Search of departing vessels and aircraft

- (1) Subsection (2) applies if the chief biosecurity officer believes on reasonable grounds that there are one or more things on board a vessel or an aircraft leaving Niue that are prohibited items or non-complying restricted items.
- (2) A biosecurity officer may stop the vessel or and do one or more of the following:
 - (a) board and search the vessel or aircraft;
 - (b) require the captain to produce for inspection the log, cargo manifest, bill of lading, stores list, passenger list, crew list, or any other document;
 - (c) direct the captain not to move the vessel or aircraft unless permitted by the officer, and then only as directed by the officer;
 - (d) give the captain any other instruction that is reasonably necessary to protect the receiving country from any biosecurity risk posed by the vessel or aircraft, including requiring the captain to allow the vessel or aircraft to be subjected to any treatment necessary to eliminate that risk.
- (3) A person commits an offence who refuses to permit a search pursuant to subsection (2)(a) or fails to comply with a requirement, direction, or instruction given under any of subsection (2)(b) to (d) and is liable on conviction to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both.

Transits

21 Individuals and items in transit

- (1) A biosecurity officer may require an individual who is in transit through Niue to complete the arrival, departure, or both arrival and departure requirements imposed on a person under this Act if the officer believes on reasonable grounds that the individual or his or her baggage may pose a biosecurity risk to Niue or the receiving country.

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(2) Any item other than baggage that is in transit through Niue may be subject to the import, export, or import and export requirements imposed on items under this Act if a biosecurity officer believes on reasonable grounds that the item may pose a biosecurity risk to Niue or the receiving country.

(3) An individual who refuses to comply with a requirement under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

(4) The owner of an item to which subsection (2) applies who refuses to comply with that subsection commits an offence and is liable on conviction —

- (a) in the case of an individual, to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both;
- (b) in any other case, to a fine not exceeding 250 penalty units.

PART 4

INTERNAL BIOSECURITY CONTROLS

22 Pest and disease surveys

(1) The Biosecurity Authority may conduct a survey of any area of Niue —

- (a) to determine the presence, absence, prevalence, incidence, distribution, or occurrence of any pest or disease in the area;
- (b) to determine the biosecurity risk of moving humans, animals, plants, animal products, plant products, or organisms into, out of, or through the area;
- (c) for any other purpose necessary to ensure the effective implementation of this Act.

(2) For the purposes of conducting a survey, the Authority may, in the survey area —

- (a) inspect and test any inanimate thing, including machinery and equipment;
- (b) test, or take specimens of any animals, plants, animal products, plant products, air, land, or water;
- (c) seek information from any person.

(3) However, a biosecurity officer may undertake an activity referred to in subsection (2)(a) or (b) in relation to a private home only if he or she has a warrant.

(4) A person commits an offence who refuses to —

- (a) permit a biosecurity officer to enter any land, building, or premises, or any private home with a warrant, for the purposes of this section; or
- (b) answer, to the best of his or her knowledge and ability, oral or written questions reasonably put to the person by a biosecurity officer; or
- (c) make available animals, plants, animal products, plant products, or any other thing in the ownership, custody, or control of the person as required.

(5) A person who commits an offence against subsection (4) is liable on conviction —

- (a) in the case of an individual, to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both;
- (b) in any other case, to a fine not exceeding 250 penalty units.

23 Internal of prohibited pests and diseases, LMOs, etc

(1) This section applies if a biosecurity officer believes on reasonable grounds that —

- (a) a prohibited pest or disease, an LMO prohibited under section 6, or a prohibited item is present in Niue; or

- (b) an LMO regulated under section 6 and lawfully present in Niue poses a biosecurity risk; or
- (c) an item or other thing lawfully present in Niue poses a biosecurity risk.
 - (2) The biosecurity officer may —
 - (a) stop, board, and search any vessel, aircraft, or vehicle;
 - (b) enter and search any land, including land adjacent to a private home;
 - (c) with the consent of the owner, enter and search a private home;
 - (d) with a warrant, enter and search a private home.
 - (3) A biosecurity officer may seize any of the following while conducting a search for the purposes of this section —
 - (a) any thing that is evidence of the commission of an offence under this Act;
 - (b) any thing that poses a biosecurity risk.
 - (4) A biosecurity officer who seizes any thing from a person under subsection (3) must —
 - (a) inform the person of the reason for seizing the thing; and
 - (b) give the person a receipt for the thing seized; and
 - (c) remove the thing to a quarantine station or other place of safekeeping and deal with it in accordance with this Act.

24 Detention, testing, and treatment of animals, plants, animal products, and plant products

- (1) The Biosecurity Authority may require an animal, plant, animal product, or plant product to be held at a place specified by the chief biosecurity officer for testing if a biosecurity officer suspects it of being infected, contaminated, or infested with or by a prohibited pest or disease.
- (2) If, after testing, the chief biosecurity officer considers that the animal, plant, animal product, or plant product poses a biosecurity risk, the Authority may —
 - (a) continue to hold it for as long as is necessary to eliminate that risk and, during that time, treat it as necessary; or
 - (b) destroy it, if treatment will not eliminate the risk or an appropriate treatment to eliminate the risk is not available in Niue.
- (3) For the purposes of this section, a biosecurity officer —
 - (a) may direct the owner or person in possession of the animal, plant, animal product, or plant product to remove it to the place specified under subsection (1) or arrange for it to be removed to the specified place; and
 - (b) must give the owner or person in possession written notice in the prescribed form stating the reasons why the animal, plant, animal product, or plant product has been detained; and .
 - (c) if applicable, must give the owner or person in possession written notice in the prescribed form stating where the animal, plant, animal product, or plant product is to be destroyed and the reasons for its destruction.
- (4) The Authority is not responsible for the costs incurred by any person in complying with this section and, if any animal, plant, animal product, or plant product is damaged during its removal, holding, or treatment, or required to be destroyed, the owner is not entitled to compensation for the damage or destruction.

25 Declaration of controlled infested area

(1) Cabinet may, by public notice declare any area of Niue to be a controlled infested area if an animal or a plant in that area is found to be infected, contaminated, or infested with or by a prohibited pest or disease or an LMO prohibited under section 6.

(2) A notice made under subsection (1) —

- (a) must be made as soon as practicable after the finding; and
- (b) must specify the people and things that may not be moved into, out of, and within the area except in accordance with any conditions specified in the declaration; and
- (c) may include an area adjacent to the controlled area if necessary to effectively contain the infestation.

(3) A person who breaches a declaration made under subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both;
- (b) in any other case, to a fine not exceeding 250 penalty units.

26 Management of controlled infested area.

(1) In a controlled infested area, the Biosecurity Authority —

- (a) must ensure the terms of the declaration as a controlled infested area are complied with; and
- (b) may carry out one or more of the following activities to deal with the infestation —
 - (i) enter any land, building, or premises within the area and, if necessary, destock, clean, disinfect, or otherwise treat it;
 - (ii) with the consent of the owner, enter a private home and, if necessary, clean, disinfect, or otherwise treat it;
 - (iii) with a warrant, enter a private home and, if necessary, clean, disinfect, or otherwise treat it;
 - (iv) treat or destroy diseased animals and plants or any other thing, whether inside or outside the area;
 - (v) and treat any restricted item going into, out of, or within the area;
 - (vi) subject to the terms of the declaration, take any other measures that the chief biosecurity officer considers necessary to control the infestation, including measures necessary to control or prevent the movement of any host material of the prohibited pest, disease, or LMO to which the declaration relates within, or outside of the area.

(2) The Authority must consult the Environment Department before carrying out any activity described in any of subparagraphs (i) to (iv) of subsection (1)(b).

(3) The Authority is not responsible for the costs incurred by any person in complying with this section and, if any thing is damaged by any action, or is required to be destroyed, the owner is not entitled to compensation for the damage or destruction.

27 Revocation of declaration of controlled infested area

Cabinet must, by public notice revoke a declaration made under section 25 as soon as practicable after the Biosecurity Authority has advised Cabinet that the declaration is no longer necessary.

28 Declaration of pest-free area

(1) For the purposes of preventing the spread of a pest or a disease, Cabinet may, by public notice declare any area of Niue to be a pest-free area in respect of that pest or disease.

(2) Cabinet may make a declaration under subsection (1) only if the area to which the declaration will apply is an area —

- (a) in which, in the opinion of the Biosecurity Authority (having consulted the Health Department and the Environment Department), the pest or disease does not occur; and
- (b) in relation to which incursions of the pest or disease should be prevented.

29 Management of pest-free area

In an area declared to be a pest-free area under section 28, the Biosecurity Authority may, for the purposes of preventing incursions of the relevant pest or disease into the area —

- (a) control the movement of people and things into, out of, and within the area; and
- (b) inspect and treat or require the treatment of any restricted item entering, within, or leaving the area; and
- (c) monitor the area for any signs of incursion of the pest or disease into the area.

30 Destruction of wild animals

(1) This section applies if the chief biosecurity officer believes on reasonable grounds that a wild or feral animal is infected, contaminated, or infested with or by a prohibited pest or disease.

(2) The chief biosecurity officer may cause the animal to be destroyed and dispose of its carcass in a way that avoids, or avoids any risk of, the spread of the pest or disease.

(3) In this section, wild or feral animal includes any domestic animal that is untethered or unconfined and located more than 100 metres from the animal owner's private home or premises.

31 Notifiable pests and diseases

(1) Cabinet may declare, by public notice —

- (a) a pest or disease to be a notifiable pest or disease; and
- (b) the manner in which a person must notify the Biosecurity Authority of the occurrence of any notifiable pest or disease.

(2) A person who knows of or suspects the occurrence in Niue of a notifiable pest or disease must, as soon as is reasonably practicable, notify the Authority in the manner specified in the notice.

(3) Subsection (2) applies unless the person reasonably believes that the Authority has already been notified of the occurrence.

(4) The captain of a vessel or an aircraft arriving or departing from Niue who knows of or suspects the occurrence of a notifiable pest or disease on board the vessel or aircraft must —

- (a) as soon as is reasonably practicable, notify the Authority in the manner specified in the notice; and
- (b) take any action in relation to the vessel or aircraft that the chief biosecurity officer requires.

(5) A person who fails to comply with subsection (2) or (4) without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

(6) The Authority must record in the register all occurrences of notifiable pests or diseases notified under this section or that are otherwise brought to the notice of the Authority.

32 Release of beneficial organisms and biocontrol agents

(1) Cabinet may authorise in writing the release of beneficial organisms or biocontrol agents that are necessary or suitable for the control or eradication of a pest or disease in Niue.

(2) Before acting under subsection (1), Cabinet must consult the Biosecurity Authority as to the biosecurity risks of the release.

(3) An authorisation under subsection (1) must —

- (a) identify the beneficial organism or biological agent; and
- (b) identify the pest or disease that it is intended to control; and
- (c) identify the area in Niue where it may be released; and
- (d) specify when it may be released; and
- (e) identify the person or persons who may release it and the reporting requirements in relation to the release; and
- (f) state any other conditions to which a release is subject.

(4) The Authority must record in the register —

- (a) the names of any beneficial organisms or biological agents released under this section; and
- (b) the place and extent of any release.

33 Cabinet may declare biosecurity emergency

(1) Cabinet may declare a biosecurity emergency in to the whole or any area of Niue by public notice but only if the Biosecurity Authority has advised Cabinet that —

- (a) an outbreak of a pest or disease has occurred or is likely to occur; and
- (b) the pest or disease poses a serious biosecurity threat to Niue.

(2) A declaration takes effect on the day after public notice is given and notice of the emergency must be displayed on notice boards or signs, or both, throughout the island and within the area concerned.

(3) Cabinet must, by public notice, revoke a declaration made under subsection (1) as soon as practicable after the Authority has advised Cabinet that the biosecurity threat to which the emergency relates is resolved or the threat is now of such a magnitude that emergency measures are no longer required.

(4) Despite subsection (3), a declaration that is in force 6 months after the date on which it came into force is revoked without further authority than this section unless the declaration is extended on or before that date by a further declaration of Cabinet made in accordance with subsection (1).

(5) Subsections (2) and (3) apply to any further declaration of Cabinet made under subsection (4).

34 Management of biosecurity emergency

(1) During a biosecurity emergency, the following persons may take the following actions in the area to which a biosecurity emergency declaration relates (the emergency area) —

- (a) the Minister may require the Chief of Police and any government department to use their resources and lawful powers to assist the Biosecurity Authority in the control or eradication of the pest or disease to which the emergency relates;
- (b) the Director may, in writing, requisition for use by any authorised person any vessel, aircraft, vehicle, machinery, equipment, or other thing that the Director considers necessary to eradicate, prevent, or limit the spread of the pest or disease to which the emergency relates;
- (c) the Director may authorise any person, whether resident in Niue or not, to assist the Biosecurity Authority to effectively respond to the biosecurity emergency.

(2) During a biosecurity emergency, the Biosecurity Authority may take or cause to be taken one or more of the following actions in the emergency area —

- (a) mark the boundaries of the area;
- (b) set up roadblocks at one or more of the entries to and exits from the area;
- (c) set up facilities for the cleaning and disinfection of people, vessels, aircraft, vehicles, machinery, equipment, or any other thing likely to spread the pest or disease to which the emergency relates at one or more of the entries to and exits from the area;
- (d) inspect and, if necessary, disinfect or otherwise treat any person or thing entering or leaving the area who or that is likely to carry the pest or disease or its host material;
- (e) for the purposes of paragraph (d), detain a person or thing for as long as is necessary to minimise or eliminate any biosecurity risk presented by the person or thing.

(3) For the purposes of acting under subsection (2), the Biosecurity Authority may require assistance from any government department that is reasonable in the circumstances, and the directors of those departments must ensure that any personnel, machinery, equipment, or other things requested by the Biosecurity Authority are supplied.

(4) A person commits an offence who —

- (a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of a biosecurity officer, police officer, or other authorised person performing functions in respect of a biosecurity emergency;
- or
- (b) knowingly enters or leaves a biosecurity emergency area other than in accordance with the directions of a biosecurity officer, police officer, or other authorised person; or
- (c) knowingly moves any thing out of or into a biosecurity emergency area, or from one place within the area to another place within the area, except with the permission of a biosecurity officer, police officer, or other authorised person.

(5) A person who commits an offence against subsection (4) is liable on conviction —

- (a) in the case of an individual, to a fine not exceeding 500 penalty units or a term of imprisonment not exceeding 15 months, or both;
- (b) in any other case, to a fine not exceeding 2 500 penalty units.

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(6) Any thing moved in breach of any direction or requirement given under this section may be seized by a biosecurity officer or police officer and —

- (a) held pending criminal proceedings for the breach; or
- (b) if necessary to remove any biosecurity risk, destroyed as the chief biosecurity officer directs.

(7) In respect of any action taken under this section —

- (a) the Government is responsible for the cost of treatment or destruction of any thing; and
- (b) the owner of any land, premises, or thing that is or are used, lost, damaged, or destroyed is entitled to compensation for that use, loss (other than consequential loss), damage, or destruction.

PART 5

ADMINISTRATIVE PROVISIONS

Niue Biosecurity Authority

35 Niue Biosecurity Authority established

(1) This section establishes the Niue Biosecurity Authority.

(2) The Biosecurity Authority comprises —

- (a) the Director of the Department; and
- (b) the chief biosecurity officer appointed under section 38; and
- (c) the senior biosecurity officer appointed under section 39; and
- (d) one or more biosecurity officers appointed under section 40(1); and
- (e) one or more other biosecurity officers (being the individuals referred to in section 40(2)); and
- (f) any administrative, support, or other ancillary staff as is necessary.

36 Functions of Biosecurity Authority

(1) The functions of the Biosecurity Authority are —

- (a) to protect Niue against pests and diseases, including by —
 - (i) preventing their introduction, establishment, and spread to or within Niue;
 - (ii) monitoring, eradicating, containing, or controlling their movement, if already present in Niue;
 - (iii) assessing whether a pest or disease should be prohibited or regulated under this Act;
- (b) to prevent the release, establishment, and spread of other organisms that may adversely affect animals, plants, human beings, and the Niuean environment;
- (c) to facilitate the safe importation of animals, plants, animal products, and plant products, and any related equipment and technology;
- (d) to facilitate the exportation of animals, plants, animal products, and plant products in accordance with the biosecurity requirements of receiving countries;
- (e) to facilitate the safe import and export of other things to and from Niue;
- (f) to facilitate Niue's contribution to international efforts to prevent the spread of pests and diseases affecting animals, plants, human beings, and the environment;
- (g) to provide advice to Cabinet, the Minister, and the Director on biosecurity matters;
- (h) to prepare and maintain, in consultation with relevant government departments, a biosecurity emergency response plan;

- (i) if necessary, to implement the biosecurity emergency response plan;
- (j) to prepare and maintain an operations manual for biosecurity officers;
- (k) to publicise this Act and its requirements and increase public awareness generally of the importance of biosecurity issues.

(2) The Authority must carry out its functions in accordance with this Act. However, to avoid doubt, it is required to fulfil this responsibility only to the extent that available funding and resources allow.

37 Director

(1) The Director is responsible to the Minister and the Secretary to the Government for the efficient and effective management of the Biosecurity Authority.

(2) The functions of the Director are to —

- (a) administer this Act; and
- (b) ensure that the Authority appropriately carries out its functions; and
- (c) advise the Minister on any matter relating to biosecurity (after consulting the chief biosecurity officer); and
- (d) report to the Minister on any matter relating to biosecurity that the Minister directs (after consulting the chief biosecurity officer); and
- (e) liaise with other government departments on matters relating to biosecurity; and
- (f) perform any functions and exercise any powers conferred on him or her under this Act.

(3) The Public Service Commission may appoint a suitably qualified person (whether from the Department or otherwise) to perform the Director's functions or exercise his or her powers under this Act for any period during which the Director is absent from Niue or is temporarily unable to do so, and this Act applies, with any necessary modifications, as if that person were the Director.

38 Chief biosecurity officer

(1) The Public Service Commission must, by written notice, appoint a suitably qualified person (whether from the Department or otherwise) as the chief biosecurity officer.

(2) The chief biosecurity officer is responsible to the Director for the efficient and effective operation of the Biosecurity Authority and, for that purpose, must —

- (a) supervise and administer the Authority; and
- (b) perform the functions and exercise the powers delegated to him or her by the Director; and
- (c) perform the functions and exercise the powers conferred directly on him or her by this Act.

(3) However, before performing any technical function under this Act in respect of which a government department has a legitimate interest, the chief biosecurity officer must consult the director of that department (for example, in a biosecurity emergency, the Director for the Environment must be consulted).

39 Senior biosecurity officer

(1) The Public Service Commission must, by written notice, appoint a suitably qualified person (whether from the Department or otherwise) as the senior biosecurity officer.

(2) For any period during which the chief biosecurity officer is absent from Niue or is temporarily unable to perform or exercise his or her functions and powers

under this Act, the senior biosecurity officer is the acting chief biosecurity officer and this Act applies, with any necessary modifications, as if the senior biosecurity officer were the chief biosecurity officer.

40 Biosecurity officers

(1) The Public Service Commission may, by written notice, appoint one or more biosecurity officers as may be necessary for the purposes of this Act.

(2) In addition, the Director, on the chief biosecurity officer's advice, may, by written notice, designate one or more public servants (whether by name, class, or as the holder of a particular position) as biosecurity officers for the purposes of one or more of the following:

- (a) to assist with a biosecurity emergency;
- (b) to assist with the inspection of a vessel or an aircraft;
- (c) to assist in the monitoring, eradication, containment, or of a pest or disease;
- (d) to assist with any other matter that the chief biosecurity officer reasonably considers necessary.

(3) A designation as a biosecurity officer made under subsection (2) continues until expressly revoked by the Director. However, a designated person may perform the functions and exercise the powers of a biosecurity officer only —

- (a) as directed by the chief biosecurity officer; and
- (b) for the specified purpose for which the person was designated a biosecurity officer.

41 Duty to co-ordinate functions and report certain matters

(1) The Biosecurity Authority must, as far as is reasonably practicable, carry out its responsibilities under this Act in co-ordination with other government departments with responsibilities in areas that relate to the same or similar subject matter as the Authority (for example, those departments dealing with immigration, customs, natural resources, health, and the environment).

(2) Without limiting subsection (1), a biosecurity officer must notify an officer of the Customs Department or an immigration officer of any breach of the Customs Act 1966 or the Immigration Act 2011 that comes to his or her attention.

(3) Other government departments must, so far as is reasonably practicable, carry out their responsibilities in co-ordination with the Authority.

(4) Without limiting subsection (3), immigration officers, officers of the Customs Department, and employees of the Niue Post Office must —

- (a) notify a biosecurity officer of the importation or proposed exportation of any prohibited or restricted item that comes to their attention; and
- (b) hand to a biosecurity officer any prohibited or restricted item that comes into their possession.

Powers of biosecurity officers

42 Power to inspect

(1) A biosecurity officer may inspect any place (other than a private home) if he or she believes on reasonable grounds that —

- (a) anything has been, is being, or is about to be done in or on that place in breach of this Act; or
- (b) there is in or on that place any thing whose presence is a breach of this Act, whether absolutely or by virtue of the lack of some necessary clearance.

(2) A biosecurity officer may inspect any thing if he or she believes on reasonable grounds that the thing breaches this Act, or any action has been, is being, or is about to be done to the thing in breach of this Act.

(3) Without limiting subsections (1) and (2), a biosecurity officer may —

- (a) open and inspect any biosecurity documentation required under this Act;
- (b) open and inspect incoming and outgoing mail;
- (c) take photographs and electronic or other copies of any document or thing;
- (d) unpack, break open, or otherwise facilitate the inspection of any thing, at the owner of the thing's risk and expense.

(4) The owner or occupier of any place at which a biosecurity officer exercises or attempts to exercise a power of inspection under this Act—

- (a) must give the officer –
 - (i) all reasonable assistance to enable the officer to exercise the power; and
 - (ii) all information in relation to the exercise of the power that the officer reasonably requires; but
- (b) is not required to give information, or give a response to a question, that may incriminate himself or herself.

(5) Before requiring a person to answer questions or give information, an inspecting officer must inform a person of his or her rights under section (4)(b).

43 Permits authorise certain inspections

(1) Every permit issued under this Act authorises a biosecurity officer to inspect any place to which the permit relates (other than a private home) as if the officer believed on reasonable grounds that something is being done in or on that place in contravention of this Act.

(2) The power to inspect conferred by subsection (1) is in addition to the powers of inspection conferred by section 42, and does not limit or affect them.

44 Power to seize

(1) A biosecurity officer may, without a Court order or warrant, seize any thing (the seized thing) if —

- (a) the seized thing is produced to the officer or is in plain view during an inspection authorised by this Act or any other Act; and
- (b) the officer believes on reasonable grounds that—
 - (i) an offence against this Act has been committed; and
 - (ii) the seized thing is evidence of the commission of the offence.

(2) An officer of the Customs Department or an employee of the Niue Post Office may, without a Court order or warrant, hold any thing (the seized thing) if —

- (a) it comes into the possession of the officer or employee in the course of his or her employment; and
- (b) the officer or employee believes on reasonable grounds that —
 - (i) an offence against this Act has been committed; and
 - (ii) the seized thing is evidence of the commission of the offence.

(3) A person who seizes or holds a thing under this section must

- (a) take reasonable steps to –
 - (i) tell the owner (or person in possession) of the seized thing the reason for seizing or holding it; and
 - (ii) give the owner or person a receipt for the seized thing; and
- (b) remove the seized thing to a place of safekeeping; and

- (c) if the thing poses a biosecurity risk, deal with it as necessary to remove or limit that risk.

45 Power to lock and seal stores

A biosecurity officer may lock or seal the stores of any vessel or aircraft while it is in Niue.

46 Taking of samples

(1) A biosecurity officer may take samples or cause samples to be taken from —

- (a) an arriving or departing vessel or aircraft that has restricted items on board;
- (b) any place containing restricted items intended for import or export whether located in Niue or elsewhere;
- (c) any thing subject to a prohibition, restriction, or process under this Act that relates to biosecurity.

(2) A biosecurity officer acting under this section must give the owner or person in possession written notice in a form prescribed by the Director, identifying the sample, the quantity, and the place where the sample is to be analysed.

47 Testing and treatment of restricted items

(1) A biosecurity officer may test, or cause tests to be conducted on, a restricted item in order to decide whether the item meets the import specifications or export specifications for the item (for example, to test whether an item has been fumigated).

(2) If an incoming item is found to be infected, contaminated, or infested with or by a prohibited pest or disease, the Biosecurity Authority may require the item to be treated whether or not treatment was a requirement for importation.

(3) A biosecurity officer may re consign or destroy an incoming item if —

- (a) the item is required to be treated before arrival or on arrival and the importer fails to have the item treated or treated within a reasonable time; or
- (b) for an item to which subsection (2) applies —
 - (i) the appropriate treatment is not available in Niue; or
 - (ii) the importer chooses not to treat the item or refuses to consent to its treatment by the Authority.

(4) Treatment of an item by the Authority —

- (a) must be the minimum required to meet the import or export specifications or remove or adequately reduce the biosecurity risk posed by the item, as the case may be; and
- (b) may be administered by an appropriately qualified biosecurity officer or by any other suitably qualified person at the request of a biosecurity officer or the importer or exporter.

48 Quarantine of items and other things

(1) A biosecurity officer may quarantine at a quarantine station any of the following —

- (a) a prohibited item before it is re consigned or destroyed;
- (b) a restricted item required to be quarantined;
- (c) an incoming item that is, or is suspected of being, infected, contaminated, or infested with or by a prohibited pest or disease;

(d) any other thing that the biosecurity officer considers on reasonable grounds poses a biosecurity risk.

(2) For the purposes of quarantining any item or thing under this section, a biosecurity officer may —

(a) direct the captain of the vessel or aircraft or the importer to remove the item or thing to the quarantine station; or

(b) arrange for the item or thing to be removed to the quarantine station, in which case the owner or importer is responsible for the costs of removal.

(3) The owner or person in possession of an item or thing removed to a quarantine station must be given written notice of the reasons for the quarantine and the location of the thing.

(4) A person who refuses to remove an item or thing to quarantine as directed under this section commits an offence and is liable on conviction —

(a) in the case of an individual, to a fine not exceeding 100 penalty units;

(b) in any other case, to a fine not exceeding 500 penalty units.

49 Reconsignment

(1) Except as expressly provided by another provision of this Act, this section applies to any item or other thing that a biosecurity officer may order to be reconsigned under this Act.

(2) The power to order reconsignment of any thing includes the power to reassign any container, crate, baggage, mail, or other package that carries the thing.

(3) Reconsignment is at the option and cost of the importer but must be carried out within the time specified by a biosecurity officer, which must be reasonable in the circumstances.

(4) If reconsignment is not carried out within 24 hours, a biosecurity officer may destroy the thing and, if relevant, the thing in which it was carried.

(5) Before reconsigning a thing, the Biosecurity Authority must notify the importer in writing of the intention to do so, and the owner may instead consent to the thing being destroyed.

(6) If the importer makes no response within 3 working days to a notice, the importer must be treated as having consented to the destruction of the thing, and the biosecurity officer may destroy the thing in accordance with section 50.

50 Destruction of things

(1) This section applies to any thing that a biosecurity officer may order to be destroyed under this Act.

(2) The power to order destruction includes the power to reassign any container, crate, baggage, mail, or other package that carries or carried the thing, irrespective of whether the thing is destroyed.

(3) A thing or its packaging must be destroyed in the manner specified by the chief biosecurity officer and the owner of the thing, if known, must —

(a) be given written notice in the prescribed form before its destruction; and

(b) if reasonable in the circumstances, be invited to witness its destruction.

51 Post-mortem examination of animal

(1) If a biosecurity officer examining an animal pursuant to this Act suspects that the animal is diseased and considers a post-mortem examination to be the only way in the circumstances to establish a diagnosis, the officer may, on the written authority of the chief biosecurity officer, and without the consent of the owner —

- (a) take or cause to be taken the life of the animal; and
- (b) cause a post-mortem examination to be conducted to decide whether the animal is diseased; and
- (c) specimens from the animal for laboratory examination and diagnosis.

(2) The results of the examination and of any laboratory reports resulting from the examination must be provided in writing to the chief biosecurity officer and to the owner of the animal. .

52 Powers in relation to individuals

(1) Subsections (2) to (5) apply for the purposes of preventing the outbreak or spread of a notifiable disease within the meaning of section 11 of the Public Health Act 1965.

(2) A biosecurity officer may detain a person on his or her arrival in Niue, at any place that the officer thinks fit, if the officer believes on reasonable grounds that the person is infected with a notifiable disease.

(3) The biosecurity officer must immediately notify the Director of Health of his or her actions and the Director must, as soon as practicable, go to the place where the person is detained.

(4) However, if the Director of Health is not available or is unlikely to be available within 2 hours from the time at which the person is detained, the biosecurity officer must take the person to the hospital for assessment by a medical officer.

(5) To avoid doubt, the biosecurity officer and the Biosecurity Authority have no further responsibility for the person once he or she is delivered to a medical officer or other staff member at the hospital.

(6) A biosecurity officer may detain and question a person if the officer believes on reasonable grounds that the person is in possession or in control of any thing that poses a biosecurity risk to Niue.

(7) Without limiting subsection (6), a biosecurity officer may detain and question a person seeking to enter or leave Niue, or a person importing or exporting an item from Niue.

(8) A biosecurity officer may search a person seeking to enter or leave Niue and, if applicable, his or her baggage, if —

- (a) the officer suspects that the person has on or with him or her an item; and
- (b) arriving in or departing from Niue with that item would constitute an offence under this Act.

(9) A search of a person under this section must be carried out —

- (a) by a person of the same sex as the person searched; or
- (b) if a person of the same sex is not available to carry out the search, in the presence of another person of the same sex as the person searched.

Holding areas, quarantine areas, and quarantine stations

53 Minister may designate certain areas as biosecurity holding areas

(1) The Minister may, by public notice designate —

- (a) any part of the territorial sea or contiguous zone (as defined in the Maritime Zones Act 2013), or any part of the seaport, as an area where vessels are to be held for biosecurity inspections;
- (b) any part of the airport as an area where aircraft are to be held for biosecurity inspections;
- (c) any area of land at or adjacent to the seaport or airport as an area where items and other things are to be held for biosecurity inspections.

- (2) Before acting under this section, the Minister must —
 - (a) consult the Biosecurity Authority on the suitability of the proposed area; and
 - (b) consult the director of the government department responsible for the movement of vessels or aircraft, as the case may be.
- (3) Only the following persons may enter a holding area —
 - (a) the person in charge of the area;
 - (b) a biosecurity officer acting in the course of his or her duty;
 - (c) any other person who has the written permission of the chief biosecurity officer or the person in charge of the area.
- (4) A person commits an offence who —
 - (a) enters a holding area in breach of subsection (3); or
 - (b) damages, interferes with, or otherwise compromises a holding area; or
 - (c) damages, interferes with, or otherwise harms any thing in a holding area; or
 - (d) releases, removes, or attempts to release or remove any thing from a holding area without the permission of a biosecurity officer.
- (5) A person convicted of an offence against subsection (4) is liable—
 - (a) in the case of an individual, to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 3 months, or both;
 - (b) in any other case, to a fine not exceeding 500 penalty units.

54 Minister may designate quarantine area

- (1) The Minister may, by public notice designate —
 - (a) any part of the territorial sea or contiguous zone (as defined in the Maritime Zones Act 2013), or any part of the seaport, as a quarantine area for the purposes of isolating vessels or any item, or other thing on a vessel;
 - (b) any part of the airport as a quarantine area for the purposes of isolating aircraft or any person, item, or other thing on an aircraft.
- (2) Before acting under this section, the Minister must consult —
 - (a) the Biosecurity Authority on the suitability of the area; and
 - (b) the director of the government department responsible for the movement of vessels or aircraft, as the case may be.
- (3) The chief biosecurity officer may, subject to any requirements in the relevant designation notice, issue instructions to the person in charge of a quarantine area as to the management of the area generally or in relation to a particular vessel or aircraft held or to be held in the area.
- (4) Without limiting subsection (3), the chief biosecurity officer may issue instructions in relation to —
 - (a) the examination, treatment, disposal, or destruction of any thing at the area or during its transit to or from the area; and
 - (b) the period of time for which the thing must remain at the area.

55 Minister may designate land as quarantine station

- (1) The Minister may, by public notice designate any Crown or Niuean land as a quarantine station for the purposes of isolating any item or other thing (including, without limitation, a prohibited pest or disease, animal, plant, animal product, plant product, LMO, prohibited item, restricted item, vehicle, or container).
- (2) The notice —
 - (a) must specify the thing or things or class or classes of things that may be held at the station; and

(b) may provide for any other matter in relation to the or the thing or things to be held at the station.

(3) Before acting under this section, the Minister must consult—

- (a) the Biosecurity Authority on the suitability of the land; and
- (b) the director of any relevant government department; and
- (c) if the designation relates to Niuean land, the owner of the land.

(4) The chief biosecurity officer may, subject to any requirements in the relevant designation notice, issue written instructions to the person in charge of a quarantine as to the management of the station generally or in relation to a particular thing or things held or to be held at the station.

(5) Without limiting subsection (4), the chief biosecurity officer may issue instructions in relation to —

- (a) the examination, treatment, disposal, or destruction of any thing at the station or during its transit to or from the station; and
- (b) the period of time for which any thing must remain at the station.

(6) An owner of Niuean land designated as a quarantine station in accordance with this section is entitled to compensation for use of the land as a quarantine station.

56 Management of quarantine areas and quarantine stations

(1) Only the following persons may enter a quarantine area or quarantine station —

- (a) the person in charge of the area or station;
- (b) a biosecurity officer acting in the course of his or her duty;
- (c) any other person who has the written permission of the chief biosecurity officer or the person in charge of the area or station.

(2) The Biosecurity Authority may affix a notice at an area or a station or on any thing held at the area or station, stating —

- (a) the conditions of entry and exit to the area or station; and
- (b) the conditions and expected duration of quarantine of the thing held at the area or station; and
- (c) any other information relating to the area, station, or thing.

(3) Any thing (other than a vessel or aircraft) may be released from an area or station only if —

- (a) the chief biosecurity officer issues a quarantine release certificate for it in the prescribed form; and
- (b) the quarantine fees, if any, for the thing have been paid.

(4) A quarantine release certificate may be granted —

- (a) unconditionally; or
- (b) subject to specified conditions, in which case the owner of the thing must pay a bond in the prescribed amount.

(5) A person commits an offence who —

- (a) enters an area or a station in breach of subsection (1); or
- (b) without lawful authority, removes, damages, or interferes with a notice affixed under subsection (2); or
- (c) damages, interferes with, or otherwise compromises an area or a station; or
- (d) damages, interferes with, or otherwise harms any thing in an area or a station without the permission of a biosecurity Officer; or
- (e) releases, removes, or attempts to release or remove any thing from an area or a station.

(6) A person convicted of an offence against any of paragraphs (a) and (c) to (e) of subsection (5) is liable —

(a) in the case of an individual, to a fine not exceeding 400 penalty units or a term of imprisonment not exceeding 12 months, or both;

(b) in any other case, to a fine not exceeding 2 000 penalty units.

(7) A person convicted of an offence against subsection (5)(b) is liable —

(a) in the case of an individual, to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 3 months, or both;

(b) in any other case, to a fine not exceeding 500 penalty units.

Miscellaneous administrative provisions .

57 Seal

The Biosecurity Authority must have a seal, which must be judicially noticed in all courts and for all purposes.

58 Biosecurity register

(1) The Biosecurity Authority must keep a register containing —

(a) the information required under any provisions of this Act; and

(b) any other prescribed information.

(2) The register may be kept in any format that the Director thinks fit, so long as its contents are readily retrievable and are protected against unintended loss and unauthorised alteration.

(3) The register must be made available at the office of the Authority for inspection by the public, free of charge, and for copying, on payment of an administration fee, if any, during normal office hours.

(4) A copy of an entry in the register that is certified by the Director or the chief biosecurity officer to be an accurate copy is prima facie evidence of the facts contained in the entry and may be used in Court as evidence of those facts.

59 Biosecurity officer identity card

(1) The Director must —

(a) issue each biosecurity officer appointed under section 40(1) with an identity card; and

(b) endorse the primary position identity card of each officer designated under section 40(2) with a reference to the officer's designation as a biosecurity officer under this Act.

(2) If it is practicable in the circumstances, a biosecurity officer must produce his or her identity card —

(a) on each occasion before the officer acts under this Act; and

(b) when requested to do so by any person who is affected while the officer acts under this Act.

60 Facilities for biosecurity officers to be provided at airport, seaport, and post office

(1) For the purposes of this Act, the operators of the airport, seaport, and post office must provide at their respective premises, to the satisfaction of the Director (which must not be unreasonably withheld) —

(a) an area suitable for use as offices by biosecurity officers stationed or working at the premises;

(b) adequate space for the display of notices regarding the biosecurity requirements of this Act;

- (c) one or more areas for biosecurity rubbish disposal units (as provided by the Biosecurity Authority);
- (d) an area for interviewing and, if necessary, physically examining an individual;
- (e) any other facilities that the Director requests in writing and that are reasonably necessary to enable a biosecurity officer to perform his or her functions under this Act at the premises.

(2) The Biosecurity Authority must provide all the necessary equipment for the collection and disposal of rubbish from a biosecurity rubbish disposal unit.

(3) A person who intentionally interferes with, damages, or otherwise alters a biosecurity rubbish disposal unit commits an offence and is liable on conviction to a fine not exceeding 20 penalty units.

61 Owners or persons in charge of vessel, aircraft, land, buildings, or premises must provide biosecurity officers with certain protections.

(1) Subsection (2) applies if a biosecurity officer is required to visit or inspect a vessel, an aircraft, land, a building, or premises (the place).

(2) The owner, or person in charge, of the place must —

- (a) if requested to do so, safely transport the officer to the place; and
- (b) provide a safe working environment at the place for the officer to perform the function concerned.

62 Consultants and outsourcing

(1) The Director may, to enable the effective implementation of this Act, —

- (a) hire the services of consultants with specialist biosecurity or other relevant knowledge (for example, to test samples, perform biosecurity risk assessments, or carry out surveys);
- (b) enter into memoranda of understanding or other agreements with other government departments, statutory authorities, official agencies, or private organisations, whether in Niue or elsewhere.

(2) The Director must—

- (a) consult the chief biosecurity officer before acting under subsection (1); and
- (b) comply with any relevant requirements in respect of public service rules relating to procurement, tenders, and similar matters.

63 Compliance agreements

(1) The chief biosecurity officer, on behalf of the Biosecurity Authority, may enter into a written agreement (a compliance agreement) with an importer, an exporter, or any other person in respect of —

- (a) how the person may satisfy any requirement under this Act, including in relation to any item or class of items; and
- (b) the supervision, monitoring, or testing of the person's compliance with satisfying those requirements.

(2) A compliance agreement must set out the circumstances in which the Biosecurity Authority may, by written notice, cancel or vary the agreement or suspend the operation of the agreement for any period.

(3) A biosecurity officer must comply with a compliance agreement in his or her dealings with any item to which the agreement relates, but only to the extent that the officer is satisfied that the terms of the agreement are being observed.

64 Biosecurity approved premises

(1) The owner or occupier of any premises may apply to the Biosecurity Authority for approval —

- (a) of the premises as a place for the inspection, testing, and treatment of restricted items or particular types or classes of restricted items; and
- (b) for specified activities to be carried out in relation to those restricted items at the premises.

(2) An application must be in the prescribed form and be accompanied by the prescribed fee.

(3) In deciding whether to approve premises, the chief biosecurity officer —

- (a) must inspect the premises; and
- (b) must determine whether the premises are adequate to enable the proposed activities to be undertaken efficiently and safely having regard to the nature of the activities to be carried out, the level of biosecurity risk that the activities present, and the ease of accessibility of the premises to biosecurity officers; and
- (c) may take into account any other matter that he or she considers relevant.

(4) An approval —

- (a) may be granted with or without conditions; and
- (b) has effect for a period not exceeding 12 months, but may be renewed and, for that purpose, this section applies as if the renewal application were an application to which subsection (1) applied.

PART 6

OFFENCES, PENALTIES, AND PROCEEDINGS

Offences

65 Offences against biosecurity officers

(1) A person commits an offence who —

- (a) wilfully fails to comply with a request or direction of a biosecurity officer lawfully made by the officer under this Act; or
- (b) knowingly obstructs a biosecurity officer who is performing or exercising his or her functions or powers under this Act; or
- (c) assaults or threatens to assault a biosecurity officer who is performing or exercising his or her functions or powers under this Act; or
- (d) bribes or attempts to bribe a biosecurity officer in relation to the performance or exercise of his or her functions or powers under this Act; or
- (e) in relation to any matter under this Act, knowingly or recklessly —
 - (i) makes a false or misleading declaration or statement; or
 - (ii) issues a false or misleading certificate; or
 - (iii) gives false or misleading information to a biosecurity officer while the officer is performing or exercising his or her functions or powers under this Act.

(2) A person convicted of an offence against subsection (1) is liable —

- (a) in the case of an individual, to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both;
- (b) in any other case, to a fine not exceeding 500 penalty units..

66 Fraudulent use of official documents

(1) A person to whom a permit or other document is issued under this Act commits an offence if the person —

- (a) forges or unlawfully alters the document; or
- (b) allows any other person to use or attempt to use the document, if the document is not transferable.

(2) A person commits an offence who produces a false or misleading document for the purposes of this Act knowing that document to be false or misleading and intending a biosecurity officer or any other person to rely on it.

(3) A person commits an offence who uses or affixes an official stamp or seal required under this Act without lawful authority and with intent to defraud or deceive any person.

(4) A person convicted of an offence against any of subsections (1) to (3) is liable —

- (a) in the case of an individual, to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both;
- (b) in any other case, to a fine not exceeding 500 penalty units.

67 Biosecurity officer offences

(1) A biosecurity officer commits an offence if the officer —

- (a) fails without reasonable excuse to perform any of his or her functions in accordance with this Act; or
- (b) without lawful authority, discloses information of a confidential or commercial nature that has come into the officer's possession while performing or exercising his or her functions or powers under this Act; or
- (c) in the course of performing or exercising his or her functions or powers under this Act, harasses, intimidates, or assaults any person; or
- (d) in connection with his or her functions or powers under this Act, solicits or accepts a bribe; or
- (e) knowingly or recklessly makes a false or misleading statement, or issues a false or misleading permit or other document, while purporting to perform or exercise his or her functions or powers under this Act.

(2) A person convicted of an offence against subsection (1) is liable to a fine not exceeding 100 penalty units or a term of imprisonment not exceeding 12 months, or both.

Proceedings

68 Evidence

In any proceedings under this Act —

- (a) a document purporting to have been issued by Cabinet, the Minister, the Director, a biosecurity officer, or any other person for the purposes of this Act is presumed, until the contrary is proved, to have been duly executed or signed by that person;
- (b) a copy of or extract from a document issued by Cabinet, the Minister, the Director, a biosecurity officer, or any other person, and certified by the Director or chief biosecurity officer to be true and correct, is *prima facie* evidence of the matters contained in it and may be used in Court as evidence of those matters;
- (c) a certificate, in the prescribed form, of the results of any test conducted on any thing by the person who conducted the test is *prima facie* evidence of the

matters contained in the certificate and may be used in Court as evidence of those facts;

- (d) a certificate, in the prescribed form, of the analysis of a sample is *prima facie* evidence of the results contained in the certificate and may be used in Court as evidence of those facts, so long as the prescribed procedure in relation to the sample has been substantially followed.

69 Forfeiture of things used to commit offence

(1) The Court may, on convicting a person of an offence under this Act, order the forfeiture to the Crown of any thing used to commit the offence or, if the thing has been sold, that the proceeds of sale be forfeited to the Crown.

(2) The Crown may sell or otherwise dispose of a thing forfeited under subsection (1) and any proceeds from its disposal must be paid into the general funds.

(3) However, if the thing poses a biosecurity risk it must be destroyed as directed by the chief biosecurity officer.

(4) For the purposes of this section, “thing” —

- (a) means any thing directly used in the commission of an offence; and
- (b) includes machinery, equipment, or any vessel, aircraft, or vehicle; but
- (c) does not include land or buildings or other fixtures.

70 Offences committed by body corporate

(1) If a body corporate an offence against this Act, every individual who is a board member or director or otherwise concerned in the management of the body is also liable for the offence unless he or she proves —

- (a) that the offence was committed without his or her consent or connivance; and
- (b) that he or she exercised reasonable diligence to prevent the commission of the offence, having regard to the nature of his or her functions in the body corporate and to all the circumstances.

(2) If a body corporate commits an offence against this Act, every individual who is a board member or director or otherwise concerned in the management of the body may be proceeded against and convicted whether or not the body corporate is proceeded against and whether or not it is convicted.

(3) A body corporate remains liable for any offence committed by it, whether or not proceedings are commenced against any individual who is a board member or director or otherwise concerned in the management of the body,

(4) If a body corporate commits an offence against this Act, any penalty against the body takes precedence over any secured or preferred claim lodged in any action for bankruptcy against the body.

Infringement offences

71 Infringement offences

(1) If a person is alleged to have committed an infringement offence, the person may —

- (a) be proceeded against in the normal manner by the laying of an information against the person; or
- (b) be served with an infringement notice, by the Biosecurity Authority delivering it, or a copy of it, personally to the person.

(2) An infringement notice must be in the prescribed form and must state —

- (a) details of the alleged infringement offence that are sufficient to fairly inform the person of the time, place, and nature of the alleged offence; and

- (b) the amount of the infringement fee; and
- (c) an address at which the infringement fee may be paid; and
- (d) the time within which the infringement fee must be paid; and
- (e) that the person has a right to request a hearing; and
- (f) what will happen if the person does not pay the infringement fee and does not request a hearing; and
- (g) any other prescribed matters.

(3) If the person pays the infringement fee within the period stated in the infringement notice —

- (a) no further action may be taken against the person; and
- (b) no conviction may be entered against the person for the offence.

(4) If the person does not pay the infringement fee or request a hearing within the period stated in the infringement notice, the Department must serve the person with a reminder notice in the prescribed form that the same or substantially the same particulars as the infringement notice.

(5) If the person does not pay the infringement fee or request a hearing within the period stated in the reminder notice, proceedings may be commenced against the person by filing the reminder notice with the Court and, for that purpose —

- (a) the reminder notice must be treated as the information for the infringement offence; and
- (b) the Court is deemed to make an order, on the date when the reminder notice is filed, that the defendant pay a fine equal to the amount of the infringement fee together with costs in the prescribed amount, but no conviction is entered against the person.

(6) A person requests a hearing by providing to the Department, within the period specified in the infringement notice or reminder notice, as the case may be —

- (a) a notice, signed by the person, requesting a hearing and accepting or rejecting liability; and
- (b) if accepting liability, the reasons, if any, as to why the Court should impose a lesser fine than the infringement fee for the offence.

(7) A person found guilty at a hearing held for the purposes of subsection (7) is liable to a fine equal to the amount of the infringement fee (unless the Court imposes a lesser amount) together with costs in the prescribed amount, but no conviction is entered against the person.

(8) To avoid doubt, if a person commits an infringement offence and proceedings against the person are taken in the normal manner under subsection (1)(a), the person is liable to pay not the infringement fee but the amount that the Court determines within the penalty range for the offence. However, no conviction may be entered against the person.

Warrants

72 Warrants

(1) This section applies if a warrant is required before taking any action under this Act.

(2) A Judge or Commissioner of the Court, or any two Justices of the Peace acting together, may, on application, issue a warrant in the prescribed form if satisfied that there are reasonable grounds for believing that it is necessary for the purpose for which the application has been made.

(3) The application —

- (a) must be made in writing by a constable or the chief biosecurity officer; and
- (b) must be accompanied by a copy of the relevant provisions of this Act.

PART 7

MISCELLANEOUS MATTERS

73 Delegation of functions

(1) The Minister may, in writing, delegate any of his or her functions and powers under this Act to the Director except the following powers —

- (a) the power to designate land or an area as a biosecurity holding area, quarantine area, or quarantine station;
- (b) the power to order a vessel or an aircraft to leave Niue;
- (c) the power to grant an exemption under section 79.

(2) The Director may, in writing, delegate to the chief biosecurity officer —

- (a) any of the Director's functions and powers under this Act; and
- (b) any functions and powers delegated to the Director by the Minister.

(3) The chief biosecurity officer may, in writing, delegate any of his or her functions and powers under this Act to one or more other biosecurity officers, except any functions and powers delegated to him or her under subsection (2).

(4) A delegation under this section may be made subject to the restrictions and conditions that the delegator thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) A delegation under this section continues in force until revoked by the delegator.

(6) A person to whom a function or power has been delegated (person B) may without confirmation by the person who delegated the function or power (person A) perform or exercise the function or power in the same manner and with the same effect as person A could have performed or exercised it.

(7) No delegation under this section relieves any person of the liability or legal responsibility to perform or ensure the performance of any function or power.

74 Exchange of information

(1) The Biosecurity Authority may communicate to a government department any information that the Authority —

- (a) holds in relation to the performance or exercise of the Authority's functions and powers under this Act; and
- (b) considers may assist that government department in the performance or exercise of that department's functions and powers.

(2) The Authority may, in the performance or exercise of its functions and powers under this Act, use any information communicated to it by a government department.

(3) This section applies irrespective of any other enactment or contract, deed, or other document.

(4) The Authority may impose any conditions in relation to communicating information to a government department under this section, including conditions relating to —

- (a) maintaining the confidentiality of the information (in particular, information that is personal information or commercially sensitive);
- (b) the storing of, use of, or access to the information;
- (c) the copying, returning, or disposing of the information;
- (d) payment of the costs incurred by the Authority in communicating the information.

75 International co-operation

(1) The Minister, with the approval of Cabinet, on behalf of the Government of Niue, may enter into agreements with countries or international organisations in relation to international solutions to biosecurity matters.

(2) The Biosecurity Authority may, pursuant to such agreements, and on behalf of the Government of Niue —

- (a) exchange information with other countries and international organisations;
- (b) contribute to the development of international sanitary and phytosanitary standards.

(3) The Biosecurity Authority, on behalf of the Government of Niue, must use its best endeavours to implement in Niue international standards and requirements relating to biosecurity.

(4) For the purposes of subsection (3), the chief biosecurity officer —

- (a) is designated as the Niuean contact in respect of —
 - (i) the Food and Agriculture Organization of the United Nations (being the organisation that oversees the International Plant Protection Convention); and
 - (ii) the World Organisation for Animal Health; and
 - (iii) the Pacific Plant Protection Organisation; and
 - (iv) any other organisation or body as appointed by Cabinet from time to time;
- (b) must ensure that any notification and reporting requirements of an organisation referred to in paragraph (a) that apply to Niue are met in a timely manner; and
- (c) must ensure, if possible, that any other international obligations lawfully imposed upon Niue or to which Niue has agreed to be bound are met in a timely manner.

76 Import permits

(1) An import permit must be in the prescribed form and may relate to —

- (a) a single item or a class or category of items;
- (b) items from one or more countries of origin;
- (c) items incoming at regular periods throughout a year;
- (d) items incoming at a particular time of day or year.

(2) An application for an import permit must be made to the Biosecurity Authority in the form prescribed by the Director and be accompanied by the prescribed fee.

77 Revocation or variation of import permit

(1) The chief biosecurity officer may, at any time, revoke an import permit or vary its conditions, by written notice to the permit holder, if —

- (a) a change in the biosecurity risk to Niue presented by the items to which the permit relates so requires; or
- (b) the permit holder persistently breaches the requirements of the permit; or
- (c) the chief biosecurity officer is satisfied on reasonable grounds that the permit should be revoked or its conditions varied for any other reason and the reason is specified in the notice.

(2) Import clearance may be refused for an item for which an import permit is required at any time on and from the date on which the permit holder is notified of the revocation of the related permit.

(3) A permit holder whose import permit is revoked must surrender the permit to a biosecurity officer as soon as practicable after the holder is notified of the revocation of the permit.

(4) A permit holder who breaches subsection (3) commits an offence and is liable on conviction —

(a) in the case of an individual, to a fine not exceeding 50 penalty units:

(b) in any other case, to a fine not exceeding 250 penalty units. .

78 Status certificates

(1) The chief biosecurity officer may issue, in the prescribed form —

(a) a certificate stating that a pest or disease specified in the certificate is known to exist in Niue;

(b) a certificate stating that a pest or disease specified in the certificate does not exist in Niue;

(c) a certificate stating the classification, name, or identity by which an animal, plant, animal product, plant product, pest, or disease is known, or is to be known, in Niue.

(2) A certificate issued under subsection (1) is prima facie evidence of the facts contained in it and may be used in Court as evidence of those facts.

79 Exemption from biosecurity requirements

(1) The Minister may, if requested to do so —

(a) allow the importation of any thing prohibited by or under this Act;

(b) allow the exportation of any thing prohibited by or under this Act;

(c) exempt any thing from any restriction or regulation to which it is subject by or under this Act.

(2) A request under subsection (1) must be made in the first instance in writing to the Biosecurity Authority.

(3) The Minister may grant a request, with or without conditions, including a condition that a fee is payable for costs associated with the investigation of the request.

(4) However, the Minister must not grant a request unless he or she has received written advice from the Biosecurity Authority to the effect that the biosecurity risk to Niue as a result of granting the request will not be increased in a material way or can be satisfactorily managed in accordance with any conditions set out in the advice.

80 Biosecurity clearance agents

(1) A person may appoint, in writing, a resident of Niue as the person's agent to carry out one or more of the person's duties under this Act (for example, the duty of a person to be present during a biosecurity inspection of an item imported by the person).

(2) A person who has appointed an agent for the purposes of this provision must notify the Biosecurity Authority, in writing, of the appointment and its terms.

(3) An agent appointed under subsection (1) ceases to be an agent for the purposes of this Act if the Director gives written notice to the person who appointed the agent that the agent's conduct is such that the person's duties under the Act are not being fulfilled in a satisfactory manner by the agent.

(4) A notice under subsection (3) comes into force on the date specified in the notice, which must be no earlier than 28 days after the date the notice is given.

(5) For the purposes of this Act, a biosecurity officer and any other person performing or exercising a function or power may treat an agent as if he or she were the person for whom the agent acts. However, this does not relieve the person who appointed the agent of the legal responsibility to perform or ensure the performance of any duty under this Act that applies to the person.

81 Consequence of non-payment of fee or charge

(1) If a fee or charge payable under this Act in relation to a service is not paid —

- (a) the service may be withheld until the amount is paid; or
- (b) if the service has already been provided, the amount is a debt due to the Crown and recoverable in court.

(2) If a fee or charge payable under this Act in relation to a thing in quarantine is not paid, the thing may be treated as abandoned under section 82 once it is cleared for release from quarantine.

82 Abandoned things

(1) For the purposes of this Act, any thing may be treated as abandoned if —

- (a) the thing is in the possession of the Biosecurity Authority or a biosecurity officer and any fee or charge payable by a person under this Act in respect of the thing is not paid within 30 days after the date on which the fee or charge was required to be paid;
- (b) the thing is held in a biosecurity holding area and is not removed from the area within 5 days after clearance has been granted or a biosecurity officer has granted permission for the thing to be removed;
- (c) the thing is held in a quarantine area or station and, once cleared for release, is not removed from the quarantine area or station within 5 days of its clearance.

(2) A thing that is treated as abandoned in accordance with this section may be destroyed, sold, or otherwise disposed of in any manner that the chief biosecurity officer thinks fit, having regard to any biosecurity risk posed by the thing, and proceeds from its disposal must be paid into the Niue Government Account.

(3) The cost of disposal of an abandoned thing is a debt due to the Crown owed by the owner of the thing.

83 Compensation for loss or damage

(1) Except as expressly provided by another provision of this Act, no compensation is payable for loss or damage as a result of any action lawfully taken under this Act by a biosecurity officer or any other person, unless negligence or malice is proved.

(2) Any compensation payable under this Act must be —

- (a) claimed in accordance with the prescribed procedure; and
- (b) paid in the amount between the Director (on behalf of the Cabinet) and the person concerned or, if no agreement is made, as determined by the Court.

84 Limitation of liability

(1) No person authorised to act under this Act is personally liable for any action taken under it in good faith and without negligence.

(2) A breach of a duty imposed on any person by or under this Act does not give rise to any civil liability, except as expressly provided by or under this Act.

85 Public notification of regulations and notices and service of documents

- (1) Subsection (2) is in addition to any other requirement of this Act.
- (2) Regulations and notices made under this Act must be available to the public —
 - (a) for inspection at the offices of the Department and on its Internet site or the Internet site of the Niue Government; and
 - (b) for purchase at the offices of the Department.
- (3) Unless otherwise provided by another provision of this Act, and subject to subsection (4), any notice or other document required by or under this Act may be given electronically —
 - (a) by a person to the Biosecurity Authority, Minister, Director, or other biosecurity officer;
 - (b) by the Biosecurity Authority, Minister, Director, or other biosecurity officer to a person, if the person has given that person an electronic address for receipt of such notices.
- (4) If service of a notice or other document on a person is to be proved in Court, it must be effected by —
 - (a) personal service on the person; or
 - (b) registered post to the address of the person given to the Biosecurity Authority, Minister, Director, or other biosecurity officer, in which case service is presumed to have been effected 2 days after posting.
- (5) A printed copy of an electronic record of a notice, instruction, or direction given or received by electronic means is prima facie evidence of the notice if the record purports to have been made at the time of sending or receipt.

86 Fines to be paid into Niue Government Account

Fines collected under this Act must be paid into the Niue Government Account.

Regulations

87 Regulations

- (1) Cabinet may make regulations for the effective implementation of this Act, including for the performance of the biosecurity functions of the Biosecurity Authority.
- (2) Without limiting subsection (1), regulations may —
 - (a) prescribe forms, or the information to be included in, or required by, forms prescribed by the Director; and
 - (b) prescribe treatments for vessels and aircraft to be taken before or on their arrival; and
 - (c) prescribe treatments for items to be taken before or on their arrival; and
 - (d) prescribe fees and charges for the services provided by the Authority or any other person under this Act; and
 - (e) prescribe a method for calculating fees and charges referred to in paragraph (d) (for example, an hourly rate); and
 - (f) prescribe the amount of bonds and the manner and circumstances in which they are to be paid, held, and, if applicable, returned; and
 - (g) prescribe the method or procedure for the taking and analysing of samples, the recording and certifying of the results, and the disposal of the samples; and
 - (h) prescribe the procedure for claiming compensation; and
 - (i) prescribe information to be kept in the register; and

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- (j) prescribe the form of any certificate that may be issued under the Act; and
 - (k) provide for the extermination of rats on vessels, and the form of any rat extermination certificate; and
 - (l) regulate the disposal of rubbish and other things in a biosecurity emergency area; and
 - (m) provide for the electronic filing of declarations, applications, and other documents required by this Act; and
 - (n) prescribe the manner and language of markings on containers of incoming and outgoing restricted items; and
 - (o) prescribe the methods of handling, sealing, treating, and disposing of containers holding restricted items; and
 - (p) provide for the placing and use of amnesty bins or other containers for prohibited or restricted items at points of entry and departure; and
 - (q) prescribe additional measures, consistent with this Act, to implement in Nine the standards and requirements relating to the International Plant Protection Convention, the World Organisation for Animal Health, and the Pacific Plant Protection Organisation, and any other organisation; and
 - (r) prescribe the offences created by this Act that constitute infringement offences for the purposes of this Act; and
 - (s) prescribe infringement fees not exceeding 20 penalty units for each infringement offence, which may be different fees for different offences (including different fees for a first, second, or third offence); and
 - (t) prescribe the form of infringement notices and reminder notices; and
 - (u) prescribe any other matter that this Act requires to be prescribed or that is necessary for carrying out or giving effect to this Act.
- (3) Before making regulations under this section, Cabinet must —
- (a) obtain the advice of the Biosecurity Authority; and
 - (b) consult other government departments as appropriate.

88 Biosecurity emergency regulations

- (1) For the purposes of dealing with a biosecurity emergency, Cabinet may make regulations for one or more of the following purposes —
- (a) to confer on the Biosecurity Authority, or specified officers of the Authority, powers necessary to deal with the emergency that are in addition to those already conferred by this Act in relation to biosecurity emergencies;
 - (b) to prescribe the disposal, destruction, treatments and other measures to be adopted in respect of any thing (whether inside or outside an emergency area) that is infected, contaminated, or infested with or by the pest or disease to which the emergency relates or that may have come into contact with any thing that is so infected, contaminated, or infested;
 - (c) to prescribe measures to be taken to prevent the pest or disease to which an emergency relates from spreading, including but not limited to the cleaning of private homes and utensils, removal of stagnant water, and disposal of rubbish;
 - (d) to prohibit or restrict the use of the seaport or airport, or of any facilities at the seaport or airport;
 - (e) to create one or more exclusion zones within an emergency area and control the movement of humans and any thing into, out of, and within such a zone;
 - (f) to prohibit specified activities in an emergency area;
 - (g) to provide for the destruction or treatment of any thing;
 - (h) to require the treatment of land in an emergency area;

- (i) to regulate the use of any area subject to restrictions in relation to the emergency for a specified period after the lifting of the restrictions;
- (j) to make any other arrangements that Cabinet believes, after consulting the Biosecurity Authority, are reasonably necessary to control the biosecurity emergency.

(2) Regulations made under this section may include a penalty for conviction on breach of the regulation to an amount —

- (a) not exceeding 20 penalty units, if the breach is by an individual; and
- (b) not exceeding 100 penalty units, if the breach is by any other person.

(3) Regulations made under this section are revoked (and have no continuing effect) on the day that the declaration in relation to the biosecurity emergency is revoked, unless the declaration is renewed, in which case the regulations are revoked (and have no continuing effect) on the day that the renewed declaration is revoked.

(4) Subsection (3) does not apply to regulations made under subsection (1)(i). Instead, the regulations are revoked on the date specified in the regulations, which must be no later than 30 days after the declaration is revoked.

(5) The Government of Niue is not responsible for the cost of the treatment or destruction of any thing as the result of any person exercising a power conferred by a regulation made under this section.

(6) The owner of any land, premises, vehicle, vessel, or other thing that is used, lost, destroyed or damaged as the result of any taken by a person exercising a power conferred by a regulation made under this section is not entitled to compensation.

89 Regulations may incorporate material by reference

(1) Regulations made under section 87 or 88 may incorporate any of the material described in subsection (2) if the purpose of the regulations (or a purpose of the regulations) is to define terms, prescribe matters, or make other provision in relation to an activity or a thing, including (without limitation) any facility, items, information, practice, premises, process, programme, service, or system.

(2) The material that may be incorporated by reference, whether in whole or in part, is one or more of the following —

- (a) a standard, framework, code of practice, recommended practice, or requirement of an international organisation or a national organisation;
- (b) a standard, framework, code of practice, recommended practice, or requirement prescribed in any country or jurisdiction, or by any group of countries;
- (c) any other written material that deals with technical matters and that can reasonably be regarded as being too large or impractical to include in, or publish as part of, the regulations.

(3) Material incorporated by reference in reliance on this section has legal effect as part of the regulation that incorporates the material.

90 Access to material incorporated by reference

(1) This section applies if regulations incorporating material by reference in reliance on section 89 are made.

(2) The Director must —

- (a) make the material (the incorporated material) available for inspection during working hours free of charge at the offices of the Biosecurity Authority and any Other place that the Director determines is appropriate; and

(b) make copies of the incorporated material available, free of charge, on an Internet site maintained by or on behalf of the Department or the Government of Niue, or both, unless doing so would infringe copyright.

(3) The Director may make copies of the incorporated material available in any other way that he or she considers appropriate in the circumstances.

(4) The Director may comply with subsection (2)(b) by providing a hypertext link from an Internet site maintained by or on behalf of the Department or the Government of Niue to a copy of the incorporated material that is available, free of charge, on an Internet site that is maintained by or on behalf of someone else.

(5) A failure to comply with this section does not invalidate an instrument that incorporates material by reference.

91 Effect of amendments to material incorporated by reference

(1) This section applies if the material incorporated by reference in reliance on section 89 is amended by the originator of the material after the regulations are made.

(2) For the purposes of this section, material is amended if the material or any part of it —

- (a) is amended or replaced; or
- (b) expires or is revoked; or
- (c) otherwise ceases to have effect.

(3) Amendments made by the originator of the material have no legal effect as part of the regulations in which they are incorporated unless they are specifically incorporated by amending or replacing the regulations in accordance with sections 89 and 90.

92 Proof of material incorporated

(1) A copy of material incorporated by reference in regulations in reliance on section 89 must be —

- (a) certified as a correct copy of the material by the Director; and
- (b) retained by the Director.

(2) A certified copy is prima facie evidence of the material incorporated by reference in the regulations and may be used in Court as evidence of that material.

PART 8

REPEALS, SAVINGS, AND CONSEQUENTIAL PROVISIONS

93 Repeals and savings

(1) The Agriculture Quarantine Act 1984 is repealed.

(2) Despite subsection (1), regulations made under that Act continue in force as if made under this Act until revoked, amended, or replaced under this Act, but only to the extent that those regulations are not inconsistent with this Act or any regulations made under this Act.

(3) Despite subsection (1), delegations, directions, notices, agreements, and any other administrative actions or decisions of the Minister, the Director of Agriculture, or any quarantine officer or inspector issued or made under the Agriculture Quarantine Act 1984 continue to have effect as if issued or made under this Act until revoked, amended, or replaced under this Act, but only to the extent that they are not inconsistent with this Act or any regulations made under this Act.

(4) Despite subsection (1), import permits issued under the Agriculture Quarantine Act 1984 remain in force until they expire in accordance with their terms, or until expressly revoked under this Act.

(5) Any bond, agreement, instrument, or arrangement relating to the biosecurity functions of the Government, to which the Government is a party and that is in effect at the commencement of this Act, continues to have effect after that date and is enforceable by or against the Government as if it had been entered into under this Act.

(6) An item destined for Niue that has left the country of origin but has not arrived in Niue at the date of commencement of this Act requires clearance under this Act before it can be imported.

94 Continuation of employment arrangements

All employees of the Department who were appointed before the commencement of this Act are deemed to have been appointed under section 37, 38, 39, or 40 (as applicable) and, subject to this Act, continue in office on the terms and conditions of their original appointment.

Consequential amendments

95 References in other enactments

(1) A reference in another Act to the Agricultural Quarantine Act 1984, or any regulations made under it, is, to the extent possible, to be read as a reference to this Act or to regulations or specifications made under it.

(2) A reference in another Act to a quarantine officer is, to the extent possible, to be read as a reference to a biosecurity officer exercising equivalent functions under this Act.

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 the 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 or 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 need 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 one 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.

Broadcasting Act

(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 of 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	19	Regulations
9	Inspection of building	20	Act to bind Crown
10	Requisitions	21-22	[Spent]
11	Suspension of permit		

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

-
- (a) For human habitation; or
- (b) As a place within or under which work is performed; or
- (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 Inspector 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 –

- (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; or

(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 annul 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 dwellinghouse, 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]

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 in consideration 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 principal 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; and
- (b) The type of business; and
- (c) The place of business; and
- (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 May, unless the licence is renewed under section 14.

14 Renewal of licence

(1) At any time during the month of May, 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 June, 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 May 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 provider.

(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 licences, 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 24 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 brought 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	9	Fatal accidents
2	Act to bind Crown	10	Limitation of liability
3	[Repealed]	11	Time for bringing proceedings
	Part 1	12	Contributory negligence
	INTERNATIONAL CARRIAGE BY AIR	13	Power to exclude aircraft in use for military purposes
4	[Repealed]	14	Actions against High Contracting Parties
5	Interpretation	15	Regulations
6	Application of Guadalajara Convention		
7	Conventions to have force of law		SCHEDULES
8	Designation of Parties		

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]**

PART 1 INTERNATIONAL CARRIAGE BY AIR

- 4 [Repealed]**
- 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 in 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 in 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.

[* See section 706 of the Niue Act 1966]

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) 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.

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]

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;

Chattels Transfer Act

“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]
- (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]
- (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]

(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]

(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.

11-13 [Repealed]

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]

(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]

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 two 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; or
- (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]

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 as 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.

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]

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]

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 two or more grantors or two 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 for 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 appears, 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 negated or varied

All or any of the covenants, provisos, conditions, agreements, or powers set forth in Schedules 3, 4 and 5 may be negated, 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]

(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.

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(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]

REPEALS AND SAVINGS

60 [Repealed]

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.

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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 signatories 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 (or 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

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

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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 or 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

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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

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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]

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

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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 same, 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

CHATELS 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.

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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 treehaulage 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, treemoving, or treehaulage 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	5	Protection of bankers collecting payment of cheques
2	Protection of bankers paying unindorsed or irregularly indorsed cheques	6	Application of certain provisions of principal Act
3	Rights of bankers collecting cheques not indorsed by holders	7	Effect of Act
4	Unindorsed cheques as evidence of payment		

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 –

(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 payment 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]
- (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 this Act, is not negotiable.

CITIZENSHIP ACT 1977

1977/61 (NZ) – 1 January 1978

[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 which is accessible at <http://www.legislation.govt.nz/act/public/1977/0061/latest/whole.html>. The Citizenship Act 1977 in its Niue form is accessible in *Niue Legislation as at 1 August 1990* Vol 1 pp326-337.]

- (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 from the aircraft and its engine and any propeller or rotor has 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

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- (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 while 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 suspension of an aviation document or 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 in 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 an application for the renewal of an air service licence has been made; but 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 –
(i) Without holding the appropriate current aviation document; or
(ii) 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 2016

336/2016 – 19 November 2016

1	Title	9	Advance of remuneration
2	Commencement	10	Advance of overseas travel allowance
3	Interpretation	11	Allowances to be treated as taxable income
4	Remuneration and allowances	12	Members assisting a Minister
5	Appropriation	13	Effectiveness of remuneration and allowances
6	Payment of remuneration	14	Repeal
7	Period for which the Premier's and Ministers' remuneration and allowances are payable		
8	Period for which Members' remuneration and allowances are payable		

SCHEDULE

An Act to prescribe under article 25(2) of the Constitution the remuneration and other entitlements of the Premier, Ministers, Members of the Niue Assembly and the Speaker

1 Title

This is the Civil List Act 2016.

2 [Spent]

3 Interpretation

In this Act, unless the context otherwise requires —

"Acting Premier" means a Minister discharging the functions of Premier pursuant to article 9(1) or (2) of the Constitution;

"Member of the Niue Assembly," or "Member" means a person elected as a Member of the Niue Assembly under article 16 of the Constitution;

"Member assisting a Minister" means a Member of the Niue Assembly who has been appointed by the Premier to assist a Minister in the undertaking of the duties of the Minister;

"Minister" means a Member of the Niue Assembly who has been appointed as such under Article 5 of the Constitution, but does not include a temporary Minister; .

"Premier" means a Member of the Niue 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 Niue Assembly performing the functions of the Speaker under that article;

"temporary Minister" means a Member of the Niue Assembly appointed as a temporary Minister under article 8 of the Constitution.

4 Remuneration and allowances

There is payable to the Premier, Ministers, Members of the Niue Assembly 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

(1) 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.

(2) The rate of remuneration in Part 1 of the Schedule is deemed to be effective from 12 December 2019.

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 end on the day that he/she vacates his/her office under article 3 or article 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 under Part 2 of the Schedule 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 an adjustment 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 exceeded 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.

(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,

Civil List 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 Members assisting a Minister

(1) The Premier may, as the Premier sees fit, at any time appoint a Member to assist a Minister.

(2) No more than four Members may at any time hold appointment under subsection (1).

(3) Every appointment of a Member under subsection (1) is effective from the date of notification of the appointment, and ends on the date of notification of termination, by the Premier in writing to the Financial Secretary.

(4) Public notice shall be given of every appointment and termination of appointment under this section.

13 Effectiveness of Remuneration and Allowances

Notwithstanding section 7, the remuneration and allowances in clause 3 shall be deemed to be effective from 1 July 2016.

14 [Spent]

SCHEDULE

PART 1 – REMUNERATION

Office	Rate of Remuneration - Annual
Premier	\$80,785.00
Minister	\$56,789.00
Member Assisting Minister	\$45,095.00
Member	\$31,959.00
Speaker	\$35,511.00

PART 2 – ALLOWANCES

Type of allowance	Amount of allowance
Premier's Entertainment and Residence allowance payable to the Premier annually, to defray costs incurred by the Premier in relation to official duties, representation at official functions and to defray the cost of maintaining the Premier's residence.	\$10,000 per annum

Niue Legislation 2019

<p>Ministerial allowance payable to a Minister annually , to defray the costs incurred in relation to official duties and representation at official functions</p>	<p>\$8,000 per annum</p>
<p>Member Assisting a Minister Allowance payable annually to a Member of Parliament who is assisting the Minister with the duties of the Minister, to defray the cost incurred in relation to official duties and representation at official functions</p>	<p>\$6,000 per annum</p>
<p>Speaker's Allowance payable to the Speaker to defray costs incurred in relation to official duties and representation at functions</p>	<p>\$6,000 per annum</p>
<p>Member of Parliament Allowance payable to a Member of Parliament to defray the costs incurred in relation to official duties and representation at official functions</p>	<p>\$4,000 per annum</p>
<p>Acting Premier's Allowance payable to a Minister when acting as Premier</p>	<p>\$100 per day in addition to remuneration as a Minister</p>
<p>Temporary Minister's Allowance payable to a Member when acting as a Minister</p>	<p>\$70 a day in addition to remuneration as Member</p>
<p>Clothing Allowance</p>	<p>Premier \$5,000 payable every 3 years Minister \$4,000 payable every 3 years Speaker \$4,000 payable every 3 years Member \$4,000 payable every 3 years</p> <p>This allowance is payable on the person first becoming a member of the Assembly and may be then subsequently payable every 3 years after the payment of any previous clothing allowance if the member is re-elected to the Niue Legislative Assembly</p>

Civil List Act

<p>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</p>	<p>Premier \$500 daily allowance Minister \$350 daily allowance Speaker \$200 daily allowance Member \$200 daily allowance</p> <p>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 adjusted 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</p>
<p>Overseas Entertainment Allowance payable to the Premier, a Minister, a Member of Parliament assisting a Minister, Members of Parliament and the Speaker in connection with the person's official duties</p>	<p>Premier \$450 per trip Minister \$300 per trip Member Assisting the Minister \$300 per trip Member \$250 per trip Speaker \$250 per trip</p> <p>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</p>
<p>Select Committee Member's Allowance payable to a Select Committee Member who attends Select Committee meetings</p>	<p>For meetings outside of normal working hours \$70 per day. For meetings between 8.30am-12.30pm during normal working hours \$50 per day. For meetings during normal working hours between 8.30am and 4.00pm and beyond, \$100 per meeting</p>

COMMISSIONS OF INQUIRY ACT 1968

1968/50 – 1 October 1968

1	Short title	8	Protection of witnesses and counsel
2	Interpretation	9	Witnesses' allowances
3	Cabinet may appoint Commissions of Inquiry	10	Payment of witnesses' allowances
4	Members of Commissions protected	11	Non-attendance of witness
5	Commissioners' powers	12	Reference of point of law to Court
6	Persons interested entitled to be heard at inquiry	13	Power to award costs
7	Service of summons	14	Enforcing orders for costs
		15	Powers of Judges when Commissioners

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 2
			POSTAL SERVICES
			19 Obligation
			20 Interpretation
2	Objectives and obligations	21	Control on carriage of postal articles
3	Interpretation	22	Control on creation of postage stamps
4	Control of transmission installations	23	Stealing postal articles
5	Control of reception installations	24	Delay and interference with postal articles
6	Public communications service licence	25	Divulging contents of postal articles
7	Private communications service licence	26	Prohibited material
8	Radio communications licence	27	Penalties
9	Grant of public communications service licences	28	Lawful opening of postal articles
10	Grant of private communications service licences and radio communications licences	29	Insufficient postage
11	Schedule of transmission and reception installations	30	Regulations
12	Programmes of public communications service		
13	Programme Advisory Committee		
14	Power of Cabinet to require certain transmissions		
15	Forfeiture		
16	Director may give directions		
17	Exemptions		
18	Regulations (Part 1)		
			PART 3
			ELECTRONIC ADDRESSING
		30A	Interpretation
		30B	Objectives and obligations
		30C	Niue Information Technology Committee
		30D	Appointed Manager/s of electronic addressing
		30E	Cabinet may give directions to the Appointed Manager of electronic addressing
		30F	Delegation of powers
			PART 4
			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

(A) 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

(B) 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 one year and may renew such a licence for further periods of one 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 regulations 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 a 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) 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, 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.

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2006/275 – 1 August 2006

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13	Use of company name	40	Company to maintain share register
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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, 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.

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(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 one 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 one 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 –

(i) specified; or

(ii) to be calculated by reference to a formula; or

(iii) required to be fixed by a suitably qualified person who is not associated with, or interested in, the company.

(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; or
 - (b) Payment of compensation by the company or a director of the company for any loss sustained; or
 - (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: one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) The name of the company; and

(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.

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Part 4

SHAREHOLDERS

Subpart 1 – General

46 Every company must have at least one shareholder

A company must, at all times, have at least one 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; and
- (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.

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(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 one or more classes of shares in the company.

(4) For the purposes of this section and the definition of interest group –

- (a) One 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 two 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 one 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 two directors of the company or, if the company has only one 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 one 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 one 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 58 to 68, 77 to 92, or 94 to 98 of the Criminal Law Code; 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, two 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 one 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 one shareholder, until that director has given not less than 10 working days' notice of the resignation to that share holder.
- (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 one 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) two or more directors of the company; or
 - (ii) if there is only one 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 one person, that person's signature must be witnessed; or
 - (iv) one 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 12 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 two 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 two 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 two or more registers, the share register; or
 - (b) If the share register is divided into two 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 two directors of the company or, if the company has only one 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 two 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.

Companies Act

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 one 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 one 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 maybe 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 High 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 High 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 one 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 one 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 one 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 one 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 one 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;

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- (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 one 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 one 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 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
- (c) 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 one 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 –

Companies Act

- (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 12 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 12 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 Financial Secretary is the Registrar of Companies.

306 Deputy Registrars

(1) The Public Service Commission 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 [Repealed]

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 actor 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; or
- (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 an 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 one 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;

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- (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

INTERPRETATION

s 3

1	Definitions	4	Meaning of related company
2	Meaning of subsidiary	5	Solvency test
3	Meaning of holding company		

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 one 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;

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- “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 cashflows for the company in relation to the accounting period ending on the balance date; and

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- (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) A receiver, or a manager, or a receiver and manager in respect of any property appointed –
 - (i) by or under any deed or agreement; or
 - (ii) 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

(b) Does not include –

(i) 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

(ii) 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 one 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 of 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

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- (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.

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PART 6

LIQUIDATION AND REMOVAL FROM REGISTER

- 73 Resolution to appoint liquidator
74 Distribution of surplus assets

PART 7

MISCELLANEOUS

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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 one 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 one 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; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) the name of the company; and

(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 judgement 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 one 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 two 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 one 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 two directors of the company or, if the company has only one 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 one 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 one 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 one 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 –

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- (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 one 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 one 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 one 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 one 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 one 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 two directors of the company, or, if the company has only one 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 two 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 cashflows 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.

Companies Act

(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 2006.

(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

MODEL RULES FOR SINGLE SHAREHOLDER COMPANY

s 15(3)

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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 one 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 one shareholder.

(4) These rules are designed for a company with one 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 one 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 one 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: one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) the name of the company; and

(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.

Companies Act

(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 one 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 one 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 one 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 one 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.

Companies Act

- (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 two directors of the company, or, if the company has only one director, by that director.

(3) The period between –

- (a) The date of incorporation of the company and its first balance date; or
- (b) Any two 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 cashflows 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.

Companies Act

(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 2006.

(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 4 Model rules for public companies s 15(2)

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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 one 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 one 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) In 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; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and

(b) In all cases send to the shareholder a certificate stating –

(i) the name of the company; and

(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 insufficient 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 five 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 one 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 five 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 two 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 one 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 two 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 one 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 two directors of the company or, if the company has only one 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 two.
- (2) The maximum number of directors is ten.
- (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 three 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 one 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 one 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 one 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 one 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 one 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 one 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 one 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;

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- (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 two directors of the company, or, if the company has only one director, by that director.
- (3) The period between –
 - (a) The date of incorporation of the company and its first balance date; or
 - (b) Any two 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 cashflows 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 –

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- (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 2006.

(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

MINORITY BUY-OUT PROCEDURE

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1	Shareholder may give notice requiring purchase of shares	4	Objection to share price
2	Directors' duties on receipt of notice requiring purchase	5	Nominated price payable if no objection
3	Directors to nominate and give notice of price for shares	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

AMALGAMATIONS

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|---|-----------------------------------|---|---|
| 1 | Approval of amalgamation proposal | 3 | Process for approving amalgamation proposal |
| 2 | Contents of 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 one or more other companies that is or that are directly or indirectly wholly owned by it; or
 - (b) Of two 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 one 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 one 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 –

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- (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 one 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 two 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 one 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 COMPANY CHARGES

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	<i>Preliminary provisions</i>	11	Consequences of rejecting non-complying document
1	Meaning of registrable charge		
2	Charges that are not registrable charges		
3	Constructive notice of registered documents		
	<i>Rectification of register and extension of time</i>	12	When document is registered
4	Court orders	13	Certificate of registration
5	Grounds for Court orders	14	No presumption of validity
	<i>Registration</i>		
6	Registrable documents	15	Entries of satisfaction and release of property from registered charge
7	Who may apply for registration	16	Prescribed time for submitting notices
8	Time for submitting registrable documents	17	Matters on which notices may be deferred
9	What must accompany copy of registrable	18	Registrar must enter memorandum of satisfaction in register
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10	Registrar may reject non-complying document		

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 one 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

POWERS, FUNCTIONS, AND LIABILITIES OF ADMINISTRATORS

s 156

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 two or more administrators
- 5 Exercise of powers, etc, by two or more administrators under compromise

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- 6 General powers of administrator
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PART 3

GENERAL LIABILITY

- 10 Administrator not liable in damages for refusing consent

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- 13 Application of clauses 14 to 17
- 14 Liability of administrator for rent
- 15 Notice stating company does not propose to exercise rights over property
- 16 Effect of notice
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Indemnity

- 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 two or more administrators

(1) If subpart 1 of Part 9 provides for an administrator of a company to be appointed, two or more persons may be appointed as administrators of the company.

(2) If there are two or more administrators of a company –

- (a) A function or power of an administrator of the company may be performed or exercised by any one of them, or by any two 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 one or more of those administrators the case requires.

5 Exercise of powers, etc, by two or more administrators under compromise

If there are two 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 one of them, or by any two 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 one 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

OFFICE OF ADMINISTRATOR

s 158(1)(a)

<i>Restrictions on appointment of administrators</i>		6	Replacement administrator to hold creditors’ meeting
1	Who may not be appointed or act as administrator	7	Court order if vacancy in office of administrator
2	Validity of acts of administrators	8	Vacancy in office of administrator under compromise
3	Person must consent to being appointed administrator		
4	Court may declare whether administrator validly appointed		<i>Administrators’ remuneration</i>
		9	Remuneration of administrator
<i>Vacancy in office of administrator</i>			
5	Vacancy in office 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
EFFECT OF ADMINISTRATION s 156(2)(c)

<p style="text-align: center;">PART 1</p> <p style="text-align: center;">PRELIMINARY PROVISION</p> <p>1 Time for doing act does not run while act prevented by administration</p>	2 3 4	<p>Functions and powers of company officers suspended</p> <p>Effect on company's shareholders</p> <p>Restrictions on putting company into liquidation</p>
<p style="text-align: center;">PART 2</p> <p style="text-align: center;">EFFECT ON COMPANY'S OFFICERS AND SHAREHOLDERS, ETC</p>	5 6	<p style="text-align: center;">PART 3</p> <p style="text-align: center;">EFFECT ON PROCEEDINGS, ETC</p> <p>Stay of civil proceedings</p> <p>Suspension of enforcement process</p>

Companies Act

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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) With 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 two 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 one 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
CREDITORS' COMMITTEES

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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

MEETINGS OF CREDITORS

ss 156, 205, 206, 211

<i>General provisions</i>	<i>Proxies</i>
1 Procedure generally	13 Administrator or liquidator may act as proxy
2 Effect of irregularity or defect	14 Irregularity in notice of proxy
	15 Limits on holder of proxy
	<i>Voting</i>
	16 Entitlement to vote, etc, determined by chairperson
	17 Voting by secured creditors
	18 When resolution adopted
	<i>Postal voting</i>
	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

Companies Act

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 insufficient detail to enable a creditor to form a reasoned judgement 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 two 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 two 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

POWERS, FUNCTIONS, AND LIABILITIES OF LIQUIDATORS

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<p style="text-align: center;">PART 1</p> <p style="text-align: center;">PRELIMINARY PROVISIONS</p> <p>1 Power to appoint two or more liquidators</p> <p>2 Liquidators to act jointly</p> <p>3 When liquidator not required to act</p> <p style="text-align: center;">PART 2</p> <p style="text-align: center;">POWERS OF LIQUIDATORS</p> <p>4 Liquidator controls company's assets</p> <p>5 General powers</p> <p>6 Specific powers</p> <p>7 Liquidator may enforce liability of shareholders</p> <p>8 Liquidator may disclaim onerous property</p> <p>9 Liquidator may be required to elect whether to disclaim onerous property</p> <p style="text-align: center;">PART 3</p> <p style="text-align: center;">DUTIES OF LIQUIDATORS</p> <p>10 Principal duties of liquidator</p> <p>11 Restriction on purchase of company's</p>	<p>12 Restriction on purchase of goods or services from persons connected with liquidator</p> <p>13 Deposit of company funds</p> <p>14 Investment of funds</p> <p>15 Duties in relation to accounts</p> <p>16 Meaning of failure to comply</p> <p>17 Failure to comply</p> <p>18 Consequences of non-compliance with Court order</p> <p>19 Prohibition order</p> <p>20 Who may apply for orders under clauses 17 to 19</p> <p>21 Court order under clauses 17 to 19: general</p> <p style="text-align: center;">PART 4</p> <p style="text-align: center;">COURT SUPERVISION OF LIQUIDATIONS</p> <p>22 Court orders</p> <p>23 Court orders are additional to other Court powers</p> <p>24 Defence to act in accordance with Court direction</p>
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PART 1

PRELIMINARY PROVISIONS

1 Power to appoint two or more liquidators

For the purposes of this Act, the power to appoint a liquidator of a company includes the power to appoint two or more persons as liquidators of a company.

2 Liquidators to act jointly

If two 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 one 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 one 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 two 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 two 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
OFFICE OF LIQUIDATOR

s 211

<p>RESTRICTIONS ON APPOINTMENT OF LIQUIDATORS</p> <p>1 Who may not be appointed or act as liquidator</p> <p>2 Validity of acts of liquidators</p> <p>3 Person must consent to being appointed liquidator</p> <p>4 Court may declare whether liquidator validly appointed</p> <p style="text-align: center;"><i>Vacancy in office of liquidator</i></p> <p>5 Vacancy in office of liquidator</p> <p>6 How liquidator may resign</p> <p>7 Court may review appointment of successor</p> <p>8 Vacancy not caused by resignation</p>	<p>9 Appointment of liquidator until successor appointed</p> <p>10 Appointment of successor by Court</p> <p>11 Notice of appointment given by successor</p> <p>12 Vacating liquidator’s successor to be helped</p> <p>13 Liquidator ceases to hold office On completion of liquidation</p> <p style="text-align: center;"><i>Liquidators’ remuneration</i></p> <p>14 Remuneration of liquidators</p> <p>15 Expenses and remuneration payable out of assets of company</p>
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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.

Companies Act

SCHEDULE 15
EFFECT OF LIQUIDATION

s 211

	PART 1 PRELIMINARY PROVISION	5	Effect on proceedings commenced before commencement of liquidation
1	Company's rules not to be altered	6	No enforcement of rights over company's property
	PART 2 EFFECT ON COMPANY'S OFFICERS AND SHAREHOLDERS, ETC	7	Restriction on rights of creditors to complete execution, distraint, or attachment
2	Functions and powers of company's directors suspended	8	Duties of court officer in execution process
3	Effect on company's shareholders		
	PART 3		
4	Legal proceedings not to be commenced or continued		
			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
LIQUIDATION COMMITTEES

ss 211, 244

PART 1 LIQUIDATION COMMITTEE	PART 2 PROCEEDINGS AT MEETINGS
1 Appointment of members	10 Frequency of meetings
2 Membership	11 Majorities
3 Powers	12 Resignation
4 Application of company's rules	13 Office becoming vacant
5 Inability to act	14 Removal of member
6 Restriction on purchase of company's assets by liquidation committee	15 Vacancy filled
7 Members not entitled to benefit from dealings with company's assets	16 Committee with vacancy may act
9 Disallowance or recovery of benefits or payments	

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 three 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 three 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 two, may act even though a vacancy exists in the committee.

SCHEDULE 17

VOIDABLE TRANSACTIONS AND CHARGES AND RECOVERIES IN OTHER CASES s 211

<p style="text-align: center;">PART 1</p> <p style="text-align: center;">VOIDABLE TRANSACTIONS AND CHARGES</p> <p style="text-align: center;"><i>Voidable transactions</i></p> <p>1 Definitions</p> <p>2 Voidable transactions</p> <p style="text-align: center;"><i>Voidable charges</i></p> <p>3 Definitions</p> <p>4 Voidable charges</p> <p>5 Exception: certain kinds of substituted charges</p> <p>6 Exception: charge that secures unpaid purchase price</p> <p>7 Payments received by secured party</p> <p style="text-align: center;"><i>Procedure for setting aside voidable transactions and charges</i></p>	<p>8 Procedure</p> <p>9 Other orders</p> <p>10 Additional provisions relating to setting aside transactions and charges</p> <p style="text-align: center;">PART 2</p> <p style="text-align: center;">RECOVERY IN OTHER CASES</p> <p style="text-align: center;"><i>Transactions at undervalue</i></p> <p>11 Definitions</p> <p style="text-align: center;"><i>Transactions for inadequate or excessive consideration with directors, etc</i></p> <p>13 Definitions</p> <p>14 Transactions for excessive consideration with directors, etc</p>
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Companies Act

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|----|---|----|--|
| 15 | Transactions for inadequate consideration with directors, etc | 19 | Contribution for not keeping proper accounting records |
| | | 20 | When Court may not make declaration under clause 19 |
| | <i>Court may set aside certain securities and charges</i> | | <i>Court may require persons to repay money or return property</i> |
| 16 | Court may set aside certain securities and charges | 21 | Court may require persons to repay money or return property |
| 17 | Certain securities exempted | | |
| 18 | Other orders, etc | | <i>Pooling of assets</i> |
| | <i>Contribution for not keeping proper accounting records</i> | 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 one 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 one 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 one 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 one 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 one 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 one 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 one 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 one 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 one 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 one 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 one 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 two or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one 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;

Companies Act

- (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 CREDITORS' CLAIMS

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<p style="text-align: center;">PART 1</p> <p style="text-align: center;">PRELIMINARY PROVISIONS</p> <p>1 Admissible claims</p> <p>2 Ascertainment of amount of claim</p> <p>3 Claim not of ascertained amount</p> <p>4 Fines and penalties</p> <p>5 Claims relating to debts payable after commencement of liquidation</p> <p>6 Claims by unsecured creditors</p> <p style="text-align: center;">PART 2</p> <p style="text-align: center;">SECURED CLAIMS</p> <p>7 Powers of secured creditors</p> <p>8 Realising secured property</p> <p>9 Valuation of security</p> <p>10 Liquidator's duties on receipt of claim by secured creditor</p> <p>11 Liquidator may redeem security</p> <p>12 Liquidator may require secured creditor to exercise powers</p> <p>13 Offence to make false or misleading claim</p> <p style="text-align: center;">PART 3</p> <p style="text-align: center;">PREFERENTIAL CLAIMS</p> <p>14 Definitions</p> <p>15 First priority claims</p> <p>17 Third priority claims</p>	<p>18 Ranking of claims in clauses 16 and 17</p> <p>19 When landlord or other person has distrained on goods, etc</p> <p style="text-align: center;">PART 4</p> <p style="text-align: center;">MUTUAL CREDIT AND SET-OFF</p> <p>20 Definitions</p> <p>21 Mutual credit and set-off</p> <p>22 Proof for person who is not related person Proof for person who is related person</p> <p>24 Exceptions for amounts paid or payable by shareholder</p> <p style="text-align: center;">PART 5</p> <p style="text-align: center;">MISCELLANEOUS</p> <p>25 Interest on claims</p> <p>26 Trade discounts</p> <p>27 Periodical payments</p> <p>28 Employees' claims</p> <p>29 Notice to creditors to claim</p> <p>30 Failure to claim by day fixed for claims</p> <p>31 Failure to establish priority by day fixed for claims</p> <p>32 Dividends in respect of rejected claims</p> <p>33 Costs of proceedings relating to liquidator's decision on claims</p>
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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 one 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 one 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.
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SCHEDULE 19
LIQUIDATION OF ASSETS OF OVERSEAS COMPANIES

s 290(1)

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]

CONSTITUTIONAL POLLS ACT 1977

1977/28 – 14 April 1977

1	Short title	5	Declaration of result of poll and communication to the Speaker
2	Special poll of electors as to Bills to which article 35 of the Niue Constitution applies	6	Regulations
3	Application of provisions of Niue Assembly Act		
4	Electoral rolls		

SCHEDULE

To provide for special polls relating to proposed amendments to the Niue Constitution Act 1974 or the Niue Constitution

1 Short title

This is the Constitutional Polls Act 1977.

2 Special poll of electors as to Bills to which article 35 of the Niue Constitution applies

(1) Whenever a Bill to which article 35 of the Niue Constitution applies, has satisfied the requirements of article 35 (1) (a), there shall be taken within the meaning of the Assembly Act 1966, a poll on the question whether the proposal in the Bill is supported or not supported.

(2) The poll shall be taken on a day to be fixed by the Speaker by notice in the *Gazette* or in a newspaper circulating in Niue and shall be a poll of the electors of the several village constituencies who are entitled to vote at a general election of members of the Niue Assembly.

(3) The question shall be submitted in the form in the Schedule.

3 Application of provisions of the Niue Assembly Act

Subject to this Act and any regulations made under it, and subject to all necessary modifications, the poll shall be taken in the same manner as if it were a general election of members of the Niue Assembly and the Niue Assembly Act 1966 and any other law relating to such elections, as far as they are applicable, shall apply accordingly.

4 Electoral rolls

(1) Subject to this section, the electoral roll for each village constituency at the poll shall be the roll as provided by the Niue Assembly Act 1966.

(2) The electoral roll in each village constituency shall close 10 days before the date fixed for the taking of the poll.

(3) The electoral rolls to be used in each village constituency shall be the main and supplementary rolls used at the last general election, together with a further supplementary roll to be prepared by the Chief Electoral Officer and to include the names of all electors registered by him after the closing of the rolls for the last general election and remaining on the roll for each village constituency at its closing under subsection (2).

5 Declaration of result of poll and communication to Speaker

(1) After the close of the poll in each village constituency the Presiding Officer shall count the votes recorded for and against the proposal and shall reject all informal votes.

(2) Immediately after he has counted the votes he shall send to the Chief Electoral Officer a statement of the number of informal votes, and of the total number of valid votes recorded, and of the number of valid votes recorded for and against the proposal.

(3) On receipt of the statement from all Presiding Officers, the Chief Electoral Officer shall conduct the final count and declare –

- (a) The total number of valid votes recorded at the poll throughout Niue and in each village constituency for the proposal; and
- (b) The total number of valid votes recorded at the poll throughout Niue and in each village constituency against the proposals.
- (c) The total number of votes rejected as informal.

(4) The Chief Electoral Officer shall communicate to the Speaker and shall notify in the *Gazette* or in a newspaper circulating in Niue, the numbers of the votes as finally ascertained by him in respect of the whole of Niue and in respect of each village constituency, and the result of the poll as determined thereby in respect of the whole of Niue.

6 Regulations

The Cabinet may make regulations for any purpose for which regulations are required or contemplated by this Act.

SCHEDULE
VOTING PAPER – Section 2 (3)
Constitutional Amendment Poll
(article 35 Niue Constitution)

Consecutive Number

..... Village Constituency

DO YOU VOTE IN FAVOUR OF THE BILL?

YES

or

NO.....

DIRECTIONS TO VOTER

Place a tick (✓) by the answer you wish to give.

After voting, fold this paper and place it in the ballot box.

You must not take this paper outside the polling booth.

If you spoil this paper, return it to the Poll Clerk and obtain another.

CONSULAR PRIVILEGES AND IMMUNITIES ACT 1971

1971/11 (NZ) – 1 April 1972

1	Short title	8	Refunds or payments where fiscal privileges accorded
2	Interpretation	9	Certificate of the Cabinet
3	[Spent]	10	[Spent]
4	Consular privileges and immunities	11	Regulations
5	Immunities of certain employees of a consular post	12-14	[Spent]
6	Withdrawal of consular privileges and immunities		
7	Immunities of certain persons in service of Commonwealth or foreign countries		

SCHEDULE

To make provision with respect to consular privileges and immunities, and to give effect to the Vienna Convention on Consular Relations

1 Short title

This is the Consular Privileges and Immunities Act 1971.

2 Interpretation

In this Act –

- (a) “Convention” means the Vienna Convention on Consular Relations signed in 1863, a copy of the English text of which is set out in Schedule 1;
- (b) Expressions defined in article 1 of the Convention have the meanings so defined.

3 [Spent]

4 Consular privileges and immunities

(1) Subject to subsection (7) the following provisions of the Convention shall have the force of law in Niue, namely:

- (a) Articles 1, 5 and 15, article 17 (1), article 31 (1), (2), (4) and article 32,33, 35 and 39, article 41 (1), (2), articles 43 to 45 and 48 to 54, article 55 (2) and (3), article 57 (2), articles 60 to 62, 66 and 67, and article 70 (1), (2) and (4);
- (b) Article 58 (1), (2) and (3) except in relation to any articles referred to therein that do not have the force of law in Niue under paragraph (a);
- (c) Article 71, except in relation to article 42.

(2) Subject to subsection (1), Cabinet may determine, either generally or in any case or class of case, the fiscal privileges which shall be accorded to any consular post or persons connected with any consular post, notwithstanding that the determination may extend treatment more favourable than that required by the provisions of the Convention, and may in like manner determine the terms and conditions on which those privileges may be enjoyed.

(3) (a) For the purpose of giving effect to any custom or agreement by which Niue and any other State extend to each other treatment more favourable than is required by the provisions of the Convention, Cabinet may, by regulation, declare that

a consular post of that State and persons connected with that consular post shall be accorded such immunity from jurisdiction, and inviolability, as are specified in the order.

(b) Nothing in this subsection shall apply with respect to persons to whom section 5 applies.

(4) In subsection (2) “persons connected with any consular post” includes any person in respect of whom a regulation has been made for the purposes of section 7.

(5) In subsections (2) and (3) “treatment more favourable” includes the according of privileges or immunities, as the case may be, to persons who under the Convention may enjoy privileges and immunities only if and so far as these are granted to them by the receiving State.

(6) Where by virtue of this Act any immunity from jurisdiction is accorded to persons who do not enjoy immunity under the Convention, that immunity may be waived in the manner and subject to the conditions specified in article 45 of the Convention, and the waiver shall have the same consequences as a waiver under that article.

(7) For the purposes of the articles referred to in subsection (1) –

- (a) A reference to the receiving State shall be construed as a reference to Niue;
- (b) A reference to a national of the receiving State shall be construed as a reference to a New Zealand citizen;
- (c) The reference in article 31 (2) to authorities of the receiving State shall be construed as including a reference to any constable and any person exercising a power of entry to premises;
- (d) The reference in article 41 (1) to a grave crime shall be construed as a reference to any offence punishable with imprisonment for a term of 3 years or more or for life;
- (e) The reference in article 44 (3) to matters connected with the exercise of the functions of members of a consular post shall be construed as references to matters connected with the exercise of consular functions by consular officers or consular employees;
- (f) The reference in article 45 to waiver by the sending State shall be construed as including a reference to a waiver by the head, or by a person for the time being performing the functions of head, of the diplomatic mission of the sending State or, if there is no such mission, of the consular post concerned;
- (g) Articles 50 to 52, 54, 62 and 67 shall be construed as granting the privileges or immunities that those articles require to be granted;
- (h) The reference in article 50 (1) and in article 62 to such laws and regulations as the receiving State may adopt shall be construed as including a reference to any law in force in Niue relating to the quarantine, or the prohibition or restriction of the importation into, or the exportation from Niue of animals, plants or goods, but any immunity from jurisdiction that a person may possess or enjoy by virtue of subsection (1) shall not be prejudiced;
- (i) The reference in article 57 (2) to the privileges and immunities provided in chapter 2 shall be construed as a reference to those provided in section 2 of that Chapter;
- (j) The reference in article 70 (4) to the rules of international law concerning diplomatic relations shall be construed as a reference to Part 1 of the Diplomatic Privileges and Immunities Act 1968;
- (k) The reference in article 71 (1) to any additional privileges and immunities that may be granted by the receiving State, and the reference in article 71 (2) to

privileges and immunities so far as these are granted by the receiving State, shall, so far as they relate to fiscal privileges, be construed as references to such determinations as may be made by Cabinet under subsection (2) and, so far as they relate to immunities, be construed as references to such immunities as may be conferred by a regulation under subsection (3).

5 Immunities of certain employees of a consular post

Consular employees of a consular post headed by a career consular officer who are New Zealand citizens or are permanently resident in Niue shall be accorded immunity from jurisdiction in respect of all official acts performed in the exercise of their functions.

6 Withdrawal of consular privileges and immunities

Where Cabinet is satisfied that the privileges and immunities accorded in relation to a consular post of Niue in any State, or to persons connected with that consular post, are less than those conferred by or by virtue of this Act in relation to a consular post of that State, or to persons connected with any such consular post, Cabinet may, by regulation, withdraw, modify, or restrict, in relation to that consular post or to persons connected with that consular post, such of the privileges and immunities so conferred to such extent as appears to him to be proper.

7 Immunities of certain persons in service of Commonwealth or foreign countries

(1) Cabinet may, by regulation, confer on –

- (a) Persons in the service of the Government of any country; and
- (b) Persons in the service of the Government of any territory for whose international relations the Government of any Commonwealth country is responsible –

performing functions corresponding to those of a consular officer or consular employee, and holding such offices or classes of offices as are specified in the regulation, such immunity from jurisdiction and such inviolability, as are specified in the regulation.

(2) Cabinet may, by regulation declare that the provisions of this Act shall apply, to such extent as may be specified in the regulation, to persons appointed by the Government of any other Commonwealth country to serve as consular officers or consular employees in Niue.

(3) Any regulation made under this section may accord, to such extent as may be specified in the regulation, inviolability to the official premises and official archives of any person in respect of whom a regulation has been made for the purposes of this section.

8 Refunds or payments where fiscal privileges accorded

(1) Cabinet may direct that such refunds or payments be made from any public fund or account or from the money of any local authority, public body, or person as may in the opinion of Cabinet be necessary to give effect to any fiscal privilege accorded under section 4.

(2) Where any loss is suffered by any public fund or account other than the Niue Government by reason of the conferring of any such privilege or by the making of any refund or payment directed under this section, the Cabinet may direct that such payments be made from the Niue Government Account to that other fund or account as may be necessary in the opinion of Cabinet to reimburse that loss.

(3) Where any loss is suffered by any local authority, public body, or person by reason of the conferring of any such privilege or by the making of any refund or payment directed under this section, the Cabinet may direct that such payments be made

from the Niue Government Account to that local authority, public body, or person as may be necessary in the opinion of Cabinet to reimburse that loss.

(4) All refunds or payments directed under this section to be made from any public fund or account shall be made without further appropriation than this section.

9 Certificate of the Cabinet

If in any proceedings any question arises whether or not any person is or was at any time or in respect of any period accorded any privilege or immunity under or by virtue of this Act, a certificate issued by the Cabinet stating any fact relevant to that question shall be conclusive evidence of that fact.

10 [Spent]

11 Regulations

Cabinet may make regulations providing for such matters as are contemplated by or necessary for giving full effect to this Act and for the due administration of it.

12-14 [Spent]

SCHEDULE

Section 2

VIENNA CONVENTION ON CONSULAR RELATIONS

THE STATES PARTIES TO THE PRESENT CONVENTION,

RECALLING that consular relations have been established between peoples since ancient times,

HAVING IN MIND the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

CONSIDERING that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on April 18, 1961,

BELIEVING that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

REALIZING that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

AFFIRMING that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

HAVE AGREED as follows:

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ARTICLE 1

Definitions

1 For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) “consular post” means any consulate-general, consulate, vice-consulate or consular agency;
- (b) “consular district” means the area assigned to a consular post for the exercise of consular functions;
- (c) “head of consular post” means the person charged with the duty of acting in that capacity;
- (d) “consular officer” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) “consular employee” means any person employed in the administrative or technical service of a consular post;
- (f) “member of the service staff” means any person employed in the domestic service of a consular post;
- (g) “members of the consular post” means consular officers, consular employees and members of the service staff;
- (h) “members of the consular staff” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) “member of the private staff” means a person who is employed exclusively in the private service of a member of the consular post;
- (j) “consular premises” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) “consular archives” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

2 Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3 The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

CHAPTER 1 – CONSULAR RELATIONS IN GENERAL

SECTION 1 – ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

ARTICLE 2

Establishment of consular relations

1 The establishment of consular relations between States takes place by mutual consent.

2 The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.

3 The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

ARTICLE 3

Exercise of consular functions

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

ARTICLE 4

Establishment of a consular post

1 A consular post may be established in the territory of the receiving State only with that State's consent.

2 The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3 Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4 The consent of the receiving State shall also be required if a consulate general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5 The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

ARTICLE 5

Consular functions

Consular functions consist in:

- (a) Protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) Furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) Ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) Issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) Helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) Safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) Safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) Subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the

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sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

- (j) Transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) Exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorised by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

ARTICLE 6

Exercise of consular functions outside the consular district

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

ARTICLE 7

Exercise of consular functions in a third State

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

ARTICLE 8

Exercise of consular functions on behalf of a third State

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

ARTICLE 9

Classes of heads of consular posts

- 1 Heads of consular posts are divided into four classes, namely:
 - (a) consuls-general;
 - (b) consuls;
 - (c) vice-consuls;

(d) consular agents.

2 Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

ARTICLE 10

Appointment and admission of heads of consular posts

1 Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2 Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

ARTICLE 11

The consular commission or notification of appointment

1 The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2 The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3 If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this Article.

ARTICLE 12

The *exequatur*

1 The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an *exequatur*, whatever the form of this authorization.

2 A State which refuses to grant an *exequatur* is not obliged to give to the sending State reasons for such refusal.

3 Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an *exequatur*.

ARTICLE 13

Provisional admission of heads of consular posts

Pending the delivery of the *exequatur*, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

ARTICLE 14

Notification to the authorities of the consular district

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

ARTICLE 15

Temporary exercise of the functions of the head of a consular post

1 If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2 The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3 The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4 When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

ARTICLE 16

Precedence as between heads of consular posts

1 Heads of consular posts shall rank in each class according to the date of the grant of the *exequatur*.

2 If, however, the head of a consular post before obtaining the *exequatur* is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the *exequatur*.

3 The order of precedence as between two or more heads of consular posts who obtained the *exequatur* or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.

4 Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.

5 Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6 Heads of consular posts shall have precedence over consular officers not having that status.

ARTICLE 17

Performance of diplomatic acts by consular officers

1 In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorised to perform

diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2 A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

ARTICLE 18

Appointment of the same person by two or more States as a consular officer

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

ARTICLE 19

Appointment of members of consular staff

1 Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2 The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.

3 The sending State may, if required by its laws and regulations, request the receiving State to grant an *exequatur* to a consular officer other than the head of a consular post.

4 The receiving State may, if required by its laws and regulations, grant an *exequatur* to a consular officer other than the head of a consular post.

ARTICLE 20

Size of the consular staff

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

ARTICLE 21

Precedence as between consular officers of a consular post

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

ARTICLE 22

Nationality of consular officers

1 Consular officers should, in principle, have the nationality of the sending State.

2 Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.

3 The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

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ARTICLE 23

Persons declared non grata

1 The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2 If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff.

3 A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.

4 In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

ARTICLE 24

Notification to the receiving State of appointments, arrivals and departures

1 The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

- (a) The appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
- (b) The arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
- (c) The arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;
- (d) The engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2 When possible, prior notification of arrival and final departure shall also be given.

SECTION 2 – END OF CONSULAR FUNCTIONS

ARTICLE 25

Termination of the functions of a member of a consular post

The functions of a member of a consular post shall come to an end *inter alia*:

- (a) On notification by the sending State to the receiving State that his functions have come to an end;
- (b) On withdrawal of the *exequatur*;
- (c) On notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

ARTICLE 26

Departure from the territory of the receiving State

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members

of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in the case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

ARTICLE 27

Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances

- 1 In the event of the severance of consular relations between two States:
 - (a) The receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
 - (b) The sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
 - (c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.
- 2 In the event of the temporary or permanent closure of a consular post, the provisions of sub-paragraph (a) of paragraph 1 of this Article shall apply. In addition,
 - (a) If the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or
 - (b) If the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Article shall apply.

CHAPTER 2 – FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

SECTION 1 – FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

ARTICLE 28

Facilities for the work of the consular post

The receiving State shall accord full facilities for the performance of the functions of the consular post.

ARTICLE 29

Use of national flag and coat-of-arms

- 1 The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
- 2 The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.

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3 In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

ARTICLE 30

Accommodation

1 The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular posts or assist the latter in obtaining accommodation in some other way.

2 It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

ARTICLE 31

Inviolability of the consular premises

1 Consular premises shall be inviolable to the extent provided in this Article.

2 The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3 Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4 The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

ARTICLE 32

Exemption from taxation of consular premises

1 Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2 The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

ARTICLE 33

Inviolability of the consular archives and documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

ARTICLE 34

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

ARTICLE 35

Freedom of communication

1 The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

2 The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3 The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorised representative of the sending State. If his request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4 The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5 The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6 The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7 A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorised port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

ARTICLE 36

Communication and contact with nationals of the sending State

1 With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

- (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
- (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall

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also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

- (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2 The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

ARTICLE 37

Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) In the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;
- (b) To inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;
- (c) If a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

ARTICLE 38

Communication with the authorities of the receiving State

In the exercise of their functions, consular officers may address:

- (a) The competent local authorities of their consular district;
- (b) The competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

ARTICLE 39

Consular fees and charges

1 The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2 The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

SECTION 2 – FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO
CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

ARTICLE 40

Protection of consular officers

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

ARTICLE 41

Personal inviolability of consular officers

1 Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2 Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3 If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 42

Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

ARTICLE 43

Immunity from jurisdiction

1 Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2 The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:

- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

ARTICLE 44

Liability to give evidence

1 Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

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2 The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3 Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

ARTICLE 45

Waiver of privileges and immunities

1 The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2 The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3 The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4 The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

ARTICLE 46

Exemption from registration of aliens and residence permits

1 Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2 The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

ARTICLE 47

Exemption from work permits

1 Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2 Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

ARTICLE 48

Social security exemption

1 Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2 The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3 Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4 The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

ARTICLE 49

Exemption from taxation

1 Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2 Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3 Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

ARTICLE 50

Exemption from customs duties and inspection

1 The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilisation by the persons concerned.

2 Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3 Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is

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prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

ARTICLE 51

Estate of a member of the consular post or of a member of his family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

ARTICLE 52

Exemption from personal services and contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 53

Beginning and end of consular privileges and immunities

1 Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2 Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3 When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4 However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5 In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

ARTICLE 54

Obligations of third States

1 If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2 In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3 Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4 The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

ARTICLE 55

Respect for the laws and regulations of the receiving State

1 Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2 The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3 The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

ARTICLE 56

Insurance against third party risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

ARTICLE 57

Special provisions concerning private gainful occupation

1 Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

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- 2 Privileges and immunities provided in this Chapter shall not be accorded:
- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
 - (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
 - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER 3—REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

ARTICLE 58

General provisions relating to facilities, privileges and immunities

1 Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

2 Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.

3 Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4 The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

ARTICLE 59

Protection of the consular premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

ARTICLE 60

Exemption from taxation of consular premises

1 Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2 The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

ARTICLE 61

Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

ARTICLE 62

Exemption from customs duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

ARTICLE 63

Criminal Proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings, shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

ARTICLE 64

Protection of honorary consular officers

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

ARTICLE 65

Exemption from registration of aliens and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

ARTICLE 66

Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

ARTICLE 67

Exemption from personal services and contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 68

Optional character of the institution of honorary consular officers

Each State is free to decide whether it will appoint or receive honorary consular officers.

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CHAPTER 4 – GENERAL PROVISIONS

ARTICLE 69

Consular agents who are not heads of consular posts

1 Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2 The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

ARTICLE 70

Exercise of consular functions by diplomatic missions

1 The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2 The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3 In the exercise of consular functions a diplomatic mission may address:

- (a) the local authorities of the consular district;
- (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4 The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

ARTICLE 71

Nationals or permanent residents of the receiving State

1 Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2 Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

ARTICLE 72

Non-discrimination

- 1 In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.
- 2 However, discrimination shall not be regarded as taking place:
 - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;
 - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

ARTICLE 73

Relationship between the present Convention and other international agreements

- 1 The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.
- 2 Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

CHAPTER 5 – FINAL PROVISIONS

ARTICLE 74

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialised agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

ARTICLE 75

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE 76

Accession

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE 77

Entry into force

- 1 The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
- 2 For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Consular Privileges and Immunities Act

ARTICLE 78

Notifications by the Secretary-General

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74:

- (a) Of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;
- (b) Of the date on which the present Convention will enter in force in accordance with Article 77.

ARTICLE 79

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

CONTINENTAL SHELF ACT 1964

1964/28 (NZ) – 3 November 1964

1	Short title	6	[Repealed]
2	Interpretation	7	Application of criminal and civil law shelf
3	[Repealed]	8	Regulations
4	Mining for petroleum on continental shelf	9	[Spent]
5	Mining for minerals on continental shelf		

To make provision as to the exploration and exploitation of the continental shelf of Niue and for matters connected with that purpose

1 Short title

This is the Continental Shelf Act 1964.

2 Interpretation

In this Act –

“continental shelf” has the same meaning as in the Maritime Zones Act 2013;

“natural resources” means –

- (a) The mineral and other natural non-living resources of the seabed and subsoil; and
- (b) Living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.

3 [Repealed]

4 Mining for petroleum on continental shelf

The Mining Act 1977 shall, as far as applicable and with any necessary modification, apply with respect to petroleum in the seabed and subsoil of the continental shelf.

5 Mining for minerals on continental shelf

(1) No person shall prospect or mine for, or carry on any operations for the recovery of, minerals in the seabed or subsoil of the continental shelf except in pursuance of a licence issued under this section.

(2) Cabinet may on application in that behalf, grant to any person a licence authorising the licensee to prospect and mine for, and carry on operations for the recovery of, minerals or of minerals of any specified kinds in any specified area of the continental shelf.

(3) Every licence granted under this section shall be subject to such conditions as the Cabinet, when granting the licence, thinks fit to impose in the circumstances of each particular case, including, but without limiting the generality of this section, conditions requiring the licensee –

- (a) To comply with such conditions as to safety as are specified in the licence;
- (b) To pay to the Crown in respect of minerals recovered by the licensee from the continental shelf such royalties as are specified in the licence.

(4) The grant of a licence under this section shall in every case be in the absolute discretion of Cabinet.

(5) Any number of licences under this section may be granted to the same person.

(6) [Repealed]

(7) Every person commits an offence, and is liable on conviction to a fine not exceeding 2 penalty units, who prospects or mines for, or carries on operations for the recovery of, minerals in the seabed or subsoil of the continental shelf otherwise than pursuant to a licence under this section and in accordance with the conditions of the licence (not being a condition relating to the payment of royalties to the Crown).

6 [Repealed]

7 Application of criminal and civil law

(1) Subject to the provisions of this Act, for the purposes of this Act and of every other enactment (whether passed before or after the passing of this Act) and of every rule of law for the time being in force in Niue –

(a) Every act or omission which takes place on or under or above or about any installation or device (whether permanent or temporary) constructed, erected, placed, or used in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources shall be deemed to take place in Niue; and

(b) Every such installation or device shall be deemed to be situated in Niue, and for the purposes of jurisdiction shall be deemed to be situated in that part of Niue above highwater mark at ordinary spring tides which is nearest to that installation or device; and

(c) Every court in Niue which would have jurisdiction (whether civil or criminal) in respect of that act or omission if it had taken place in Niue shall have jurisdiction accordingly; and

(d) Every power of arrest or of entry or search or seizure or other power that could be exercised under any enactment (whether passed before or after the passing of this Act) or under any rule of law in respect of any such act or omission or suspected act or omission if it had taken place or was suspected to have taken place in Niue may be exercised on or in respect of any such installation or device as if the installation or device were in Niue; and

(e) Subject to the customs laws, every installation or device, and any materials or parts used in the construction of an installation or device, which are brought into the waters above the continental shelf from parts beyond the seas shall be deemed to have been imported into Niue when the installation or device is constructed, erected, or placed in, on, or above the continental shelf in connection with the exploration of the continental shelf or the exploitation of its natural resources.

(2) [Spent]

(3) Nothing in this section shall limit the provisions of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond Niue or the jurisdiction of any Niue court under any such enactment or rule of law.

(4) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person charged with having committed an offence in respect of which the courts of Niue have jurisdiction by virtue only of this section shall not be instituted in any court except with the certificate of Cabinet that it is expedient that the proceedings should be instituted:

Continental Shelf Act

Provided that a person so charged 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 Cabinet to the institution of proceedings for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(5) A person so charged 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 proceedings for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(6) In this section “device” includes any ship or floating platform or aircraft that is used in connection with any installation or device.

8 Regulations

(1) Cabinet may make regulations for all or any of the following purposes

- (a) Regulating the construction, erection, or use of installations or devices in, on, or above the continental shelf, or any specified part thereof, in connection with the exploration of the shelf or that part thereof or the exploitation of its natural resources;
- (b) Prohibiting the construction, erection, placing, or use of installations or devices in, on, or above the continental shelf in places where they could cause interference with the use of recognised sea lanes essential to coastwise or international navigation;
- (c) Establishing safety zones, extending to a distance not exceeding 500 metres measured from each point of the outer edge of the installation or device, around any such installations or devices in, on, or above the continental shelf;
- (d) Prescribing such measures as the Cabinet considers necessary in any such safety zone for the protection of the installation or device with respect to which the safety zone is established;
- (e) Regulating or prohibiting the entry of ships into any such safety zone;
- (f) Prescribing measures to be taken in any such safety zone for the protection of the living resources of the sea and the natural resources of the continental shelf from harmful agents;
- (g) Prescribing the notice to be given of the construction, erection, or placing of installations or devices in, on, or above the continental shelf;
- (h) Prescribing the permanent means to be installed for the purpose of giving warning to shipping and aircraft of the presence of installations or devices in, on, or above the continental shelf;
- (i) Providing for the removal of installations or devices constructed, erected, or placed in, on, or above the continental shelf which have been abandoned or become disused;
- (j) Prohibiting or restricting any exploration of the continental shelf or any specified part thereof or any exploitation of its natural resources which in the opinion of the Cabinet could result in an unjustifiable interference with navigation, fishing, or the conservation of the living resources of the sea, or could interfere with national defence or with oceanographic or other scientific research or with submarine cables or pipelines;
- (k) Providing for such matters as are necessary for giving full effect to this Act and for its due administration;

- (1) Prescribing penalties for breaches of the regulations, not exceeding a fine of 10 penalty units.
- (2) In this section “continental shelf” includes the seabed and subsoil of the submarine areas within the territorial limits of Niue.

9 [Spent]

CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS AND HOSTAGES ACT 1984

1984/86 – 27 September 1984

1	Short title		<i>General Provisions</i>
2	Interpretation	9	[Spent]
		10	Crimes deemed to be included in extradition treaties
	<i>Internationally Protected Persons</i>	11	Surrender of offenders
3	Crimes against persons	12	Restrictions on surrender of offenders
4	Crimes against premises or vehicles	13	Further restrictions on surrender of offenders
5	Threats against persons	14	Consent of Cabinet required to prosecutions
6	Threats against premises or vehicles	15	Evidence
7	Prosecution need not prove certain matters	16	[Spent]
		17	Other Acts not affected
	<i>Hostages</i>		
8	Hostage-taking		

SCHEDULES

To give effect to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 1973, and the Convention Against the Taking of Hostages 1979, and for matters incidental to the implementation of those Conventions

1 Short title

This is the Crimes against Internationally Protected Persons and Hostages Act 1984.

2 Interpretation

(1) In this Act –

“Fugitive Offenders Act 1881” means the Fugitive Offenders Act 1881 of the Parliament of the United Kingdom (as amended by the Fugitive Offenders Amendment Act 1976);

“internationally protected person” in relation to an alleged act or omission that constitutes a crime by virtue of or against any of sections 3 to 6 means –

(a) A person who, at the time of the alleged act or omission, is –

(i) a Head of State; or

(ii) a member of a body that performs the functions of a Head of State under the constitution of the State; or

(iii) a head of Government; or

(iv) a Minister of Foreign Affairs –

and is outside the territory of the State in which he holds office;

(b) A member of the family of any person referred to in paragraph (a) who is accompanying that person;

(c) A person who, at the time of the alleged act or omission, is –

(i) a representative or an official of a State; or

(ii) an official or agent of an international organisation of an inter-governmental character –

and is entitled under international law to special protection from attack on his person, freedom, or dignity;

- (d) A member of the family of any person referred to in paragraph (c) who is a member of that person's household;

“Secretary for Justice” means that member of the Niue Public Service for the time being holding the office of the head of the Justice Department;

“1973 Convention” means the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973;

“1979 Convention” means the Convention Against the Taking of Hostages, opened for signature at New York on 18 December 1979;

“vehicle” includes any means of conveyance.

(2) In paragraph (a)(i) of the term “internationally protected person” in subsection (1), the term “Head of State” includes, in relation to any Commonwealth country (other than the United Kingdom) of which Her Majesty the Queen is Head of State, the Governor-General or other person who performs the functions of the Head of State as Her Majesty's representative.

Internationally Protected Persons

3 Crimes against persons

(1) Without limiting the Criminal Law Code everyone commits a crime who, whether in or outside Niue, does or omits to do any act to, or in relation to any person whom he knows to be an internationally protected person, if that act or omission constitutes, or would, if done or omitted to be done in Niue, constitute –

- (a) A crime referred to or described in any of the provisions of the Criminal Law Code specified in Schedule 1; or
- (b) An attempt to commit any such crime (where the crime is not itself constituted by a mere attempt).

(2) Every one who commits a crime against this section is liable on conviction to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Criminal Law Code.

4 Crimes against premises or vehicles

(1) Without limiting the Criminal Law Code, every one commits a crime who, whether in or outside Niue, does or omits to do any act –

- (a) To, or in relation to –
- (i) any premises that he knows to be the official premises or private residence of any internationally protected person; or
- (ii) any vehicle that he knows is used by an internationally protected person

–
while an internationally protected person is present in those premises or that residence or vehicle; and

- (b) Which constitutes, or would, if done, or omitted to be done in Niue, constitute –
- (i) a crime referred to or described in any of the provisions of the Criminal Law Code specified in Schedule 2; or
- (ii) an attempt to commit any such crime (where the crime is not itself constituted by a mere attempt).

(2) Every one who commits a crime against this section is liable on conviction to the same penalty to which he would have been liable had he been charged with a crime against the relevant provision of the Criminal Law Code.

5 Threats against persons

(1) Every one commits a crime who, whether in or outside Niue, threatens to do any act –

- (a) To, or in relation to, any person whom he knows to be an internationally protected person; and
- (b) Which constitutes a crime against section 3.

(2) Every one commits a crime against this section is liable on conviction to imprisonment for a term not exceeding the lesser of –

- (a) Seven years; or
- (b) The term of years prescribed by the relevant provision of the Criminal Law Code in respect of the crime that he would have committed had he carried out his threat in Niue.

6 Threats against premises or vehicles –

(1) Every one commits a crime who, whether in or outside Niue threatens to do any act –

- (a) To, or in relation to –
 - (i) any premises that he knows to be the official premises or private residence of any internationally protected person; or
 - (ii) any vehicle that he knows is used by any internationally protected person; and
- (b) Which constitutes a crime against section 4.

(2) Every one who commits a crime against this section is liable on conviction to imprisonment for a term not exceeding 3 years.

7 Prosecution need not prove certain matters

Notwithstanding sections 3 to 6, in any proceedings brought under any of those sections, it shall not be necessary for the prosecution to prove the following matters:

- (a) In respect of any internationally protected person to whom paragraph (a) or paragraph (c) of the definition of that term in section 2(1) applies that the defendant knew, at the time of the alleged crime, the identity of that person or the capacity in which he was an internationally protected person;
- (b) In respect of any internationally protected person to whom paragraph (b) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was accompanying any other person to whom paragraph (a) of that definition applies;
- (c) In respect of any internationally protected person to whom paragraph (c) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was entitled under international law to special protection from attack on his person, freedom, or dignity;
- (d) In respect of any internationally protected person to whom paragraph (d) of that definition applies, that the defendant knew, at the time of the alleged crime, that the internationally protected person was a member of the household of any other person referred to in paragraph (c) of that definition.

Hostages

8 Hostage-taking

(1) Subject to subsection (2), every one commits the crime of hostage-taking who, whether in or outside Niue, unlawfully seizes or detains any person (in this section called the hostage) without his consent, or with his consent obtained by fraud or duress, with intent to compel the Government of any country or any international

intergovernmental organisation or any other person to do or abstain from doing any act as a condition whether express or implied, for the release of the hostage.

(2) No one shall be convicted of the crime of hostage-taking if –

- (a) The act of hostage-taking takes place in Niue; and
- (b) The alleged offender and the hostage are New Zealand citizens; and
- (c) The alleged offender is in Niue.

(3) Every one who commits the crime of hostage-taking is liable on conviction to imprisonment for a term not exceeding 14 years.

General Provisions

9 [Spent]

10 Crimes deemed to be included in extradition treaties

(1) For the purposes of the Extradition Act 2007 and any regulations made under that Act –

- (a) Each crime described in section 3 or section 4 or section 8 of this Act, including attempting to commit that crime (where it is not itself constituted by a mere attempt), aiding, abetting, inciting, counselling or procuring any person to commit any such crime, inciting, counselling, or attempting to procure any person to commit any such crime when it is not in fact committed, and being an accessory after the fact to that crime; and
- (b) Each crime described in section 5 or section 6 of this Act –

shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between Niue and any foreign country that is a party to the 1973 Convention or, as the case may require, the 1979 Convention.

(2) Notwithstanding subsection (1), no person shall be liable to be surrendered under the Extradition Act 2007 in respect of an act or omission that amounts to a crime to which that subsection applies if that act or omission occurred before the date on which the crime was deemed by that subsection to be an offence described in the relevant extradition treaty.

(3) 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 1973 Convention or, as the case may require, the 1979 Convention, extends.

11 Surrender of offenders

(1) Where the surrender of a person is sought under the Extradition Act 2007 in respect of any act or omission –

(a) That amounts to –

- (i) any crime described in section 3 or section 4 or section 8 of this Act, including attempting to commit any such crime (where it is not itself constituted by a mere attempt), aiding, abetting, inciting, counselling, or procuring any person to commit any such crime, inciting, counselling, or attempting to procure any person to commit any such crime when it is not in fact committed and being an accessory after the fact to any such crime; or
- (ii) any crime described in section 5 or section 6 of this Act; and

(b) For which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a country that is a party to the 1973 Convention, or, as the case may require, the 1979 Convention – 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.

(2) Without limiting subsection (1) where any act or omission to which that subsection applies occurred in Niue, the Extradition Act 2007 and the relevant extradition treaty shall apply with any necessary modifications as if the act or omission had occurred outside Niue.

(3) In 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 1973 Convention or, as the case may be, the 1979 Convention, extends.

12 Restrictions on surrender of offenders

(1) Notwithstanding sections 9 to 11 of this Act, or the Extradition Act 2007, a person whose surrender is sought in respect of any act or omission that amounts to a crime under section 8 of this Act shall not be surrendered from Niue to another country if it appears to the Minister of Justice, or to the Court before which that person is brought, or to any Court or Judge on an application for a writ of habeas corpus, that –

(a) The surrender of the accused person, although purporting to have been sought in respect of such a crime, was sought for the purposes of prosecuting or punishing him on account of his race, ethnic origin, religion, nationality, or political opinions; or

(b) If the accused person is surrendered –

(i) he may be prejudiced at his trial, or punished, detained, or restricted in his personal liberty, by reason of his race, ethnic origin, religion, nationality, or political opinions; or

(ii) his position may be prejudiced because communication with him by the country that is entitled in international law to exercise rights of protection in respect to the accused person cannot be effected.

(2) Notwithstanding sections 9 to 11 of this Act, the Minister of Justice may decline to order the surrender of a person from Niue to another Commonwealth country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if it appears to the Minister that, in respect of the act or omission, the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his surrender is sought.

(3) Notwithstanding sections 9 to 11 of this Act, no Judge shall without the consent of the Minister of Justice, order the surrender of a person from Niue to another Commonwealth country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if it appears to the Judge that, in respect of the act or omission, the person has been sentenced to death or is liable to be so sentenced by the appropriate authority in the country to which his surrender is sought.

13 Further restrictions on surrender of offender

(1) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 2007, no person shall be surrendered from Niue to another country in respect of any act or omission that amounts to a crime against any of sections 3 to 8 of this Act if proceedings have been brought in Niue against that person in respect of the act or omission.

(2) Notwithstanding sections 9 to 11 of this Act or the Extradition Act 2007, but subject to subsection (3) of this section, the High Court of Niue shall not order the

surrender, or the committal for the purposes of surrender, of a person to another country in respect of an act or omission that amounts to a crime against any of sections 3 to 8 of this Act if the Secretary for Justice certifies that the case is being or is about to be considered to determine whether or not proceedings should be brought in Niue against that person in respect of the act or omission.

(3) If, in any case to which subsection (2) of this section applies, it is subsequently determined that proceedings should not be brought in Niue against the person in respect of the act or omission, the Secretary for Justice shall advise the Court accordingly, and the Court shall proceed with the matter as if the certificate of the Secretary for Justice had never been given.

14 Consent of Cabinet required to prosecutions

(1) Subject to subsection (2) no proceedings for the trial and punishment of any person charged with a crime against any of sections 3 to 8 shall be instituted in any court except with the consent of the Cabinet.

(2) A person charged with a crime against any of those provisions 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 crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

15 Evidence

For any purpose in connection with this Act, a certificate, given by the New Zealand Representative or any other officer of the office of the New Zealand Representative in Niue, certifying –

- (a) Any fact relevant to the question of whether a person was or was not an internationally protected person at any material time; or
- (b) That any country is or is not, or was or was not at any material time, a party to the 1973 Convention or to the 1979 Convention; or
- (c) That the Government of any country is or is not, or was or was not at any material time, responsible for the international relations of any territory –

shall be sufficient evidence of that fact.

16 [Spent]

17 Other Acts not affected

Nothing in this Act shall limit or affect the Immigration Act 2011, the Aviation Crimes Act 1973, nor, except as expressly provided in this Act, the Criminal Law Code.

Crimes Against Internationally Protected Persons and Hostages Act

SCHEDULES

SCHEDULE 1

Section 3 (1)(a)

Crimes Against Internationally Protected Persons

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11	Manslaughter
19	Attempt to murder
20	Conspiracy and inciting to murder
23	Grievous bodily harm
24	Actual bodily harm
29	Assault
33	Abduction of children
123	Accessory after the fact
135	Rape, attempt to commit rape

SCHEDULE 2

Section 4(b)(i)

Crimes Against Premises or Vehicles or Internationally Protected Persons

Section of Criminal Law Code	Subject-matter
26	Intentionally endangering persons on aerodromes
27	Wantonly endangering persons on or near aerodromes
99	Arson
100	Wilful mischief to property
116	Attempts to commit offences

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PART 1 CRIMINAL OFFENCES

1 Seditious offences

(1) A seditious intention is an intention to excite disaffection against Her Majesty, or against the Parliament or Government of New Zealand, or against the Government of Niue, or to excite such hostility or ill will between different classes of the inhabitants of Niue as may be injurious to the public welfare, or to incite, encourage, or procure lawlessness, violence, or disorder in Niue, or to procure otherwise than by lawful means the alteration of any matter affecting the laws, government, or constitution of Niue.

(2) No one shall be deemed to have a seditious intention only because he intends in good faith –

- (a) To show that Her Majesty has been misled or mistaken in her measures; or
- (b) To point out errors or defects in the Parliament or Government of New Zealand or in the Government of Niue; or to incite the inhabitants of Niue to attempt to procure by lawful means the alteration of any matter affecting the laws, government, or constitution of Niue; or
- (c) To point out, with a view to their removal, matters producing or having a tendency to produce hostility or ill will between different classes of the inhabitants of Niue.

(3) Seditious words are words expressive of a seditious intention.

(4) A seditious libel is a libel expressive of a seditious intention.

(5) A seditious conspiracy is an agreement between 2 or more persons to carry into execution a seditious intention.

2 Punishment of seditious offences

Every person is liable to imprisonment for a term not exceeding 2 years who speaks any seditious words, or publishes a seditious libel, or is a party to a seditious conspiracy.

3 Homicide

Homicide is the killing of a human being by another, directly or indirectly, by any means whatsoever.

4 Killing of a child

(1) A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

(2) The killing of such a child is homicide if it dies in consequence of injuries received before, during, or after birth.

5 Culpable homicide

- (1) Homicide may be either culpable or not culpable.
- (2) Homicide is culpable when it consists in the killing of any person –
 - (a) By an unlawful act; or
 - (b) By an omission without lawful excuse to perform or observe any legal duty; or
 - (c) By both combined; or
 - (d) By causing that person by threats or fear of violence, or by deception, to do an act which causes his death; or
 - (e) By wilfully frightening that person, if he is a child under the age of 16 years or is sick or infirm.
- (3) Culpable homicide is either murder or manslaughter.
- (4) Homicide that is not culpable is not an offence.

6 Murder

Culpable homicide is murder in each of the following cases –

- (a) If the offender means to cause the death of the person killed;
- (b) If the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not;
- (c) If the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;
- (d) If the offender for any unlawful object does an act that he knows to be likely to cause death, and thereby kills any person though he may have desired that his object should be effected without hurting anyone.

7 Further definition of murder

(1) Culpable homicide is also murder in each of the following cases, whether the offender means or does not mean death to ensue, or knows or does not know that death is likely to ensue –

- (a) If he means to inflict grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (2) or the flight of the offender upon the commission or attempted commission of it, or for the purpose of resisting lawful apprehension in respect of any other offence whatsoever, and death ensues from such injury;
- (b) If he administers any stupefying or overpowering thing for any of the purposes aforesaid, and death ensues from the effects of it;
- (c) If he by any means wilfully stops the breath of any person for any of the purposes aforesaid, and death ensues from such stopping of the breath.

(2) The offences referred to in subsection (1) are those within the meaning of the following provisions –

- (a) Section 6 (murder);
- (b) Section 31 (resisting a constable in the execution of his duty or any person acting in aid of any constable);
- (c) Section 32 (abduction of girl under 15);
- (d) Section 35 (rape);

- (e) Sections 70 to 72 (escape or rescue from prison or lawful custody);
- (f) Section 81 (robbery);
- (g) Section 90 (burglary);
- (h) Section 100 (arson).

8 Provocation

(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.

(2) Anything done or said may be provocation if –

- (a) In the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the person charged, of the power of self-control; and
- (b) It did in fact deprive the person charged of the power of self-control and thereby induced him to commit the act of homicide.

(3) Whether there is any evidence of provocation is a question of law.

(4) Whether, if there is evidence of provocation, the provocation was sufficient as aforesaid, and whether it did in fact deprive the person charged of the power of self-control and thereby induced him to commit the act of homicide, are questions of fact.

(5) No one shall be held to give provocation to another by lawfully exercising any power conferred by law, or by doing anything which the person charged incited him to do in order to provide the person charged with an excuse for killing or doing bodily harm to any person.

(6) This section shall apply in any case where the provocation was given by the person killed, and also in any case where the person charged, under provocation given by one person, by accident or mistake killed another person.

(7) The fact that by virtue of this section one party to a homicide has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the case of any other party to it.

9 Illegal arrest may be evidence of provocation

An arrest shall not necessarily reduce the offence from murder to manslaughter because the arrest was illegal, but if the illegality was known to the person charged it may be evidence of provocation.

10 Punishment of murder

Every one who commits murder shall upon conviction of it be sentenced to imprisonment for life.

11 Manslaughter

Culpable homicide not amounting to murder is manslaughter.

12 Punishment of manslaughter

Every one who commits manslaughter is liable to imprisonment for a term not exceeding 14 years.

13 Omissions dangerous to life

Every one who undertakes, whether by a legally binding contract or otherwise, to do any act the omission of which is or may be dangerous to life is under a legal duty to do that act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

14 Duty to provide the necessaries of life

(1) Everyone who has charge of any other person unable, by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is (whether such charge is undertaken by him under any contract or is imposed upon him by law or by reason of his unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and is criminally responsible for omitting, without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his charge is endangered or his health permanently injured by such neglect.

15 Duty of parent or guardian to provide necessaries

(1) Every one who as a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of 16 years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his health permanently injured by such neglect.

16 Liability for dangerous things

Every one who has in his charge or under his control anything whatever, whether animate or inanimate, or who erects, makes, or maintains anything whatever, which in the absence of precaution or care may endanger human life is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to perform that duty.

17 Hastening death

Every one who hastens the death of any person from any disease or disorder from which he is already suffering shall be deemed to have caused the death of that person.

18 Indirect cause of death

Every one whose act or omission results in the death of any person shall be deemed to have caused his death, although the immediate cause of death is the act or omission of some other person or some other independent intervening event.

19 Attempted murder

Every one who attempts to commit murder is liable to imprisonment for a term not exceeding 14 years.

20 Conspiracy and inciting to murder

Every one is liable to imprisonment for a term not exceeding 10 years, who –
(a) Conspires with any person to murder any person; or
(b) Incites any person to commit murder.

21 Counselling suicide

Every one is liable to imprisonment for a term not exceeding 14 years who counsels or procures any person to commit suicide, if that person actually commits suicide in consequence, or who aids or abets any person in the commission of suicide.

22 Concealment of birth

Every one is liable to imprisonment for a term not exceeding 2 years who disposes of the dead body of any child in any manner with intent to conceal the fact that its mother was delivered of it, whether the child died before, or during, or after birth.

23 Grievous bodily harm

Every one is liable to imprisonment for a term not exceeding 7 years who wilfully and without lawful justification causes grievous bodily harm to any person.

24 Actual bodily harm

Every one is liable to imprisonment for a term not exceeding 2 years who wilfully and without lawful justification causes actual bodily harm to any person.

25 Omissions resulting in bodily harm

Every one is liable to imprisonment for a term not exceeding 2 years who by any act or omission causes bodily harm to any person under such circumstances that, if death had been caused, he would have been guilty of manslaughter.

26 Intentionally endangering persons on aerodromes

Every one is liable to imprisonment for a term not exceeding 14 years who, with intent to injure or endanger the safety of any person on any aerodrome or in any aircraft –

- (a) Places anything upon or across any aerodrome; or
- (b) Does any act likely to interfere with, injure, endanger, or obstructs any aircraft; or
- (c) Shoots or throws anything at any person in any aircraft or at, into, or upon, or causes anything to come in contact with, any aircraft; or
- (d) Does anything whatever to any part of any aerodrome or to any machinery or signal belonging to or near to any aerodrome or to any aircraft on, or about to land on or take off from, any aerodrome; or
- (e) Deals in any way with any signal or light on or near to any aerodrome, or makes or shows any false signal or light or makes any sign whatever on or near to any aerodrome; or
- (f) Wilfully omits to do any act which it is his duty to do.

27 Wantonly endangering persons on aerodromes

Every one is liable to imprisonment for a term not exceeding 2 years who unlawfully and wilfully, in a manner likely to injure or endanger the safety of any person on any aerodrome or in any aircraft –

- (a) By any act, omission, or neglect endangers or obstructs any aircraft; or
- (b) Does any act likely to interfere with or to cause injury to any aircraft; or
- (c) Shoots or throws anything at any person in any aircraft or at, into, or upon, or causes anything to come in contact with, any aircraft; or
- (d) Does anything whatever to any part of any aerodrome or to any machinery or signal belonging to or near to any aerodrome or to any aircraft on, or about to land on or take off from, any aerodrome; or

- (e) Deals in any way with any signal or light on or near to any aerodrome, or makes or shows any false signal or light or makes any sign whatever on or near to any aerodrome; or
- (f) By any culpable neglect of duty endangers the safety of any person conveyed in any aircraft.

28 Indecent assault

Every one who indecently assaults any woman or girl is liable to imprisonment for a term not exceeding 5 years.

29 Assault

Every one who commits an assault on any person is liable to imprisonment for a term not exceeding one year.

30 Cruelty to a child

Every one is liable to imprisonment for a term not exceeding 5 years who, having the custody, control, or charge of a child under the age of 16 years, wilfully illtreats or wilfully neglects the child, or wilfully permits the child to be illtreated or neglected, in a manner likely to cause the child unnecessary suffering, actual bodily harm, injury to health, or mental disorder, or to incur any other unnecessary physical or mental disability.

31 Resisting constable in execution of his duty

Every one is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 0.5 penalty units who resists or assaults or wilfully obstructs, or incites or encourages any person to resist or assault or obstruct, any constable in the execution of his duty, or any person acting in aid of any constable.

32 Abduction of girl under 15

(1) Every one is liable to imprisonment for a term not exceeding 2 years who, without the consent of the father or mother or other person having lawful charge of an unmarried girl under the age of 15 years, or without other lawful authority (the proof of which shall lie on him), takes that girl or causes her to be taken out of the possession of her father or mother or such other person as aforesaid.

(2) It shall be no defence in a prosecution for an offence against this section that the girl was taken with her own consent, or at her own suggestion, or that the offender believed the girl to be of or over the age of 15 years.

(3) No proceedings for an offence against this section shall be taken in the event of the subsequent intermarriage of the offender and the girl in respect of whom the offence has been committed.

33 Abduction of children

(1) Every one is liable to imprisonment for a term not exceeding 2 years who, with intent to deprive any parent or guardian or other person having the lawful charge of any child under the age of 14 years of the possession of that child, unlawfully

- (a) Takes or entices away or detains the child; or
- (b) Receives the child knowing it to have been so dealt with.

(2) Nothing in this section shall extend to any one who gets possession of any child claiming in good faith a right to the possession of the child.

34 Sexual intercourse

For the purposes of this Part, sexual intercourse is complete upon penetration; and there shall be no presumption of law that any person is by reason of his age incapable of such intercourse.

35 Rape

(1) Rape is the act of a male person having sexual intercourse with a woman or girl –

- (a) Without her consent; or
- (b) With consent extorted by threats or fear of bodily harm; or
- (c) With consent obtained by personating her husband; or
- (d) With consent obtained by false and fraudulent representations as to the nature and quality of the act.

(2) Every one who commits rape is liable to imprisonment for a term not exceeding 14 years.

(3) Every one is liable to imprisonment for a term not exceeding 10 years who attempts to commit rape or who assaults any person with intent to commit rape.

(4) Notwithstanding anything in subsection (1), no man shall be convicted of rape or attempting to commit rape or assaulting with intent to commit rape in respect of his wife, unless at the time of the intercourse or attempt a separation order granted in Niue or New Zealand was in force in respect of the marriage.

36 Sexual intercourse or indecency with girl under 12

(1) Every one is liable to imprisonment for a term not exceeding 10 years who –

- (a) Has sexual intercourse with any girl under the age of 12 years; or
- (b) Attempts to have sexual intercourse with a girl under the age of 12 years; or
- (c) Indecently assaults any girl under the age of 12 years; or
- (d) Being a male, does any indecent act with or upon any girl under the age of 12 years; or
- (e) Being a male, induces or permits any girl under the age of 12 years to do any indecent act with or upon him.

(2) It is no defence to a charge under this section that the girl consented, or that the person charged believed that she was of or over the age of 12 years.

(3) The girl shall not be charged as a party to an offence committed upon or with her against this section.

37 Sexual intercourse or indecency with girl between 12 and 15

(1) Every one is liable to imprisonment for a term not exceeding 3 years who –

- (a) Has or attempts to have sexual intercourse with any girl of or over the age of 12 years and under the age of 15 years, not being his wife; or
- (b) Indecently assaults any such girl; or
- (c) Being a male, does any indecent act with or upon any such girl;
- (d) Being a male, induces or permits any such girl to do any indecent act with or upon him.

(2) It is no defence to a charge under this section that the girl consented, or that the person charged believed that the girl was of or over the age of 15 years.

(3) The girl shall not be charged as a party to an offence committed upon or with her against this section.

38 Sexual intercourse with woman or girl who is an idiot or imbecile or of unsound mind

Every one is liable to imprisonment for a term not exceeding 2 years who has or attempts to have sexual intercourse with any woman or girl who is an idiot or an imbecile or of unsound mind, if he knows or has good reason to believe that she is an idiot or an imbecile or of unsound mind.

39 Procuring miscarriage of woman or girl

Every one is liable to imprisonment for a term not exceeding 2 years who, with intent to procure the miscarriage of any woman or girl, unlawfully administers to or causes to be taken by her any poison or any drug or other noxious thing, or unlawfully uses any instrument or other means whatsoever with the like intent.

40 Act of woman or girl procuring her own miscarriage

Every woman or girl is liable to imprisonment for a term not exceeding one year who, whether with child or not, unlawfully administers to herself or permits to be administered to her any poison or any drug or other noxious thing, or unlawfully uses on herself or permits to be used on her any instrument or other means whatsoever, with intent to procure miscarriage.

41 Supplying means of miscarriage

Every one is liable to imprisonment for a term not exceeding 2 years who unlawfully supplies or procures any poison or any drug or other noxious thing, or any instrument or thing whatsoever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of any woman or girl.

42 Bigamy

(1) Every one who commits bigamy is liable to imprisonment for a term not exceeding 5 years.

(2) Bigamy is –

- (a) The act of a person who being married goes through a valid form of marriage with any other person; or
- (b) The act of a person who goes through a valid form of marriage with any person whom he or she knows to be married.

(3) The fact that the parties would, if unmarried, have been incompetent to contract marriage is not a defence upon a prosecution for bigamy.

(4) Every form of marriage shall for the purposes of this section be deemed valid, notwithstanding any act or default of the person charged with bigamy, if it is otherwise a valid form.

43 Buggery

(1) Every one is liable to imprisonment for 10 years who commits buggery either with a human being or with any other living creature.

(2) This offence is complete upon penetration.

44 Attempted buggery and indecent assaults on males

(1) Every one is liable to imprisonment for 5 years who –

- (a) Attempts to commit buggery; or
- (b) Assaults any person with intent to commit buggery; or
- (c) Being a male, indecently assaults any other male person.

(2) It is no defence to a charge of indecent assault on a male person of any age that he consented to the act of indecency.

45 Incest

- (1) Incest means sexual intercourse between –
- (a) Parent and child; or
 - (b) Brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or
 - (c) Grandparent and grandchild, whether the relationship is traced through lawful wedlock or not –
- where the person charged knows of the relationship between the parties.
- (2) Every one of or over the age of 15 years who commits incest is liable to imprisonment for a term not exceeding 7 years.

46 Indecent acts

- (1) Every one is liable to imprisonment for a term not exceeding 6 months who wilfully does any indecent act in any public place or within the view of any person being in any public place.
- (2) It is a defence to a charge under subsection (1) if the person charged proves that he had reasonable grounds for believing that he would not be observed.
- (3) Every one is liable to imprisonment for a term not exceeding 6 months who with intent to insult or offend any person does any indecent act in any place.

47 Indecent documents

- Every one is liable to imprisonment for a term not exceeding 6 months who, knowingly and without lawful justification or excuse –
- (a) Sells, exposes for sale, or otherwise distributes to the public any obscene or indecent book, picture, photograph, document, film, video-tape, or other object tending to corrupt morals; or
 - (b) Publicly exhibits any obscene or indecent show tending to corrupt morals.

48 Adultery by married persons

Every married person who commits adultery shall be guilty of an offence and liable on conviction to a fine not exceeding 0.5 penalty units.

49 Adultery with married person

Every unmarried man who commits adultery with a woman whom he knows to be married, and every unmarried woman who commits adultery with a man whom she knows to be married shall be guilty of an offence and liable to a conviction to a fine not exceeding 0.5 penalty units.

50 Scandalous conduct

Persons of the opposite sex who, without being married to each other, live together as husband and wife to the annoyance of the public commit an offence and shall be liable on conviction to a fine not exceeding 0.5 penalty units.

51 Brothels

- (1) Every one who keeps a brothel is liable to imprisonment for a term not exceeding 6 months.
- (2) A brothel is a house, room, or place of any kind whatever kept or used for purposes of prostitution.
- (3) Any one who acts as a person having the management, care, or control of a brothel shall be deemed to be a keeper thereof, whether he is in fact a keeper of it or not.

(4) The owner or occupier of any house, room, or place who knowingly permits it to be used as a brothel shall be deemed to be a keeper of it, whether he is in fact a keeper of it or not.

52 Prostitution

Any prostitute is liable to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who loiters and importunes any person in any public place for the purpose of prostitution.

53 Gaming houses

(1) Every one who keeps a gaming house is liable to imprisonment for a term not exceeding 6 months.

(2) A gaming house is a house, room, or place of any kind whatever kept or used as a place of resort for gambling.

(3) “Gambling” means playing for money or other valuable thing at any game of chance, or playing for excessive stakes or otherwise to the injury of public morals at any game of mixed chance and skill; and includes any form of unlawful gaming.

(4) Any one who acts as a person having the management, care, or control of a gaming house shall be deemed to be a keeper of it, whether he is in fact a keeper of it or not.

(5) The owner or occupier of any house, room, or place who knowingly permits it to be used as a gaming house shall be deemed to be a keeper of it whether he is in fact a keeper of it or not.

54 Powers to permit gambling

Notwithstanding section 53 Cabinet may make regulations to permit certain gambling activities to be carried out in Niue, within certain guidelines and to prescribe fees and offences in respect of such activities.

55 Riot

(1) Every one who takes part in a riot is liable to imprisonment for a term not exceeding 2 years.

(2) A riot is an assembly of 3 or more persons who, with intent to carry out any common purpose, disturb the peace tumultuously.

56 Forcible entry

Every one is liable to imprisonment for a term not exceeding 6 months who, by force or threats of force, enters on land then in the actual and peaceable possession of another for the purpose of taking possession of it, whether he who so enters is entitled to the possession of it or not.

57 Affrays

(1) Every one who, without lawful justification or excuse, takes part in an affray is liable to imprisonment for a term not exceeding one year.

(2) An affray is the act of fighting in a public highway or in any other public place.

PART 2

CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Bribery and Corruption

58 Interpretation

In this Part –

“bribe” means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

“judicial officer” means a Judge or Commissioner of any court, Coroner, or Justice of the Peace, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

“law enforcement officer” means any constable, or any person employed in the detection or prosecution or punishment of offenders;

“official” means any person in the service of Her Majesty in Niue (whether that service is honorary or not, and whether it is within or outside of Niue), or any member or employee of any local authority or public body.

59 Judicial corruption

(1) Every judicial officer is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his judicial capacity.

(2) Every judicial officer, and every Registrar or Deputy Registrar of any court is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity, not being an act or omission to which subsection (1) applies.

60 Bribery of judicial officer

(1) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by him in his judicial capacity.

(2) Every one is liable to imprisonment for a term not exceeding 5 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any court in respect of any act or omission by him in his official capacity, not being an act or omission to which subsection (1) applies.

61 Corruption and bribery of Minister

(1) Every Minister or member of the executive authority is liable to imprisonment for a term not exceeding 14 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a Minister or member of the executive authority.

(2) Every one is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister or member of the executive authority in respect of any act or omission by him in his capacity as a Minister or member of the executive authority.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge or Commissioner of the Court.

62 Corruption and bribery of member of Assembly

(1) Every member of the Assembly is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a member of the Assembly.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any member of the Assembly in respect of any act or omission by him in his capacity as a member of the Assembly.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge or Commissioner of the Court.

63 Corruption and bribery of law enforcement officer

(1) Every law enforcement officer is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by him in his official capacity.

64 Corruption and bribery of official

(1) Every official is liable to imprisonment for a term not exceeding 7 years who, whether within Niue or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding 3 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

65 Corrupt use of official information

Every official is liable to imprisonment for a term not exceeding 7 years who, whether within Niue or elsewhere, corruptly uses or discloses any information, acquired by him in his official capacity, to obtain, directly or indirectly, an advantage or pecuniary gain for himself or any other person.

66 Restrictions on prosecutions

No one shall be prosecuted for an offence against sections 59, 60, 63, 64 and 65 without the leave of the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

67 Perjury

(1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence upon oath or affirmation, whether his evidence is given in open court or by affidavit or otherwise, that assertion being known to the witness to be false.

(2) Every proceeding is judicial within the meaning of this section which is held before any court, or before any judicial officer or other person having power to take evidence on oath or affirmation.

(3) Every one is liable to imprisonment for a term not exceeding 5 years who commits perjury.

68 Fabricating evidence

Every one is liable to imprisonment for a term not exceeding 3 years who, with intent to mislead any court or any judicial officer in the exercise of his functions as such, fabricates evidence by any means other than perjury.

69 Conspiracy to pervert justice

Every one is liable to imprisonment for a term not exceeding 3 years who conspires or attempts to obstruct, prevent, pervert, or defeat the course of justice in any cause or matter, civil or criminal.

70 Breaking prison

Every one is liable to imprisonment for a term not exceeding 5 years who by force breaks any prison with intent to set at liberty himself or any other person confined there.

71 Escape

Every one is liable to imprisonment for a term not exceeding 2 years who, being in lawful custody, whether in a prison or elsewhere, escapes.

72 Rescue

Every one is liable to imprisonment for a term not exceeding 2 years who rescues any person from lawful custody, whether in a prison or elsewhere, or who assists any person to escape from such custody.

73 Criminal libel or slander

(1) A criminal libel is matter published, without lawful justification or excuse, either designed to insult any person or likely to injure his reputation by exposing him to hatred, contempt, or ridicule or likely to injure him in his profession, office, business, trade, or occupation, whether such matter is expressed by words, written or printed, or legibly marked on any substance, or by any object signifying such matter otherwise than by words, and whether expressed directly or by insinuation or irony.

(2) Publishing a criminal libel is –

- (a) Exhibiting it in public; or
- (b) Causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen, by any person other than the person defamed.

(3) Every one is guilty of criminal slander who, without lawful justification or excuse, uses any words that are likely to injure the reputation of any other person by exposing him to hatred, contempt, or ridicule, or likely to injure him in his profession, office, business, trade, or occupation, if the words are –

- (a) Spoken, or reproduced from a recording, within the hearing of more than 12 persons at a meeting to which the public are invited or have access, or within the hearing of more than 12 persons in any place to which the public have or are permitted to have access; or
- (b) Broadcast by means of radio.

(4) Every one who publishes a criminal libel or is guilty of criminal slander is liable to imprisonment for a term not exceeding 6 months.

(5) In a prosecution under this section the burden of proof shall be determined by the same rules as in an action for damages for defamation.

(6) In a prosecution under this section it shall be no defence that the libel or slander is true unless the publication of it was for the public benefit.

74 Definition of theft

(1) Theft or stealing is the act of fraudulently or dishonestly taking, or converting to the use of any person, or misappropriating or disposing of, or dealing in any other manner with, anything capable of being stolen, with intent to defraud or injure any person having any property or interest in that thing.

(2) Every animate or inanimate thing whatever which is the property of any person, and is movable, is capable of being stolen.

(3) Every thing whatever which is the property of any person and is capable of being made movable is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

75 Ineffectual defences to charge of theft

Without in any way limiting the generality of the foregoing definition of theft, a person shall be deemed guilty of theft notwithstanding the fact –

- (a) That at the time of the theft he was in lawful possession of the property stolen; or
- (b) That he had himself a lawful interest in the property stolen, whether as a partner, co-owner, bailee, bailor, mortgagee, mortgagor, or otherwise howsoever; or
- (c) That he was a trustee of the property stolen; or
- (d) That the property stolen was vested in him as an executor or administrator.

76 Extended definition of theft

Without in any way limiting the generality of the foregoing definition of theft, every person shall be deemed guilty of theft who holds, receives, or obtains any money, valuable security, or other thing whatsoever capable of being stolen, subject to any obligation (whether arising from an express or implied trust, or from an express or implied contract, or from any other source whatsoever) to deal with the money, valuable security, or thing in any manner, and who fraudulently or dishonestly deals with it in any other manner or fails to deal with it under that obligation.

77 Obtaining money or goods by false pretences

Every one who by means of any fraud or false pretence dishonestly obtains for himself or for any other person (whether directly or through the medium of any contract procured by the fraud or false pretence) anything capable of being stolen is guilty of stealing the thing so obtained, and shall be liable accordingly.

78 Punishment of theft

(1) Every one who commits theft is liable –

- (a) To imprisonment for a term not exceeding 3 months if the value of the property stolen does not exceed 4 dollars;
- (b) To imprisonment for a term not exceeding one year if the value of the property stolen exceeds 4 dollars but does not exceed 100 dollars;
- (c) To imprisonment for a term not exceeding 5 years if the value of the property stolen exceeds 100 dollars;

(d) To imprisonment for a term not exceeding 7 years if the property stolen is a controlled drug as defined in the Misuse of Drugs Act 2006.

(2) In computing for the purposes of this section the value of the property stolen, where several thefts are charged in the same information against the same person, the aggregate value of all such property shall be computed, and the sentence shall be determined accordingly, and cumulative sentences in respect of the several thefts so charged shall not be imposed.

(3) For the purposes of this section a valuable security shall be deemed to be of the same value as the property to which it relates.

79 Stealing documents

(1) Every one who destroys, cancels, conceals, or obliterates in whole or in part any document for any fraudulent or dishonest purpose is guilty of having stolen that document, and is liable to imprisonment for a term not exceeding 3 years.

(2) Every one who in this or any other manner steals a testamentary instrument is liable to imprisonment for a term not exceeding 10 years.

80 Receiving stolen goods

Every one who receives any stolen property knowing it to have been stolen is guilty of having stolen the property, and is liable accordingly.

81 Robbery

(1) Robbery is theft accompanied by violence or threats of violence to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.

(2) Every one who commits robbery is liable to imprisonment for a term not exceeding 10 years.

(3) Every one who assaults any person with intent to rob him is liable to imprisonment for a term not exceeding 5 years.

82 Conversion or attempted conversion

(1) Every one is liable to imprisonment for a term not exceeding 5 years who, unlawfully and without colour of right, but not so as to be guilty of theft, takes or converts to his use or to the use of any other person any of the following things –

- (a) Any motorcar, or any vehicle of any description;
- (b) Any ship;
- (c) Any aircraft;
- (d) Any part of any motorcar, vehicle, ship or aircraft;
- (e) Any horse, mare, or gelding.

(2) Every one is liable to imprisonment for a term not exceeding one year who–

- (a) Has in his possession by night any instrument, being an instrument capable of being used for taking or converting any of the things mentioned in subsection (1)(a) to (d), in circumstances that, prima facie, show an intention to use it for the taking or converting of any such thing as aforesaid;
- (b) Has in his possession by day any such instrument as aforesaid with intent to take or convert any such thing as aforesaid.

(3) It is a defence to a charge under subsection (2) (a) if the person charged proves that he had lawful excuse for having the instrument in his possession.

83 Breach of trust

(1) Every trustee who with intent to defraud, and in violation of his trust, converts anything of which he is a trustee to any use not authorised by the trust is guilty of criminal breach of trust, and is liable to imprisonment for a term not exceeding 5 years.

(2) For the purposes of this section an executor or administrator shall be deemed to be a trustee of the property subject to his administration.

(3) Nothing in this section shall be so construed as in any manner to limit the foregoing definition of the offence of theft, and if any act of a trustee is both theft and a criminal breach of trust he may be convicted of either of those offences.

84 Menaces

Every one is liable to imprisonment for a term not exceeding 2 years who with menaces demands from any person, either for himself or for any other person, anything capable of being stolen, with intent to steal it.

85 Witchcraft

Every one is liable to imprisonment for a term not exceeding 6 months who pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes.

86 Obtaining credit by fraud

Every one is liable to imprisonment for a term not exceeding 6 months who in incurring any debt or liability obtains credit by means of any fraud.

87 Accusation of criminal offences

Every one is liable to imprisonment for a term not exceeding 5 years who –

- (a) With intent to extort or gain anything from any person, accuses or threatens to accuse either that person or any other person of any criminal offence, whether the person accused or threatened with accusation is guilty of that offence or not; or
- (b) With such intent as aforesaid, threatens that any person shall be so accused by any person; or
- (c) Causes any person to receive a document containing any such accusation or threat, knowing the contents thereof.

88 Conspiracy to defraud

Every one is liable to imprisonment for a term not exceeding 3 years who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public or any person ascertained or unascertained.

89 Obtaining execution of valuable securities by fraud

Every one is liable to imprisonment for a term not exceeding 3 years who by any false pretence causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security.

90 Burglary

(1) Every one is guilty of burglary and is liable to imprisonment for a term not exceeding 5 years who by day or night –

- (a) Breaks and enters any building or ship with intent to commit a crime there; or

(b) Breaks out of any building or ship either after committing a crime there or after having entered with intent to commit a crime there.

(2) In this section –

“break”, in relation to any building or ship, means to break any part, internal or external, of the building or ship, or to open by any means whatsoever any door, window, or other thing intended to cover openings to the building or ship or to give passage from one part of it to another;

“building” means any building, erection, or structure of any description, whether permanent or temporary, and includes a tent or a caravan, and also includes any enclosed yard or any closed cave or tunnel.

91 Unlawful entry of dwellinghouse

(1) Every one is liable to imprisonment for a term not exceeding 5 years who unlawfully enters or is in any dwellinghouse by night with intent to commit a criminal offence there or who is found by night in any dwellinghouse without lawful justification for his presence there.

(2) Every one is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who without lawful excuse (the proof of which excuse shall be on him), but in circumstances that do not disclose the commission of or an intention to commit any other offence, is found at any time in any dwellinghouse, or in any enclosed yard, garden, or area or in or on board any vessel of any kind or any aircraft.

(3) In this section –

“dwellinghouse” means –

(a) Any building, hut, tent, caravan, or other structure or erection, whether permanent or temporary, which is used or intended to be used in whole or in part for human habitation or occupation; or

(b) Any building, public or private, which is used or intended to be used in whole or in part for the purpose of education or the reception or lodging of any person for medical treatment or recuperation or entertainment or any other purpose;

“night” means the time commencing on the expiration of the first half hour after sunset and concluding at the beginning of the last hour before sunrise.

92 Entering premises for a criminal purpose

Every one is liable to imprisonment for a term not exceeding 4 years who unlawfully enters or is in any building, ship, or aircraft with intent to commit there any criminal offence mentioned in this Act.

93 Threats to kill or do bodily harm

Every one is liable to imprisonment for a term not exceeding 5 years who sends or causes to be received, knowing the contents of it, any letter or writing containing threats to kill or do bodily harm to any person, or who orally makes a threat to kill or do bodily harm to any person.

94 Forgery

(1) Forgery is the making of a false document with intent to defraud or deceive any person, whether ascertained or unascertained.

(2) Every one who commits forgery is liable to imprisonment for a term not exceeding 5 years.

(3) In this section “false document” means a document –

(a) Of which the whole or any material part purports to be made by any person who did not make it or authorise its making; or

- (b) Of which the whole or any material part purports to be made on behalf of any person who did not authorise its making; or
- (c) In which, though it purports to be made by the person who did in fact make it or authorise its making, or purports to be made on behalf of the person who did in fact authorise its making, the time or place of its making, where either is material, or any number or distinguishing mark identifying the document, where either is material, is falsely stated; or
- (d) Of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or
- (e) Which is made in the name of an existing person either by him or by his authority, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it.

(4) In this section, “making a false document” includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal, or otherwise.

(5) Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, although the offender may not have intended that any particular person should use or act upon it as genuine, or should be induced by the belief that it is genuine to do or refrain from doing anything.

(6) Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be valid in law, if it be so made and is such as to indicate that it was intended to be acted on as genuine.

95 Extended definition of forgery

Every one who procures the execution of any document by any person by falsely pretending that its contents are different from what they really are is guilty of forging that document, and is liable accordingly.

96 Making counterfeit coin

Every one is liable to imprisonment for a term not exceeding 7 years who makes or begins to make counterfeit coin of New Zealand or of any other country, or who has in his possession any dies or other instruments or materials intended to be used in the making of such counterfeit coin.

97 Lightening coin

Every one is liable to imprisonment for a term not exceeding 2 years who diminishes or lightens any coin, whether of New Zealand or of any other country, with intent that when so dealt with it shall pass as current coin either in Niue or New Zealand or elsewhere.

98 Uttering counterfeit coin

Every one who fraudulently utters any counterfeit coin is liable to imprisonment for a term not exceeding 6 months.

99 Arson

(1) Arson is the offence of wilfully, and without lawful justification and without bona fide claim of right, setting fire to any building, ship, crop, chattel, or other thing whatsoever, whether attached to the soil or not.

(2) Where the act done results in the destruction of or any damage to anything in which the person accused has an interest, whether total or partial, the existence of that interest shall not prevent his act being an offence if it is done with intent to defraud or to cause loss to any other person. For the purposes of this

subsection, where any property is subject to any mortgage or charge, each of the parties to the mortgage or charge shall be deemed to have a partial interest in that property.

(3) Every one who commits the offence of arson is liable to imprisonment for a term not exceeding 5 years.

100 Wilful mischief to property

(1) Every one is guilty of an offence who wilfully and without lawful justification and without bona fide claim of right destroys or damages any property, whether movable or immovable.

(2) Where the act done results in the destruction of or any damage to anything in which the person accused has an interest, whether total or partial, the existence of that interest shall not prevent his act being an offence if it is done with intent to defraud or to cause loss to any other person. For the purposes of this subsection, where any property is subject to any mortgage or charge, each of the parties to the mortgage or charge shall be deemed to have a partial interest in that property.

(3) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 3 years if the damage done or intended to be done by him amounts to \$20 or more, and to imprisonment for a term not exceeding 6 months in any other case.

101 Provoking breach of the peace

Every one is liable to a fine not exceeding 0.5 penalty units who uses any threatening, abusive, or insulting words or behaviour in any public place with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned.

102 Profane, indecent, or obscene language

Every one is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who uses any profane, indecent, or obscene language in any public place or within the hearing of any person in a public place.

103 Disorderly conduct in public places

Every one is liable to a fine not exceeding 0.5 penalty units who is guilty of any disorderly conduct in any public place to the annoyance of persons there present.

104 Obstructing public place

Every one is liable to a fine not exceeding 0.5 penalty units who without lawful justification obstructs any public place, or creates any source of danger in it, or otherwise commits any public nuisance in it.

105 Drunkenness

Every one is liable to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who is found drunk in any public place.

106 Animal trespass

(1) A person must not permit a horse, sheep, pig, goat, or cattle to wander or be at large in a public place or to trespass on land.

(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 2 penalty units or for a second or subsequent offence to a fine not exceeding 5 penalty units.

107 Laying poison

Every one is liable to a fine not exceeding 0.5 penalty units who without lawful justification places any poison in any place so as to be a source of danger to human beings or to animals.

108 Polluting water

Every one is liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding 1 penalty unit who throws any offensive matter into or otherwise pollutes any watercourse, well, cistern, or other place from which the supply of water for the use of the inhabitants is obtained.

109 Sale of unwholesome provisions

Every one is liable to imprisonment for a term not exceeding one month or to a fine not exceeding 0.5 penalty units who sells, or exposes for sale, or has in his possession with intent to sell, any food or drink which he knows, or might by the exercise of reasonable care have known, to be unwholesome.

110 Insanitary premises

Every one is liable to a fine not exceeding 0.5 penalty units who permits any premises in his occupation or belonging to him to be in an insanitary or offensive condition to the danger or annoyance of the public or of his neighbours.

111 Wilful trespass

Every one is liable to a fine not exceeding 0.5 penalty units who wilfully trespasses on land in the occupation of any other person.

112 Cruelty to animals

(1) A person must not –

- (a) Cruelly beat, overdrive, overload, abuse, torture, or otherwise ill treat an animal, or
- (b) Being the owner or having the charge of an animal –
 - (i) omit to supply it with proper and sufficient food, water, or shelter; or
 - (ii) abandon the animal with the intention of relinquishing ownership or charge of it.

(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 2 penalty units or for a second or subsequent offence to a fine not exceeding 5 penalty units.

(3) It is not a defence for a person charged with an offence under subsection (1)(b)(ii) to prove that the animal to which the charge relates was abandoned on land in which that person had an interest.

(4) In this section “animal” means any beast or bird of any species whatever.

113 Falsely trading as a company

(1) Every one is liable to a fine not exceeding 2 penalty units who uses in connection with his trade or business any name, sign, device, or other representation indicating or calculated to lead other persons to believe contrary to the fact that the trade or business is that of an incorporated company.

(2) In any prosecution for an offence against this section the burden of proving that the incorporated company exists and that the trade or business so carried on is the trade or business of that company shall be upon the accused.

114 Conspiracy

Every one who conspires with any other person to commit any offence punishable by imprisonment is liable to imprisonment for a term not exceeding half the longest term to which a person committing the said offence may be sentenced.

115 Wrongful communication, retention or copying of official information

(1) Everyone is liable to imprisonment for a term not exceeding 3 years who –

- (a) Knowingly or recklessly, and with knowledge that he is acting without proper authority, communicates any official information to any other person, or uses directly or indirectly any official information for any purpose whatsoever where such disclosure or use is contrary to the interests of Niue;
- (b) Knowingly or recklessly, and with knowledge that he is acting without proper authority, retains or copies official information, or permits any other person to retain or copy such official information;
- (c) Knowingly fails to comply with any directions issued by a lawful authority for the return of any official information, including copies, which is in his possession or under his control.

(2) In this section “official information” means any information held by –

- (a) A department or agency of government; or
- (b) A Minister of the Crown in his official capacity; or
- (c) An officer or employee of any department or agency of government in his capacity as such an officer or employee or in his capacity as a statutory officer; or
- (d) An independent contractor engaged by any department or Minister of the Crown or agency of government in his capacity as such contractor;
- (e) Any committee or advisory body established for the purpose of assisting or advising or performing functions connected with any department or Minister of the Crown or agency of government.

PART 3
PENALTIES
Attempts

116 Attempts to commit offences

(1) Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.

(2) The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

(3) An act done or omitted with intent to commit an offence may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing the intent to commit that offence.

(4) Everyone who attempts to commit an offence in respect of which no punishment is expressly prescribed by this or any other enactment is liable to not more than half the maximum punishment to which he would be liable if he had committed that offence.

117 Attempt proved when offence is charged

Where the commission of the offence charged is not proved, but the evidence establishes an attempt to commit the offence, the accused may be convicted of the attempt.

118 Offence proved when attempt is charged

(1) Where an attempt to commit an offence is charged, but the evidence establishes the commission of the full offence, the accused may be convicted of the attempt.

(2) After a conviction for that attempt, the accused shall not be liable to be tried again for the offence which he was charged with attempting to commit.

Parties to Offences

119 Inciting

(1) Every person who incites any person, whether ascertained or unascertained, to commit any offence punishable by imprisonment shall be liable to imprisonment for a term not exceeding half the longest term to which a person committing the said offence may be sentenced or, where that offence is punishable by imprisonment for life, to imprisonment for a term not exceeding 14 years.

(2) If the offence to which any person is so incited is actually committed by him, the person so inciting him shall be liable, on a charge of inciting, to the same punishment as if he had himself committed the offence, or he may be charged and convicted as a party to the offence so procured by him.

120 Parties to offences

Every one is a party to and guilty of an offence who –

- (a) Actually commits the offence; or
- (b) Does or omits any act for the purpose of aiding any person to commit the offence; or
- (c) Abets any person in the commission of the offence; or
- (d) Counsels or procures any person to commit the offence.

121 Common criminal purpose

If several persons form a common intention to prosecute any unlawful purpose and to assist each other in it, each of them is a party to every offence committed by any one of them in the prosecution of that common purpose, the commission of which offence was known to be a probable consequence of the prosecution of that common purpose.

122 Counselling or procuring

(1) Every one who counsels or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from that which was counselled.

(2) Every one who counsels or procures another to be a party to an offence is a party to every offence which that other commits in consequence of that counselling or procuring, and which the person counselling or procuring knew to be likely to be committed in consequence of the counselling or procuring.

123 Accessory after the fact

(1) An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.

(2) No married person whose spouse has been a party to an offence shall become an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse, or the spouse and any other person who has been a party to the offence, to escape after arrest or to avoid arrest or conviction.

124 Punishment of accessories

Every one who is accessory after the fact to any offence punishable by imprisonment, being an offence in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding 7 years if the punishment for that offence is imprisonment for life, and not exceeding 5 years if that punishment is imprisonment for 10 or more years; and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed the offence.

Infancy

125 Children under 10

(1) No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of 10 years.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

126 Children between 10 and 14

(1) No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of 10 but under the age of 14 years, unless he knew either that the act or omission was wrong or that it was contrary to law.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

Defences

127 Common law defences

All rules and principles of the common law which render any circumstance a justification or excuse for any act or omission, or a defence to any charge, shall remain in force with respect to all offences constituted by this or any other enactment, except so far as inconsistent with this or any other enactment.

128 Common law offences

No person shall be proceeded against for any criminal offence at common law.

Persons of Unsound Mind Charged with Offences

129 Insane persons not to be tried for offences

If any person on being charged with an offence before the Court is found to be of unsound mind so that he cannot understand the nature of the proceedings, he shall not be tried, but the Court shall order him to be detained in prison or in some other place of security.

130 Accused persons acquitted on ground of insanity

(1) If any person on his trial for an offence before the Court is found to have been insane at the time of the commission of the offence, he shall be found not guilty on the ground of insanity, and the Court shall order him to be detained in prison or in some other place of security.

(2) A person so detained may apply to the High Court for discharge at any time but an application may not be made at more frequent intervals than 6 months.

131 Discharge

(1) A person who is detained under section 129 shall not be so detained for a period of more than one month, and may at any time be discharged by order of the Court.

(2) Such a person may further be brought before the Court and either tried for the offence in respect of which he or she is detained or be again detained under section 129.

132 Orders of medical custody

When any person is so detained, whether in the case of a charge of murder or manslaughter or otherwise, the Court shall have the same jurisdiction to make an order of medical custody or to issue a warrant for removal to New Zealand as in the case of any other person of unsound mind.

133 The defence of insanity in criminal prosecutions

(1) No person charged with any offence shall be acquitted on the ground of insanity, unless the offence was committed by him while labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of understanding the nature or quality of the act done by him or of knowing that the act was wrong.

(2) A person labouring under specific delusions but in other respects sane shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act.

(3) Every one shall be presumed to be and to have been sane unless the contrary is proved.

PART 5
CRIMINAL PROCEDURE

134 Jurisdiction of High Court

Except where otherwise expressly provided, all offences against the laws of Niue may be tried in the High Court under this Part.

Preliminary Proceedings

135 Arrest without warrant

(1) No person shall be arrested without warrant except under this Act or under some other enactment giving power to arrest without warrant.

(2) Any constable and any person whom he calls to his assistance may, without warrant, arrest and take into custody –

- (a) Any person whom he finds disturbing the public peace or whom he has good cause to suspect is committing any offence punishable by imprisonment;
- (b) Any person whom he has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment;
- (c) Any person whom he has good cause to suspect to be attempting or about to commit a breach of the peace or any offence punishable by imprisonment;
- (d) Any person whom he has good cause to suspect is committing an offence against section 102 or section 104.

(3) Any person may, without warrant, arrest and take into custody –

- (a) Any person whom, in any public place, he finds disturbing the public peace;
- (b) Any person whom he has good cause to suspect to be about to commit, in a public place, a breach of the peace.

(4) Subsections (1) and (2) shall be read subject to the express provisions of any enactment imposing any limitation, restriction, or condition on the exercise of any power to arrest without warrant conferred upon any constable or any other person in respect of any specified offence or any specified class of offences.

(5) Where under any enactment, other than this Act, any officer or other person, not being a constable, has power without warrant, to arrest any other person, any constable may exercise that power in the same cases and in the same manner as that officer or other person.

(6) Where any person, other than a constable, arrests without warrant, any other person, he shall as soon as reasonably possible thereafter deliver that other person into the custody of a constable.

136 Arrest on warrant of Commissioner

A Commissioner, on receiving such information on oath as seems sufficient to him, whether made in writing or not, may issue his warrant for the arrest of any person for any offence against the laws of Niue, and thereupon any constable or other person specified in the warrant in that behalf may arrest the accused, who shall be forthwith brought before a Judge of the High Court or the Registrar there to be dealt with under this Part.

137 Duty of persons arresting

(1) It is the duty of every one arresting any other person to inform the person he is arresting, at the time of the arrest, of the act or omission for which the person is being arrested, unless it is impracticable to do so, or unless the reason for the arrest is obvious in the circumstances. The act or omission need not be stated in technical or precise language, and may be stated in any words reasonably sufficient to give that person notice of the true reason for his arrest.

(2) It is the duty of every one who arrests any other person under any process or warrant –

- (a) If he has the process or warrant in his possession at the time of the arrest, to produce it if required by that person to do so;
- (b) If he does not have the process or warrant in his possession at the time of the arrest, to show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(3) Where under any enactment any person other than a constable has, by virtue of his office, a power of arrest without warrant, he shall, whenever he arrests any other person under that power –

- (a) If he has evidence of his appointment to that office in his possession at the time of the arrest, produce it if required by that person to do so;
- (b) If he does not have evidence of his appointment in his possession at the time of the arrest, show it to the arrested person as soon as practicable after the arrest, if that person so requires.

(4) A failure to fulfil any of the duties mentioned in subsections (1)-(3) shall not of itself deprive the person arresting, or his assistants, of protection from criminal responsibility, but shall be relevant to the inquiry whether the arrest might not have been effected, or the process or warrant executed, by reasonable means in a less violent manner.

(5) Every person who is arrested on a charge of any offence shall be brought before the High Court, as soon as possible, to be dealt with according to law.

(6) Nothing in this section shall limit or affect the express provisions of any enactment whereby –

- (a) The burden of proving the absence of reasonable or probable cause, or the absence of justification, for any arrest is on any person;
- (b) Any person having, by virtue of his office, a power of arrest without warrant is entitled, in any specified circumstances, to exercise that power without the production of evidence of his appointment to that office, or is required in exercising the power, to comply with any specified conditions or restrictions in addition to or instead of producing evidence of his appointment.

138 Committal for trial

(1) When any person arrested with or without warrant under the foregoing provisions is brought before a Judge or the Registrar, the Judge or Registrar may, after such preliminary inquiry (if any), and after giving the prisoner an opportunity of being heard, by warrant either discharge the prisoner, or commit him to prison to await trial by the High Court for the offence for which he was arrested, or admit him to bail, with or without sureties, conditioned to appear before the High Court in due course for trial for the offence.

(2) No such discharge shall amount to an acquittal so as to preclude the prosecution and trial of the accused in the High Court for the offence for which he was so arrested.

Trial by the High Court

139 Information

Every prosecution in the High Court for any offence shall be commenced by an information in writing laid by a constable or any other prosecutor before a Judge or the Registrar of that Court.

140 Warrant or summons

On the commencement of any such prosecution, any Judge or Commissioner of the High Court or any two Justices of the Peace acting together may unless the accused is already in custody, at any time issue either a warrant for the arrest of the accused or a summons requiring him to appear before the High Court at the time and place specified in the summons, there to answer the charge so made against him in the information and set out in the summons.

141 Warrant after issue of summons

Any such warrant may be at any time issued by a Judge or Commissioner of the High Court or any two Justices of the Peace acting together, notwithstanding the fact that a summons has been already issued to the accused as aforesaid.

142 Arrested person may be released on bail

(1) Where, under section 135, any person is arrested without warrant by a constable or some other person on the grounds that the constable or other person suspects on reasonable grounds that the person arrested has committed any one or more of the following offences –

- (a) Wilful mischief to property; or
- (b) Resisting a constable in the execution of his office; or
- (c) Using profane, indecent, or obscene language; or
- (d) Indecent behaviour; or
- (e) Assault; or
- (f) Fighting or drunkenness in a public place; or

(g) Any offence against section 135(2) – then, notwithstanding section 135(2), on the arrested person being brought before a constable in charge of any police station, the constable in charge of the police station may release the arrested person on bail, with or without sureties, conditioned for the appearance of the arrested person before the High Court at such place and at such time (being not more than 3 clear days after the date of the arrest of the arrested person) as the constable in charge of the police station specifies.

(2) Should the constable in charge of a police station not release any arrested person on bail under subsection (1) the provisions of section 135 shall apply to that person.

(3) Where any person who has been released on bail under subsection (1) appears before the High Court, then, on his appearance before the High Court, he shall be deemed to be in custody.

(4) Nothing in subsection (1) shall derogate from section 144.

143 Prisoners brought before Court before commencement of prosecution

(1) When any person charged with an offence is brought before a Judge of the High Court or any two Justices of the Peace acting together in custody, having been arrested without warrant or on a warrant issued under section 136, the Judge may, unless a prosecution has already commenced against the prisoner by information as aforesaid, either discharge the prisoner, or remand him in custody pending the commencement of a prosecution, or release him on bail, with or without sureties, conditioned for his appearance before the High Court at such time and place as the Judge thinks fit.

(2) No discharge under this section shall amount to an acquittal so as to preclude the prosecution or trial of the prisoner for the offence for which he has been so arrested.

144 Remand

When any prosecution has been commenced in the High Court, the Court may either remand the accused in custody or admit him to bail, with or without sureties, conditioned to appear before the High Court at any other time or place.

145 Trial of accused in his absence

When any person who is prosecuted for an offence punishable by fine only has been duly summoned to appear before the High Court and fails to appear under the summons, the Court may try and sentence him for that offence in his absence.

Assessors

146 Constitution of Court in criminal trials

Every criminal trial in the High Court shall take place before one Judge of that Court sitting with or without assessors under the provisions of this Part.

147 Judge with assessors

On the trial of any person for any offence punishable by imprisonment for more than 5 years, the Judge shall sit with assessors.

148 Judge without assessors

On the trial of any person on an information charging him exclusively with an offence or offences punishable only by fine, the Judge shall sit without assessors.

149 Judge with or without assessors as he thinks fit

In all other criminal trials, the Judge shall sit without assessors, unless the Court in its discretion orders otherwise, either on its own motion or on the application *ex parte* or otherwise of either the prosecutor or the accused.

150 Order appointing assessors

Any such order may be made at any time after the commencement of the prosecution, and whether before or during the trial; but, if made after any evidence has been heard at the trial, all such evidence shall, except so far as repeated before the Judge and assessors, be of no force or effect.

151 Number and qualifications of assessors

(1) The assessors shall in all cases be 6 in number, and shall be such fit and proper persons (whether men or women) as a Judge of the Court thinks fit, subject to any rules of Court which may be made in that behalf, to appoint by warrant under his hand and the seal of the Court, and the consent of an assessor shall not be requisite for his appointment.

(2) No person shall be appointed as an assessor unless he has first been nominated by the Cabinet by warrant published in the *Gazette* as a person qualified for appointment as an assessor under this Act, either generally or in respect of any particular case or class of cases; and the Cabinet may accordingly nominate in this behalf such and so many persons as the Cabinet thinks qualified by reason of their character, education, ability, or reputation to hold that office, and may at any time in like manner revoke any such nomination.

152 Default of assessors

If any person so appointed as an assessor, and having had reasonable notice of the time and place of the trial, fails without reasonable excuse duly to attend at the trial or at any adjournment of it, or duly to make oath as such, or duly to act as assessor throughout the trial, he shall be guilty of contempt of the High Court.

153 Remuneration of assessors

Every assessor shall be entitled to receive from the Niue Government Account such remuneration or allowances in respect of his services as may be authorised by the Judge at the trial in conformity with any rules of Court which may be made in that behalf.

154 Oath of assessors

Before an assessor commences to act as such, he shall in open court and in the presence of the accused make oath to act well and truly as assessor and to decide in accordance with the evidence and with law.

155 Change of assessors

At any time after the appointment of an assessor and before he has been sworn as aforesaid, a Judge of the Court may, either of his own motion or on the application *ex parte* or otherwise of the prosecutor or the accused, if he is satisfied there is any reasonable and sufficient objection to that assessor, remove him and appoint another assessor in his place.

156 Discharge of assessors and new trial

(1) If at any time after the commencement of the trial and before judgment the Judge is of the opinion that, owing to the misbehaviour of any assessor, or to the death, illness, or absence of any assessor, or to any accident or misadventure, or to any

other sufficient cause, a new trial is necessary in the interests of justice, he may discharge the assessors and order a new trial accordingly.

(2) Every such new trial shall take place before the same or another Judge with assessors in the same manner as if no previous trial had taken place.

157 Concurrence of assessors

On a trial with assessors, no person shall be convicted by the Judge of any offence, unless the conviction is concurred in by not less than 4 of the assessors.

158 Concurrence of Judge

If the Judge is of opinion that the accused should not be convicted, or if fewer than 4 of the assessors concur in his conviction, the accused shall be acquitted.

159 Sentence

The concurrence of assessors in the sentence to be passed by the Judge shall not be necessary.

160 Concurrence of assessors necessary for conviction

The concurrence of the assessors shall not be necessary for any other act of the Court or the Judge other than conviction, and in all other respects the jurisdiction of the Court shall be exercised by the Judge in the same manner as if he was sitting without assessors.

161 Alternative and cumulative charges

(1) Subject to this section, in any prosecution in the High Court the information of the prosecutor may relate to two or more distinct offences, whether alternative or cumulative.

(2) No information for the offence of murder shall charge any other offence except manslaughter.

(3) No information for the offence of rape shall charge any other offence except indecent assault and an attempt to commit rape.

Miscellaneous Provisions

162 Relation between information and conviction

On an information for any offence the accused may be convicted either of the offence charged in the information or of any offence which is included within the offence so charged and which might lawfully have been charged in the same information.

163 Withdrawal of information

(1) An information in the High Court for any offence may at any time, whether before or during the trial, be withdrawn by the prosecutor with the leave of a Judge of the Court, but not otherwise.

(2) An information so laid and withdrawn shall not operate as a bar to any further proceedings against the accused in respect of the same offence.

164 Drawing up of conviction

(1) On the conviction of any person of any offence before the High Court, a minute or memorandum of the conviction shall thereupon be drawn up and preserved as a record of the Court, and a formal conviction under the seal of the Court may be drawn up at any time afterwards when it becomes necessary.

(2) In the meantime the conviction and sentence may be carried into execution, and shall have the same force and effect in every respect as if the conviction had been formally drawn up under the seal of the Court.

165 Defects of information, summons, or warrant

(1) No objection shall be taken or allowed to any information, summons, or warrant in any criminal proceedings before the High Court for any alleged defect in it in substance or in form, or for any variance between the information, summons, or warrant and the evidence adduced at the trial.

(2) The High Court may at any stage of the trial amend the information in such manner as it thinks fit in respect of any such defect or variance.

(3) Where under subsection (2) any information is amended by substituting one offence for another, the following provisions shall apply:

(a) Subject to paragraphs (b) and (c), the trial shall be continued as if the accused had originally been charged with the substituted offence;

(b) Before the trial is continued, the substance of the information as amended shall be stated to the accused and he shall be asked how he pleads; and, if he pleads guilty, the High Court may convict him or deal with him in any other manner authorised by law;

(c) Any evidence already given shall be deemed to have been given in and for the purposes of the trial of the information as amended, but either party shall have the right to examine or cross-examine or re-examine any witness whose evidence has already been given in respect of the offence originally charged.

(4) The High Court may, at the request of the accused, if it is of opinion that he would be embarrassed in his defence by reason of any amendment made or proposed to be made under this section, adjourn the trial.

166 Payment of witnesses

Any witness at a criminal trial may, if the Judge thinks fit and certifies accordingly, be paid out of the Niue Government Account such allowance for his expenses and loss of time as is so certified, subject to such rules of Court as may be made in that behalf.

167 Court may order convicted person to come up for sentence

(1) The Court, on convicting an accused person of an offence under any enactment, may, having regard to the circumstances, including the nature of the offence and the character of the offender, instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as it thinks fit, including, if the Court thinks fit, a condition that the offender shall be subject to supervision for such period as the Court specifies, not exceeding the period specified in or under subsection (3), by a person to be nominated by the Chief of Police.

(2) The making of an order under this section shall not limit or affect the power of the Court, under any enactment applicable to the offence, to make any order for the payment of costs, damages, or compensation, or for the restitution of any property, notwithstanding that the offender is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly.

(3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the Court in the order, being a period not exceeding 3 years from the date of the conviction, or if no period is so specified, within one year from the date of the conviction.

(4) Where any person is brought up for sentence under this section, the Court may, after inquiry into the circumstances of the case and the conduct of the

offender since the order was made, sentence or otherwise deal with the offender for the offence in respect of which the order was made.

168 Conviction without sentence or discharge without conviction

(1) If on any criminal trial the Court thinks that the charge, though proved, is in the particular case of so trifling a nature or was committed under such circumstances that no punishment should be imposed, the Court may convict the accused and discharge him without sentence, either unconditionally or on such conditions as the Court thinks fit to impose.

(2) If any person who is so convicted and discharged on conditions commits any breach of those conditions, he shall be guilty of an offence punishable in the same manner as the offence of which he was so previously convicted.

(3) Without limiting the powers conferred on the High Court by subsection (1), where any person is accused of any offence, the High Court, after inquiry into the circumstances of the case, may discharge him without convicting him, unless by any enactment applicable to the offence a minimum penalty is expressly provided for. A discharge under this subsection shall be deemed to be an acquittal.

(4) The High Court, when discharging any person under subsection (3), may, if it is satisfied that the charge is proved against him, make any order for the payment of costs, damages, or compensation, or for the restitution of any property, that it could have made under any enactment applicable to the offence with which he is charged if it had convicted him and sentenced him, and the provisions of every such enactment shall apply accordingly.

169 Bail

(1) When any person is admitted to or released on bail under this Act or under any other enactment, he shall, with or without sureties, enter into a bail bond in favour of the Government in such sum as may be required, conditioned in such manner as may be appropriate to the particular case and as may be required.

(2) [Repealed]

(3) Every such bond shall be taken by and before a Judge of the High Court, or the Registrar of the High Court, or, where a person is released on bail under section 142, by a constable in charge of the police station.

(4) Every such bond shall be signed by the person admitted to or released on bail and by his sureties (if any) and the signature of that person and of each of his sureties (if any) shall be attested by a Judge of the High Court, the Registrar of the High Court, or a constable.

(5) When any person is admitted to or released on bail, the Judge of the High Court, or constable admitting or releasing him may require him to deposit with that Judge, or constable or with the Registrar of the High Court a sum of money (being not greater than the amount of the recognisance entered into in the bond). Any such sum so deposited with a Judge, or constable shall, as soon as reasonably possible after the deposit, be paid by the person with whom it was deposited to the Registrar of the High Court.

(6) Where any person admitted to or released on bail has fully performed the conditions of his bond, the bond shall be void and any sum deposited by him under subsection (5) shall be forthwith repaid to him but without any interest.

(7) Where any person admitted to or released on bail fails to perform any condition of his bond, the Registrar of the High Court shall fix a place and time at and on which the High Court may consider the estreat of the bond, and shall, not less than 7 clear days before the time fixed, cause to be served on the person admitted or released on bail (if he can be found) and upon the sureties (if any) notice that, unless at the place

and time fixed some person bound by the bond proves to the satisfaction of the High Court that it ought not to be estreated, the bond may be estreated.

(8) (a) If at the time and place fixed by the Registrar under subsection (7) no sufficient cause to the contrary is shown, the High Court, on proof of non-performance of the bond, may make an order to estreat the bond to such amount as it thinks fit as to any person bound thereby upon whom notice is proved to have been served in accordance with subsection (7) and the whole or any part of any sum deposited under subsection (5) may (but otherwise without prejudice to the rights of the Government under the estreated bond) be forfeited accordingly to the Government.

(b) If the Court is satisfied that the person admitted to or released on bail cannot be found, it may estreat the bond as against him, notwithstanding that the notice has not been served on him.

(c) No bail bond shall be estreated save by a Judge of the Court.

(9) Any sum payable in connection with any estreated bond shall be recoverable as if it were a fine.

(10) Where any person has been admitted to or released on bail, any surety under the bail bond entered into by that person may, at any time and at any place, without warrant arrest and seize that person while he is not in the custody of the law and deliver him into the custody of a constable and, on any such delivery, the surety shall cease to be liable under the bond.

170 Search warrants

(1) Any Judge or the Registrar of the High Court who is satisfied on the oath of any person that there is reasonable ground for believing that there is in any building, ship, aircraft, receptacle, or place –

(a) Anything which there is reasonable ground to believe will afford evidence as to the commission of any offence; or

(b) Anything in respect of which any offence has been or is suspected of having been committed; or

(c) Anything which there is reasonable grounds for believing to be intended to be used for the purpose of committing any offence –

may, by warrant under his hand, authorise some constable or other officer of the Niue Public Service to search the building, ship, aircraft, receptacle, or place for any such thing, and to seize and bring it before the person by whom the warrant has been issued.

(2) Every such warrant shall be executed by day (that is to say, after sunrise and before sunset), unless the warrant expressly authorises the execution of it by night.

(3) Every such warrant may be executed by reasonable force if necessary.

(4) When any such thing is seized and brought before the person by whom the warrant was issued, he may either order it to be detained for the purpose of evidence on the trial of any person for any such offence as aforesaid or may direct it to be delivered to any person believed by the person so issuing the warrant to be entitled to it.

(5) No such order of delivery shall in any manner affect the right of any person to the ownership or possession of the thing.

(6) Any thing so ordered to be detained as evidence of an offence may be detained under the order for such time as is reasonably necessary for the purpose of any proceedings instituted or to be instituted in respect of the offence.

171 Power to enter premises to arrest offender or prevent offence

(1) Where any constable is authorised by this Act or by any other enactment to arrest any person without warrant, that constable, and all persons whom he calls to

his assistance, may enter on any premises, by reasonable force if necessary, to arrest that person if the constable –

- (a) Has found that person committing any offence punishable by imprisonment and is freshly pursuing that person; or
- (b) Has good cause to suspect that that person has committed any such offence on those premises.

(2) Any constable, and all persons whom he calls to his assistance, may enter on any premises, by reasonable force if necessary, to prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property, if he believes, on reasonable and probable grounds, that any such offence is about to be committed.

(3) If, in any case to which this section applies, the constable is not in uniform and any person in actual occupation of the premises requires him to produce evidence of his authority, he shall before entering on the premises produce his badge or other evidence that he is a constable.

(4) Nothing in this section shall affect in any way the power of any constable to enter any premises under a warrant.

172 Parole Board

(1) There is established a Parole Board consisting of 3 members who are to be appointed by Cabinet.

(2) Cabinet may appoint a Parole Board member under subsection (1) for a term not exceeding 3 years.

(3) Cabinet may appoint the Chairperson of the Board.

(4) A Parole Board member appointed under subsection (1) may be reappointed.

(5) A Parole Board member appointed under subsection (1) may resign by written notice given to Cabinet.

(6) The appointment of a Parole Board member appointed under subsection (1) may be terminated by Cabinet for misconduct, inefficiency or inability.

173 Compensation for loss of property

(1) On the conviction of any person for any offence, the High Court may order the offender to pay to any person such sum as it thinks fit by way of compensation for any loss of or damage to property suffered by that person through or by means of the offence.

(2) Where on the arrest of the offender any money was taken from him, the High Court may order the whole or any part of the money to be applied to any such payment.

(3) Any order for payment under this section may be enforced in the same manner as a fine.

(4) An order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

174 Criminal procedure in Niue

In every enactment in force in Niue, every reference to the trial of offences by way of indictment or by way of summary proceedings shall, in the application of that enactment to Niue, be construed as a reference to the trial of such offences by the High Court in the ordinary course of its criminal jurisdiction and procedure.

175 Warrants of arrest

(1) Except where other provision is made by law in that behalf, any warrant for the arrest of any person in Niue may be directed either to any constable or other person by name, or generally to the constables of Niue.

(2) When such a warrant is directed to constables generally, any such constable may execute the warrant in like manner as if it was directed specially to him by name.

(3) Any such warrant may be granted and executed on a Sunday, and either by day or night.

(4) Every such warrant shall name or otherwise describe the person against whom it is issued.

(5) It shall not be necessary to make any such warrant returnable at any particular time, but it may remain in full force until executed.

PART 6

SENTENCING

176 Power to fine instead of or in addition to imprisonment

Except where otherwise expressly provided, every one liable to imprisonment for any term for any offence may be sentenced to pay a fine not exceeding 2 penalty units in addition to or instead of imprisonment.

177 Enforcement of fines

(1) Every fine imposed upon any person by the High Court shall constitute a judgment debt due by that person to the Crown, and payment of it shall be enforceable and recoverable accordingly by writ of sale or any other civil process of execution in the same manner in all respects as if the debt had been recovered in civil proceedings at the suit of the Crown.

(2) Any person upon whom any such fine has been imposed may, by warrant under the seal of the High Court, be committed to prison by a Judge of that Court for a period not exceeding 6 months, but shall be entitled to be discharged from imprisonment on payment of the fine.

(3) When any person has been so committed to prison, no proceedings or further proceedings shall thereafter be taken for the enforcement of the fine by way of civil process under this section.

178 Imprisonment in Niue

Save so far as herein otherwise provided, every sentence of imprisonment shall be carried into effect in some prison in Niue and subject to any Act.

179 Transfer of convicted persons to New Zealand

(1) Every person sentenced to imprisonment, or committed to prison for 6 months or more including an offender who has been recalled under section 181 may, by warrant of the Cabinet and the Seal of Niue, be transferred to some prison in New Zealand named or described in the warrant.

(2) On the issue of any such warrant, the person named therein shall thereupon be taken in custody from Niue to New Zealand, and there forthwith delivered to the Superintendent of the prison named or described in the warrant.

(3) The warrant shall be delivered to the said Superintendent together with a certificate under the hand of a Judge of the High Court and the seal of that Court setting forth the fact of the conviction or commitment of the person named in the

warrant, the offence of which he was convicted or the reason of the commitment, and the term for which he has been so sentenced or committed.

(4) Where any person brought to New Zealand under this section is imprisoned in New Zealand under any of the foregoing provisions of this section –

- (a) The period during which he has been in custody since the sentence was imposed in Niue until his delivery to the Superintendent in New Zealand shall for all purposes be computed as part of the term of his imprisonment;
- (b) Subject to section 180, he shall be imprisoned in New Zealand in the same manner in all respects and shall be subject in all respects to the same laws, as far as applicable, as if he had been sentenced by the High Court of New Zealand to imprisonment for the life offence, or committed to prison by that Court on the like grounds.

[180 Release of prisoners transferred to New Zealand

[This section is not Niue law. The Criminal Justice Act 1954 of New Zealand has been replaced by the Criminal Justice Act 1985.]

(1) Where any person (in this section referred to as the offender) brought to New Zealand under section 179 is imprisoned in New Zealand under that section –

- (a) The Minister of Justice, with the concurrence of the Minister of Foreign Affairs –
 - (i) may, by warrant signed by him, grant to the offender, not being an offender serving a sentence of life imprisonment, remission of any part of his sentence, not exceeding one-fourth of the term, on the ground of his good conduct and industry; and
 - (ii) may, where he considers that the conduct of the offender has been exemplary during his sentence, or that the offender has during his sentence performed some outstanding act of service, grant to the offender, not being an offender serving a sentence of life imprisonment, in addition to any remission which may be granted to him under subparagraph (i), a special remission of part of his sentence, not exceeding one-twelfth of the term; and may revoke any such remission at any time before the offender is released; and
 - (iii) may, in the case of any offender who is a Niuean, direct by warrant signed by him that on the release of the offender he be allowed to remain in New Zealand;
- (b) Where any offender is granted a remission of any part of his sentence under paragraph (a) then –
 - (i) if under this section he is to be released in New Zealand, the Minister of Justice, with the concurrence of the Minister of Foreign Affairs may, by warrant at any time before the offender is released, impose such special conditions of probation in addition to those that apply by virtue of section 38 of the Criminal Justice Act 1954;
 - (ii) if under this section he is to be returned to Niue, the Minister of Justice, with the like concurrence, may, by warrant at any time before the offender is released for the purpose of being returned to Niue, direct that, until a date specified in the warrant (being a date not later than the date of expiry of the term of the original sentence), the offender shall be subject to supervision by a person to be nominated by the Premier, and shall comply with the directions of that person with respect to such matters as are specified in the warrant;
- (c) The provisions of section 33A of the Criminal Justice Act 1954 as far as they are applicable but subject to the provisions of this section, shall apply with

respect to the offender as if he had been sentenced to imprisonment by the High Court of New Zealand.

(2) The Prisons Parole Board, on considering the case of any offender under section 33A of the Criminal Justice Act 1954 (as so enacted), shall have regard, in addition to the matters specified in subsection (6) of that section, to such other matters of any kind whatsoever as it considers relevant in the circumstances of the case, and may recommend that the offender –

- (a) Be returned to Niue and released on his arrival there; or
- (b) Be returned in custody to Niue and continue to serve the sentence of imprisonment in some prison in Niue until a date specified by the Board (being, in the case of a prisoner undergoing a sentence of life imprisonment, such date as the Board thinks fit, and, in the case of any other prisoner, a date not later than 3 months after his return to Niue) and be released on the date so specified; or
- (c) Be released in New Zealand.

(3) Any recommendation of the Prisons Parole Board under subsection (2) may be subject to such conditions as the Board thinks fit, including, if the Board thinks fit, a condition, in the case of a prisoner to whom paragraph (a) or paragraph (b) of that subsection applies, that, until a date specified by the Board (being, in the case of an offender undergoing a sentence of life imprisonment, such date as the Board thinks fit, and in any other case a date not later than the date of the expiry of the term of the original sentence), he shall be subject to supervision by a person to be nominated by the Premier and shall comply with the directions of that person with respect to such matters as the Board specifies.

(4) The provisions of the Criminal Justice Act 1954 relating to the release of an offender on probation shall not apply with respect to any offender who is returned to Niue under this section.

(5) Where under this section any offender is released in New Zealand, sections 35 to 39 of the Criminal Justice Act 1954, as far as they are applicable, shall apply as if he had been so released at or before the expiry of a term of imprisonment imposed by the High Court of New Zealand.

(6) Where any offender who under this section is released in New Zealand desires to return to Niue before the expiration of the term of his probation, the Minister of Justice, on the application of the offender and with the concurrence of the Minister of Foreign Affairs, may cancel the probationary licence as from the date on which the offender leaves New Zealand, and by warrant direct that as from the date of the arrival of the offender in Niue until a date specified in the warrant (being not later than the date on which the term of probation would have expired if the probationary licence had not been cancelled) the offender shall be subject to supervision by a person to be nominated by the Premier and shall comply with the directions of that person with respect to such matters as are specified in the warrant.

(7) Every offender, if he is a Niuean, shall, as soon as he is entitled to be released or as soon thereafter as may be, unless he is to be released in New Zealand under this section, be returned to Niue under a warrant signed by the Minister of Justice, and in the meantime shall be detained in custody in some prison in New Zealand appointed by that warrant.

(8) A recommendation of the Prisons Parole Board under this section may be given effect under a warrant signed by the Minister of Justice with the concurrence of the Minister of Foreign Affairs.

(9) For the purposes of this section, cumulative terms of imprisonment shall be treated as one term.

(10) Where any offender is for the time being subject to supervision in Niue under this section, the term of his sentence shall continue to run while he is subject to supervision as if he were still serving the sentence; and the date of expiry of the sentence shall be determined accordingly.]

181 Recall of offender subject to supervision

(1) Where any offender undergoing a sentence of imprisonment for life is for the time being subject to supervision in Niue under section 180, the Court on application of the Chief of Police may at any time before the expiration of the period of supervision, by warrant direct that the offender be recalled.

(2) On the giving of that direction, the supervision shall be deemed to be cancelled, and the offender may be arrested without warrant by any constable, and, subject to section 180, shall continue to serve his original sentence.

(3) The powers conferred by subsection (1) may be exercised on such grounds as the Court thinks fit and whether or not the offender has committed a breach of any condition of his supervision.

182 Person conditionally released from imprisonment

(1) Any person who is released from imprisonment, pursuant to a remission of part of his sentence under section 180(1)(a) or to a recommendation of the Prisons Parole Board under paragraph (c) of that subsection subject to any conditions imposed under that section, and is returned to Niue under that section (including a person who returns to Niue under subsection (6) of that section), and who commits a breach of any such condition may be arrested by any constable without warrant and brought before a Judge of the High Court, and may be sentenced to imprisonment, in the case of a person who was undergoing a sentence of life imprisonment, for such period as the Court thinks fit, and in any other case for any period not exceeding the unexpired portion of the term of his original sentence.

(2) For the purposes of this section, cumulative terms of imprisonment shall be treated as one term.

183 Cumulative sentences

(1) When an offender is sentenced for more offences than one at the same time, or if, when sentenced for one offence, he has already been sentenced for any other offence and has not yet completed the sentence so imposed upon him, the Court may direct that the sentences passed on him for his several offences shall take effect one after the other or concurrently.

(2) Save as provided by this section, every sentence of imprisonment shall commence to take effect on the day on which the sentence is pronounced.

PART 7

PRISONS

184 Establishment of prisons

The Cabinet may, by warrant under its hand and the Seal of Niue, appoint as prisons such buildings or places in Niue as it thinks suitable for that purpose.

185 Detention of persons in custody

(1) Any person in lawful custody in Niue may be detained in any such prison, and may be removed by order of a Judge of the Court to any other prison in Niue.

(2) Any person in lawful custody in Niue may, if it is inconvenient or impracticable immediately to take him to any prison for confinement, be temporarily detained in any other suitable place of security.

186 Labour instead of imprisonment

(1) Any person sentenced to imprisonment or committed to prison in Niue may, by order of a Judge of the High Court made either at the time of sentence or committal or at any time thereafter, be discharged from custody on condition that he labours on public works in Niue for the term or the residue of the term for which he has been so sentenced or committed.

(2) Every prisoner so discharged shall perform the labour so appointed for him under the control and subject to the direction of some officer nominated for that purpose by the Chief of Police.

(3) If any prisoner so discharged makes default in the due performance of the labour so appointed for him, or is guilty of any insubordination or other misconduct, whether in respect of that labour or otherwise, he may be arrested without warrant by any officer of police or of prisons; and a Judge of the High Court may (without the necessity of any judicial inquiry) revoke the discharge of that prisoner and commit him to prison for a period equal to that for which he would have been imprisoned subsequent to the order of discharge had no such order been made, with such deduction (if any) as the Judge thinks fit, having regard to the seriousness of the default, insubordination, or misconduct, and to any labour duly performed by the prisoner under the conditions of his discharge.

(4) Where under subsection (3) a prisoner is committed to prison for a term expiring before the date on which, if he had not been discharged under this section, the original period of imprisonment would have expired, then, on the expiration of the term for which he is committed under that subsection, the order of discharge made under subsection (1) and subsections (2) and (3) shall again apply to him for the residue of the term for which he was originally sentenced or committed.

187 Prisons and criminal justice

(1) Cabinet may by regulations provide for –

- (a) The administration of sentences imposed by the Court (whether involving imprisonment or not);
- (b) The management and supervision of offenders placed in the custody or under the control of the Controller of Prisons, a Superintendent, or Parole and Probation Officers;
- (c) The administration of prisons and other detention centres;
- (d) The administration of the parole system and probation service;
- (e) All other matters necessary or expedient for ensuring that full effect is given to decisions of the courts in criminal matters.

(2) Regulations made under subsection (1) may provide for prison discipline and for control of breach of discipline by the officer in charge of the prison.

(3) Punishments imposed under regulations made under this section shall not exceed –

- (a) Confinement in a separate cell for a period of 2 weeks;
- (b) The forfeiture of privileges for 3 months; or
- (c) A combination of the punishments specified in paragraphs (a) to (b).

**COMPARATIVE REFERENCE FOR THE SOURCE OF THE
REPRINT SECTIONS**

Reprint	Source
1 Seditious offences	Niue Act 1966 s129.
2 Punishment of seditious offences	Niue Act 1966 s130.
3 Homicide	Niue Act 1966 s131.
4 Killing of a child	Niue Act 1966 s132.
5 Culpable homicide	Niue Act 1966 s133.
6 Murder	Niue Act 1966 s134.
7 Further definition of murder	Niue Act 1966 s135.
8 Provocation	Niue Act 1966 s136.
9 Illegal arrest may be evidence of provocation	Niue Act 1966 s137.
10 Punishment of murder	Niue Act 1966 s138.
11 Manslaughter	Niue Act 1966 s139.
12 Punishment of manslaughter	Niue Act 1966 s140.
13 Omissions dangerous to life	Niue Act 1966 s141.
14 Duty to provide the necessaries of life	Niue Act 1966 s142.
15 Duty of parent or guardian to provide necessaries	Niue Act 1966 s143.
16 Liability for dangerous things	Niue Act 1966 s144.
17 Hastening death	Niue Act 1966 s145.
18 Indirect cause of death	Niue Act 1966 s146.
19 Attempted murder	Niue Act 1966 s147.
20 Conspiracy and inciting to murder	Niue Act 1966 s148.
21 Counselling suicide	Niue Act 1966 s149.
22 Concealment of birth	Niue Act 1966 s150.
23 Grievous bodily harm	Niue Act 1966 s151.
24 Actual bodily harm	Niue Act 1966 s152.
25 Omissions resulting in bodily harm	Niue Act 1966 s153.
26 Intentionally endangering persons on aerodromes	Niue Act 1966 s154.
27 Wantonly endangering persons on aerodromes	Niue Act 1966 s155.
28 Indecent assault	Niue Act 1966 s156.

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29	Assault	Niue Act 1966 s157.
30	Cruelty to a child	Niue Act 1966 s157A.
31	Resisting constable in execution of his duty	Niue Act 1966 s158.
32	Abduction of girl under 15	Niue Act 1966 s159.
33	Abduction of children	Niue Act 1966 s160.
34	Sexual intercourse	Niue Act 1966 s161.
35	Rape	Niue Act 1966 s162.
36	Sexual intercourse or indecency with girl under 12	Niue Act 1966 s163.
37	Sexual intercourse or indecency with girl between 12 and 15	Niue Act 1966 s164.
38	Sexual intercourse with woman or girl who is an idiot or imbecile or of unsound mind	Niue Act 1966 s165.
39	Procuring miscarriage of woman or girl	Niue Act 1966 s166.
40	Act of woman or girl procuring her own miscarriage	Niue Act 1966 s167.
41	Supplying means of miscarriage	Niue Act 1966 s168.
42	Bigamy	Niue Act 1966 s169.
43	Buggery	Niue Act 1966 s170.
44	Attempted buggery and indecent assaults on males	Niue Act 1966 s171.
45	Incest	Niue Act 1966 s172.
46	Indecent acts	Niue Act 1966 s173.
47	Indecent documents	Niue Act 1966 s174.
48	Adultery by married persons	General Laws Act 1968 s16.
49	Adultery with married person	General Laws Act 1968 s17.
50	Scandalous conduct	General Laws Act 1968 s18.
51	Brothels	Niue Act 1966 s175.
52	Prostitution	Niue Act 1966 s220.
53	Gaming houses	Niue Act 1966 s176.
54	Powers to permit gambling	Niue Act 1966 s176A.
55	Riot	Niue Act 1966 s177.
56	Forcible entry	Niue Act 1966 s178.
57	Affrays	Niue Act 1966 s179.
58	Interpretation	Niue Act 1966 s180.

Criminal Law Code

59	Judicial corruption	Niue Act 1966 s180A.
60	Bribery of judicial officer	Niue Act 1966 s180B.
61	Corruption and bribery of Minister	Niue Act 1966 s180C.
62	Corruption and bribery of member of Assembly	Niue Act 1966 s180D.
63	Corruption and bribery of law enforcement officer	Niue Act 1966 s180E.
64	Corruption and bribery of official	Niue Act 1966 s180F.
65	Corrupt use of official information	Niue Act 1966 s180G.
66	Restrictions on prosecutions	Niue Act 1966 s180H.
67	Perjury	Niue Act 1966 s181.
68	Fabricating evidence	Niue Act 1966 s182.
69	Conspiracy to pervert justice	Niue Act 1966 s183.
70	Breaking prison	Niue Act 1966 s184.
71	Escape	Niue Act 1966 s185.
72	Rescue	Niue Act 1966 s186.
73	Criminal libel or slander	Niue Act 1966 s187.
74	Definition of theft	Niue Act 1966 s188.
75	Ineffectual defences to charge of theft	Niue Act 1966 s189.
76	Extended definition of theft	Niue Act 1966 s190.
77	Obtaining money or goods by false pretences	Niue Act 1966 s191.
78	Punishment of theft	Niue Act 1966 s192.
79	Stealing documents	Niue Act 1966 s193.
80	Receiving stolen goods	Niue Act 1966 s194.
81	Robbery	Niue Act 1966 s195.
82	Conversion or attempted conversion	Niue Act 1966 s196
83	Breach of trust	Niue Act 1966 s197
84	Menaces	Niue Act 1966 s198
85	Witchcraft	Niue Act 1966 s199
86	Obtaining credit by fraud	Niue Act 1966 s200
87	Accusation of criminal offences	Niue Act 1966 s201
88	Conspiracy to defraud	Niue Act 1966 s202
89	Obtaining execution of valuable securities by fraud	Niue Act 1966 s203

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90	Burglary	Niue Act 1966 s204
91	Unlawful entry of dwellinghouse	Niue Act 1966 s205
92	Entering premises for a criminal purpose	Niue Act 1966 s205A
93	Threats to kill or do bodily harm	Niue Act 1966 s206
94	Forgery	Niue Act 1966 s207
95	Extended definition of forgery	Niue Act 1966 s208
96	Making counterfeit coin	Niue Act 1966 s209
97	Lightening coin	Niue Act 1966 s210
98	Uttering counterfeit coin	Niue Act 1966 s211
99	Arson	Niue Act 1966 s212
100	Wilful mischief to property	Niue Act 1966 s213
101	Provoking breach of the peace	Niue Act 1966 s214
102	Profane, indecent, or obscene language	Niue Act 1966 s215
103	Disorderly conduct in public places	Niue Act 1966 s216
104	Obstructing public place	Niue Act 1966 s217
105	Drunkenness	Niue Act 1966 s218
106	Animal trespass	Niue Act 1966 s219
107	Laying poison	Niue Act 1966 s221
108	Polluting water	Niue Act 1966 s222
109	Sale of unwholesome provisions	Niue Act 1966 s223
110	Insanitary premises	Niue Act 1966 s224
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CROWN PROCEEDINGS ACT 1950

1950/54 – 1 January 1952

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To consolidate and amend the law relating to the civil liabilities and rights of the Crown and officers of the Crown, and to civil proceedings by and against the Crown

1 Short title

This is the Crown Proceedings Act 1950.

2 Interpretation

(1) In this Act –

“agent”, in relation to the Crown, includes an independent contractor employed by the Crown;

“civil proceedings” means any proceedings in any court other than criminal proceedings; but does not include proceedings in relation to habeas corpus, mandamus, prohibition, or certiorari or proceedings by way of an application for judicial review to the extent that any relief sought in the application is in the nature of mandamus, prohibition, or certiorari;

“department” means any department or instrument of the executive government of Niue;

“member of a visiting force” includes a member of any other force who is attached to a visiting force;

“Niue armed forces” means the Niue Naval Forces, the Niue Army, and the Niue Air Force;

“officer”, in relation to the Government of Niue, includes any Niue public servant, a member of Cabinet, and a member of the Niue armed forces, but does not include the Governor-General or any judicial officer;

“order” includes a judgment, decree, rule, award, or declaration;

“proceedings against the Crown” includes a claim by way of set-off or counterclaim raised in proceedings by the Crown;

“servant” has the same meaning as officer;

“ship” includes every description of vessel used in navigation not propelled by oars;

“visiting force” means any naval, military, or air force of any country other than Niue which has been granted a right of entry into or passage through or over Niue.

(2) Any reference in this Act to the Crown, in relation to any civil proceedings, or in relation to any order or judgment debt or costs in connection with any civil proceedings, shall be construed as including a reference to the Cabinet or any Government department or officer of the Crown where the Cabinet, department, or officer is a party or third party to the proceedings under section 14.

(3) The Cabinet shall not be deemed to be the Crown in relation to any proceedings by reason only of the fact that the proceedings are brought by the Cabinet upon the relation of some other person.

PART 1

SUBSTANTIVE LAW

3 Claims enforceable by or against the Crown

(1) (a) All debts, damages, duties, sums of money, land, or goods, due, payable or belonging to the Crown shall be sued for and recovered by proceedings taken for that purpose in accordance with this Act.

(b) Nothing in paragraph (a) shall interfere with or restrict any special power or authority vested in the Crown, or in any person on its behalf, with respect to all or any of the matters mentioned in paragraph (a).

(2) Any person may enforce as of right, by civil proceedings taken against the Crown for that purpose in accordance with this Act, any claim or demand against the Crown in respect of any of the following causes of action –

(a) The breach of any contract or trust;

(b) Any wrong or injury for which the Crown is liable in tort under any enactment which is binding on the Crown;

(c) Any cause of action, in respect of which a claim or demand may be made against the Crown under any enactment which is binding on the Crown, and for which there is not another equally convenient or more convenient remedy against the Crown;

(d) Any cause of action, which is independent of contract, trust, or tort, or any Act, for which an action for damages or to recover property of any kind would lie against the Crown if it were a private person of full age and capacity, and for which there is not another equally convenient or more convenient remedy against the Crown.

(3) Any other cause of action in respect of which a petition of right would lie against the Crown at common law or in respect of which relief would be granted against the Crown in equity.

4 [Repealed]

5 Liability of the Crown under other Acts

Except as expressly provided by this Act or any other Act, this Act shall not be construed so as to make any Act binding upon the Crown which would not otherwise be so binding, or so as to impose any liability of the Crown by virtue of any Act which is not binding on the Crown.

6 Liability of the Crown in tort

(1) (a) The Crown shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject –

- (i) in respect of torts committed by its servants or agents;
- (ii) in respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and
- (iii) in respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property.

(b) No proceedings shall lie against the Crown by virtue of paragraph (a) in respect of any act or omission of a servant or agent of the Crown unless the act or omission would apart from this Act have given rise to a cause of action in tort against that servant or agent or his estate.

(2) Where the Crown is bound by a statutory duty which is binding also on persons other than the Crown and its officers, then, subject to this Act, the Crown shall, in respect of a failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

(3) Where any functions are conferred or imposed upon an officer of the Crown and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Crown in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Crown.

(4) Any enactment which negatives or limits the amount of the liability of any Government department or officer of the Crown in respect of any tort committed by that department or officer shall, in the case of proceedings against the Crown under this section in respect of a tort committed by that department or officer, apply in relation to the Crown as it would have applied in relation to that department or officer if the proceedings against the Crown had been proceedings against that department or officer.

(5) No proceedings shall lie against the Crown by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities which he has in connection with the execution of judicial process.

7 Provisions as to industrial property

(1) Where an officer or agent of the Government of Niue infringes an intellectual property right protected by the law of Niue and the infringement is committed with the authority of the Government, civil proceedings in respect of the infringement shall lie against the Government under this Act.

(2) [Repealed]

(3) Subject to subsection (1), no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of a patent, a registered trade mark, or of any such copyright as is mentioned in subsection (1).

8 Law as to indemnity, contribution, and joint and several tortfeasors

Where the Crown is subject to any liability by virtue of this Part, the law relating to indemnity and contribution shall be enforceable by or against the Crown in respect of the liability to which it is so subject as if the Crown were a private person of full age and capacity.

9 [Repealed]

10 Claims in respect of visiting forces

(1) Any person who suffers in Niue any damage, loss or injury by, through, or in connection with the use of any ship, vehicle, or aircraft belonging to any visiting force, or who has or deems himself to have any just claim or demand in respect of any cause of action to which this section applies against a member of any visiting force or a person acting for or on behalf of any visiting force, shall be entitled to make against the Crown any claim or demand which he would have been entitled to make under this Part if the ship or vehicle had belonged to the Crown, or the aircraft had been a service aircraft, or the member or the person so acting had been a member of the Niue armed forces, and if the Government of the country to which the visiting force belongs had been the Crown, and for the like amount (if any) and in the like form and manner as the amount, form, and manner of the claim or demand that he would have been entitled to make as aforesaid.

(2) This section shall apply to any cause of action which arises in Niue and which is in respect of the death of or bodily injury to any person or damage to any property.

(3) In respect of any claim or demand made under this section the Crown shall have, in relation to the person making it, the same rights and liabilities as the Crown would have had if the ship or vehicle belonging to the visiting force had belonged to the Crown or the aircraft belonging to the visiting force had been a service aircraft, or the member of the visiting force or the person acting for or on behalf of the visiting force had been a member of the Niue armed forces, as the case may be.

(4) In the determination of any such claim or demand made by any person against the Crown, regard shall be had to any payment which that person has received or is entitled to receive, whether from the Crown or from any other person or authority, in satisfaction, wholly or partly, of the claim or demand.

(5) For the purposes of this section all persons who, by the law of the country to which any visiting force belongs, are for the time being subject to the naval, military, or air force law of that country shall be deemed to be members of the visiting force.

(6) For the purposes of any proceedings to enforce a claim or demand made under this section, a certificate issued by or on behalf of such authority as may be appointed for the purpose by the Government of the country to which any visiting force belongs stating that a person of the name and description specified in the certificate is, or was at a time so specified, subject to the naval, military, or air force law of that country shall be conclusive evidence of that fact.

(7) If in any proceedings as aforesaid the question is raised whether any person whose name appears in or in connection with the proceedings is or was at any time a member of any visiting force, any such certificate as aforesaid relating to a person bearing that name shall, unless the contrary is proved, be deemed to relate to that person.

Crown Proceedings Act

(8) Any document purporting to be a certificate issued for the purposes of this section and to be signed by or on behalf of an authority described as appointed by the Government of any country for the purposes of this section shall be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

11 [Repealed]

PART 2

JURISDICTION, PROCEDURE, AND JUDGMENTS

12 Civil proceedings by or against the Crown

All civil proceedings which must be taken by, or may be brought against, the Crown under this Act may be commenced, heard, and determined in the same Court and in like manner in all respects as in suits between subject and subject.

13 Interpleader

Without limiting any other provisions of this Act, it is hereby declared that the Crown may obtain relief by way of interpleader proceedings, and may be made a party to such proceedings, in the manner in which a subject may obtain relief by way of such proceedings or be made a party to it, and may be made a party to such proceedings notwithstanding that the application for relief is made by a sheriff or bailiff or other like officer; and all rules of Court relating to interpleader proceedings shall, subject to this Act, have effect accordingly.

14 Method of making Crown a party to proceedings

(1) Civil proceedings under this Act by the Crown may be instituted by –

- (a) The appropriate Government department in its own name if the department has power to sue apart from this section; or
- (b) The appropriate officer of the Crown in the name in which he may sue on behalf of the Crown or of any Government department if the officer has power to sue on behalf of the Crown or of any Government department apart from this section; or
- (c) The Cabinet, if there is no such appropriate department or officer or if the Cabinet has any reasonable doubt whether any and, if so, which department or officer is appropriate; or
- (d) Any two or more of them jointly.

(2) Civil proceedings under this Act against the Crown shall be instituted against –

- (a) The appropriate Government department in its own name if the department may be sued apart from this section; or
- (b) The appropriate officer of the Crown in the name in which he may be sued on behalf of the Crown or of any Government department if the officer may be sued on behalf of the Crown or of any Government department apart from this section; or
- (c) The Cabinet if there is no such appropriate department or officer or if the person instituting the proceedings has any reasonable doubt whether any and, if so, which Department or officer is appropriate; or
- (d) Any two or more of them jointly.

(3) The Crown may be joined as a plaintiff to any civil proceedings to which it could be a plaintiff under this Act by joining as a plaintiff –

- (a) Any Government department by which, or officer of the Crown by whom, the proceedings could be instituted under subsection (1); or

- (b) The Cabinet if there is no such department or officer or if the person seeking to join the Crown as a plaintiff has any reasonable doubt whether any and, if so, which department or officer should be so joined; or
- (c) Any two or more of them jointly.

(4) The Crown may be joined as a defendant or third party to any civil proceedings to which it could be a defendant under this Act by joining as a defendant or third party –

- (a) Any Government department against which, or officer of the Crown against whom, the proceedings could be instituted under subsection (2); or
- (b) The Cabinet if there is no such department or officer or if the person seeking to join the Crown as a defendant or third party has any reasonable doubt whether any and, if so, which department or officer should be so joined; or
- (c) Any two or more of them jointly.

(5) (a) Where any civil proceedings against the Crown under this Act are instituted against the Cabinet or the Cabinet is joined as a party or third party to any such proceedings, an application may at any stage of the proceedings be made to the Court by or on behalf of the Cabinet to have one or more of the Government departments or officers of the Crown against which or against whom the proceedings could have been instituted under subsection (2), substituted for it as a party or third party to the proceedings; and where any such proceedings are brought against any such department or officer, or where any such department or officer is joined as a party or third party to any such proceedings, an application may at any stage of the proceedings be made to the Court on behalf of the department or officer to have the Cabinet or any such department or officer substituted for the applicant as a party or third party to the proceedings.

(b) Upon any such application the Court may make an order granting the application on such terms as the Court thinks just, and the proceedings shall continue accordingly.

(6) No proceedings instituted under this Act to which the Cabinet or any Government department or officer of the Crown is a party or third party shall abate or be affected by any change in the person holding the office of a Minister or any other office in the Government service or in the person or body of persons constituting the department.

(7) Where the Cabinet or any Government department or officer of the Crown is a party or third party to any proceedings under this section, any order of the Court against or in favour of the Crown in those proceedings shall be made against or in favour of the Cabinet or the department or officer as the case may be.

15 [Repealed]

16 Service of documents and time for filing defence by Crown

(1) In any civil proceedings instituted against the Cabinet or to which the Cabinet is joined as a party or third party, as aforesaid, the first document required to be served on him, and any other document required to be served before an address for service has been given by him shall be served on the Cabinet by delivering it to the Registrar of the High Court of Niue or by leaving at the office of the Registrar at his said office or by sending it by post in a registered letter addressed to the Registrar of the High Court at his said office.

(2) In any civil proceedings against the Crown under this Act the time to be allowed in any writ or summons for the filing of a statement of defence or notice of

intention to defend shall be not less than 28 days, or such further time as the Court may allow.

(3) Where any document is sent by post in the manner prescribed by subsection (1) it shall be deemed to have been served at the time at which the letter would have been delivered in the ordinary course of post.

17 Nature of relief

(1) In any civil proceedings under this Act by or against the Crown or to which the Crown is a party or third party the Court shall have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require.

(2) (a) Where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may instead make an order declaratory of the rights of the parties.

(b) In any proceedings against the Crown for the recovery of land or other property, the Court shall not make an order for the recovery of the land or delivery of the property, but may instead make an order declaring that any person is entitled as against the Crown to the land or property or to the possession of it.

(3) The Court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

18 Appeals, stay of execution, and costs

(1) Subject to this Act, all enactments and rules of court relating to appeals and stay of execution shall, with any necessary modifications, apply to civil proceedings by or against the Crown under this Act as they apply to proceedings between subjects; and the costs of suit shall follow on either side as in ordinary cases between other suitors.

(2) The Crown shall not be required under any rule of court or order to deposit or give security for the costs of any other party.

19 Interest on debts and costs

(1) Any judgment debt due from or to the Crown shall carry interest if it would carry interest if it were due from or to a subject, and any interest so payable shall be at the rate at which it would be payable if the judgment debt were due from or to a subject.

(2) Any costs awarded to or against the Crown shall carry interest if the costs would carry interest if they were awarded to or against a subject, and any interest so payable shall be at the rate at which it would be payable by a subject.

(3) Any judgment in any civil proceedings by or against the Crown may award interest to any party to whom interest could be awarded if the proceedings were between subjects at the rate at which interest could be so awarded.

20 Recovery of fines imposed otherwise than by judgment or conviction

(1) Notwithstanding sections 2 to 19 where a fine is imposed upon any person otherwise than by a judgment or conviction of some court, and no other procedure is provided by any Act or rule of court for the recovery of the fine, the court by which the fine was imposed shall, if the same is not immediately paid, by writing in

the form numbered (1) in Schedule 3, certify the fact, together with the name and place of abode or business, of the person on whom the fine was imposed, and the cause and amount of the fine, and shall deliver or send by post the writing to the Cabinet who, upon receipt of it, shall cause a final judgment to be signed in the High Court for the amount of the fine, and a sum not exceeding ten dollars for costs.

(2) Every such judgment may be in the form numbered (2) in Schedule 3 or to the like effect, and no appeal shall lie therefrom.

21 Recovery of debts due upon recognisance

(1) Notwithstanding sections 2 to 20 where any person has entered into a recognisance to Her Majesty, and the recognisance is forfeited, and no other procedure is provided by any Act or rule of Court for the estreat thereof, the Court before which, the same was forfeited may cause the recognisance to be estreated as provided in this section.

(2) The Judge shall, by writing under his hand in the form numbered (3) in Schedule 3, or to the like effect, certify that the forfeiture has taken place, and shall deliver or send by post the said recognisance and writing to the Cabinet who, upon receipt of it shall cause a final judgment to be signed in the High Court for the amount of the recognisance and a sum not exceeding ten dollars for costs.

(3) Every such judgment may be in the form numbered (4) in Schedule 3 or to the like effect, and no appeal shall lie therefrom.

22 [Repealed]

23 Judgments may be vacated by High Court

(1) Where final judgment has been signed under section 20 or section 21, the High Court may order satisfaction to be entered upon the judgment, whether execution has been issued on it or not.

(2) Such an order shall not be made except upon notice calling upon the Cabinet to show cause, nor unless it is proved by affidavit to the satisfaction of the High Court either that the judgment has been satisfied, or that, according to equity and good conscience and the real merits and justice of the case, the defendant ought not to be required to satisfy the same.

PART 3

EXECUTION

24 Satisfaction of orders against the Crown

(1) Except as provided in this section, no execution or attachment or process in the nature of it shall be issued out of any court for enforcing satisfaction by the Crown, or by the Cabinet or any Government department or officer of the Crown of any order made in any civil proceedings under this Act.

(2) (a) Where in any civil proceedings any order (whether for costs or otherwise) is made by the court in favour of any person against the Crown or the Cabinet or any Government department or officer of the Crown, and the person in whose favour the order is made so requests, the proper officer of the court shall issue to that person, without payment of any fee, a certificate in the form numbered (5) in Schedule 3 or to the like effect.

(b) If the order provides for the payment of money, the court by which the order is made or any court to which an appeal against the order lies direct that, pending an appeal or otherwise, payment of the money so payable, or any part

of it shall be suspended, and (if the certificate has not been issued) may order any such directions to be inserted in it.

(3) On receipt of any such certificate the Treasurer without further appropriation than this section, may cause to be paid to the person named in it the amount payable by the Crown under the order, together with any costs allowed him by the Court and the interest, if any, lawfully due and may also perform or give effect to the terms of the order so far as it is to be satisfied by the Crown.

(4) The Minister of Finance shall, forthwith after the end of each financial year, cause to be prepared, in such form as he approves or directs, a statement showing all amounts paid under this section without appropriation other than this section; and shall, as soon as practicable, cause the statement (duly audited by the Audit Office) to be laid before the Assembly.

25 Execution by the Crown

(1) Any order made in favour of the Crown against any person in any civil proceedings may be enforced in the same manner as an order made between subjects is enforced, and not otherwise.

(2) Nothing in this section shall affect any procedure which immediately before the commencement of the Act was available for enforcing an order made in favour of the Crown in proceedings brought by the Crown for the forfeiture or condemnation of any goods, or the forfeiture of any ship or any share in a ship.

26 Attachment of money payable by the Crown

(1) Any person who has obtained an order for the payment of money may take proceedings under rules of court, to obtain payment to him of the amount of any debt payable by or accruing due from the Crown to the person against whom the order was made, or so much thereof as may be sufficient to satisfy the order and the costs of the garnishee proceedings; and in any such case the court may make any order in respect of the amount payable by or accruing due from the Crown which it would be entitled to make if the whole proceedings were between subjects.

(2) Except as provided in any other Act, no such order shall be made in respect of –

- (a) Any wages, salary, honorarium, allowances, or expenses payable to any officer of the Crown as such;
- (b) Any money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution.

PART 4

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous

27 Discovery

(1) Subject to and under rules of court –

- (a) In any civil proceedings to which the Crown is a party or third party, the Crown may be required by the court to answer interrogatories if the Crown could be required to do so if it were a private person of full age and capacity; and
- (b) In any such proceedings as aforesaid the Crown may be required by the Court to make discovery of documents and produce documents for inspection if the Crown could be required to do so if it were a private person of full age and capacity.

(2) This section shall be without prejudice to any rule of law which authorises or requires the withholding of any document or the refusal to answer any

question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(3) Any order of the Court made under subsection (1)(a) shall direct by what officer of the Crown the interrogatories are to be answered.

(4) Without prejudice to subsection (2) any rules made for the purposes of this section shall be such as to secure that the existence of a document will not be disclosed if, in the opinion of the Cabinet, it would be injurious to the public interest to disclose its existence.

28 Exclusion of proceedings *in rem*

(1) Nothing in this Act shall authorise proceedings *in rem* in respect of any claim against the Crown, or the arrest, detention or sale of any ships or aircraft, or any cargo or other property belonging to Her Majesty, whether in right of the Government in Niue or otherwise, or give to any person any lien on any such ship, aircraft, cargo, or other property.

(2) (a) Where proceedings *in rem* have been instituted in the High Court against any such ship, aircraft, cargo, or other property, the Court may, if satisfied, either on an application by the plaintiff for an order under this subsection or on application by the Crown to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo, or other property did not belong to the Crown, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Crown under this Act, or duly instituted against any other person whom the Court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

(b) Any such order may be made upon such terms, if any, as the Court thinks just; and, where the Court makes any such order, it may make such consequential orders as the Court thinks expedient.

29 Application of certain provisions

This Act shall not prejudice the right of the Crown to take advantage of an Act although not named therein; and it is hereby declared that in any civil proceedings against the Crown any Act which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the Crown.

Supplemental

30 Rules of court

(1) Any power to make, alter, or revoke rules touching or regulating the practice and procedure of any court shall include power to make, alter, or revoke rules for the purpose of giving effect to this Act, and any such rules may contain provisions to have effect in relation to any proceedings by or against the Crown in substitution for or by way of addition to any of the provisions of the rules applying to proceedings between subjects.

(2) Without prejudice to the generality of subsection (1), rules may be made with respect to the following matters –

(a) For providing for service outside Niue of process or notice of it, in the case of proceedings by the Crown;

(b) For securing that where any civil proceedings are brought against the Crown under this Act the plaintiff shall, before the Crown is required to take any steps in the proceedings, provide the Crown with such information as the Crown may reasonably require as to the circumstances in which it is alleged that the

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liability of the Crown has arisen and as to the departments and officers of the Crown concerned;

- (c) For providing that in the case of proceedings against the Crown the plaintiff shall not enter judgment in default of appearance or pleading without the leave of the court to be obtained on an application of which notice has been given to the Crown;
- (d) For excepting proceedings brought against the Crown from the operation of any rule of court providing for summary judgment without trial;
- (e) For providing that a person shall not be entitled to avail himself of any set-off or counterclaim in any proceedings by the Crown for the recovery of taxes, duties, or penalties, or to avail himself in proceedings of any other nature by the Crown of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties, or penalties;
- (f) For providing that a person shall not be entitled, without the leave of the court, to avail himself of any set-off or counterclaim in any proceedings by the Crown if either the subject-matter of the set-off or counterclaim does not relate to the Government department or officer of the Crown in whose name the proceedings are brought or the proceedings are brought in the name of the Cabinet;
- (g) For providing that the Crown, when sued in the name of a Government department or of an officer of the Crown, shall not, without the leave of the court, be entitled to avail itself of any setoff or counterclaim if the subject-matter of it does not relate to that department or officer; and
- (h) For providing that the Crown, when sued in the name of the Cabinet shall not be entitled to avail itself of any set-off or counterclaim without the leave of the court.

31 General rules

The laws, statutes, and rules for the time being in force as to pleading, joinder of parties, third party procedure, evidence, hearing and trial, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal, and all other laws, statutes, and rules for the time being available as between plaintiffs and defendants in personal actions between subjects, and the practice and course of procedure of the court in its legal and equitable jurisdiction respectively for the time being in reference to such suits and personal actions, shall, unless the court otherwise orders, be applicable, and apply and extend to civil proceedings by or against the Crown.

32-34 [Spent]

35 Saving of certain rights

(1) Nothing in this Act shall apply to or authorise proceedings by or against Her Majesty in her private capacity.

(2) Except as expressly provided in this Act, nothing in this Act shall—

- (a) Affect the law relating to prize salvage, or apply to proceedings in causes or matters within the jurisdiction of the High Court as a Prize Court, or to any criminal proceedings; or
- (b) Authorise proceedings to be taken against the Crown under or in accordance with this Act in respect of any alleged liability of the Crown arising otherwise than in respect of the Government in Niue or affect proceedings against the Crown in respect of any such alleged liability as aforesaid; or

- (c) Affect any proceedings by the Crown otherwise than in right of the Government in Niue; or
 - (d) Subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which the Crown would be subject in respect of the acts or omissions if the Crown were a private person; or
 - (e) Subject the Crown to any liability in respect of the acts or omissions of any medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or any other person while any such person is rendering any professional or other service or supplying any medicine, drug, appliance unless the medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist or other person is acting as a servant of the Crown at the time of the act or omission; or
 - (f) Subject the Crown, in its capacity as a highway authority, to any greater liability than that to which a local authority is subject in that capacity; or
 - (g) Interfere with or affect any Act that now is or hereafter may be in force whereby the Crown, or any of its officers and servants, is exempt from liability for anything done under the Act or affect any power, authority, or liability vested in or imposed upon the Crown or any of its officers or servants under any such Act; or
 - (h) Affect any right of the Crown to control or otherwise intervene in proceedings affecting the Crown's rights, property, or profits.
- (3) A certificate of the Cabinet –
- (a) To the effect that any alleged liability of the Crown arises otherwise than in respect of Government in Niue; or
 - (b) To the effect that any proceedings by the Crown are proceedings otherwise than in right of the Government in Niue –

shall for the purposes of this Act, be conclusive as to the matter so certified.

(4) Where any property vests in the Crown by virtue of any rule of law which operates independently of the acts or the intentions of the Crown, the Crown shall not by virtue of this Act be subject to any liabilities in tort by reason only of the property being so vested; but this subsection shall be without prejudice to the liabilities of the Crown under this Act in respect of any period after the Crown or any person acting for the Crown has in fact taken possession or control of any such property, or entered into occupation thereof.

(5) This Act shall not operate to limit the discretion of the Court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Act, notwithstanding that by reason of the provisions of this Act some other and further remedy is available.

SCHEDULE 1
[Repealed]

SCHEDULE 2
[Repealed]

Crown Proceedings Act

SCHEDULE 3

Section 20(1)

(1) CERTIFICATE OF FINE

This is to certify to the Cabinet that, at the _____, this day held at _____, the several persons whose names and places of abode or business are specified in the Schedule below were fined the several sums therein set opposite to their respective names, and that the cause of each such fine is duly and truly set forth in the said Schedule.

Schedule

Full name	Place of Abode or Business	Cause of Fine	Amount
		Behaving and conducting himself in a disorderly manner in Court	\$
		Total	\$

Given under my hand this _____ day of _____ 20____.

Judge.

Section 20 (2)

(2) JUDGMENT IN RESPECT OF FINE

In the High Court at _____ No. _____

Be it remembered that the Registrar of the High Court has informed the Court that at the held at _____ on _____ the _____ day of _____, 20____, before _____ a fine of _____ was imposed and inflicted upon _____ because he, the said _____ (*behaved and conducted himself in a disorderly manner in the said Court, or as the case may be*) as by the certificate of the said _____ now filed of record appears. Therefore, on the _____ day of _____, 20____, it is adjudged by the Court here that the Crown do recover against the said _____ the sum of _____ and also the sum of _____ for costs, making together the sum of _____.

Dated at _____ this _____ day of _____ 20____.

Registrar.

Section 21 (2)

CERTIFICATE OF FORFEITURE OF RECOGNISANCE

This is to certify to the Cabinet of Ministers that, at the _____, this day held at _____, the recognisances hereunto annexed were forfeited, and were there and then caused to be estreated.

Given under my hand this _____ day of _____ 20____.

Judge, Commissioner.

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Section 21 (3)

JUDGMENT IN RESPECT OF RECOGNISANCE

In the High Court at

Be it remembered that the Registrar of the High Court has informed the Court that at the held at _____ on the _____ day of _____ 20____, before _____, the recognisance of one _____, by which he acknowledged to owe to the Crown the sum of _____, was forfeited and estreated as by the said recognisance and the certificate of the said _____, now filed of record appears. Therefore, on the _____ day of _____, 20____, it is adjudged by the Court here that the Crown do recover against the said _____ the said sum of _____, and also the sum of _____ for costs, making together the sum of _____

Dated at _____ this _____ day of _____ 20____. Registrar.

Section 24(2)

(5) CERTIFICATE OF JUDGMENT, ETC.

In the High Court at

Between _____, plaintiff, and _____ Defendant.
I hereby certify that _____, of _____, did on the _____ day of _____ 20____, in the High Court _____ at _____, obtain a judgment (order, decree, or declaration); and that by the judgment (order, decree, or declaration) the Crown was ordered to pay to him the sum of _____ (or as the case may be).

Dated at _____ this _____ day of _____ 20____. Registrar.

CUSTOMS ACT 1966

1966/19 – 1 January 1967

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To consolidate and amend certain enactments relating to customs and excise and to the importation and exportation of goods

1 Short title

This is the Customs Act 1966.

2 Interpretation

(1) In this Act –

“aerodrome” means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement, and servicing of aircraft; and includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

“aircraft” means any machine that can derive support in the atmosphere from the reaction of the air;

“boat” means any vessel other than a ship;

“bulk cargo container” means an article of transport equipment, being a lift van, movable tank, or other similar structure –

(a) Of a permanent character and accordingly strong enough to be suitable for repeated use; and

(b) Specially designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and

(c) Fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and

(d) So designed as to be easy to fill and empty; and

(e) Having an internal volume of one cubic metre or more –

and includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; but does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing;

“controlling authority” in relation to any wharf, customs airport, examining place, or customs containerbase, means the owner or occupier thereof, or any person having the control thereof; and includes any Harbour Board or local authority or public body having the control thereof;

“Customs” means the Customs Department;

“customs airport” means any aerodrome appointed as a customs airport under section 30;

“customs containerbase” means a place appointed under this Act for the reception, examination, or protection of goods subject to the control of the Customs and carried or to be carried in bulk cargo containers;

“declaration” means a declaration made under this Act;

“documents” includes books;

“dutiabale goods” means goods of a kind subject to duty on their importation or on their manufacture in a manufacturing warehouse or on their entry for home consumption;

“duty” means any duty payable on goods on the importation thereof, and includes duty payable under this Act on goods produced in a manufacturing warehouse;

“examination station” means a place at a Customs airport appointed by the Secretary as an examination station under this Act;

“examining place” means a place appointed under this Act for the examination by the Customs of goods subject to the control of the Customs;

“forfeited goods” means any goods in respect of which a cause of forfeiture has arisen under the Customs Acts;

“goods” means all kinds of movable personal property, including animals;

“importer” means any person by or for whom any goods are imported; and includes the consignee of any goods and any person who is or becomes the owner of or entitled to the possession of or beneficially interested in any goods on or at any time after their importation and before they have ceased to be subject to the control of the Customs;

“intent to defraud the revenue of Customs” means –

- (a) An intent to evade or to enable any other person to evade payment of the duty or any part of the duty payable on any goods; or
- (b) An intent to obtain or to enable any other person to obtain, in respect of any goods, any drawback or refund of duty not authorised by law or in excess of that which is authorised by law; or
- (c) An intent to evade or to enable any other person to evade payment of any money payable to the Crown under this Act;

“Manager” means any officer appointed as Revenue Manager at any port or in respect of any district; and includes the Financial Secretary; and also includes the chief officer of Customs at any port or other place, and any proper officer acting for the time being in place of the Manager either generally or in respect of any of his powers or functions, whether during any vacancy in the office of Manager or otherwise;

“manufacture”, in relation to tobacco, includes the processes of cutting, pressing, grinding, crushing, or rubbing any raw or leaf tobacco, or otherwise preparing raw or leaf tobacco or manufactured or partially manufactured tobacco, and of making cigarettes whether from duty-paid or from non-duty-paid tobacco, and of putting up for use or consumption in any way any scraps, waste, chippings, stems, or deposits of tobacco resulting from any processing of tobacco;

“manufactured tobacco” means tobacco that has been manufactured or prepared by any means or in any shape for smoking or for any other purpose;

“manufacturing warehouse” means any place for the time being licensed as a manufacturing warehouse under Part 4; and includes a tobacco manufacturing warehouse;

“master”, in relation to any ship, means the person (other than any person not belonging to the ship who has the lawful conduct of it for the time being in actual charge or command of the ship);

“Minister” means the Minister of Foreign Affairs;

“Normal Tariff” means the rates of duty and the exemptions from duty specified in the column headed “Normal Tariff” in the Tariff; and includes any modification or amendment thereof that may hereafter be made;

“officer” means any person employed in the service of the Customs;

“other preferential rates of duty” means the rates of duty and the exemptions from duty specified in the column headed ‘other preferential rates of duty’ in the Tariff; and includes any modification or amendment thereof that may hereafter be made;

“owner” includes –

- (a) In respect of any ship or aircraft, any charterer of the ship or aircraft, and any person acting as agent for the owner or charterer;
- (b) In respect of any goods, the importer or other person for the time being possessed of or beneficially interested in the goods;

“package” includes every means by which goods for carriage may be cased, covered, enclosed, contained, or packed but does not include a bulk cargo container or a pellet;

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- “pallet”, except in the Tariff, means a device on the deck of which a quantity of goods can be assembled to form a unit load for the purposes of transportation, handling, or stacking with the aid of mechanical devices; but does not include a bulk cargo container; and, in relation to a pallet that is imported laden, does not include any goods laden thereon;
- “pilot”, in relation to any aircraft, means the person for the time being in charge or command of the aircraft;
- “port” means a port of entry appointed as such under section 26 and, where it is not inconsistent with the context, includes a Customs airport;
- “prohibited imports” means goods imported or landed in breach of any prohibition of importation contained in the Customs Acts;
- “proper officer” in relation to any matter, means any officer acting or employed in that matter by the order or with the concurrence (whether precedent or subsequent) of the Minister or the Secretary or under any other lawful authority;
- “raw tobacco” means unmanufactured tobacco, or the leaves and stems of the tobacco plant before they have passed through any process of manufacture;
- “restricted goods” means goods whose importation or exportation is prohibited by the Customs Acts, whether absolutely or subject to any exceptions or qualifications;
- “seal” means to affix the seal of the Customs;
- “Secretary” means the Financial Secretary and includes any officer of Customs acting for the time being, by direction of the Minister in the place of the Secretary, whether during any vacancy in the office of Secretary or otherwise;
- “ship” means any kind of vessel used in navigation, not propelled by oars only;
- “shipment” includes loading into an aircraft;
- “ships’ stores” includes aircraft’s stores;
- “smuggling” means importing, unshipping, landing, conveying, or otherwise dealing with any goods with intent to defraud the revenue of Customs;
- “Standard Tariff” means the Standard Tariff comprised in Part 1 of the Customs Tariff; and includes any modification or amendment thereof that may hereafter be made;
- “Tariff” means the Customs Tariff of Niue (comprising the Standard Tariff set out in Part 1 and the provisions set out in Part 2 as set out in Schedule 2 and includes all notes to the Tariff, or to any Part, section, chapter, subchapter, heading, subheading, or item thereof, set out in that Schedule; and also includes any modification or amendment of the Tariff or of the said notes that may hereafter be made;
- “Tariff headings” or “headings”, means the headings of the Standard Tariff printed in bold type, being the headings of the Brussels Nomenclature established by the Convention for the Classification of Goods in Customs Tariffs signed in Brussels on 15 December 1950 and includes any modification or amendment of it that may hereafter be made;
- “Tariff items” means the Tariff items of the Standard Tariff identified by 7 digits; and includes the headings to it so identified;
- “Tariff subheading”, or “subheading”, means a subheading appearing in the Standard Tariff and not identified by any number;
- “tobacco” includes cigars, cigarettes, and snuff;
- “transit building” means a building or any part of a building for the reception, examination or protection of goods on their loading or unloading while subject to the control of the Customs;
- “uncustomed goods” means any goods on which any duty has become due and payable and is unpaid;
- “vehicle” means any conveyance of any kind whatsoever for use on land;

“warehouse” means a place of security licensed under section 80; and includes a crown warehouse;

“wharf” means a wharf or other landing place appointed as a wharf under this Act; and includes a sufferance wharf.

(2) Any reference in this Act to contravention of any provision of this Act, or of any regulations, licence, requirements, conditions, or directions thereunder, includes a reference to failure to comply with that provision.

3 Customs Acts defined

(1) In this Act, “Customs Acts” means this Act, the General Agreement on Tariffs and Trade Act 1948, the Niue Customs Tariff Act 1982, and all enactments made under any of these Acts.

(2) In its application to the subject-matter of any other of the Customs Acts this Act shall be read subject to the provisions of that other Act.

(3) Subject to subsection (2), the provisions of this Act, so far as they are applicable and with the necessary modifications, shall be deemed to be incorporated in and to form part of every enactment declared by this or any other Act to be a Customs Act.

(4) In the application of this Act to any Customs Act references to this Act shall, where necessary, be read as references to that Customs Act.

4 Importers

When in respect of any imported goods there are more importers than one (in accordance with the definition of the term “importer” in this Act) all the provisions of this Act with reference to the importer of those goods shall, except where the context otherwise requires, apply severally and independently to each of those importers.

PART 1

ADMINISTRATION

5 Customs Department

(1) There shall continue to be a Department of State to be known as the Customs Department.

(2) Subject to the control of the Minister, the Department shall be charged with the administration of the Customs Acts.

(3) The Department shall have such other functions as may be lawfully conferred on it.

6 Financial Secretary

There shall be appointed a Financial Secretary who, under the Minister, shall be the permanent head of the Customs and shall have the chief control of it.

7 Revenue Manager

At every port there shall be appointed an officer to be called the Revenue Manager who shall, subject to the Minister and the Secretary, have the chief control and management at that port of all matters relating to the Customs Acts.

8 Officers of Customs

There shall be appointed to the Customs such other officers as are considered necessary for the efficient administration of the Customs Acts.

9 Delegation of powers

(1) The Minister may, either generally or particularly, delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(2) With the written consent of the Minister, the Secretary may similarly delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(3) Subject to any general or special directions given or conditions imposed by the Minister or the Secretary, the officer 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 this Act and not by delegation.

(4) Every officer of Customs purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to any specified person or to the holder or holders for the time being of any specified office or class of offices.

(6) Every such delegation, whether by the Minister or the Secretary, shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister or the Secretary.

(7) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister or Secretary by whom it was made had ceased to hold office, and shall continue to have effect as if made by the successor in office of that Minister or Secretary.

10 Seal of the Customs

The seal of the Customs shall be the Royal Arms having the words “Niue – H.M. Customs” encircling the arms.

11 Customs flag

(1) The Customs flag shall be the Niue Ensign with the addition in the fly of the letters “H.M.C.” in white in bold characters.

(2) The ships and boats employed in the service of the Customs shall be distinguished by the Customs flag.

12-13 [Repealed]

14 Charges in respect of attendance of officers

(1) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations in respect of the attendance of officers of Customs, whether or not within the working hours of the Customs, at any place for the purpose of performing or supervising any act required or permitted by the Customs Acts, and in particular –

- (a) Prescribing, except where otherwise provided in any of the Customs Acts, a rate or rates of charges for such attendance;
- (b) Providing for the liability of any person to pay any actual and reasonable expenses incurred by any officer in respect of the attendance;
- (c) Prescribing the person or persons or class or classes of persons by whom such charges and expenses shall be paid, or authorising the Manager to determine the person or persons by whom they shall be paid.

(2) All charges and expenses payable under this section shall constitute a debt due to the Crown.

(3) All charges and expenses paid under this section shall be receivable by the Secretary or the Manager and shall be paid into the Public Account.

15 Districts

(1) For the proper administration of the Customs Acts, the Secretary may by notice in the *Gazette* appoint adjacent to any port such district as he thinks fit; and the Manager at the port shall, subject to the control of the Minister and the Secretary have the chief control and management in that district of all matters relating to the Customs Acts.

(2) The Secretary may in like manner alter the boundaries of any such district.

PART 2

CONTROL OF THE CUSTOMS, GENERAL PROVISIONS AS TO ENTRIES

Control of the Customs

16 Control of the Customs

Goods shall be subject to the control of the Customs, within the meaning of this Act, as follows –

- (a) In the case of all goods imported, from the time of importation until delivery by the Customs for home consumption, or until exportation to any country outside Niue, whichever first happens;
- (b) In the case of all goods under drawback, from the time of the claim for drawback until exportation to any country outside Niue;
- (c) In the case of all goods for export that are subject to export duty, or the exportation of which is subject to any condition or restriction from the time when the goods are brought upon any wharf, or are waterborne for export, or are brought to any Customs airport or Customs containerbase for export until their exportation to any country outside Niue;
- (d) In the case of all goods on board any ship or aircraft and loaded in any country outside Niue, and in the case of ships' stores wherever loaded, at all times –
 - (i) While the ship is within the territorial limits of Niue; or
 - (ii) While the aircraft is at any place in Niue;
- (e) In the case of all goods produced in a manufacturing warehouse, from the time of their production until delivery by the Customs for home consumption or until exportation to any country outside Niue, whichever first happens;
- (f) In the case of spirits distilled, rectified, or compounded in Niue under a spirit maker's licence or a rectifier's and compounder's licence under the Liquor Act 1975, from the time when they are removed from the spirit store or distillery warehouse of any distiller, or from any other warehouse appointed for the lodging of spirits under that Act, until delivery by the Customs for home consumption or until exportation to any country outside Niue, whichever first happens;
- (g) In the case of spirits distilled pursuant to a vigneron's licence under the Liquor Act 1975, from the time when they are removed from the vigneron's storeroom under that Act until they have been used for fortifying wine produced from fruit grown in Niue or have been otherwise disposed of under that Act.

17 Delivery for home consumption

(1) For the purposes of this Act, goods shall be deemed to be delivered by the Customs for home consumption –

- (a) As soon as the proper officer gives to the owner of the goods notice of their unconditional delivery for home consumption; or
- (b) On the fulfilment of any conditions included in any notice of the delivery of the goods for home consumption given by the proper officer to the owner.

(2) Notice of delivery under this section shall be given in the prescribed form or manner.

18 No responsibility for safe custody of goods

(1) Neither the Crown, nor the Minister, nor any officer of Customs shall be responsible to any person for the safe custody of any goods subject to the control of the Customs, or shall be under any liability in respect of the erroneous delivery of any goods from such control.

(2) This section shall not apply to goods warehoused in a Crown warehouse.

General Provisions as to Entries

19 Making of entries

(1) Every entry of goods under this Act shall be made by the delivery of the entry by the person making it to the Manager or other proper officer.

(2) Any person making any entry shall truly answer all questions asked by the Manager or other proper officer relating to the goods referred to in the entry.

(3) Every entry shall be in the prescribed form.

20 Verification of entries

The Manager may require from any person making entry of any goods proof by declaration or the production of documents (in addition to any declaration or documents otherwise required by this Act or by regulations thereunder) of the correctness of the entry, and may refuse to deliver the goods or to pass the entry pending such proof.

21 Erroneous entries

(1) Every person who makes any entry (whether for home consumption or otherwise) that is erroneous or defective in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units or 3 times the amount of any deficient duty, whichever sum is the greater.

(2) In this section, “deficient duty” means the full duty on the goods which are comprised or ought to have been comprised in the entry less the amount of duty (if any) payable if computed under the entry as actually made and as if the goods had been entered for home consumption.

(3) For the purposes of this section, every declaration, invoice, certificate or written statement required or authorised by or under this Act to be made or produced by the person making an entry shall be deemed to form part of that entry.

(4) For the purposes of this section, every amendment of an entry shall be deemed to form part of that entry, but not so as to relieve any person from any penalty incurred in respect of the entry before its amendment.

22 Passing of entries

(1) An entry shall be passed by the Manager or other proper officer signing the entry, and on the passing of the entry the goods shall be deemed to be entered.

(2) Any entry so passed shall be warrant for dealing with the goods in accordance with the entry.

23 Cancellation and amendment of entry

(1) With the permission of the Manager, any entry may, after it has been made but not later than one day after it has been passed and while the goods still remain subject to the control of the Customs, be cancelled or amended by the person making it.

(2) When the Secretary is satisfied that any entry has been made in error but in good faith, he may permit the entry to be cancelled or amended, by the person who made it, at any time while the goods remain subject to the control of the Customs or, subject to such conditions as the Secretary may impose, at any time after delivery of the goods from such control.

(3) No cancellation or amendment of an entry by the person who made it shall take away or affect any penalty, forfeiture, or criminal liability theretofore accrued or incurred in respect of the entry.

(4) The Manager may make a refund of duty under any such cancellation or amendment of an entry.

(5) The cancellation or amendment of any entry shall be made in the prescribed manner.

24 Amendment of entries by officers

(1) Any officer, for the purpose of correcting any part of any entry, may amend that entry before it is passed.

(2) No such amendment shall take away or affect any penalty, forfeiture, or criminal liability theretofore accrued or incurred in respect of the entry.

25 Goods to be dealt with according to entry

(1) All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry and with the provisions of this Act in respect of goods so entered.

(2) Every person commits an offence against this Act who is knowingly concerned in any contravention of this section.

PART 3

IMPORTATION, EXPORTATION, REMOVAL WITHIN NIUE

Ports of Entry, Customs Airports

26 Ports of entry

(1) The Minister may, by notice in the *Gazette*, appoint as a port of entry for the purposes of this Act any area specified in the notice, and fix the name of that port.

(2) A port of entry may be so appointed for any specified limited purposes exclusively, or for all purposes with specified exceptions, or without any such limitation; and if any such limitation is so imposed the port shall be deemed a port of entry in respect of the purposes so authorised only.

(3) The Minister may, by notice in the *Gazette*, declare that any port shall cease to be a port of entry for the purposes of this Act, or alter the limits or the name of any port, or impose any limitation on the purposes for which any port shall be a port of entry, or remove or alter any such limitation.

27 Boarding stations

- (1) The Secretary may by notice in the *Gazette* –
 - (a) Appoint stations or places at which ships arriving at or departing from any port shall bring-to for the boarding or landing of officers of Customs;
 - (b) Appoint particular parts of any port at which ships laden with any particular cargo or class of cargo shall moor and discharge such cargo.
- (2) Any such appointment may be in like manner revoked.

28 Wharves

- (1) The Secretary may, by notice in the *Gazette*, appoint proper places within any port to be wharves for the loading and unloading of goods, and declare the limits of such wharves and fix the names thereof.
- (2) The Secretary may in like manner impose such restrictions with respect to the use of any such wharf; and so long as any such restrictions exist the wharf shall be deemed to be a wharf under this Act for such purposes only as are consistent with those restrictions.
- (3) The Secretary may declare that any wharf shall cease to be a wharf for the purposes of this Act, or may alter the limits or the name of the wharf, or alter or remove any restriction imposed upon its use.

29 Sufferance wharves

When the Secretary is satisfied that for any particular purpose there is no suitable wharf available he may, in writing, appoint any place within a port as a sufferance wharf for that purpose, and permit its use for that purpose, subject to such conditions and restrictions and for such time as he thinks fit.

30 Customs airports

Subject to the concurrence of the Minister of Civil Aviation and to such conditions as to security and otherwise as that Minister thinks fit, the Minister of Foreign Affairs may, by notice in the *Gazette*, appoint any aerodrome to be a Customs airport, and may in like manner and with the like concurrence revoke any such appointment.

31 Examination stations at Customs airports

- (1) Subject to the concurrence of the Secretary for Civil Aviation, the Secretary may by notice in the *Gazette* appoint for the purposes of this Act a place at any Customs airport to be an examination station for the loading and unloading of goods and for the embarking and disembarking of passengers.
- (2) The Secretary may, with the like concurrence and in like manner –
 - (a) Alter the limits of any examination station;
 - (b) Impose such conditions and restrictions as he thinks fit in respect of the use of any examination station;
 - (c) Vary or revoke any such conditions or restrictions;
 - (d) Revoke the appointment of any examination station.
- (3) Any examination station in respect of which any restrictions imposed pursuant to this section apply shall be deemed to be an examination station under this Act for such purposes only as are consistent with those restrictions.

32 Examining places

The Secretary, by writing under his hand, appoint at any port or Customs airport places for the examination by the Customs of goods subject to the control of the Customs and any such appointment may be in like manner revoked.

32A Customs container bases

(1) The Secretary may by notice in the *Gazette*, appoint places, at any port or Customs airport, to be Customs containerbases for the reception, examination, or protection of goods that are subject to the control of the Customs and are carried or to be carried in bulk cargo containers.

(2) The Secretary may impose such conditions and restrictions in respect of the use of any Customs containerbase, and vary or revoke any such conditions or restrictions.

(3) Subject to subsections (4) to (9), the Secretary may by notice in writing to the controlling authority of any Customs containerbase revoke the appointment of the containerbase.

(4) (a) Before revoking any such appointment the Secretary shall give to the controlling authority notice in writing stating that he intends to do so and that within 14 days after the receipt of the notice the controlling authority may appeal to the Minister against the Secretary's decision.

(b) The notice shall also state the reasons why he intends to revoke the appointment.

(5) (a) Within 14 days after the receipt by the controlling authority of the notice under subsection (4), the controlling authority may appeal to the Minister by giving to the Manager a notice of appeal in writing addressed to the Minister.

(b) The notice of appeal shall state fully the grounds of the appeal.

(6) The Minister shall consider the notice of appeal, and any further representations made by the controlling authority within the 14 days or within such further period as he may allow, and, if the controlling authority so requests, shall afford to the controlling authority an opportunity of being heard by him within such period or further period as aforesaid.

(7) On any such appeal the Minister may confirm or reverse the Secretary's decision, and the Minister's decision shall be final.

(8) Where an appointment is revoked under this section, the revocation shall take effect on such date as is specified in the notice of revocation or, if no date is so specified, from the time of the receipt by the controlling authority of the notice of revocation.

(9) Notice of the revocation of any such appointment shall be published by the Secretary in the *Gazette*.

33 Duties of controlling authorities

(1) The controlling authority of every wharf or Customs airport or Customs containerbase shall provide and maintain at the wharf or airport, or containerbase to the satisfaction of the Minister –

(a) Suitable office accommodation, at such place or places as the Minister may direct, for the exclusive use of officers of Customs employed at the wharf or airport or containerbase; and

(b) Such suitable transit buildings as the Minister may declare to be requisite in respect of the wharf or Customs airport, or Customs containerbase together with suitable weighing appliances for use in such transit buildings by officers of Customs.

(2) The controlling authority of every wharf or Customs airport or customs container base, shall store goods subject to the control of the Customs in such manner and in such place as the Manager or other proper officer of Customs may direct.

(3) Every controlling authority who fails to comply with any provision of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units for every month or part of a month during which the default has continued.

34 Storage charges

(1) No charges shall be made by any controlling authority for the reception or storage in any transit building or on any wharf of any goods, being goods subject to the control of the Customs, during the period of 24 hours (exclusive of holidays) from the time of the landing of the goods.

(2) Without limiting subsection (1), where any such goods are detained by any officer of Customs for examination, weighing, analysis, or testing for Customs purposes, no storage charges shall be payable to any controlling authority in respect of the storage of the goods in any transit building or on any wharf during any period of such detention up to 96 hours (exclusive of holidays) from the time of their landing; but after those goods cease to be so detained there shall be payable in respect of them by the importer or exporter such storage charges as the controlling authority determines by bylaws made in that behalf.

35 Security

(1) Before appointing any place to be a wharf, sufferance wharf, Customs containerbase or examining place under this Act, or as a condition of the continuance of any such appointment, the Secretary shall require the controlling authority or other person having the control or use of that wharf, containerbase or examining place to give security to the satisfaction of the Secretary for the payment of duty on all goods that are wrongfully removed by any person from that wharf, containerbase or examining place.

(2) To the extent of that security the controlling authority or other person having the control or use of a wharf, sufferance wharf, Customs containerbase or examining place duly appointed under this Act shall be liable for all duty payable on goods that the Manager is satisfied have been so wrongfully removed, in the same manner as if the goods had been imported by the controlling authority or other person and entered for home consumption, and he shall not be released from his liability under this section by virtue of any other provisions of the Customs Acts or because a security previously given has been cancelled or for any other reason.

(3) All the provisions of this Act as to securities required by the Manager, so far as they are applicable and with all necessary modifications, shall apply to securities under this section.

Arrival of Ships and Aircraft

36 Ships to come into port of entry only

(1) The master of any ship shall not, without the written permission of the Manager, cause or permit his ship to enter any place in Niue other than a port of entry, unless driven there by stress of weather, want of provisions, or other necessity.

(2) Every master who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

37 Aircraft to land at Customs airport only

(1) Subject to section 38, the pilot in command of any aircraft shall not, without the permission of the Secretary given with the concurrence of the Secretary for Civil Aviation, cause or permit the aircraft to land at any place other than a Customs airport –

(a) For the first time on any journey from any country outside Niue; or

(b) While it is carrying any goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs.

(2) A person importing or concerned in importing any goods in any aircraft shall not bring the goods into Niue at any place other than a Customs airport.

(3) Every person who acts in contravention of any provision of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

38 Aircraft landing other than at Customs airport

(1) Section 37 shall not apply in relation to any aircraft flying from any country outside Niue if the aircraft is required under or by virtue of any enactment relating to air navigation or is compelled by accident, stress of weather, or other necessity to land at a place other than a Customs airport.

(2) The pilot in command of any aircraft that is so required or compelled to land –

(a) Shall, unless the place of landing is an aerodrome, forthwith report to an officer of Customs or to a constable;

(b) Shall, if the place of landing is an aerodrome, forthwith report the arrival of the aircraft and the place whence it came to the person for the time being in charge of the aerodrome;

(c) Shall not, without the consent of an officer of Customs, permit any goods carried in the aircraft to be unloaded from it or any of the crew or passengers to depart from its vicinity;

(d) Shall comply with any directions given by an officer of Customs in respect of any goods carried in the aircraft.

(3) No passenger or member of the crew of any aircraft that is so required or compelled to land shall leave the vicinity of the aircraft without the consent of an officer of Customs or a constable.

(4) Nothing in this section shall prohibit the departure of crew or passengers from the vicinity of an aircraft or the removal of goods from it if that departure or removal is necessary for reasons of health or safety, or for the preservation of life or property.

(5) The pilot in command of any aircraft to which this section applies shall not be held to have committed a breach of this section if he proves that –

(a) No officer of Customs or constable was readily accessible; and

(b) He did not permit any goods to be unloaded from the aircraft or any passengers to depart from its vicinity; and

(c) As soon as was practicable, he resumed and completed his flight.

(6) Every person in charge of an aerodrome to whom a report is made under subsection (2)(b) shall forthwith report the arrival of the aircraft to an officer of Customs.

(7) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 10 penalty units.

39 Transshipment of goods

(1) Except as permitted by the Manager, the master of any coastal ship or the pilot in command of any aircraft (other than an aircraft arriving on a journey from any country outside Niue), shall not, at any place other than a port of entry or Customs airport, cause or permit any goods to be transhipped into his ship or aircraft from –

(a) Any ship, except a coastal ship; or

(b) Any aircraft arriving on a journey from any country outside Niue.

- (2) This Part shall apply –
- (a) To any goods so transhipped otherwise than at a port of entry or Customs airport; and
 - (b) To any ship or aircraft into which such goods are transhipped –
- as if the goods had been loaded into that ship or aircraft in a country outside Niue.
- (3) Every master or pilot in command who acts in contravention of subsection (1) commits an offence and shall be liable to a fine not exceeding 10 penalty units.

40 Interference with cargo

If at any time after any ship or aircraft carrying goods brought from any country outside Niue arrives within the territorial limits of Niue and, before a report is made in Niue under section 45 –

- (a) Bulk is broken; or
- (b) Any alteration is made in the stowage of any goods carried, so as to facilitate the unloading of any part thereof before due report has been made; or
- (c) Any part of the goods is staved, destroyed or thrown overboard, or any package is opened –

and the matter is not explained to the satisfaction of a Manager, the master of the ship or pilot in command of the aircraft shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

41 Boarding of ships at sea

(1) The master of every ship arriving within the territorial limits of Niue shall bring his ship to for boarding on being approached by or hailed or signalled from any vessel in the service of the Customs having hoisted the Customs flag, or from any other vessel in the service of Her Majesty (whether in respect of the Government of Niue or otherwise) having hoisted the proper ensign and pendant; and shall by all reasonable means facilitate the boarding of the ship by the officers of Customs or by an officer of the vessel so approaching, hailing, or signalling.

(2) If the master fails to comply with this section he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

42 Boarding of ships at boarding stations

(1) The master of every ship arriving at any port from any country outside Niue shall bring his ships to for boarding at the boarding station appointed for that port under this Act, and shall by all reasonable means facilitate the boarding of the ship by the officers of Customs.

(2) If the master fails to comply with this section he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

43 Stations of ships

(1) The master of every ship, after his ship has been brought to at the boarding station and boarded by the officer, and after receiving permission from the proper officer of Customs, shall come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place.

(2) After a ship has arrived at the proper place of mooring or unloading it shall not, except by the authority of the Manager or by direction of the harbour authority, be removed therefrom before the discharge of the cargo intended to be discharged at that port.

(3) If any provision of this section is contravened the master shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

44 Aircraft brought to examination station

(1) The pilot in command of every aircraft arriving at a Customs airport –
(a) For the first time on any journey from any country outside Niue; or
(b) While it is carrying goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs –
shall, on landing, forthwith take his aircraft to the examination station at the airport.

(2) The pilot shall not be held to have committed a breach of subsection (1) if he satisfies the Manager that –

(a) He was prevented, by circumstances over which he had no control, from so taking his aircraft to the examination station; and

(b) After report had been duly made by him under section 45, all the goods carried in the aircraft were conveyed to the examining place at that airport.

(3) After an aircraft has arrived at the examination station it shall not, except by the authority of the Manager or by direction of the controlling authority of the Customs airport, be removed therefrom before the disembarkation of passengers and unloading of cargo intended for that airport has been completed.

(4) If any provision of subsection (1) or (3) is contravened the pilot shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

45 Inward report

(1) This section shall apply to –

(a) Every ship, except a coastal ship; and

(b) Every aircraft arriving at a Customs airport –

(i) For the first time on any journey from any country outside Niue; or

(ii) While it is carrying any goods brought in that aircraft from any country outside Niue and not yet delivered from the control of the Customs.

(2) On the arrival at any port or Customs airport of any ship or aircraft to which this section applies, the master or owner of the ship, or, as the case may be, the pilot in command or owner of the aircraft, shall within such time or times as may be prescribed –

(a) Deliver to the Manager or other proper officer an inward report in such form and manner, containing such particulars verified by declaration, and with such supporting documents, as may be prescribed; and

(b) Answer all questions asked by the Manager or other proper officer relating to the ship or aircraft and its passengers, crew, cargo, stores and voyage.

(3) If the master or owner or pilot fails to comply with subsection (2) he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(4) If the inward report so delivered is false, misleading, or defective in any particular, or if any document so delivered is not genuine or is false or misleading, or if the answer to any question is false or misleading, the master or pilot and the owner shall each be guilty of an offence and shall be severally liable to a fine not exceeding 5 penalty units.

46 Report of wrecked ships and aircraft

(1) When any ship or any aircraft carrying goods taken on board in any country outside Niue and not yet delivered from the control of the Customs is lost or wrecked within the territorial limits of Niue, the master or owner of the ship or, as the case may require, the pilot in command or owner of the aircraft, shall without

unnecessary delay report the loss or wreck to the Manager at the port nearest to the place where the ship or aircraft was lost or wrecked, and shall comply, so far as it is possible for him to do so, with section 45(2) (a) and (b).

(2) If any of the provisions of this section are not complied with, the master or pilot and the owner shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units.

Importation

47 “Importation” defined

(1) For all the purposes of this Act, goods shall, except where otherwise expressly provided, be deemed to be imported into Niue if and so soon as in any manner whatever, whether lawfully or unlawfully, they are brought or come within the territorial limits of Niue from any country outside those limits.

(2) Goods whose destination is outside the territorial limits of Niue, and ships’ stores, shall not be deemed to have been so imported unless, while they are within those limits, they are removed from the ship or aircraft in which they arrived there, but if so removed they shall for all the purposes of this Act be deemed to have been brought within the territorial limits of Niue.

48 Prohibited imports

(1) No person shall import into Niue any of the goods specified in Schedule 1.

(2) Subject to subsection (3), the Cabinet may by regulation prohibit the importation into Niue of –

- (a) Any specified goods;
- (b) Goods of any specified class or classes;
- (c) All goods except goods of a specified class or specified classes;
- (d) All goods whatsoever (without specification of any such goods or of the class or classes to which they belong).

(3) The Cabinet may exercise the powers conferred on it by subsection (2) if in its opinion such exercise is necessary –

- (a) In the public interest; or
- (b) For the protection of the revenue; or
- (c) For the efficient administration of the Customs Acts; or
- (d) For the prevention of fraud or deception, whether in relation to the Customs Acts or not; or
- (e) For the prevention of any communicable disease; or
- (f) In respect of goods whose sale in Niue would be an offence against the law.

(4) Any prohibition imposed under this section –

- (a) May be general; or
- (b) May be limited to the importation of goods from any specified place or by or from any specified person or class of persons; or
- (c) May, whether general or limited, be absolute or conditional.

(5) Any such conditional prohibition may allow the importation of goods –

- (a) Under the authority of a licence, or a permit (whether granted before or after the importation of the goods), or a consent to be granted by the Minister or by any other prescribed person upon or subject to such terms or conditions (if any), not inconsistent with the provisions of the prohibition, as may be imposed by the Minister or other person granting the licence, permit, or consent; or
- (b) On or subject to any other prescribed conditions whatsoever.

(6) [Repealed]

(7) Every person commits an offence against this section who –

- (a) Imports into Niue or unships or lands in Niue any goods whose importation is prohibited by this section; or
- (b) Commits any breach of, or fails in any respect to comply with, any term or condition on or subject to which there has been granted, under any regulation made under this section, any licence, permit, or consent under the authority of which any goods are imported into Niue.

(8) Every person commits an offence against this section who –

- (a) Is knowingly concerned in any importation, unshipment, landing, breaching or non-compliance to which any provision of subsection (7) applies; or
- (b) Without lawful justification or excuse, removes from any wharf, Customs airport, Customs containerbase or examining place any imported goods whose importation constitutes an offence against this section; or
- (c) Is knowingly concerned in or connives at the removal from any wharf, Customs airport, Customs containerbase or examining place of any goods whose importation constitutes an offence against this section.

(9) Where any goods are imported into Niue under the authority of a licence or permit or consent granted under regulations made under this section, and any person has knowingly made any false declaration or statement –

- (a) For the purpose of obtaining that licence, permit, or consent; or
- (b) As to compliance with any condition on or subject to which the licence, permit, or consent was granted –

he shall be guilty of an offence against this section.

(10) Every person who commits an offence against this section is liable to a fine not exceeding 10 penalty units or 3 times the value of the goods to which the offence relates, whichever sum is the greater.

(11) Any goods in respect of which any offence against this section is committed shall be forfeited.

(12) No goods otherwise dutiable shall be exempt from duty because their importation is unlawful.

49 Importation of brandy, whisky and rum

(1) Except as provided in subsection (3), no brandy imported into Niue shall be delivered from the control of the Customs unless the Secretary is satisfied that –

- (a) It is wholly the distillate of the fermented juice of fresh grapes; and
- (b) It has been matured by storage in wood for a period of not less than three years.

(2) Except as provided in subsection (3), no whisky or rum imported into Niue shall be delivered from the control of the Customs unless the Secretary is satisfied that it has been matured by storage in wood for a period of not less than –

- (a) Three years in the case of whisky; and
- (b) Two years in the case of rum.

(3) Any brandy, whisky, or rum that does not conform to the requirements of this section may be delivered from the control of the Customs, by direction of the Secretary, if he is satisfied that it is intended for scientific or industrial use or for such other purposes as he may permit.

50 Goods not to be landed or dealt with without permission

(1) Except as provided by this Act, no goods that are subject to the control of the Customs, and no goods that would become subject to that control if unshipped or

landed, shall be unshipped or landed from any ship or aircraft to which this subsection applies, except pursuant to –

- (a) An entry made and passed in respect of those goods; or
- (b) A written permit granted by the Manager in respect of it:

Provided that if the landing of goods from any ship or aircraft is necessary for reasons of health or safety, or for the preservation of life or property, and if the permission of the Manager or other proper officer cannot readily be sought, the goods may be landed without such permission.

(2) Subsection (1) shall apply to:

- (a) Every ship, except a coastal ship; and
- (b) Every aircraft arriving at a Customs airport while carrying any goods brought in that aircraft from any country outside Niue.

(3) Subsection (1) shall not apply to any pallet that has a value of less than 0.5 penalty units and is imported laden.

(4) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units and the goods in respect of which the offence is committed shall be forfeited.

51 [Repealed]

52 Method of unshipment

(1) All goods on any ship that are subject to the control of the Customs, or that would be subject to that control if unshipped or landed, shall, if unshipped, be either –

- (a) Landed at a wharf directly, or after direct conveyance to a wharf by water within the limits of the port; or
- (b) Transshipped directly, or after direct conveyance by water within the limits of the port, to the ship into which they are to be transshipped for export or removal.

(2) All goods on any aircraft, being goods brought by that aircraft from any country outside Niue shall, if unshipped, be either –

- (a) Landed directly at an examination station or, if the aircraft does not come to an examination station, conveyed directly from the aircraft to the examining place at the Customs airport; or
- (b) Transshipped directly, or by direct conveyance within a Customs airport, to the aircraft into which the goods are to be transshipped for export or removal.

(3) Every person who is knowingly concerned in any dealing with goods in contravention of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units.

52A Removal of goods

(1) Except as provided by this Act, no goods that are subject to the control of the Customs shall be removed from any wharf, Customs airport, Customs containerbase, or examining place except –

- (a) With the permission of the proper officer of Customs after entry has been made and passed in respect of it; or
- (b) In pursuance of a written permit granted by the Manager in respect of it.

(2) Any bulk cargo container (including its contents, if any) may, in pursuance of a written permit granted by the Manager, be removed by the holder of the permit –

- (a) From a wharf to a Customs containerbase or an examining place only; or

(b) From an examination station or an examining place at a Customs airport to a Customs containerbase or an examining place only.

(3) Subsection (1) shall not apply to any pallet that has a value of less than twenty dollars and is imported laden.

(4) Every person who acts in contravention of any provision of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units, and the goods in respect of which the offence is committed shall be forfeited.

52B Manager's permits

(1) Goods unshipped, landed, or removed under a Manager's permit shall be dealt with under the permit and with any directions given by the Manager.

(2) This Act shall apply to such goods in the same manner as if they had not been unshipped, landed, or removed, and for this purpose they shall be deemed to have remained upon or in the ship, aircraft, wharf, Customs airport, Customs containerbase, or examining place from which they were so unshipped, landed, or removed.

(3) If at any time such goods are dealt with by any person contrary to the terms of the permit or to the directions of the Collector, they shall be deemed for all the purposes of this Act to have been unlawfully unshipped, landed, or removed by that person as if the permit had not been granted.

(4) Any permit issued for the unshipment, landing, or removal of bulk cargo containers shall be issued to the controlling authority of a Customs containerbase or an examining place and shall relate to such containers generally.

(5) A permit for the unshipment, landing or removal of pallets may relate to pallets generally, or to pallets imported in any particular ship or aircraft, or to any specified class of pallets, or to pallets imported in specified circumstances.

(6) Any permit may be granted subject to such conditions and restrictions as the Manager thinks fit.

(7) Subject to subsections (8) to (12), if in the case of a permit granted to the controlling authority of a Customs containerbase or an examining place under subsection (4) the Manager has reasonable cause to believe that the controlling authority has committed a breach of this Act or of any regulations thereunder or of any condition or restriction imposed under this Act or such regulations, he may, by notice in writing to the controlling authority, revoke the permit, or suspend it for any period specified in the notice.

(8) Before revoking or suspending any such permit, the Manager shall give to the controlling authority notice in writing stating that he intends to do so and that within 14 days after the receipt of the notice the controlling authority may appeal to the Minister against the Manager's decision. The notice shall also state the reasons why he intends to revoke or suspend the permit.

(9) (a) Within 14 days after the receipt by the controlling authority of the notice under subsection (8), the controlling authority may appeal to the Minister by giving to the Manager a notice of appeal in writing addressed to the Minister.

(b) The notice of appeal shall state fully the grounds of the appeal.

(10) The Minister shall consider the notice of appeal, and any further representations made by the controlling authority within the said period of 14 days or within such further period as he may allow, and, if the controlling authority so requests, shall afford to the controlling authority an opportunity of being heard by him within such period or further period aforesaid.

(11) On any such appeal the Minister may confirm, reverse, or modify the Manager's decision and the Minister's decision shall be final.

(12) Where a permit is revoked or suspended under this section, the revocation or suspension shall take effect on such date as is specified in the notice of revocation or suspension or, if no date is so specified, from the time of the receipt by the controlling authority of the notice of revocation or suspension.

53 Kinds of entry of imported goods

Except as provided in section 54 or 54A all imported goods, when they have arrived at their port of discharge, or with the consent of the Manager at any time before their arrival, shall be there entered by the importer –

- (a) For home consumption; or
- (b) For warehousing; or
- (c) For export; or
- (d) For removal.

54 Passengers' effects exempt from entry

(1) Goods being the personal baggage or household or other effects belonging to and accompanying passengers in any ship or aircraft, and not being dutiable goods imported for the purpose of sale or exchange or as trade samples, may, subject to any prescribed conditions, be imported or exported without entry.

(2) The Manager may require entry of any such goods.

54A Certain goods exempt from entry

The following goods may, subject to any prescribed conditions, be imported or exported without entry –

- (a) Such bulk cargo containers, and such wagons, trolleys, or wheeled pallets specially designed for the handling of bulk cargo containers as may be prescribed;
- (b) Any pallet which has a value of less than twenty dollars and is imported laden: Provided that in any case where the Collector is satisfied that the pallet is imported for sale or re-use in Niue he may require that entry be made;
- (c) Any pallet which has a value of less than twenty dollars and is imported unladen, and any pallet (whether imported laden or unladen) which has a value of twenty dollars or more, being in either case a pallet which is imported temporarily and in respect of which a Manager's permit for removal is granted under section 52A;
- (d) Such other goods or classes of goods as may be prescribed.

55 When entry to be made

(1) Subject to section 57, entries shall be made of all goods unshipped or to be unshipped at any port, or removed to any port, within such respective times after the arrival of the goods at that port as may be prescribed, or within such further time (if any) as the Manager may see fit to allow, but so that, if the goods are placed in quarantine, at least 7 days shall be allowed for entry after their release from quarantine.

(2) If default is made in the entry of any goods pursuant to this section, the Manager may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within 3 months after such removal, duty shall thereupon become due and payable on the goods as if entered for home consumption, and the goods may be sold by the Manager.

(3) If any goods in respect of which default has been so made are, in the opinion of the Manager of a perishable nature, they may be sold at any time the Manager thinks fit, either before or after warehousing.

56 Vessels or aircraft imported

(1) Notwithstanding anything in this Act, entries shall be made in respect of such ships and other vessels, and in respect of such aircraft, being ships, vessels, and aircraft imported into Niue otherwise than as cargo, as the Minister may determine by notice in the *Gazette*.

(2) For the purpose of making entries in respect of any ship or vessel or aircraft imported into Niue otherwise than as cargo, and for all other purposes of the Customs Acts, every such ship, vessel, or aircraft shall be deemed to have been imported as cargo and to have been unshipped as such on its arrival.

57 Licence or permit for restricted goods

Where under any enactment the importation of any goods or of goods of any class or kind is prohibited except under the authority of a licence or permit, the Manager or other proper officer may refuse to accept an entry for those goods, or for any goods of that class or kind, until a licence or permit for their importation is produced to him.

58 Sight entries

(1) If the importer cannot immediately supply the full particulars for making an entry, and makes by himself or his agent a declaration to that effect before the Manager or other proper officer, he may make a sight entry in the prescribed form.

(2) A sight entry, on being passed by the Manager, shall be warrant for the landing and examination of the goods by the importer.

(3) The importer of the goods included in a sight entry shall, within 7 days after the passing of that entry, or within such further time as is allowed by the Manager, make complete entry of it; and if he makes default in doing so the goods may be dealt with by the Collector as if no sight entry had been made.

(4) Complete entry of the goods included in any sight entry shall be made in the same manner as if the sight entry had not been made.

59 Delivery of goods on sight entry

(1) The Manager may deliver goods from the control of the Customs for home consumption in pursuance of a sight entry, but only on receiving such security as he thinks sufficient to cover the full amount of duty.

(2) Complete entry of the goods for home consumption shall thereafter be made by the importer within such time as the Manager appoints; and if the importer makes default in making such entry he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(3) Goods so delivered on a sight entry shall, on such delivery, be deemed to have been entered for home consumption.

60 Goods for home consumption

Except as provided in section 181 when any imported goods have been entered for home consumption the importer shall forthwith pay to the Manager or other proper officer the duties (if any) payable thereon.

61 Importer may be required to furnish samples and illustrations

The importer of any goods shall furnish free of charge, for the use of the Customs, such samples or such illustrations, drawings, or plans relative to the goods as may be required by the Manager for purposes of analysis, classification, or record.

Removal within Niue; Exportation

62 Removal of imported goods within Niue

(1) No imported goods subject to the control of the Customs shall be placed on any ship, boat, lighter, or other conveyance for removal within Niue until entry for removal has been duly made and passed therefor in the prescribed form and manner.

(2) When any imported goods have been entered for removal the importer shall forthwith remove them to another port of entry in accordance with the entry, without payment of duty in the first instance.

(3) The Manager may require from the importer security for the due removal of the goods in accordance with the entry, and for the payment of the duty thereon.

(4) When the goods so removed have arrived at their port of destination, or with the consent of the Manager at any time before their arrival, they shall be there entered for home consumption, warehousing, export, or further removal, in the same manner as if no former entry had been made therefor, and this Act shall apply accordingly.

(5) When any goods so entered for removal to another port arrive at that port they shall be forthwith brought to a wharf or an examining place or a Customs containerbase (as the case may require) appointed at that port for the examination of goods subject to the control of the Customs.

(6) If any goods are dealt with in contravention of subsection (1) they shall be forfeited; and any person so dealing with them commits an offence and shall be liable to a fine not exceeding 4 penalty units.

63 Export subject to control of Customs

(1) (a) No goods subject to the control of the Customs shall be placed on board any ship, boat, lighter, or other vessel or loaded into any aircraft or packed into any bulk cargo container in a Customs containerbase, to be shipped for export until entry has been duly made and passed therefor in the prescribed form and manner.

(b) Where the Manager is satisfied in respect of any goods that their exportation is not prohibited by any regulation made under section 70 he may permit such entry to be made within 6 days after the goods have been so shipped.

(2) When any imported goods have been entered for export the importer shall forthwith export them to a country outside Niue in accordance with the entry and with the provisions of this Act relating to the exportation of goods and, except as provided in section 181, no duty shall be payable thereon.

(3) If any goods are dealt with in contravention of subsection (1), they shall be forfeited; and any person so dealing with them commits an offence and shall be liable to a fine not exceeding 4 penalty units.

64 Entry for export of goods not subject to control of Customs

(1) When goods not subject to the control of the Customs are shipped for export, entry thereof for export shall be made in the prescribed form and manner, before shipment or within 6 days after the shipment, or within such further time as may be prescribed.

(2) If entry is not made in accordance with this section, the exporter and every person knowingly concerned in the exportation or intended exportation of the goods shall be guilty of an offence against this Act.

64A Export of antiquities and protected objects to comply with Tāoga Niue Act 2012

(1) The export of a good that is an antiquity or a protected object (as each of those terms is defined in the Tāoga Niue Act 2012) must comply with the requirements of the Tāoga Niue Act 2012.

(2) The requirements specified in subsection (1) are in addition to the requirements of this Act.

65 Method of shipment

(1) Goods subject to the control of the Customs for export or removal within Niue shall be brought to the ship, aircraft, or vehicle in which they are to be exported or removed by the most direct means reasonably available.

(2) Every person who deals with or is knowingly concerned in dealing with goods in contravention of this section commits an offence and shall be liable to a fine not exceeding 2 penalty units.

66 Goods not shipped according to entry

(1) If any goods entered for export or removal within Niue are not shipped according to the entry, the person making the entry shall immediately give to the Manager notice of the failure to ship and, as required by the Manager, cancel or amend the entry.

(2) Every person commits an offence against this Act who fails to comply with this section.

67 Information and securities in respect of exported goods

(1) When any goods have been entered for export the Manager may require the person making the entry to produce all documents relating to the goods, and, if the goods are subject to the control of the Customs, to give security that they will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the Manager.

(2) If required by the Secretary, a certificate in the prescribed form, to be given by such person as may be prescribed, shall be produced by the exporter in proof of the due landing, in accordance with the export entry, of any goods which at the time of shipment were subject to the control of the Customs.

(3) A Manager may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce any certificate so required of the landing of any such goods previously exported by him, or to account for such goods to the satisfaction of a Manager.

68 Exported goods not to be relanded

(1) No goods shipped for export shall be unshipped or landed, except in a country outside Niue, without the permission of the Manager or some other proper officer of Customs.

(2) If any goods which at the time of shipment were subject to the control of the Customs are unshipped or landed in breach of this section, they shall be forfeited.

(3) If any goods are unshipped or landed in contravention of this section, the master and owner of the ship, or the pilot in command and owner of the aircraft and every person knowingly concerned in such unshipment or landing, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units.

69 Time of exportation

For the purposes of this Act the time of exportation of goods shall be deemed to be the time at which the exporting ship leaves the limits of her last port of call in Niue or at which the exporting aircraft departs from the last Customs airport at which it landed immediately before proceeding to a country outside Niue.

70 Prohibited exports

(1) Cabinet may, by regulation, prohibit the exportation of any goods –

- (a) Being arms, explosives, or military or naval stores, or being goods which in his opinion may, if exported, be used as or in the manufacture of arms, explosives, or military or naval stores or for any purpose of war; or
- (b) Being goods the prohibition of whose exportation is in his opinion necessary for the preservation of the flora or fauna of Niue; or
- (c) Being goods that have not been prepared or manufactured in accordance with or do not conform to any conditions as to purity, soundness, or freedom from disease imposed by any laws, rules, or regulations in force under any Act; or
- (d) Being goods which would in his opinion be the source of danger to life or property at sea or in the air; or
- (e) Being goods the prohibition of whose exportation is in his opinion necessary in the public interest.

(2) The powers conferred by subsection (1) shall extend to authorise the prohibition of the exportation of –

- (a) Any specified goods;
- (b) Goods of any specified class or classes;
- (c) All goods except goods of a specified class or specified classes;
- (d) All goods whatsoever (without specification of such goods or of the class or classes to which they belong).

(3) Any prohibition imposed under this section –

- (a) May be general; or
- (b) May be limited to the exportation of goods to any specified place or by or to any specified person or class of persons; or
- (c) May, whether general or limited, be absolute or conditional.

(4) Any such conditional prohibition may allow the exportation of goods –

- (a) Under the authority of a licence, permit, or consent to be granted by the Minister or by any other prescribed person on or subject to such terms or conditions (if any), not inconsistent with the provisions of the prohibition, as may be imposed by the Minister or person granting the licence, permit, or consent; or
- (b) On or subject to any other prescribed conditions whatsoever.

(5) [Repealed]

(6) Every person commits an offence against this section who –

- (a) Exports or ships, with intent to export, or conspires with any other person (whether that other person is in Niue or not) to export, any goods from Niue, contrary to the terms of any prohibitions in force with respect to it; or
- (b) Commits any breach of, or fails in any respect to comply with, any term or condition on or subject to which there has been granted, under any regulations made under this section, any licence, permit, or consent; or
- (c) Knowingly makes any false declaration or statement for the purpose of obtaining any such licence, permit, or consent; or

(d) Is knowingly concerned in any exportation, shipment, breach, or non-compliance to which paragraph (a) or paragraph (b) applies.

(6A) Any person who commits an offence against this section is liable to a fine not exceeding 10 penalty units or 3 times the value of the goods to which the offence relates, whichever is the greater.

(7) All goods shipped on board any ship or aircraft for the purpose of being exported contrary to the terms of any such prohibition in force with respect to it and all goods waterborne for the purpose of being so shipped and exported, shall be forfeited.

(8) No such prohibition shall apply to goods that are already loaded into the exporting ship or aircraft at the time when the prohibition comes into force.

(9) Any prohibition under this section of the exportation of any goods shall, unless otherwise specified, extend and apply to the shipment of such goods for use as ships' stores.

71 Ships in which goods may be exported

(1) Except by the permission of the Manager, no goods subject to the control of the Customs shall be exported in any ship of less than 50 tons gross register.

(2) If any such goods are exported or loaded on board any ship for the purpose of being exported in contravention of this section, the owner and the master of the ship, and any person knowingly concerned in such exportation or landing, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 2 penalty units and the goods shall be forfeited.

Departure of Ships and Aircraft

72 Clearance of ships and aircraft

(1) Unless he has received from the Manager a certificate of clearance in the prescribed form –

(a) The master of any ship, except a coastal ship, shall not depart with his ship from any port; and

(b) The pilot in command of any aircraft shall not depart with his aircraft from any Customs airport for any country outside Niue.

(2) If any provision of this section is contravened, the master and the owner of the ship or the pilot in command and the owner of the aircraft, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 10 penalty units.

(3) If the master of any ship or the pilot in command of any aircraft attempts or threatens to commit an offence against this section, the Manager or other proper officer may (in addition to any power of seizure and detention under Part 13 for any offence so committed) seize and detain the ship or aircraft until a certificate of clearance has been obtained, and section 292 shall apply in the same manner as if the ship or aircraft had been seized under Part 13.

73 Report outwards

(1) Before any certificate of clearance is granted to the master of any ship or the pilot in command of any aircraft, the master or pilot shall –

(a) Deliver to the Manager or other proper officer a report outwards in such form and manner, containing such particulars verified by declaration, and with such supporting documents, as may be prescribed; and

(b) Answer all questions asked by the Manager or other proper officer relating to the ship or aircraft and its passengers, crew, cargo, stores, and intended voyage or journey; and

(c) Produce such other documents as may be required by the Manager or other proper officer relating to the ship or aircraft and her cargo.

(2) If the report so delivered is false, misleading, or defective in any particular, or if the answer to any such question is false or misleading, or if any document so delivered or produced is not genuine is false or misleading, the master or pilot shall be guilty of an offence and shall be liable to a fine not exceeding 5 penalty units.

74 Entitlement to clearance

(1) Any ship or aircraft shall be entitled to a certificate of clearance when

—
(a) Not less than 24 hours have elapsed after application for the clearance has been made to the Manager; and

(b) All inward cargo and stores of the ship or aircraft have been duly accounted for and all the other requirements of the law in regard to the ship or aircraft and her inward and outward cargo and stores have been duly complied with.

(2) Nothing in this section shall prevent the Manager from granting the certificate at any time after application therefor if he is satisfied that subsection (1) (b) has been complied with.

75 Boarding of outward ships and aircraft

(1) The master of every ship departing from any port shall, if required to do so by the proper officer, bring the ship to at the boarding station appointed for the port, and by all reasonable means facilitate boarding by officers of Customs.

(2) The pilot in command of every aircraft departing from a Customs airport for any country outside Niue shall, if so required by the Manager or other proper officer, bring his aircraft to the examination station and by all reasonable means facilitate boarding by officers of Customs.

(3) The master of any ship or pilot in command of any aircraft shall not depart with his ship or aircraft from any port or Customs airport with any officer of Customs on board in the discharge of his duty, without the consent of that officer.

(4) If the master or pilot acts in contravention of this section he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

76 Production of clearance

(1) The master of every ship and the pilot in command of every aircraft to whom a certificate of clearance has been granted shall, on demand by an officer of Customs, produce the certificate for examination by the officer and answer any questions the officer may put to him concerning the ship or aircraft and its passengers, crew, cargo, stores, and intended voyage or journey.

(2) If the master or pilot acts in contravention of this section he commits an offence.

77 Departure to be from port of entry or Customs airport only

(1) Except with the prior permission of the Manager, no ship shall —

(a) Depart for any country outside Niue from any place in Niue other than a port of entry, save after being driven there by stress of weather, want of provisions, or other necessity; or

(b) Having cleared from any place in Niue for any country outside Niue, go to any place in Niue other than a port of entry, unless driven there by stress of weather, want of provisions, or other necessity.

(2) Except with the prior permission of the Secretary, given with the concurrence of the Secretary for Civil Aviation, no aircraft shall –

- (a) Depart from any place in Niue, other than a Customs airport, for any country outside Niue; or
- (b) Having obtained a certificate of clearance at any Customs airport in Niue, land at any place in Niue other than a Customs airport.

(3) (a) Nothing in subsection (2) (b) shall apply in relation to any aircraft flying to any country outside Niue if the aircraft is required under or by virtue of any enactment relating to air navigation, or is compelled by accident, stress of weather, or other necessity, to land at a place other than a Customs airport.

- (b) Where any such aircraft is so required or compelled to land, section 38 (2) to (6) shall apply.

(4) If any provision of this section, or of section 38 (2) to (5) (as applied by this section), is contravened, the master and the owner of the ship or the pilot in command and the owner of the aircraft shall be guilty of an offence and shall be severally liable to a fine not exceeding 5 penalty units.

Stores for Ships and Aircraft

78 Stores exempt from duty

(1) Subject to any prescribed restrictions, such an allowance of stores as the Manager thinks adequate for the use of passengers and crew and the service of every ship or aircraft about to depart (whether directly or otherwise) for any country outside Niue may be shipped free of duty on entry for export under section 53 or from any warehouse, or under drawback of duty.

(2) Such stores shall be shipped pursuant only to an order of the Manager on request made in the prescribed form and manner by the master or owner of the ship or by the pilot in command or owner of the aircraft.

(3) On the issue of any such order in respect of warehoused goods, the stores therein mentioned shall be forthwith shipped in pursuance of the order in the same manner as if they had been entered for export, and all the provisions of this Act as to warehoused goods entered or shipped for export, so far as they are applicable, shall apply to it accordingly.

(4) On the issue of any such order in respect of goods to be shipped under drawback, the goods shall be forthwith entered in the prescribed form and manner for shipment as ships' stores under drawback, and, save so far as is otherwise prescribed all the provisions of this Act relating to drawback, so far as they are applicable, shall apply thereto accordingly as if the goods were for export and as if the master or owner of the ship or the pilot in command or owner of the aircraft, as the case may be, were the exporter.

(5) –

(6) Without limiting the power to make regulations conferred by section 306, regulations may be made under that section –

- (a) Determining what classes of goods are, or are not, to be deemed stores within the meaning of this section;
- (b) Extending the provisions of this section, subject to such restrictions and conditions as are deemed necessary, to whalers and other ships departing from Niue and returning to it without going to countries outside Niue.

79 Stores subject to duty

(1) If any ship or aircraft not being entitled to receive stores free of duty under section 78 leaves any port of entry or Customs airport having on board dutiable stores shipped under the authority of that section or loaded elsewhere than in Niue, duty shall be payable on those stores as if imported and entered for home consumption so far as they are consumed at any place, or in the course of any voyage or journey between any two places, within the territorial limits of Niue at any time before the ship or aircraft becomes entitled under the said section 78 to receive stores free of duty.

(2) Entries shall be made and passed and duty paid on such stores in the prescribed manner and at the prescribed time.

(3) The owner and master of the ship or the owner and pilot in command of the aircraft shall be deemed to be the importers of such stores.

(4) Any ship or aircraft to which this section relates shall not be entitled to a certificate of clearance at any port or Customs airport until duty under this section has been paid.

PART 4

WAREHOUSES

Licensed Warehouses

80 Licensing of warehouses

(1) Any place of security for the deposit, keeping, and securing of dutiable goods without payment of duty on it may be licensed under this Act for any one or more of the following purposes –

- (a) As a warehouse for the warehousing of dutiable goods generally; or
- (b) As a warehouse for the warehousing of such class or classes of dutiable goods as may be specified in the licence; or
- (c) As a manufacturing warehouse (including a tobacco manufacturing warehouse) in which dutiable goods may be warehoused for use in such manufacture or processing of goods as is permitted by this Act or by regulations under this Act to be carried on in manufacturing warehouses.

(2) Any two or more places of security may be licensed as one warehouse.

(3) Any such warehouse may be situated in any port or outside the limits of any port.

81 Application for licence

(1) Every person who desires to obtain a licence for a warehouse shall make application therefor to the Manager.

(2) The application shall be made by the occupier of the premises to which it relates.

82 Security for warehouse

(1) Before any licence for a warehouse is granted the applicant therefor shall, if the Secretary so requires, give such security as the Secretary approves, and in such sum as he requires, for the payment of all duties which may become payable by the licensee under this Act in respect of any goods warehoused in that warehouse.

(2) The Secretary may require such security to be given by any such licensee in substitution for any security theretofore given by him, and may cancel the last mentioned security accordingly.

(3) If any licensee fails or refuses to give any security required from him under this section, his licence may be cancelled by the Secretary by notice published in the *Gazette*.

83 Grant of licence

On receipt of an application from the occupier of any warehouse, the Secretary may grant to the occupier a licence for the warehouse, subject to section 82 and to such conditions as he may direct, or may refuse the application.

84 Harbour Boards and local authorities may hold licences

Notwithstanding anything to the contrary in any Act, any Harbour Board or any public or local authority having the control of management of any harbour may receive and hold a licence under this Act in respect of any warehouse in the occupation of that Board or public or local authority, and shall as the licensee thereof be subject to the same provisions, obligations, and liabilities as any other licensee under this Act.

85 Licence fees

(1) There shall be payable to the Crown by the licensee of every warehouse an annual licence fee.

(2) The annual licence fee shall consist of –

- (a) A sum computed on the basis of the cubic contents of the warehouse or otherwise in accordance with prescribed scales; and
- (b) In the case of a warehouse which in the opinion of the Secretary on account of its distance from the Customhouse or for any other reason, requires supervision involving unusual expenditure, an additional sum to be determined by the Secretary, not exceeding in any case \$1,500 a year; and
- (c) In the case of any warehouse, if the Secretary determines, an additional sum, to be fixed by the Secretary sufficient to cover the reasonable expenses incurred by the supervising officer in travelling between his office or station and the warehouse.

(3) The measurement of the cubic contents of any warehouse shall be in accordance with regulations made under this Act.

(4) Every such licence fee shall be due and payable in advance on 5 January in each year.

(5) On the first grant of a licence a proportionate part of the proper annual licence fee, for the period elapsing between the time at which the licence takes effect and the next succeeding 5 January shall be due and payable by the licensee.

(6) On the cancellation, termination, or surrender of any licence, the licensee shall be entitled to a refund or remission of a proportionate part of the licence fee for the current year of the licence, calculated from the date of such cancellation, termination, or surrender to the end of that year.

86 [Repealed]

87 Termination of licence

Every licence for a warehouse shall be terminable by the Minister by not less than 3 months' notice in writing to the licensee.

88 Cancellation of licence

Any licence for a warehouse may be cancelled by the Secretary by notice published in the *Gazette* –

- (a) If any licence fee payable in respect of the warehouse is in arrears and unpaid for one month after the due date; or
- (b) If the licensee is convicted of any offence against the Customs Acts; or

- (c) If the warehouse becomes, in the opinion of the Secretary, unfit for the purpose for which it was licensed; or
- (d) If the licensee becomes bankrupt or insolvent; or
- (e) If the warehouse ceases to be in the occupation of the licensee.

89 Transfer of licence

A licence for a warehouse may be transferred by the licensee, with the consent of the Secretary but not otherwise, to any successor of the licensee in the occupation of the warehouse.

90 Surrender of licence

A licence for a warehouse may be surrendered by the licensee by one month's notice in writing to the Secretary.

91 Closing of warehouse

On the termination, cancellation or surrender of the licence for any warehouse, or on any warehouse otherwise ceasing to be licensed under this Act, the warehouse shall be closed, and all goods therein that are subject to the control of the Customs shall be removed to some other warehouse by the owner of the goods, or shall be exported or entered for home consumption, or shall be otherwise dealt with as the Secretary may permit.

92 Use of manufacturing warehouses

The use of a manufacturing warehouse for the purpose of manufacture shall be subject to such conditions, restrictions, or exceptions as are prescribed by regulations under this Act or by the licence for that warehouse or by the directions of the Secretary.

93 Structural alterations of warehouse

(1) No structural additions to or structural alterations of any warehouse, and no new means of access or egress into or out of any warehouse, shall be made without the written permission of a Manager.

(2) If any provision of this section is contravened, the licensee shall be guilty of an offence and shall be liable to a fine not exceeding 2 penalty units.

Warehousing of Goods

94 Entry for warehousing

When any imported goods have been entered for warehousing the importer shall forthwith warehouse them in accordance with the entry without payment of duty in the first instance, except where otherwise provided in this Act.

95 Account of warehoused goods

(1) On the entry of any goods to be warehoused, the proper officer shall take an account of the goods in such manner and at such time and place as the Secretary may direct, either generally or in any particular case.

(2) Except where otherwise provided in this Act, the account so taken shall be that upon which all duties payable on those goods shall be ascertained and paid.

96 Receipt for warehoused goods

When any goods entered for warehousing have been duly deposited in the warehouse the licensee shall sign a receipt for them in the prescribed form.

97 Removal of goods to warehouse

If any goods entered to be warehoused are not forthwith warehoused accordingly by the importer, the Manager may remove them to a warehouse.

98 Packing of warehoused goods

Goods entered for warehousing shall be deposited in the warehouse in the packages in which they were imported, except goods repacked or skipped on a wharf with the permission of the Manager.

99 Repacking of warehoused goods

(1) The Manager may, as prescribed by regulations under this Act, permit the importer to sort, bottle, pack, or repack goods in any warehouse.

(2) In every such case a fresh account of the goods so dealt with shall be taken by the proper officer, and shall be substituted for the original account.

100 Duties of licensee

(1) The licensee of every warehouse shall –

- (a) Stack and arrange the goods in the warehouse so that reasonable access to and examination of every package may be had at all times;
- (b) Provide sufficient lights and just scales and weights for the use of the officers of Customs;
- (c) Provide all labour and materials requisite for the storing, examining, packing, marking, cooping, weighing, and taking stock of the warehoused goods whenever the Manager may desire.

(2) Every licensee who fails to comply with this section commits an offence and shall be liable to a fine of 0.5 penalty units for every day during which the offence has continued.

101 Access of officers of Customs to warehouse

The Manager and other proper officers shall at all hours of the day and night have access to every part of any warehouse and power to examine the goods in it, and may for that purpose break open the warehouse or any premises necessary to be passed through for obtaining access to it.

102 Restriction on right of warehousing

Without limiting the power to make regulations conferred by section 306, regulations may be made under that section –

- (a) Prescribing in respect of any class of goods the minimum quantity that may be entered for warehousing or cleared from a warehouse;
- (b) Prohibiting or imposing restrictions or conditions on the warehousing of dangerous goods, or of goods or classes of goods in respect of which any such prohibition, restriction, or condition is deemed necessary for any reason.

103 Sale of goods on which dues in arrear

If the warehouse dues on any warehoused goods are in arrear for 6 months or more, the goods may be sold by the Manager; but in the case of a licensed warehouse this power of sale shall not be exercised except at the request of the licensee.

104 Goods not to be removed without permission

(1) Except as provided by this Act, no goods that are subject to the control of the Customs shall be removed from any warehouse except –

- (a) With the permission of the proper officer of Customs after entry has been made and passed in respect of it; or
- (b) Under a written permit granted by the Manager in respect thereof.

(2) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units or the value of the goods in respect of which the offence is committed, whichever sum is the greater.

(3) Any goods removed in contravention of this section shall be forfeited.

105 Temporary removal of warehoused goods

(1) Subject to any regulations made under this Act, the Manager may permit the taking of warehoused goods out of the warehouse without payment of duty for any temporary purpose, for such convenient time and in such suitable quantities as he may approve, if sufficient security is taken for the return of the goods and payment of duty thereon.

(2) So long as any goods so removed remain subject to the control of the Customs they shall be deemed to be constructively warehoused in the warehouse from which they were so removed, and all the provisions of this Act shall continue to apply thereto accordingly.

106 Liability for duty on missing goods

(1) If any dutiable goods are removed from a warehouse by any person without the authority of the proper officer of Customs, or if any dutiable goods, after being warehoused, are not produced by the licensee to the Manager or other proper officer on demand made at the warehouse and are not accounted for as having been lawfully delivered from the warehouse, duty shall thereupon become due and payable on those goods as if entered for home consumption.

(2) The duty shall constitute a debt due to the Crown by the licensee and the importer, who shall be jointly and severally liable therefore, subject to this Act relating to refunds and remissions of duty.

(3) In this section, “licensee” includes any person who was the licensee of the warehouse at any time between the warehousing of the goods and the payment of the duties thereon, and all such persons shall be jointly and severally liable accordingly.

Clearance of Warehoused Goods

107 Kinds of entry of warehoused goods

Warehoused goods may be entered by the importer in the prescribed manner –

- (a) For home consumption; or
- (b) For export; or
- (c) For removal for warehousing elsewhere.

108 Entry for home consumption

When entry for home consumption has been made in respect of any warehoused goods the person making the entry shall forthwith pay to the Manager or other proper officer the duties, if any, payable thereon.

109 Entry for export

When any warehoused goods have been entered for export the person making the entry shall forthwith export the goods to a country outside Niue in accordance with the entry and with the provisions of this Act relating to the exportation of goods.

110 Entry for removal

(1) When any warehoused goods have been entered for removal for warehousing at any other warehouse (either at the same or any other port or place) they shall forthwith be removed in accordance with the entry, subject to such conditions as may be prescribed, and with such security for their due transmission and for the payment of the duty thereon as the Manager requires.

(2) On the arrival of the goods at the port or place of destination they shall be entered and warehoused in accordance with the entry for removal in the same manner and subject to the same provisions, so far as applicable, as in the case of the entry and warehousing of goods on the first importation thereof.

(3) Notwithstanding anything in section 62 (5) warehoused goods so removed may, with the permission of the Manager, be placed directly in a warehouse on their arrival at the port or place of destination.

111 Constructive warehousing

If, after any goods have been entered for warehousing either on importation or removal, and before they have been actually warehoused, they are entered for home consumption, exportation, or removal, they shall be considered as constructively warehoused and may be delivered for home consumption, exportation, or removal as if actually warehoused.

112 Rewarehousing

(1) When any goods have remained warehoused for 3 years (whether in the same or in different warehouses) the owner of them shall thereupon either –

- (a) Enter them for home consumption; or
- (b) Enter them for export; or
- (c) Rewarehouse them.

(2) No goods shall be rewarehoused without the permission of the Manager or other proper officer.

(3) Rewarehousing shall be effected as follows –

- (a) An application for rewarehousing shall be made by the owner to the Manager;
- (b) The goods shall be examined by the Customs at the expense of the applicant;
- (c) Duty shall, subject to this Act as to remission of duty, be paid on any goods found deficient;
- (d) A rewarehousing entry shall be made in the prescribed form for the goods according to the result of the examination;
- (e) On the passing of the entry a fresh account shall be substituted for the last account, and this shall complete the rewarehousing.

(4) When any goods have been rewarehoused this section shall thereafter apply to them as if they had been then warehoused for the first time.

(5) If in respect of any goods the owner acts in contravention of this section, duty shall forthwith become due and payable on those goods as if entered for home consumption, and they may be sold by the Manager.

Crown Warehouses

113 Crown warehouses

(1) The Secretary may, by notice in the *Gazette*, declare any building or other place in the occupation of the Crown and lawfully available for such use to be a Crown warehouse for the purpose of this Act.

(2) The Secretary may in like manner declare that any Crown warehouse shall no longer continue to be such.

114 Charges in Crown warehouses

Charges shall be made and payable in respect of goods warehoused in any Crown warehouse under the prescribed scale.

115 Warehousing in Crown warehouses

If any goods warehoused in a Crown warehouse are not lawfully removed within such period after warehousing as may be prescribed, duty shall become due and payable thereon as if entered for home consumption, and the goods may be sold by the Manager.

116 Licensed warehouses

Crown warehouses shall be wholly under the control of the Customs, and shall be specially available for the examination of goods and the storage of seized and unclaimed goods; but otherwise all the provisions of this Act relating to warehouses shall, so far as practicable, apply to Crown warehouses.

Special Provisions as to Manufacturing Warehouses

117-117A [Repealed]

118 Penalties for wrongful use of manufacturing warehouse

If the licensee of any manufacturing warehouse acts in contravention of any provision of any regulation made in relation thereto, or of any provision of his licence or of the directions of the Secretary, he commits an offence and shall be liable to a fine not exceeding 2 penalty units.

PART 5

119-135 [Repealed]

Valuation of Goods

136 “Current domestic value” defined

(1) When any duty is imposed on goods according to their value, or where for any other reason the value of any goods is to be determined for the purposes of the Tariff, such value shall be taken to be the fair market value of the goods when sold for cash in the ordinary course of business for home consumption in the principal markets of the country from which the goods are exported at the time when they were so exported.

(2) The value so taken is in this Act referred to as the current domestic value.

(3) Notwithstanding subsection (1), where for the purposes of any entry the amount of the current domestic value is required to be shown or declared, that amount shall be shown or declared, if it is not a whole number of dollars, at the nearest dollar, and, if it is a number of dollars and 50 cents exactly, at the dollar next below the amount.

(4) No deduction of any kind shall be allowed from the current domestic value of such goods because of any special or sample discount, or because of any

special arrangement concerning the export of the goods or the exclusive right to their sale within certain territorial limits, or because of any royalty payable on patent rights but not payable when goods are so exported, or on account of any other consideration by which a special reduction in price has been or might be obtained.

(5) If it is proved to the satisfaction of the Manager that any drawback of import duty or excise duty has been paid or allowed on any parts, materials, or ingredients used in making any goods, or that any import duty or excise duty has been actually paid on the goods in the country from which they were exported or would have been payable on them in that country if they had been there entered for home consumption instead of being exported therefrom, the amount of that duty or drawback shall be deducted from the current domestic value of the goods as determined in accordance with the foregoing provisions of this section.

(6) When the current domestic value of any goods when sold for cash for home consumption as aforesaid depends in the ordinary course of business on the quantity sold, such value shall be determined by reference to the quantity actually imported at one and the same time by the same importer from the same seller or supplier, except that if the goods are imported under a bona fide contract of purchase made in the ordinary course of business and including a greater quantity of such goods than that which is actually imported at one and the same time the current domestic value of the goods shall be estimated by reference to the aggregate quantity so included in that contract and imported or to be imported in pursuance thereof within a period not exceeding twelve months.

(7) The determination of the Manager or, in the case of an appeal under section 142, the determination of the Minister, as to the existence and terms of any such contract as is referred to in subsection (6) and as to the quantity by reference to which the current domestic value of any goods is to be estimated in accordance with that subsection, shall be final and conclusive.

137 Production of invoice

(1) On the first entry (other than an entry for removal) of any goods, the importer or his agent shall produce to the Manager or other proper officer the invoice (as defined in section 138 for those goods, and make, and deliver to the Manager or other proper officer, a declaration in the prescribed form verifying that invoice and setting out the true value of the goods for the purposes of duty and such other particulars as may be prescribed.

(2) Unless the Secretary otherwise directs in relation to any class or classes of goods or transactions, the Manager or other proper officer shall retain the invoice so produced, or a legible copy thereof made by carbon or other duplicating process by or on behalf of the seller or consignor of the goods.

(3) If any failure to produce the invoice as required by this section is accounted for to the satisfaction of the Manager or other proper officer, proof of its contents by a copy of otherwise may be received in lieu of its production.

138 “Invoice” defined

- (1) In this Act, “invoice” means –
- (a) In the case of goods imported on their sale, the original invoice prepared and issued by or on behalf of the seller showing –
 - (i) the true description of the goods; and
 - (ii) their current domestic value; and
 - (iii) the actual money price paid or to be paid for them by the purchaser; or

- (b) In the case of goods imported otherwise than on their sale, the original invoice prepared and issued by the consignor showing –
 - (i) the true description of the goods; and
 - (ii) their current domestic value.
- (2) Every invoice for imported goods shall be in the prescribed form.

139 Blank invoices

If any person has in his possession, without reasonable excuse, any blank or partly blank invoice forms, capable of being filled up and used as an invoice in such manner as to be likely to deceive the officers of the Customs, he commits an offence and shall be liable to a fine not exceeding 4 penalty units.

140 Valuation of goods by Collector

(1) Subject to this section, the amount of the invoice, after deducting therefrom all reasonable and lawful deductions in respect of discount, freight, insurance, and other charges, may be accepted by the Manager as sufficient proof of the current domestic value of the goods for purposes of duty, and he may value the goods and assess the duty accordingly.

(2) If the importer satisfies the Manager that the current domestic value of the goods for purposes of duty is less than the value as shown by the invoice after making such deductions as aforesaid, the Manager shall value the goods at the lower sum accordingly, and shall assess the duty on that value.

(3) If the Manager has reason to believe or suspect that the current domestic value of the goods for purposes of duty is greater than the amount of the invoice, after making such deductions as aforesaid, he may value the goods at such higher sum as he thinks proper, and assess the duty accordingly.

141 Valuation presumed to be correct

Every valuation made by the Manager under this Part (whether in accordance with the invoice or not) shall be taken to be correct, and duty shall be payable in accordance therewith, unless on appeal to the Minister under section 142 or in proceedings taken under this Act in a court of competent jurisdiction, a different amount is proved to be the correct value of the goods for the purpose of *ad valorem* duty.

142 Appeal to Minister from valuation

(1) From any valuation made by the Manager under this Part (whether in accordance with the invoice or not) the importer may appeal to the Minister.

(2) Notice of appeal under this section shall be given in writing to the Manager within 14 days after the assessment of duty, or without such further time as may be allowed by the Manager and while the goods still remain subject to the control of the Customs.

(3) On any such appeal the Minister shall, by himself or his lawful delegate, after giving a reasonable opportunity to the appellant to be heard, determine the true value of the goods for purposes of duty, and his decision on all questions of fact shall be final, except in the case of fraud.

(4) The Minister may delegate his power of hearing and determining any such appeal to any person or persons, whether officers of the Customs or not, but otherwise all the provisions of this Act as to the delegation of powers by the Minister shall apply to any delegation under this section.

(5) On any such appeal the burden of proving the true value of the goods shall be upon the appellant.

(6) If any such appeal is unsuccessful, the reasonable costs incurred by the Customs in the appeal, as fixed by the Minister or his delegate under such regulations (if any) as may be made in that behalf, shall be added to the duty and shall be paid by the appellant accordingly.

(7) If no appeal is so made to the Minister, the other provisions of this Act as to the recovery and refund of duty shall apply as if no such right of appeal has existed.

143 Invoices in foreign currency

(1) If the invoice shows the value of the goods in any currency other than that in force in Niue the value in Niue currency shall be ascertained according to a fair rate of exchange, to be declared in case of doubt by the Minister.

(2) For the purposes of this Act, the Minister may from time to time, by notice in the *Gazette*, determine the relation of Niue currency to the currency of any other country.

(3) Any such notice may at any time in like manner be amended or revoked.

144 Country of export

(1) Goods exported to Niue from any country but passing through any other country on their voyage to Niue (whether transshipped in that other country or not) shall be valued for duty as if they were imported directly from the first-mentioned country.

(2) The determination of the Manager as to the true country of export in any such case shall in every court or judicial proceeding be taken to be correct unless the contrary is proved.

145 Current domestic value of goods imported through intermediate country

(1) In this section, “intermediate country” means the country, not being the country of origin, from which any goods are imported into Niue.

(2) Notwithstanding section 136 the current domestic value of any goods imported into Niue from an intermediate country may, in such cases as Cabinet prescribes by regulation, be assessed at an amount exceeding, by such percentage as may be prescribed, the current domestic value of those goods in the country from which they were exported to the intermediate country at the time of their exportation to that country.

146 Valuation for assessment of duties

(1) If in the opinion of the Minister it is difficult, inequitable, or impracticable to determine the value of goods for the purposes of duty under section 136 because –

- (a) The goods are not sold for use or consumption in the country of export; or
- (b) They are not so sold in the ordinary course of business or in quantities similar to those imported into Niue; or
- (c) The exporter retains the property in them; or
- (d) They are not imported on their sale; or
- (e) They are not imported in pursuance of a bona fide contract of purchase made in the ordinary course of business; or
- (f) There is no reliable means of estimating their value owing to the imposition of a royalty on them; or
- (g) They are usually or exclusively sold or disposed of by or to agents, or resold or imported in or under any other unusual or peculiar manner, conditions, or restrictions, either by way of limitation of purchases from or sales to any person or associations of persons or for any other reason –

the Minister shall determine the current domestic value of the goods in such manner and at such sum as he thinks just, and shall assess the duty accordingly, and his assessment shall be final.

(2) The current domestic value of goods as determined under this section shall not exceed the price at which the goods are, in the country of exportation and at the time when they were exported, sold in the ordinary course of business for domestic consumption to the ultimate consumer, if in the opinion of the Minister such price can be ascertained.

(3) Notwithstanding subsections (1) and (2), in the case of any goods being the produce or manufacture of a country not forming part of the Commonwealth, and being goods of a class or kind produced or manufactured in some part of the Commonwealth, the Minister may, in the exercise of the powers conferred on him by this section, determine a nominal value of those goods (whether such value is in his opinion that true current domestic value or not), if in his opinion the importation of those goods would, but for this section, be likely to affect prejudicially or injuriously any industry, trade, business, or occupation established or carried on in Niue or elsewhere in the Commonwealth.

(4) The nominal value determined under subsection (3) shall be such that the cost of the goods to the importer, including the duty payable thereon, shall not exceed by more than 20 percent the cost of similar goods, as determined by the Minister, including the duty on it, imported from and being the produce or manufacture of some part of the Commonwealth.

(5) The value so determined by the Minister shall be final, and for the purposes of the assessment of duties it shall be deemed to be the current domestic value.

147 Crown's right of compulsory purchase

(1) For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duty, any goods of which entry is made may, at any time while they remain subject to the control of the Customs, be taken by the Crown at a price equal to their declared current domestic value, with the addition of such charges for freight, insurance, and other matters incidental to their importation as the Secretary thinks reasonable, and with the addition of any duties already paid thereon.

(2) The aforesaid right of taking goods shall be exercised only by the Secretary or the Minister, and the taking of the goods shall be deemed to have been effected as soon as a warrant for their taking has been signed by the Secretary or the Minister.

(3) On the signing of the warrant the goods shall become the property of the Crown, and shall be sold by the Manager, and the proceeds of such sale shall be accounted for as Customs revenue.

(4) The price payable by the Crown for the goods so taken shall be paid out of Customs revenue to the person making the entry.

(5) This section shall not be so construed as to restrict or take away any other powers possessed by the Customs in respect of the goods or any liability of the importer or any other person in respect of any offence committed in respect of the goods.

Origin of Imported Goods

148 Determining country of origin

(1) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations prescribing –

- (a) The classes of goods that shall be deemed for the purposes of the Customs Acts to be the produce or manufacture of any country;
- (b) The conditions to be fulfilled before any goods shall be deemed to be the produce or manufacture of any particular country.

(2) In respect of fish, whales, or other natural produce of the sea, or goods produced or manufactured wholly or partly therefrom at sea, anything done by or on board a ship belonging to any country shall be deemed for the purposes of this Act to have been done in that country, and any such produce of the sea or goods so produced or manufactured therefrom at sea, if brought direct to Niue, shall be deemed to be imported into Niue from that country.

(3) If any question arises as to the country to which any ship belongs for the purposes of subsection (2) the question shall be determined by the Minister, whose decision shall be final.

149 Importer to state country of origin

On making entry of any goods the importer or his agent shall state to the best of his knowledge, information, and belief the country of which the goods are the produce or manufacturer and shall satisfy the Manager of the truth of such statement, by declaration or otherwise, in the prescribed form.

150 Entry of goods at preferential rates

(1) Notwithstanding anything in section 119 or section 120 or elsewhere in the Customs Acts, the duty (if any) payable under the Normal Tariff shall be paid on all goods imported into Niue or entered therein for home consumption unless the following provisions of this section are complied with.

(2) Where it is claimed in respect of any goods that they are entitled to be entered free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, they shall not be so entered unless, in verification of such claim, there is produced to the Manager in addition to an invoice of the goods, a certificate of origin in the prescribed form, signed by the seller or consignor.

(3) No such invoice as is referred to in subsection (2) shall be produced to the Manager at the time of making entry for those goods, or within such period as the Manager may allow.

(4) The certificate referred to in subsection (2) shall relate to any goods other than those to which the certificate mentioned in it refers.

(5) An extension of time under subsection (4) shall be granted on such conditions as to security for payment of duty, or as to payment of penalties, or otherwise, as may be prescribed, and on such further conditions (if any), as the Minister may in any case direct.

(6) In the case of goods sent by post or by air-freight or in such other cases (if any) as prescribed or with the consent of the Minister in any other case, the Manager may dispense with any certificate required by this section if evidence, satisfactory to him, is produced that the goods, if entered free of duty or at any rate of duty lower than that set forth in the Normal Tariff in respect of such goods, are entitled to be so entered pursuant to this Act.

(7) Nothing in subsection (1) shall be so construed as to affect the liability of any goods to duty under a tariff adopted under section 127.

151 Goods subject to forfeiture in case of false declaration

If the Manager has reason to believe that any goods referred to in any statement, declaration, invoice, or certificate under section 149 or 150 are not the produce or manufacture

of the country mentioned in the statement, declaration, invoice, or certificate, he may detain them for examination; and if the statement, declaration, invoice, or certificate is false the goods shall be forfeited.

Assessment and Recovery of Duty

152 Duty on imported goods a Crown debt

(1) The duty on any imported goods shall, immediately on their importation, constitute a debt due to the Crown.

(2) Such debt shall be owing by the importer of the goods, and, if there are several importers (whether at or at any time after the time of importation), then jointly and severally by all of them.

(3) Subject to any special provisions made by this Act in that behalf, such debt shall become due and payable as soon as entry of the goods for home consumption has been made, or the goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered for home consumption, or any other offence against this Act has been committed in respect of them.

(4) Such debt shall be recoverable by action at the suit of the Manager on behalf of the Crown.

(5) The right to recover duty as a debt due to the Crown shall not be affected by the fact that the goods have ceased to be subject to the control of the Customs, or that a bond or other security has been given for the payment of duty, or that no proper assessment of duty has been made in due course under this Act, or that a deficient assessment of duty has been made.

153 Duty on goods produced in manufacturing warehouse a Crown debt

(1) The duty on any goods manufactured in a manufacturing warehouse shall immediately on their manufacture constitute a debt due to the Crown.

(2) Such debt shall be owing by the person who is the licensee of the warehouse at the time when the goods are manufactured and by every person who thereafter becomes the licensee of that warehouse at any time before the duty has been fully paid, and by every person who is or becomes the owner of the goods at any time before the duty has been fully paid; and all such persons shall be jointly and severally liable for the duty.

(3) Section 152 (3) to (5) shall extend and apply to the duty referred to in this section.

154 Duty a charge on goods

(1) The duty on any goods shall constitute a charge on those goods until fully paid.

(2) If any duty so charged on any goods is due and unpaid, the Manager may take possession of the goods, and sell them or any part of them in satisfaction or part satisfaction of the charge.

155 Goods not to be delivered till duty paid

(1) Except as otherwise provided in this Act, no person shall be entitled to obtain delivery of any goods from the control of the Customs until the sum demanded by the Manager or other proper officer of Customs by way of duty on the goods has been paid in full.

(2) No action or other proceeding shall be instituted against the Crown or the Minister or any officer of Customs in respect of the detention of any such goods during any period before the payment of the full sum so demanded.

156 Payment of duty by one person not to affect liability of other persons

The liability of any person under this Act for the payment of duty on any goods shall not be extinguished or affected by the payment of the duty by any other person who may be liable for it under any other provision, whether or not the duty so paid has been refunded.

157 Incidence of altered duties

(1) In the case of any alteration in the law relating to the liability of any goods to duty or the rate of duty to which any goods are liable, such liability or rate shall, except where otherwise expressly provided, be determined –

- (a) In the case of goods warehoused or goods produced in a manufacturing warehouse (whether before or after such alteration in the law) by the law in force at the time when the goods are entered for home consumption;
- (b) In the case of all other goods, by the law in force at the time of importation or by the law in force at the time at which the goods are thereafter entered for home consumption, whichever is the more favourable to the importer.

(2) In this section, “alteration in the law” includes any variation which in any manner takes place at any time or periodically in the liability of goods to duty or in the rate of duty to which they are liable.

158-159 [Repealed]

160 Assessment of duty in particular cases

(1) When duties are imposed according to a specified quantity, weight, size, or value, the duties shall be charged proportionately on any greater or smaller quantity, weight, size or value.

(2) [Repealed]

(3) Subject to the provisions of the Tariff, for the purposes of assessing duty on spirits –

- (a) The strength of any spirits shall be ascertained in the prescribed manner; and
- (b) If on entry for home consumption it is so ascertained that the strength of any spirits has increased or diminished by natural process of change while they were subject to the control of the Customs, duty shall be payable in accordance with the strength as so increased or diminished.

161 Alteration of goods

In such cases and under such conditions and restrictions as may be permitted by the Secretary, imported goods may be so altered as to fall under another item of the Tariff, and the liability of such goods to duty shall be determined accordingly and a refund or remission of duty may be made or allowed as the case may require.

162 Minimum duty collectable

Without limiting the power to make regulations conferred by section 306, regulations made under that section may prescribe the minimum amount of duty that need be collected on any goods; and any goods on which the duty if assessed under this Act would be less than the minimum so prescribed may, if the Manager thinks fit, be admitted free of duty.

163 Essences and other preparations

(1) Duty shall be charged on all essences, condensations, concentrations, or preparations of dutiable goods according to the quantity or equivalent of dutiable goods into which such essences, condensations, concentrations, or preparations can be converted according to a standard to be prescribed by regulations made under this Act.

(2) In default of any such regulations, or so far as they do not extend, duty shall be chargeable as if this section was not in force.

164 Reimportation of goods exported

Goods exported from Niue for such purposes as may be approved by the Minister, either generally or in any particular case, may on reimportation into Niue be admitted, subject to such conditions as the Minister may impose either generally or in any particular case, either free of duty or at such duty as may be determined by the Minister, not exceeding the duty that would be payable thereon if imported for the first time.

165 [Repealed]

166 [Repealed]

167 Power to suspend excise duties on goods supplied to certain organisations

(1) Cabinet may by regulation suspend any excise duty in respect of any goods or classes of goods manufactured in Niue and –

- (a) Supplied solely for the use of such organisations, expeditions, or other bodies as may be approved by the Minister and as may be established or temporarily based in Niue consequent on any agreement or arrangement entered into by or on behalf of the Government of Niue with the Government of any other country or with the United Nations; or
- (b) Supplied solely for the use of persons temporarily resident in Niue for the purpose of serving as members of any such approved organisation, expedition, or other body.

(2) In respect of any goods or class of goods to which this section relates, the Secretary may impose such conditions as he thinks fit.

168 Samples of goods

Small samples of the bulk of any goods subject to the control of the Customs may, subject to such conditions as may be prescribed, be delivered free of duty.

169 Duties on wrecked goods

(1) All goods derelict, flotsam or jetsam, or landed, saved, or coming ashore from any wreck, shall be chargeable with duty as if imported in the ordinary course and entry thereof shall be forthwith made at the nearest port by the owner or person entitled thereto or having possession thereof; and all the provisions of this Act, so far as they are applicable, shall apply accordingly.

(2) If default is made in making such entry, duty shall become due and payable in the same manner as if the goods had been entered for home consumption.

170 Liability of owners of ships or aircraft for duty on missing goods

(1) If any cargo or ships' stores are smuggled into or unlawfully landed in Niue from any ship or aircraft being within the territorial limits of Niue or elsewhere, the owner and the master of the ship, or the owner and the pilot in command of the aircraft, shall (in addition to the liability of any other person) be jointly and severally liable for the payment of the duty on such cargo or stores, as if imported by them and entered for home consumption.

(2) The Manager at any port may demand from the owner or master of any ship, or the owner or pilot in command of any aircraft, at that port payment of any sum that he believes or suspects to be owing under the foregoing provisions of this section.

(3) So long as any sum so demanded by the Manager remains unpaid, the ship or aircraft shall not be entitled to a certificate of clearance.

(4) In all proceedings for the recovery of duty under this section, or for a refund of duty paid under this section, the sum so demanded by the Manager shall be presumed to be due and payable until the contrary is proved.

Refunds and Remissions of Duty

171 Recovery of duty paid in error

(1) At any time within one year after the payment of any sum by way of duty the person by whom payment was so made may institute proceedings against the Crown for a refund of such duty, or of any part thereof, on the ground that the duty was not lawfully chargeable, or was charged in excess, and whether the error alleged is one of fact or of law.

(2) Nothing in this section shall be so construed as to entitle any person to take proceedings for a refund of duty on any ground on which the determination of the Manager, or the Secretary, or the Minister is made final by this Act.

172 Secretary may refund duty paid in error

(1) If the Secretary is satisfied that any duty has been paid in error, whether of law or fact, he may refund it –

(a) At any time within 3 years after it has been paid; or

(b) At any later time, on an application made within such 3 years.

(2) If in any case, after any agreement is made, whether in Niue or elsewhere, for the sale of goods, the Secretary has authority to make a refund in respect of such goods, he may, before making the refund, require the production of evidence to his satisfaction that the importer has remitted to the buyer of the goods the amount of the refund.

172A Secretary may refund duty on forfeited goods

(1) When any duty or sales tax has been paid on any goods that are condemned or deemed to be condemned under Part 12, the Secretary may pay to any person appearing to him to be entitled to it a sum equal to the amount of that duty or tax –

(a) At any time within 3 years after seizure of the goods; or

(b) At any later time, on an application made within such 3 years.

(2) Such sum shall not exceed the amount that would be available for payment of duty under section 223 (3).

173 Remission or refund of duty on damaged and faulty goods

Whenever the Manager is satisfied that imported goods –

(a) Have been damaged or have deteriorated in condition before importation; or

(b) Are found, either before delivery from the control of the Customs or within such period after such delivery as may be prescribed, to be of faulty manufacture; or

(c) Have been damaged or have deteriorated in condition after importation and while still subject to the control of the Customs, without the wilful act of the negligence of the importer or of the licensee of any warehouse in which they have been warehoused, or of the servants of the importer or licensee –

the importer shall be entitled to a remission or refund of duty on those goods to such extent and subject to such conditions and exceptions as may be prescribed.

174 Remission of duty on warehoused goods diminished in value

(1) When any imported goods have been warehoused for not less than 2 years and the Secretary is satisfied that, while so warehoused, they have diminished in value otherwise than by reason of damage or deterioration in condition, he may in such case and to such extent as may be prescribed allow to the importer a remission of duty on those goods.

(2) With the approval of the Minister in any case, the Secretary may allow a remission of duty under this section in respect of any warehoused goods, notwithstanding that they have been warehoused for less than 2 years.

175 Remission or refund of duty on goods destroyed, pillaged, or lost

(1) If the Manager is satisfied that any goods, at any time after their importation, and while still subject to the control of the Customs, have been destroyed, pillaged, or lost without the wilful act or the negligence of the importer or the licensee of any warehouse in which they have been warehoused or of the servants of the importer or licensee, the importer shall, subject to any prescribed exceptions, restrictions, or conditions, be entitled to a remission or refund of the duty on the goods.

(2) Except where an importer is entitled to exemption from duty under subsection (1), duty on all goods destroyed, pillaged, or lost after importation and while still subject to the control of the Customs shall be due and payable by the importer as if the goods had been entered by him for home consumption on their importation.

(3) When any goods have diminished in quantity or weight they shall to the extent of that diminution be deemed to have been lost within the meaning of this section.

(4) All goods specified in the inward report of any ship or aircraft or in an invoice produced in relation to any entry shall be presumed to have been actually imported unless the contrary is proved.

176 Remission or refund of duty on goods produced in a manufacturing warehouse

(1) Sections 173-175 shall extend and apply, with all necessary modifications, to goods manufactured in a manufacturing warehouse, as if the manufacture of those goods were their importation, and as if the licensee of the warehouse or the owner of the goods were the importer of the goods so manufactured.

(2) If the Secretary is satisfied that any waste of imported raw tobacco has resulted from any process of manufacture in a tobacco-manufacturing warehouse, he may permit a remission or refund of duty on the tobacco so wasted.

177 Remission of duty on goods not worth the duty

The Secretary may cause any dutiable goods that are subject to the control of the Customs and are not, in the opinion of the Manager, worth the duty payable on them to be destroyed or otherwise dealt with as the Secretary directs, and may remit the duty.

178 Duty on goods from countries not forming part of the Commonwealth

(1) In respect of any goods or of any class or classes of goods being the produce or manufacture of a country not forming part of the Commonwealth, the Minister may, on any of the grounds set out in subsection (2), direct that such goods or any goods of such class or classes be admitted as if they were the produce or manufacture of some part of the Commonwealth, or, in the alternative, that they be admitted at a rate of duty intermediate between the rate of duty or exemption from duty specified in the British Preferential Tariff and the rate otherwise applicable under the Standard Tariff.

(2) The Minister may exercise the powers conferred by subsection (1) on any of the following grounds, namely –

- (a) On the ground that he is satisfied that goods of a like kind are not economically produced or manufactured in the Commonwealth;
- (b) On the ground that goods of a like kind, being the produce or manufacture of the Commonwealth, are sold or offered for sale in Niue at unreasonably high prices and that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected;
- (c) On the ground that any conditions or restrictions attaching to the importation into Niue of goods of a like kind, being the produce or manufacture of the Commonwealth, or attaching to the sale or other disposition of such goods in Niue, are such that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected;
- (d) On the ground that goods of a like kind being the produce or manufacture of the Commonwealth, constitute an unduly large proportion of the total goods of that kind imported into Niue and that in the opinion of the Minister the interests of the public are or will be thereby prejudicially affected.

(3) Any direction given by the Minister under this section may in its application to any goods be revoked at any time before such goods are entered for home consumption.

(4) A direction under this section may in the discretion of the Minister be given in respect of any goods entered for home consumption before the date on which the direction is given, if an application for such a direction in respect of those goods has been made at a time not later than the date of entry of the goods for home consumption.

(5) Where the Minister gives a direction under subsection (4), a refund of the duty paid or of any portion of it may, subject to such conditions, if any, be made accordingly.

179 Duty may be reduced or remitted where prices of Niue goods increased

(1) This section shall apply only in cases where by this Act or by any other Act that may hereafter be passed goods of any class are made liable to Customs duty, or to an increase in the amount or the rate of Customs duty, as the case may be.

(2) The Minister may by order given under his hand and published in the *Gazette*, remit the duty payable on any such goods, or reduce the amount or the rate of duty on any such goods, if he is satisfied that the prices charged by the producers or manufacturers of similar goods being the produce or manufacture of Niue are in excess of the usual prices that were charged by producers or manufacturers of such goods immediately before the alteration of the law, and that the maintenance of the increased prices would be detrimental to the public interest.

(3) Every order under this section may in like manner be revoked or varied.

(4) Nothing in this section shall apply with respect to the duty on any goods imported into Niue if the Minister is satisfied that the whole of the increase in the prices of similar goods being the produce or manufacture of Niue is due to the increased cost of production, manufacture, or distribution, and has been fixed by the producers or manufacturers under any usual commercial practice followed before the alteration of the law or under a commercial practice adopted since such alteration and approved by the Minister for the purposes of this section.

180 Refund of duty on materials used in manufacture of agricultural implements, machinery, ships and boats

(1) In such cases and on such conditions as may be prescribed, but subject to subsection (2), any person who manufactures in Niue –

- (a) Agricultural implements of a kind mentioned in Schedule 4; or
- (b) Machinery of such a class that, if imported into Niue it would be liable to any duty imposed only on goods not produced or manufactured in the Commonwealth; or
- (c) Ships or boats –

shall be entitled to a refund of any duty paid on materials which have been used by him in such manufacture.

(2) Except in the case of materials used in the manufacture of agricultural implements of a kind mentioned in Schedule 4, no refund shall be granted under this section in respect of any materials not being the produce or manufacture of some part of the Commonwealth, unless the Secretary is satisfied that materials of the same class, being the produce or manufacture of some part of the Commonwealth, could not have been obtained on reasonable terms or conditions.

(3) In this section, “materials” means such materials used in the manufacture of any goods of a kind to which subsection (1) applies, and also such parts of any implements or machinery to which that subsection applies, and such parts of ships or boats (including machinery therefor), as cannot, in the opinion of the Secretary be advantageously manufactured or produced in Niue.

181 Duty on goods temporarily imported

(1) Where the Manager is satisfied that any goods have been temporarily imported, the duty payable on the goods may be secured by way of deposit of money or, in such cases or classes of cases as may be approved by the Secretary, but such other security as is provided for in this Act; and on receipt of such security the Manager may deliver the goods from the control of the Customs.

(2) Subject to subsection (3) and to such conditions (if any) as may be prescribed, the deposit so made shall be returned to the person by whom it was made, or, as the case may require, the security shall be released, if –

- (a) The goods, being goods imported to be used temporarily in Niue for industrial or commercial purposes, are exported within 12 months from the date of their landing (in this section referred to as the prescribed period) or within such longer period as the Secretary may determine in any particular case; or
- (b) The goods, not being goods to which paragraph (a) applies, are exported –
 - (i) Within the prescribed period; or
 - (ii) Within such longer period as the Secretary may determine in any case where he is satisfied that the importer is prevented by *force majeure* from exporting them within the prescribed period; or
- (c) The Secretary is satisfied that any such goods have been accidentally destroyed at any time within the period prescribed by or determined under this subsection.

(3) Where in any case to which subsection (2) applies –

- (a) Goods imported to be used temporarily in Niue for industrial or commercial purposes are exported within the period prescribed by or determined under this section; or
- (b) Any other goods, being goods on which in the opinion of the Minister duty should be paid, are so exported; or

- (c) The Manager is satisfied that any such goods have been accidentally destroyed at any time within the period prescribed by or determined under this subsection

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duty shall be payable in respect of the goods on the amount by which their value for duty, as assessed by the Manager at the time of their exportation or destruction, is less than their value for duty, as ascertained in accordance with the Customs Acts, at the time of their importation.

(4) Where the Manager is satisfied that any goods have been shipped for export, or where any goods have been packed, for export, into a bulk cargo container in a Customs containerbase and the container has been secured to the satisfaction of the Manager, he may for the purposes of this section, treat them as having been exported.

(5) If at the expiry of the period prescribed by or determined under this section any security has not been dealt with in accordance with subsection (2) –

- (a) Any duty so secured by way of deposit of money shall be dealt with as Customs revenue; and
(b) Any duty otherwise so secured shall be paid to the Manager by the importer within 14 days after the expiry of that period and on such payment the security shall be released.

182 Recovery of duty refunded in error

All money refunded by the Customs in error, whether of fact or law, shall be recoverable by action at the suit of the Manager on behalf of the Crown at any time within 3 years after the date of its payment, or without limit of time if the refund has been obtained by fraud.

Drawbacks

183 Drawbacks of duty on goods exported

(1) Drawbacks of duty on goods imported into Niue or produced in any manufacturing warehouse may be allowed –

- (a) On the export of the goods; or
(b) In respect of such imported or manufactured goods wrought into or attached to exported goods; or
(c) In respect of such imported or manufactured goods, except fuel or plant equipment, consumed in the manufacture or production of exported goods.

(2) Drawbacks under this section shall be allowed in such cases, to such amount, on such conditions, and with such restrictions as may be prescribed.

(3) Where the Manager is satisfied that any goods have been shipped for export, or where any goods have been packed, for export, into a bulk cargo container in a Customs containerbase and the container has been secured to the satisfaction of the Manager, he may for the purposes of this section treat them as having been exported.

(4) Where drawback has been allowed on any goods so treated as exported, the goods shall not, without the permission of the Manager, be unshipped or relanded or unpacked before export.

(5) If, where drawback has been allowed on any goods so treated as exported, drawback has been paid in respect of any goods that are unshipped or relanded or unpacked before export, the amount of drawback allowed in respect of those goods shall, immediately on their unshipment or relanding, or unpacking constitute a debt due to the Crown and charged thereon; and such debt shall immediately be payable by the owner of the goods at the time of their unshipment or relanding or unpacking.

(6) Such debt shall be recoverable by action at the suit of the Secretary on behalf of the Crown.

(7) The right to recover drawback as a debt due to the Crown under this section shall not be affected by the fact that a bond or other security has been given in respect of the unshipment or relanding or unpacking of the goods before export.

(8) Every person commits an offence who is knowingly concerned in the unshipment or relanding or unpacking of any goods in contravention of subsection (4).

184 Entry for exportation under drawback

(1) Before any goods are shipped or waterborne to be shipped for exportation under drawback the exporter shall –

- (a) Make entry therefor in the prescribed form and manner; and
- (b) Produce the goods for examination by the Customs.

(2) The making of any such entry shall be deemed to be the making of a claim for drawback, and the goods shall forthwith become subject to the control of the Customs accordingly.

(3) If any goods are shipped or waterborne to be shipped for exportation before entry has been duly made and passed under this section, the right of drawback on those goods shall be forfeited unless the Secretary in any particular case determines otherwise.

185 Reimportation of goods exported under drawback

(1) Except in such cases and under and subject to such restrictions and conditions as may be prescribed, no goods shipped for export under drawback shall at any time thereafter be reimported into Niue.

(2) If any goods are reimported in contravention of this section they shall be forfeited and the importer or any person knowingly concerned in any such reimportation shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

186–193 [Repealed]

PART 7

194-202 [Repealed]

PART 8

POWERS OF OFFICERS OF CUSTOMS

203 Examination of goods

(1) Any officer may examine, weigh, analyse, and test, or cause to be examined, weighed, analysed or tested, any goods subject to the control of the Customs, or any goods that he has reasonable cause to suspect are subject to the control of the Customs and may for this purpose open or cause to be opened any packages in which such goods are contained or suspected by him to be contained.

(2) All expenses so incurred by the Customs shall be a debt due to the Crown by the importer or exporter or the owner of the goods and shall be recoverable in the same manner as duty under this Act.

204 Examination of goods no longer under control of Customs

(1) After any goods have ceased to be subject to the control of the Customs the Secretary or any Manager if he has reasonable cause to suspect that any offence has been committed against the Customs Acts in respect of those goods, may, by warrant

under the seal of the Customs, require any person who has or is supposed to have possession or control of those goods to produce them for inspection by the officers of Customs.

(2) Any officer may thereupon exercise in respect of the goods all the powers conferred by section 203 in respect of goods subject to the control of the Customs.

(3) If any person fails or refuses to produce any goods in accordance with such a warrant, or obstructs an officer in the exercise of his powers under this section, he commits an offence and shall be liable to a fine not exceeding 2 penalty units unless he proves that he had not possession or control of the goods or that he was otherwise unable to comply with the warrant.

205 Boarding of ships and aircraft

(1) While any ship or aircraft is within the territorial limits of Niue, any officer may board it.

(2) The Manager may station officers in any ship while it is within the limits of any port, and the master shall provide suitable accommodation below decks and suitable and sufficient food for those officers and also means of safe access to and egress from the ship in accordance with the requirements of any such officer.

(3) If the master fails to comply with subsection (2) he and the owner of the ship shall each be guilty of an offence and shall be severally liable to a fine not exceeding 0.5 penalty units for every day during which such default has continued.

206 Searching of ships and aircraft

(1) Any officer may search any ship or aircraft within the territorial limits of Niue.

(2) In the exercise of this power of search an officer may, by force if need be, enter every part of the ship or aircraft, and open any package, locker, or other place, and examine all goods found on the ship or aircraft.

207 Boarding and searching Her Majesty's ships and aircraft

The power conferred on an officer by this Act of boarding or searching any ship or aircraft shall extend –

- (a) To any ship or aircraft in the service of the Government of Niue; and
- (b) With the consent of the officer commanding or officer in charge, to any other ship or aircraft in the service of Her Majesty.

208 Firing on ships

The officer commanding or officer in charge of any ship in Her Majesty's service (whether in respect of the Government of Niue or otherwise) having hoisted and carrying the proper ensign and pendant or the Customs flag may, within the territorial limits of Niue, chase any ship which does not immediately bring-to when signalled or required to do so, and may, after having fired a gun as a signal, fire at or into the ship to compel her to bring-to.

209 Securing goods on ships and aircraft

(1) While any ship or aircraft is within the territorial limits of Niue, any officer of Customs may secure any goods on board that ship or aircraft and subject to the control of the Customs –

- (a) By fastening hatchways or other openings into the hold and by locking up, sealing, or marking the goods, or otherwise as may be thought necessary; or
- (b) By the removal of the goods to a Crown warehouse or other place of security.

(2) If any fastening, lock, mark or seal so placed by an officer upon any goods or upon any hatchway, opening, or place on any ship or aircraft is, except with the authority of an officer of Customs, opened, altered, broken, or erased by any person at any time while the ship or aircraft is at any place, or in the course of any voyage or journey between any two places, within the territorial limits of Niue, the person so acting, and the owner and master of the ship or, the owner and pilot in command of the aircraft, shall each be guilty of an offence and shall be severally liable to a fine not exceeding 4 penalty units.

210 Patrolling seacoast and aerodromes

Any officer and any person acting in his aid may –

- (a) Patrol upon and pass freely along and over any part of the seashore or on the shores or banks of any port, bay, harbour, or other waters, or over any part of the land immediately adjoining the seashore or such shores or banks as aforesaid; and
- (b) At any time enter and inspect any aerodrome and all buildings and goods therein.

211 Mooring vessels of Customs

The officer in charge of any boat or other vessel employed in the service of the Customs may haul the boat or vessel upon any part of the seashore or of the shores or banks of any port, bay, harbour, or other waters, or upon any part of the land immediately adjoining the seashore or such shores or banks as aforesaid, and may moor the boat or vessel on it.

212 Questioning persons

(1) Any officer may question any person who is on board any ship, boat, or aircraft, or who has within 48 hours landed from or got out of any ship, boat or aircraft, as to whether he has or within the said period of 48 hours has had in his possession any dutiable, restricted, uncustomed, or forfeited goods.

(2) Any person who, on being so questioned, refuses or fails to answer any question so put to him, or to answer any such question in writing if so required by the officer, or answers any such question incorrectly, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

(3) Any dutiable, restricted, or uncustomed goods found in the possession of any such person shall be forfeited if, on being so questioned, he has denied or failed to disclose the possession of it.

(4) It is a defence to a charge under this section of answering any such question incorrectly to prove that the defendant did not know, and had no reason to know, that the goods were in his possession.

213 Searching persons

(1) If any officer or constable has reasonable cause to suspect that any person has unlawfully secreted about his person any dutiable, restricted, uncustomed, or forfeited goods, he may detain and search the person so suspected.

(2) Any person so detained may, before being searched, demand to be taken before the Manager.

(3) The Manager may order the person so detained to be searched, or may discharge him without search.

(4) A woman or girl may be detained as aforesaid but shall not be searched except by a female searcher appointed by the Manager either generally or for the particular case.

(5) No person shall be searched under this section unless he has first been informed of his right to be taken before a Manager.

214 Examining goods carried by persons

If any officer or constable has reasonable cause to suspect that any person is unlawfully carrying, otherwise than by secreting about his person, any dutiable, restricted, uncustomed, or forfeited goods, he may detain the person so suspected and examine any goods carried by him, and may for that purpose open any package carried by him.

215 Searching vehicles or boats

If any officer or constable has reasonable cause to suspect that any dutiable, uncustomed, restricted, or forfeited goods are contained in any vehicle or boat, he may stop it and search it.

216 Customs warrants

(1) The Secretary may grant a warrant in the form in Schedule 5 and under the seal of the Customs to any officer.

(2) Any such warrant, unless sooner revoked by the Secretary, shall remain in force so long as the person to whom it has been so granted remains an officer whether in the same capacity or not.

217 Entry and search under Customs warrant

(1) Subject to subsection (2) any officer having with him a Customs warrant granted to him under this Act may at any time in the day or night and on any day of the week enter into, by force if need be, and search any house, premises, or place in which he has reasonable cause to suspect that there are any uncustomed goods, or any goods subject to the control of the Customs, or any goods unlawfully imported, or any forfeited goods, or any goods in respect of which any offence has been committed against the Customs Acts, or any books or other documents relating to any such goods, or any books or other documents containing information that may lead to the recovery of any penalty or other money under the Customs Acts and may on any such entry break open and search any boxes, receptacles, packages, or places in which any such goods, books, or documents may be or may be supposed to be.

(2) On each occasion on which any officer proposes to use his warrant for the purposes of this section he shall first obtain the permission of the Manager who shall not grant permission unless he is satisfied that such reasonable cause as aforesaid exists.

(3) Any officer so acting under a Customs warrant may take with him and have the assistance of any constable and such other assistants as he thinks necessary.

(4) Any officer so acting under a Customs warrant shall show his warrant on demand to the occupier of the house, premises, or place that he so enters or proposes to enter.

(5) No officer or other person lawfully so entering in pursuance of any such Customs warrant shall be deemed to be a trespasser by relation by reason of any act done by him after entry.

(6) When any entry has been so made any officer of Customs may make copies of or extracts from any books or documents as aforesaid; and in all Courts and in all proceedings such copies or extracts, if certified by an officer under the seal of the Customs, shall be received as evidence instead of the originals.

(7) Every person who obstructs an officer or constable or other authorised person in the exercise of any right of search or other right under this section or a

Customs warrant commits an offence and shall be liable to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 3 months, or to both.

218 Requisition to produce documents

(1) Whenever the Secretary has reasonable cause to suspect that goods have been unlawfully imported, exported, undervalued, entered, or otherwise unlawfully dealt with by any person contrary to the Customs Acts, or that it is intended by any person so unlawfully to import, export, undervalue, enter, or otherwise deal with any goods, or whenever any goods have been seized as forfeited under the Customs Acts, the Secretary may, by order under his hand and the seal of the Customs, require that person or any person whom the Secretary suspects to be or to have been the owner or importer of those goods immediately to produce and deliver to the Secretary or to any specified officer of Customs all invoices, bills, accounts, and statements of those goods, and of all goods imported by the same person within 3 years next before the date of the order, and also immediately to produce for the inspection of the Secretary or any specified officer of Customs, and allow him to make copies of or extracts from, all books of account, invoice-books, or other books or records in which any entry or memorandum appears or may be supposed to appear respecting the purchase, importation, exportation, cost, or value of or payment for the said goods and any other goods so imported within the said period of three years.

(2) The Manager may, by order under his hand and the seal of the Customs, require any person (including any officer employed in or in connection with any Government department) to produce for inspection by him or by any specified officer of Customs all or any receipts, records, or other documents relative to any goods with reference to which any question has arisen under the Customs Acts; and to allow the Manager or other officer as aforesaid to make copies of or extracts from any such receipts, records, or documents; and to appear before the Manager or other specified officer as aforesaid, and to answer all questions put to him concerning any such goods, or such receipts, records, or documents as aforesaid.

(3) An order under this section may be directed to any corporation or local authority, or to any member, officer, or servant of any such corporation or local authority.

(4) Every person who fails or refuses to comply with any order made under this section commits an offence and shall be liable to a fine not exceeding 4 penalty units.

219 Documents in foreign language

When any document in a foreign language is presented to any officer for any purpose connected with the Customs Acts the Manager may demand to be supplied with an English translation of it, to be made at the expense of the person producing the document by such person as the Manager may approve, or verified in such manner as the Manager may require; and until the translation is produced the Manager or other proper officer may refuse to do any act in relation to the purposes for which the document was produced.

220 Impounding documents

The Manager may impound or retain any document presented in connection with any entry or required to be produced under this Act; but the person otherwise entitled to the document shall instead be entitled to a copy certified as correct by the Manager under the seal of the Customs, and the copy so certified shall be received in all courts as evidence instead of the original.

221 Taking samples

Samples of any goods subject to the control of the Customs may, for any purpose deemed necessary, be taken, used, and disposed of by any officer of Customs in the prescribed manner.

222 Permitting examination of goods

Subject to any regulations made under this Act, the Manager may permit any person to measure, count, weigh, gauge, test, or examine any goods subject to the control of the Customs.

223 Mode of exercising power of sale

Whenever the Manager is empowered by this Act to sell any goods the following provisions shall apply, except so far as different provision is made by this act in any particular case –

- (a) The goods shall be sold by auction or tender, after such public notice as may be prescribed or, if no such notice is prescribed, after reasonable public notice;
- (b) The price shall be paid in cash on the acceptance of the bidding or tender;
- (c) No bidding or tender shall be necessarily accepted, and the goods may be reoffered until sold at a price satisfactory to the Manager;
- (d) The Manager or any officer of Customs authorised by him may act as an auctioneer in the sale of the goods without being licensed in that behalf;
- (e) The proceeds of the sale shall be applied in the following manner and order of priority –
 - (i) In the payment of the expenses of the sale;
 - (ii) In payment of the duty, as if the goods had been entered for home consumption;
 - (iii) In payment of warehouse and other charges;
 - (iv) In payment of any freight due on the goods, if written notice claiming such freight has been given to the Manager;
- (f) The residue of the said proceeds shall be paid to the person appearing to the Manager to be entitled to it.

224 Duty payable on goods sold by Manager

(1) When any dutiable goods are sold by the Manager under the authority of this Act, duty shall be payable thereon by the purchaser in the same manner as if they had been entered by him for home consumption, and the duty so paid shall be deemed to be part of the proceeds of the sale.

(2) When the duty on any such goods is *ad valorem* the Manager may, and subject to any regulations made under this Act, accept as their value, for the purpose of assessing the duty, the price at which they are so sold, or any less sum, instead of their current domestic value as otherwise determined under this Act.

225 Sale of forfeited goods

Sections 223 and 224 so far as they are applicable, shall apply to the sale of forfeited goods or other forfeited articles.

226 Payments by Manager

Subject to any regulations made under any of the Customs Acts, a Manager may pay out of any revenue in his hands and received under the Customs Acts –

- (a) All lawful refunds of duty, export duty, excise duty, or licence fees under those Acts;

- (b) All lawful drawbacks of Customs duty or excise duty under those Acts;
- (c) The amount of any deposits returnable under those Acts;
- (d) The costs of any legal proceedings under those Acts;
- (e) All expenses lawfully incurred in the administration of those Acts;
- (f) All rewards payable to officers of Customs or other persons under those Acts;
- (g) All money declared by this Act to be payable out of Customs revenue.

227 Expenses of removal and storage of goods by officers of Customs

(1) All expenses lawfully incurred by the Customs under this Act in the removal or storage of goods subject to the control of the Customs shall constitute a debt due to the Crown by the importer or exporter of the goods, as the case may be, and shall be a charge on the goods and recoverable in the same manner as duty under this Act.

(2) In the case of storage of goods in a Crown warehouse, the expenses shall include storage charges at the prescribed rate.

228 Reasonable and probable cause

No person shall be liable for any arrest, seizure, detention, or sale under the Customs Act unless it is proved that there was no reasonable or probable cause for it.

228A Protection of persons acting under authority of Act

Neither the Crown nor any officer or constable shall be liable for the loss of or damage to any goods occasioned by anything done or omitted to be done or purporting to have been done by an officer or a constable in the exercise of any power conferred on him by this Act or any regulations made under this Act, unless he has not acted in good faith or has acted without reasonable care.

PART 9

SECURITIES

229 Securities for payment of duty and compliance with Act

(1) A Manager shall have the right to require and take securities for payment of duty and generally for compliance with this Act and for the protection of the revenue of Customs, and pending the giving of the required security he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the security is required.

(2) Any security under this Act may, as required by the Manager, be by bond (with or without sureties) or guarantee to Her Majesty the Queen, or by a deposit of cash, or by all or any of those methods, to the satisfaction of the Manager.

(3) Any such security may be given in relation to any particular transaction, or generally with respect to any class of transactions or to all transactions, and for such period and amount as the Manager thinks fit, and under such conditions as to forfeiture, penalty or otherwise as the Minister may direct.

(4) Any bond or other security entered into or given under this Act by a person under the age of 20 years (otherwise than as a surety or guarantor) shall have the same force, effect, and validity as if that person had been of full age.

(5) Without limiting the power to make regulations conferred by section 306, regulations made under that section may prescribe forms of bonds, guarantees, and other securities; and any security may be either in the prescribed form or to the like effect, or in such other form as the Secretary in any particular case approves.

230 New securities may be required

If the Manager is dissatisfied with the sufficiency of any security, he may require a new security in its place, or in addition; and if the new security is not given he may refuse to pass any entry or to do any other act in the execution of his office in relation to any matter in respect of which the new security is required.

PART 10

AGENTS AND CARRIERS

Customs Agents

231 Who may act as agent

(1) No person shall act as agent for any other person in the report, entry, or clearance of ships, aircraft, or goods or otherwise for the purposes of the Customs Acts in relation to ships, aircraft, or goods, unless the person so acting is either –

- (a) A servant or clerk in the exclusive employment of his principal; or
- (b) A Customs agent licensed under this Act; or
- (c) A servant or clerk in the exclusive employment of a licensed Customs agent, and approved as such by the Manager under regulations made under this Act.

(2) If the Secretary is satisfied on reasonable grounds that any servant or clerk is, whether by reason of bad character, misbehaviour, or incompetence, not a fit person to act as agent for his principal for any of the purposes of the Customs Acts, the Secretary may refuse to permit that servant or clerk so to act.

(3) Any person who acts as an agent in contravention of this section, or who acts as an agent for any other person in any matter relating to the Customs Acts without being authorised by that person so to act, commits an offence.

232 Licensing of Customs agents

Without limiting the power to make regulations conferred by section 306 Cabinet may make regulations –

- (a) Providing for the granting of Customs agents' licences or of different classes of such licences;
- (b) Prescribing the minimum qualifications required by applicants for such licences or, where applicants or licensees are bodies corporate, by their servants or clerks in respect of whom approval is sought under the regulations;
- (c) Providing for the revocation of any such licences or class of licences;
- (d) Prescribing conditions, whether as to security or otherwise, of the grant or continuance of such licences or of any such class of licences;
- (e) Prescribing any annual or other fees to be payable in respect of any such licences or class of licences.

233 Written authority of agents

Any officer may require any person acting as or holding himself out as the agent of any other person in any matter relating to the Customs Acts to produce a written authority from his principal, and if such an authority is not produced he may refuse to recognise the agency.

234 Liability of principal for acts of agent

(1) Every declaration made or other act done by an agent in the course of his agency in relation to the report, entry, or clearance of ships, aircraft, or goods, or otherwise in relation to the Customs Acts, shall be deemed to have been made or done by his principal also, and the principal shall be liable accordingly to all penalties imposed by the Customs Acts.

Customs Act

(2) For the purposes of this section the knowledge and intent of the agent shall be imputed to the principal in addition to his own.

(3) This section shall apply whether the appointment of the agent was made under this Act or not.

(4) For the purposes of this section the agent of an agent shall be deemed to be also the agent of the principal.

235 Liability of agents

When any person acts or assumes to act as the agent of any other person in relation to the entry of goods, or in relation to any other purposes or provisions of the Customs Acts, he shall be liable to the same penalties as if he were the principal for whom he so acts or assumes to act.

Customs Carriers

236 Conveyance of goods subject to the control of the Customs

(1) No person except a licensed Customs carrier shall convey any goods subject to the control of the Customs.

(2) Nothing in this section shall apply to –

(a) The conveyance of goods in any ship that is not a coastal ship, or in any aircraft that is in the course of any journey to or from any country outside Niue; or

(b) [Repealed]

(c) The carriage of goods by the servants of any Harbour Board or local or public authority having the control of any wharf or Customs airport.

(3) Every person who conveys or is concerned in conveying any goods subject to the control of the Customs contrary to this section commits an offence.

237 [Repealed]

PART 11

OFFENCES

Offences in Relation to Officers

238 Influencing or resisting officer

Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years who –

(a) By threats or demands, attempts to influence or does influence any officer of Customs in the discharge of his duty; or

(b) Assaults, or by force resists, obstructs, intimidates, or endeavours to intimidate any officer of Customs or any person acting in his aid in the execution of his duties.

239 Obstructing officers of Customs

Every person commits an offence who, otherwise than by force, wilfully obstructs any officer of Customs in the exercise or performance of any power or duty conferred or imposed on him by the Customs Acts.

240 Abusive or threatening language

Every person commits an offence who uses abusive, insulting, obscene, or threatening language to an officer of Customs while in the execution of, or in relation to, his duties under the Customs Acts.

241 Personation of officer of Customs

Every person who, not being an officer of Customs, by words, conduct, or demeanour pretends that he is an officer, or puts on or assumes the uniform, name, designation, or description of an officer, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

Other Offences

242 Smuggling

If any person smuggles any goods he commits an offence and shall be liable to a fine not exceeding 4 penalty units or 3 times the value of those goods, whichever sum is the greater, and the goods shall be forfeited.

243 Defrauding the revenue of Customs

If any person contravenes this Act, or does any other act, with intent to defraud the revenue of Customs –

- (a) By evading or enabling any other person to evade payment of duty or full duty on any goods; or
- (b) By obtaining or enabling any other person to obtain any money by way of drawback or refund of duty on any goods; or
- (c) In any other manner whatsoever in relation to any goods –

or conspires with any other person (whether that other person is in Niue or not) so to defraud the revenue of Customs in relation to any goods, he commits an offence and shall be liable to a fine not exceeding 4 penalty units or 3 times the value of those goods, whichever sum is the greater, and the goods shall be forfeited.

244 Erroneous drawbacks or refunds

If any person obtains any drawback, refund, or remission of duty by means of any erroneous or defective declaration or written statement, or by producing to any officer of Customs any declaration or other document of any kind whatsoever that is not genuine or that is in any respect erroneous or defective, he commits an offence and shall be liable to a fine not exceeding 2 penalty units or 3 times the amount of that drawback, refund, or remission, whichever sum is the greater.

245 Erroneous declarations

Every person who makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units.

246 Wilfully false declarations

Every person who knowingly makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding 2 penalty units.

247 Production of false documents

Every person who produces or delivers to an officer in the execution of his office any document as genuine that is not genuine, or any document as true that is in any respect erroneous, commits an offence and shall be liable to a fine not exceeding 4 penalty units.

248 Interference with goods

- (1) So long as any imported goods or goods for export remain subject to the control of the Customs it shall not be lawful for any person, except with the permission of the proper officer of Customs, to make any alteration either in the condition of those goods or in the packages containing them, or to unpack, or repack the goods or to

remove them from any place in which an officer of Customs has directed that they shall be stored.

(2) Every person who acts in contravention of this section commits an offence and shall be liable to a fine not exceeding 4 penalty units.

248A Unauthorised entry into passenger processing areas

Every person who, without the permission of the proper officer of Customs, enters on or remains in any area set aside for the examination, for the purposes of this Act, or the personal baggage of passengers disembarking from or embarking on any ship or aircraft at any time when such area is being used for such examination, commits an offence and shall be liable to a fine not exceeding 2 penalty units.

249 Ship or aircraft used for smuggling

If the master or owner of any ship or the pilot in command or owner of any aircraft suffers his ship or aircraft to be used for the purpose of smuggling goods or for the unlawful importation, exportation, or conveyance of goods, he shall be guilty of an offence and shall be liable to the same penalty as if he had himself smuggled or unlawfully imported, exported, or conveyed the same goods.

250 Ships and aircraft adapted for smuggling

If any ship or aircraft comes or is found within the territorial limits of Niue having –

- (a) False bulkheads, bows, sides, or bottoms adapted for the purpose of concealing goods; or
- (b) Any secret or disguised place adapted for the purpose of concealing goods; or
- (c) Any hole, pipe, or device adapted for the purpose of smuggling or unlawfully importing or exporting goods –

the master and the owner in the case of a ship, or the owner in the case of an aircraft, shall be guilty of an offence and shall be severally liable to a fine not exceeding 10 penalty units.

251 Counterfeit seals or marks

(1) Every person commits an offence and shall be liable to a fine not exceeding 4 penalty units who, without reasonable excuse, has in his possession, or makes, or uses any counterfeit seal, stamp, or mark in imitation of or colourably resembling any seal, stamp, or mark used by the Customs for the purposes of the Customs Acts.

(2) Every person convicted of an offence against this section shall, in addition to any penalty imposed pursuant to this Act, forfeit to Her Majesty, by virtue of such conviction, all articles in respect of which the offence was committed and in his possession.

252 Failure to comply with conditions of entry

(1) When under this Act or of the Tariff any goods are, if entered for a particular purpose or under any condition prescribed by the Minister, exempt from duty or liable to a lower rate of duty than if entered otherwise than for that purpose or under that condition, and any goods have been entered under that provision, every person commits an offence who knowingly –

- (a) Uses those goods for any purpose other than that for which they have been so entered; or
- (b) Fails to comply with any condition prescribed by the Minister in respect of the goods so entered.

(2) If any person commits an offence under this section he shall be liable to a fine not exceeding 3 times the amount of the duty or additional duty that would have been payable if the goods had been entered otherwise than under the provision under which they were entered, or 4 penalty units whichever sum is the greater, and the goods shall be forfeited.

(3) The Secretary may accept from the owner of any goods so entered for a particular purpose or under any condition prescribed by the Minister the amount of duty or additional duty that would have been payable on them if they had been entered otherwise than for that purpose or under that condition, and thereafter this section shall cease to apply in respect of those goods.

253 Possession or custody of uncustomed goods or prohibited imports

Every person who has in his possession or custody any uncustomed goods or any prohibited imports commits an offence and shall be liable to a fine not exceeding 4 penalty units unless he proves –

- (a) That he obtained possession or custody of them without knowledge that they were uncustomed goods or prohibited imports; or
- (b) That he obtained possession or custody of them with some other lawful justification.

254 Possession of concealed goods

Every person found in possession of any dutiable or restricted goods concealed in any manner on any ship, boat, or aircraft shall be guilty of an offence and shall be liable to a fine not exceeding 4 penalty units.

255 Failure to answer questions truly

Every person commits an offence and shall be liable to a fine not exceeding 2 penalty units who, when required under this Act to answer any question put to him, fails or refuses to answer it, or does not truly answer it.

256 Liability of officers of body corporate

If a body corporate commits an offence against this Act, every director, manager, secretary, or other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if the act or omission constituting the offence occurred with his knowledge and consent.

257 Attempts

Any attempt to commit an offence against this Act shall be an offence punishable in like manner and constituting the like cause of forfeiture as if the offence so attempted had been actually committed.

General Provisions as to Offences

258 Offences punishable on summary conviction

Except where this Act otherwise provides, every offence against this Act, or against any regulations made under this Act, shall be punishable on summary conviction.

259 Information to be laid by Manager

Every information for an offence against this Act shall be laid by a Manager.

260 Procedure

Any information for an offence against this Act may be laid at any time within 3 years after the date of the offence.

261 Value of goods for purpose of fine

When the amount of any fine under this Act is to be determined by reference to the value of any goods, their value shall be estimated according to the price for which goods of the like kind and of the best quality, on which the duties (if any) have been paid, are salable in Niue at the time of the offence.

262 General penalty

Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine not exceeding 1 penalty unit.

263 Imprisonment for second offence

Any person who is convicted of an offence against this Act that is punishable by a fine only, and who has within 2 years before the conviction been convicted of the like offence or of any other offence against this Act, may, if the convicting court thinks fit, be sentenced to imprisonment for a period not exceeding 3 months, instead of or in addition to being sentenced to pay a fine.

264 Court may order payment of money in respect of duty

(1) In any proceedings for an offence under section 217 or section 218, if the court is of the opinion that the offence has been committed for the purpose of enabling the destruction or concealment of any evidence that would support a claim for duty or other money due to the Crown under the Customs Acts, it may, in addition to any other penalty, order the offender to pay to the Crown such further sum in respect of that claim as it thinks fit.

(2) Any order for payment under this section may be enforced in the same manner as a fine.

(3) The recovery of any amount under this section in respect of a claim shall not be deemed to extinguish the claim but shall be taken into account in determining the amount (if any) to be awarded in any subsequent proceedings that may be taken in respect of that claim.

265 Penalties independent of forfeitures

All penalties under this Act shall be in addition to and independent of any forfeiture, and all forfeitures under this Act shall, except where otherwise provided, be independent of any proceedings in respect of an offence.

266 Power of Manager to deal with petty offences

(1) This section applies to any offence against this Act that is committed in relation to any goods –

(a) Whose value does not exceed \$100; and

(b) On which any duty payable under the Tariff and this Act does not exceed \$20.

(2) If in any case to which this section applies any person admits in writing that he has committed the offence, and requests that the offence be dealt with summarily by the Manager, the Manager may at any time before an information has been laid in respect of the offence, accept from that person such sum, not exceeding 0.5 penalty units, as the Manager thinks just in the circumstances of the case, in full satisfaction of any fine to which that person would otherwise be liable under this Act.

(3) If the Manager accepts any sum under this section the offender shall not be liable to be prosecuted for the offence in respect of which the payment was made.

267 Arrest of offenders

Any officer of Customs or constable who has reasonable cause to suspect that any person has committed any offence against this Act with intent to defraud the revenue of Customs may, within 7 days after the supposed date of the offence, arrest that person without warrant.

Rewards

268 Rewards for seizures and convictions

(1) The Minister may order to be paid or distributed out of the revenue of Customs, to or among any officers or other persons by or through whom any seizure is made or fine recovered under the Customs Act, such rewards as the Minister thinks fit.

(2) Where any such seizure or fine results from an attempt to defraud the revenue of Customs, such rewards shall not exceed in the aggregate half the value as determined by the Minister of the goods seized or, as the case may be, half the amount of the fine.

PART 12

FORFEITURES

269 Application of this Part

This Part shall apply to all forfeitures accruing either under this Act or under any other of the Customs Acts.

Forfeiture

270 Goods forfeited

In addition to all other goods elsewhere declared by the Customs Acts to be forfeited, the following goods shall be forfeited to the Crown –

- (a) All dutiable or restricted goods found on any ship, boat, or aircraft or bulk cargo container being unlawfully in any place;
- (b) All dutiable or restricted goods found on any ship or aircraft or bulk cargo container after arrival in any port from any country outside Niue, not being goods specified or referred to in the inward report, and not being baggage belonging to the crew or passengers, and not being accounted for to the satisfaction of the Manager;
- (c) All dutiable or restricted goods found concealed in any manner on a ship, boat or aircraft or bulk cargo container;
- (d) Any package having in it goods not enumerated in the entry;
- (e) All dutiable or restricted goods found so packed as to be likely to deceive the officers of Customs;
- (f) All uncustomed goods which are found in any place.

271 Forfeiture of packages

The forfeiture of any goods shall extend to the forfeiture of the case, covering, or other enclosure, not being a bulk cargo container or a pallet, in which the goods are contained at the time of seizure.

272 Boats and vehicles forfeited

Every boat, vehicle, or animal used in smuggling goods, or in unlawfully conveying goods with intent to defraud the revenue of Customs, or in the importation or conveyance of prohibited imports or forfeited goods, shall be forfeited.

273 Equipment of forfeited boats, vehicles and animals

When any boat, vehicle, or animal has become liable to forfeiture under the Customs Acts, whether by virtue of section 272 or otherwise, all equipment thereof shall also be liable to forfeiture.

274 Forfeiture to relate back

When it is provided by this Act or any other of the Customs Acts that any goods are forfeited, and the goods are seized under this Act or with the Act under which the forfeiture has accrued, the forfeiture shall for all purposes relate back to the date of the act or event from which the forfeiture accrued.

Seizure

275 Seizure of forfeited goods

(1) Any officer or constable may seize any forfeited goods or any goods which he has reasonable and probable cause for suspecting to be forfeited.

(2) In any such case such force may be used as is reasonably necessary for effecting the seizure and securing the goods.

(3) All goods so seized shall be taken to a Crown warehouse or to such other place of security as the Manager or other proper officer directs.

(4) No goods shall be so seized at any time except within 2 years after the cause of forfeiture has arisen.

276 Where goods may be seized

Goods may be seized as forfeited wherever found within the territorial limits of Niue.

277 Rescue of seized goods

Every person who, without the permission of the Manager or other proper officer of Customs, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away or otherwise converts to his own use any goods that have been seized as forfeited, at any time before they have been declared by competent authority to have been seized without due cause, shall be deemed to have stolen the goods as if they were the property of the Crown and shall be guilty of theft accordingly.

278 Notice of seizure

When any goods have been seized as forfeited the Manager at or nearest to the place of seizure, or the Secretary shall, except when the goods are seized in the presence of some person having or claiming an interest therein, give immediate notice of the seizure, in the prescribed form, to the importer or some other person known or believed to have an interest in the goods, either by delivering the notice personally or by letter addressed to him and delivered at or transmitted by post to his last-known place of abode or business, but no seizure shall be invalidated or rendered illegal by any failure to give such notice.

Condemnation

279 Condemnation without suit

(1) All goods seized as forfeited shall be deemed to be condemned, as if by suit and judgment of condemnation, unless within one month after the day of the seizure some person gives notice in the prescribed form, verified by declaration in the prescribed form, to the Manager at or nearest to the place of seizure or to the Secretary, that he, or some one on whose behalf he acts, is entitled to the goods or to an interest in them and intends to dispute their forfeiture.

(2) The burden of proving in any proceedings that any such notice was duly given shall be on the person alleging it.

(3) Proceedings for the condemnation of any goods seized as forfeited may be commenced and prosecuted to judgment whether any such notice has been given or not.

280 Condemnation by High Court

(1) Proceedings for the condemnation of any goods seized as forfeited may in any case be instituted in the High Court by information in rem by the Manager.

(2) The procedure on any such information shall, subject to this Act, be in accordance with rules of court to be made in that behalf, and in default of such rules, or so far as they do not extend, then under the usual practice of the High Court in civil proceedings so far as applicable or, so far as not applicable, then on the directions of the Court or a Judge of it.

(3) On the filing of any such information in the High Court by the Manager notice of the proceedings shall be served on or given to such persons and in such manner as the Court or a Judge of it directs.

(4) Any person claiming any interest in the goods to which the information relates may within one month after the filing of the information, or within such further time as the Court or a Judge allows, file a statement of defence, and shall thereupon become a party to the proceedings.

(5) Every statement of defence shall set out the interest of the defendant in the goods to which the information relates, and shall be accompanied by an affidavit verifying the existence and nature of that interest.

(6) If no such statement of defence is duly filed by any person, judgment of condemnation of the goods to which the information relates shall be entered.

(7) Every such information shall be heard and tried before a Judge alone, unless the Court or a Judge is of opinion that it should be heard and tried before a jury and makes an order accordingly.

(8) On any such information costs may be awarded to or against the Manager or any other party to the proceedings.

281 No other action competent while condemnation proceedings pending

While any proceedings for condemnation are pending no action or other proceedings for the recovery of damages for the seizure of or the detention of the things seized, or for the recovery of possession of them, or for the recovery of money deposited in lieu of them, or of the proceeds of their sale, shall be commenced, or, if already commenced, shall be continued, without the leave of the High Court.

282 [Repealed]

283 Conviction to operate as a condemnation of forfeited goods

(1) Notwithstanding anything in the foregoing provisions of this Part relating to condemnation, but subject to subsection (2), when it is provided by this Act or by any other of the Customs Acts that on the commission of any offence any goods shall be forfeited, the conviction of any person of that offence shall have effect as a condemnation, without suit or judgment, of any goods –

- (a) That have been seized in accordance with this Act or with the Act under which the forfeiture has accrued; and
- (b) In respect of which the offence was committed.

(2) Subsection (1) shall not limit the right of any person, not being the convicted person or a person acting on his behalf, to claim that he is entitled to the goods or to an interest in them and to dispute their forfeiture under section 279.

Miscellaneous Provisions

284 Delivery of goods seized on deposit of value

(1) When any goods have been seized as forfeited the Manager at or nearest to the place of seizure may, if he thinks fit, at any time before their condemnation, deliver them to the owner or other person from whom they were seized, on the deposit with the Manager of a sum equal to their duty-paid value as determined by the Manager.

(2) The money so deposited shall be deemed to be substituted for the goods so seized, and all the provisions of this Act with respect to condemnation, so far as they are applicable, shall extend and apply to that money accordingly as if a claim thereto had been duly made under section 279 by the person depositing it.

285 Sale of perishable articles seized

(1) When any living creature or anything which, in the opinion of the Manager, is of a perishable nature has been seized as forfeited the Manager at or nearest to the place of seizure may, if he thinks fit, sell the thing so seized before its condemnation.

(2) The net proceeds of such sale shall be deemed to be substituted for the thing so sold, and all the provisions of this Act with respect to notice of claim and condemnation shall apply to those proceeds accordingly.

286 Disposal of forfeited goods

All forfeited goods shall, on forfeiture, become the property of the Crown, and shall be sold, destroyed, or otherwise disposed of as the Manager or the Minister may direct.

287 [Repealed]

288 Application of forfeiture provisions

All the provisions of this Act with respect to the forfeiture of goods shall extend and apply to any boat, vehicle, or other thing forfeited under the Customs Acts.

PART 13

DETENTION OF SHIPS AND AIRCRAFT

289 Ships and aircraft liable to detention

Any ship or aircraft shall be liable to detention under this Part when any offence has been committed for which the owner or master of the ship or the owner or pilot in command of the aircraft is liable as such to a penalty under this Act.

290 Seizure of ships and aircraft

(1) Any officer of Customs may seize any ship or aircraft that is liable to detention under this Act or which he has reasonable and probable cause for suspecting to be so liable.

(2) Any such seizure may be made in the same manner as a seizure of forfeited goods.

(3) No ship or aircraft shall be so seized at any time except within 2 years after the act or event that rendered it liable to detention.

291 Where ships and aircraft may be seized

No ship or aircraft shall be so seized elsewhere than within the territorial limits of Niue.

292 Rescue of seized ships and aircraft

(1) Every person who, without the permission of the Manager or other proper officer of Customs, whether under any claim or right or not, and either secretly or openly, and whether with or without force or violence, takes away any ship or aircraft seized as being liable to detention, at any time before it has been declared by competent authority to have been seized without due cause, shall be deemed to have stolen the ship or aircraft as if it were the property of the Crown, and shall be guilty of theft accordingly.

(2) For the purposes of this section the seizure of any ship or aircraft shall be deemed to be complete so soon as any officer of Customs has boarded the ship or aircraft and notified the master or the pilot in command or any other officer of the ship or aircraft that it is seized by the Customs, or so soon as any such officer of Customs has been resisted or obstructed in his endeavour to board the ship or aircraft for that purpose.

293 Security to be given before release of seized ship or aircraft

Every ship or aircraft so seized may be detained by the Customs until security is given to the satisfaction of the Manager or Secretary in such sum as he thinks sufficient, by or on behalf of the owner or master of the ship, or the owner or pilot in command of the aircraft, or some person claiming an interest in it, for the payment of any penalties and costs that may theretofore have been imposed or may thereafter be imposed on that owner or master or pilot in respect of the offence by which the liability of the ship or aircraft to detention accrued.

294 Avoidance of security

If no such penalty is imposed on the owner or master of the ship or the owner or pilot in command of the aircraft either before or within one year after the date of the seizure of the ship or aircraft, any such security shall become null and void, and the ship or aircraft, if no such security has been given, shall cease to be subject to detention.

295 Enforcement of security

If any such penalty is imposed on the owner or master of the ship or the owner or pilot in command of the aircraft either before or within one year after the date of the seizure of the ship or aircraft, any security so given shall become available for the recovery of the amount of the penalty and of any costs awarded.

296 Service of process

For the purpose of recovering any such penalty, any writ, summons, or other process may be served on the owner or master of any ship or the owner or pilot in command of any

aircraft so seized (whether the defendant is within Niue or not) by leaving it or a copy of it on board the ship or aircraft; but nothing in this section shall preclude any other lawful method of service.

PART 14

EVIDENCE

297 Incriminating questions and documents

(1) In any civil proceedings in any court under or in pursuance of any provision of the Customs Acts, whether for the recovery of any duty or tax or in relation to any forfeiture or otherwise, no person, whether a party to the proceedings or not, shall be excused from answering any question put to him, by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document may incriminate or tend to incriminate him.

(2) In any proceedings in any court for an offence against the Customs Acts, a person called as a witness (including a person charged with the offence and called as a witness on his own application) shall not be excused from answering any question put to him touching the alleged offence, on the ground that the answer may incriminate or tend to incriminate him.

(3) A statement made, in any proceedings to which subsection (1) or (2) applies, by any person (other than the person charged with the offence in proceedings to which the subsection (2) applies) in answer to any such question, or a document of which production or discovery is so made by him in any such civil proceedings, shall not, in any criminal proceedings, be admissible in evidence against him except on a charge of perjury in respect of his sworn testimony or on a charge of making a false statement on oath or on a charge of knowingly making a false declaration under section 246.

298 Source of information need not be disclosed

No officer of Customs or constable and no witness for the Crown in any prosecution for an offence against the Customs Acts, or in any proceedings relative to the seizure, detention, or condemnation of ships, aircraft, or goods under those Acts, shall be compellable to disclose the fact that he received any information, or its nature or source, or to produce or disclose the existence or nature of any reports made by or received by him in an official or confidential capacity.

299 Burden of proof

(1) In any proceedings against the Customs Acts instituted by or on behalf of or against the Crown every allegation made on behalf of the Crown in any statement of claim, statement of defence, plea, or information, and relating to the identity or nature of any goods, or to their value for *ad valorem* duty, or to the country or time of their exportation, or to the fact or time of their importation, or to their place of manufacture, production, or origin, or to the payment of any duty on them, or to any act done or omitted with respect to it by any person, shall be presumed to be true unless the contrary is proved.

(2) The said presumption shall not be excluded by the fact that evidence is produced on behalf of the Crown in support of any such allegation.

(3) For the purposes of this section a prosecution for an offence against the Customs Acts shall be deemed to be a proceeding instituted on behalf of the Crown.

(4) For the purposes of this section, every proceeding instituted by or against the Crown in which any question arises as to the rights, powers, obligations, or liabilities of the Crown or any other person under the Customs Acts shall be deemed to be a proceeding under those Acts.

(5) This section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue of Customs is in issue.

300 Burden of proof of justification

In all proceedings that are instituted against the Crown, or against the Minister or an officer of Customs or a constable or any other person, for any seizure, arrest or other act done in pursuance of the Customs Acts, and in which the existence of reasonable or probable cause or of any other justification for such act is in issue, the burden of proving the want of reasonable or probable cause or the absence of such justification shall be on the plaintiff.

301 Presumption of authenticity of documents

All documents purporting to be signed by or on behalf of the Minister or Secretary, or to be sealed with the seal of the Customs, shall in all courts and in all proceedings under the Customs Acts be deemed to have been so signed or sealed with due authority, unless the contrary is proved.

302 What evidence receivable

In any action or other proceeding under the Customs Acts, whether civil or criminal (other than a prosecution for an indictable offence), the court may in proof of any fact in issue admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not.

303 Declarations under this Act

(1) Every declaration required or authorised by this Act shall be made in the prescribed form.

(2) Where by any such form it is indicated that the declaration shall be made before any person, then it may be made before the Secretary or any Manager or other officer of Customs, or before any postmaster or person for the time being lawfully acting in the place of a postmaster or before any such other person as may be prescribed.

PART 15

COOK ISLANDS AND NEW ZEALAND

304 Goods imported from Cook Islands and New Zealand

(1) All goods imported into Niue from the Cook Islands or New Zealand, whether the produce or manufacture of the Cook Islands or New Zealand or not, shall be admitted into Niue free of duty.

(2) Nothing in this section shall apply to –

- (a) Goods in respect of which on their exportation from the Cook Islands or New Zealand any claim for drawback of duty has been made and allowed;
- (b) Goods which, by reason of warehousing or for any other reason, have been exported from the Cook Islands or New Zealand without payment of duty on their importation into the Cook Islands or New Zealand;
- (c) Goods produced in a manufacturing warehouse in the Cook Islands or New Zealand, unless they have been entered in the Cook Islands or New Zealand for home consumption and the duty (if any) paid on it;

- (d) Goods on which a rate of duty has been paid in the Cook Islands or New Zealand lower than that to which the goods are subject in New Zealand at the time of their importation into New Zealand;
- (e) Goods subject to any excise duty in the Cook Islands or New Zealand, unless such duty has been paid thereon as if they had not been exported.

PART 16

MISCELLANEOUS PROVISIONS

305 Goods passing through Post Office

(1) Subject to this section and to any regulations made under this Act, the provisions of the Customs Acts shall apply to postal packets and to goods contained therein in the same manner as to any other goods.

(2) Without limiting the power to make regulations conferred by section 306, Cabinet may make regulations for the following purposes –

- (a) Modifying any provisions of the Customs Acts in their application to postal packets or to goods contained therein, or exempting such postal packets or goods from the application of any provisions of the Customs Acts, but not so as to affect the liability of any goods to duty or the rate of any duty or the law as to prohibited imports or exports;
- (b) Securing, in respect of such packets or goods, the observance of the Customs Acts and the payment of duty;
- (c) Enabling the officers of the Post Office to exercise or perform for the purpose of the Customs Acts all or any of the powers or duties of the importer or exporter, or of officers of Customs, in respect of such packets or goods;
- (d) Authorising the destruction or other mode of disposition of postal packets or goods in there on which duty is not paid within such time as may be prescribed;
- (e) Providing that any separate postal packets and any goods in it, whether addressed to the same or to different persons, may be treated for the purposes of the Customs Acts as a single package consigned to a single person, and that duty shall be payable thereon accordingly;
- (f) Prescribing the persons who shall be deemed for the purposes of the Customs Acts to be the importers or exporters of such postal packets or goods.

(3) In this section, “postal packet” means any letter, parcel, packet, or other article whatever received or transmitted by or through the Post Office.

306 Regulations

Cabinet may make regulations for the following purposes –

- (a) Prescribing the nature, size and material of the packages in which imported goods or goods for export or for removal within Niue are to be packed;
- (b) Prescribing the maximum weight or quantity of imported goods or goods for export or for removal within Niue that may be contained in any one package;
- (c) Prescribing the conditions of preparation or manufacture for export of any articles used for food or drink by man or used in the manufacture of articles so used;
- (d) Prescribing the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export;
- (e) Prescribing the manner in which goods shall be weighed or measured for the purposes of the Customs Acts, and the allowances or deductions that may be permitted in such weighing or measuring;
- (f) Modifying any provisions of the Customs Acts in their application to goods (not being goods passing through the Post Office) that are imported into Niue

or exported from Niue by means of aircraft, but not so as to affect the liability of any goods to duty or the rate of any duty or the law as to prohibited imports or exports;

- (g) Prescribing forms for the purposes of this Act;
- (h) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of the Customs Acts and for the due administration thereof.

307 Penalties imposed by regulations

Any regulations made under this Act may prescribe fines, not exceeding in any case 2 penalty units for the breach of any such regulations.

308 Regulations

No regulation under this Act shall be invalid because it leaves any matter to the discretion of the Minister or of any other person, or because it authorises the Minister or any other person to give any consent or to issue any licence, permit, or other instrument on or subject to conditions to be imposed or approved by the Minister.

309-313 [Repealed]

Customs Act

Section 48 (1)

SCHEDULE 1 PROHIBITED IMPORTS

Matches made with white phosphorus.

All indecent documents and articles.

False or counterfeit coin or banknotes; and any coin that is not of the established standard in weight or composition; and any coin or banknotes that are intended for circulation in Niue and are not legal tender in Niue.

Goods manufactured or produced wholly or in part by prison labour, or within or in connection with any prison, jail, or penitentiary; also goods similar in character to those manufactured or produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture or production of such articles in such institutions, or by any agent of such person, firm, or corporation, or when originally purchased from or transferred by any such contractor.

SCHEDULE 2

THE CUSTOMS TARIFF OF NIUE

[Not reproduced, see now Customs Tariff Regulations]

SCHEDULE 3

Section 134 (1) (a)

EXCISE DUTIES

Goods	Unit	Rates of Duty
Alcohol used in manufacturing warehouses in the production of –		
Perfumed spirit	per proof 1	80c
Toilet preparations	per proof 1	75c
Culinary and flavouring essences	per proof 1	44c
Medicaments (except medicated wine or wine mixed with food):		
Containing more than 50% of proof spirit	per proof 1	10c
Other		Free
Cigarette tubes, cigarette papers, and cigarette paper manufactured in a manufacturing warehouse	per 1,000 tubes or 1,000 papers or equivalent of 1,000 tubes or papers	7c
Sugar of any degree of polarisation		Free
Invert sugar and invert syrup		Free
Liquid sugar solution:		
On weight of sugar contained in the solution as determined by means of the Brix hydrometer or other similar instrument		Free
Treacle, molasses, golden syrup, maple sugar and maple syrup		Free

Niue Legislation 2019

Tobacco, manufactured:

Cigars and snuff	per kg	\$6.57
Cigarettes:		
Not exceeding in weight 1.134 kg	per 1,000	\$11.90
Exceeding in weight 1.134 kg	per kg	\$10.49
Other manufactured tobacco	per kg	\$7.80

SCHEDULE 4 [Repealed]

SCHEDULE 5

Section 216 (1)

CUSTOMS WARRANT

To

Under the Customs Act 1966, you are hereby authorised to enter by day or night, and whether peaceably or by force if need be, any house, premises, or place in which you have reasonable cause to suspect that there are any uncustomed goods, or any goods subject to the control of the Customs or unlawfully imported, or any goods in respect of which an offence has been committed against the Customs Acts, or any books or other documents relating to any such goods, or any books or other documents containing information that may lead to the recovery of any penalty or other money under the Customs Acts, and to search any house, premises, or place so entered, and there to break open and search any boxes, receptacles, packages, or places in which any such goods, books, or documents may be or be supposed to be; and on any such entry to seize and take away any forfeited goods or any goods which there is reasonable cause to believe or suspect to be forfeited; and in so acting you are hereby authorised to take with you and have the assistance of any constable and such other assistants as you deem necessary.

For all which this shall be your sufficient warrant.

Given under my hand and the seal of the Customs, this day of 20 (Customs Seal)

Financial Secretary, Customs

CUSTOMS TARIFF ACT 1982

1982/77 - 30 September 1982

1	Short title	6	Regulations
2	Interpretation	7	Modification of Tariff
3	Customs Tariff	8	Exemptions from duties
4	[Spent]	9	Procedures for making applications for exemptions
5	Duties to be levied		

1 Short title

This is the Customs Tariff Act 1982 and shall be read together with and deemed part of the Customs Act 1966 ('the Principal Act').

2 Interpretation

In this Act –

“regulations” means the regulations made under section 3.

3 Customs Tariff

Cabinet shall by regulation prepare a Customs Tariff setting out the Customs duties to be levied and collected on all goods imported into Niue.

4 [Spent]

5 Duties to be levied

(1) Subject to this Act and the Principal Act, customs duties shall be levied, collected and paid under the regulations made under section 3 on all goods imported into Niue or entered therein for home consumption.

(2) All duties levied, collected and paid under the regulations shall be deemed to have satisfied all requirements to levy, collect and pay duties under Schedule 2 of the Principal Act.

6 Regulations

Regulations made under this Act need not be printed in the Niuean language unless Cabinet otherwise determines.

7 Modification of tariff

Cabinet may by regulation modify in whole or in part the Customs Tariff contained in the regulations following the procedure prescribed in section 6.

8 Exemption from duties

(1) Notwithstanding the rates of duty specified in the Customs Tariff, Cabinet is empowered to make exemptions for payment of duties or to substitute reduced rates of duties.

(2) For the purposes of subsection (1) Cabinet shall determine the activities for which duty exemptions may be granted and the conditions for granting exemptions.

9 Procedures for making applications for exemption

(1) All applications for exemptions are in the first instance to be made through the Revenue Manager.

(2) On receipt of an application and any further information that the Revenue Manager may require, the Revenue Manager shall, as soon as possible and in no case later than 14 days from the date of receipt of such application, forward the application to the Minister of Customs and to the relevant department for comment, as the case may require, together with appropriate recommendations.

Customs Tariff Act