

BFS GROUP Limited

Private Company

PART 1 - GENERAL PROVISIONS

1 Name of company

- (1) The name of the company at the time of registration under the Act is **BFS GROUP Limited**.
- (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 to the public.
- (3) The company must not have more than 50 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 subsection 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.

DIVISION 1 - GENERAL PROVISIONS

4 Number of shares

- (1) At the time of registration under the Act, the company has one thousand (1,000) Ordinary Shares.
- (2) The company shall immediately after its registration issue to the following persons the number of shares specified below:
 - (a) **LOY PHAY XUAN** , One thousand (1,000) Ordinary Shares

5 Rights attaching to shares

Subject to subclause 7(2), each share carries the following rights:

- (a) the right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to:
 - (i) appoint or remove a director or auditor;
 - (ii) adopt new rules;

- (iii) alter the company's rules;
- (iv) approve a major transaction;
- (v) put the company into liquidation;
- (vi) 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 according to 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; and
 - (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); and
 - (c) any shares offered under paragraph (b), but not taken up by shareholders may then be offered by the directors to shareholders or any other persons in such manner as the directors think fit, on the same terms and conditions as the offer made under paragraph (a).
- (2) With the prior approval of all shareholders, the company may issue more than 1 class of shares. In particular, shares may be issued that:
 - (a) are redeemable; or
 - (b) confer preferential rights to distributions of capital or income; or
 - (c) confer special, limited, or conditional voting rights; or
 - (d) do not confer voting rights.
- (3) If the company issues shares, it must give the prescribed notice to the Registrar under subsection 25(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 subclauses 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).

DIVISION 2 - 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 and 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.

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.

DIVISION 3 - 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 a 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.

DIVISION 4 - TRANSFER OF SHARES

21 Transfer of shares

- (1) If shares are to be transferred, a form of transfer signed by the holder or by his or her agent or attorney must be delivered to the company.
- (2) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.
- (3) Subject to clause 12 and subclause (4), the company must immediately on receipt of a properly executed share transfer enter the name of the transferee in the share register as holder of the shares transferred.
- (4) If any amount payable to the company by the shareholder is due but unpaid, the directors may resolve to refuse to register a transfer of a share within 30 working days of receipt of the transfer.
- (5) If the directors resolve to refuse to register a transfer for this reason, they must give notice of the refusal to the shareholder within 5 working days of the date of the resolution.

22 Share certificates

- (1) A shareholder may apply to the company for a share certificate relating to some or all of the shareholder's shares in the company.
- (2) On receipt of an application for a share certificate under subclause (1), the company must, within 20 working days after receiving the application:

- (a) if the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; 1 parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
 - (b) in all cases send to the shareholder a certificate stating:
 - (i) the name of the company; and
 - (ii) the class of shares held by the shareholder; and
 - (iii) the number of shares held by the shareholder to which the certificate relates.
- (3) If a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by clause 21 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.

DIVISION 5 - 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 each director and any auditor of the company not less than 10 working days before the meeting.
- (2) The notice must set out:
 - (a) the nature of the business to be transacted at the meeting in enough detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any special resolution to be submitted to the meeting.
- (3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- (4) An accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.
- (5) If a meeting of shareholders is adjourned for less than 30 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that is adjourned.

25 Methods of holding meetings

A meeting of shareholders may be held either:

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the

place, date, and time appointed for the meeting; or

- (b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, may simultaneously hear each other throughout the meeting.

26 Quorum

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

27 Chairperson

- (1) If the directors have elected a chairperson of the directors, and the chairperson of the directors is present at a meeting of shareholders, he or she must chair the meeting.
- (2) If no chairperson of the directors has been elected or if, at any meeting of shareholders, the chairperson of the directors is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose 1 of their number to be the chairperson of the meeting.

28 Voting

- (1) In the case of a meeting of shareholders held under subclause 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 subclause 25(b), unless a poll is demanded, voting at the meeting must take place by shareholders signifying individually their assent or dissent by voice.
- (3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4).
- (4) At a meeting of shareholders a poll may be demanded by:
 - (a) not fewer than 5 shareholders having the right to vote on the question at the meeting; or
 - (b) a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote on the question at the meeting.
- (5) A poll may be demanded either before or after a vote is taken on a resolution.
- (6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.
- (7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

29 Votes of joint shareholders

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

30 Proxies

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

31 Corporations may act by representatives

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

32 Minutes

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

DIVISION 6 - MISCELLANEOUS

33 Annual meetings and special meetings of shareholders

- (1) Subject to subclause (3) and subclause 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 paragraph 70(1)(a), not later than 20 working days after the financial statements are required to be completed; and
 - (c) not later than 15 months after the previous annual meeting.
- (2) The meeting must be held on the date on which it is called to be held.
- (3) The company need not hold its first annual meeting in the calendar year of

its incorporation, but must hold that meeting within 18 months of its incorporation.

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

34 Written resolutions of shareholders

- (1) A resolution in writing signed by shareholders, who together hold not less than 75% of the votes

entitled to be cast on that resolution at a meeting of shareholders, is as valid as if it had been passed at a meeting of those shareholders.

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

35 Voting in interest groups

If the company proposes to take action that affects the rights attached to shares within the meaning of section 53 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 53(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 exceed 20 working days from the date on which the proposed distribution 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 paragraph (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 paragraph (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 who approved the distribution, in accordance with section 28 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 subclause 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 subclause 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 125 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 125 of the Act; and
 - (c) if an auditor's report is required in relation to the financial statements included in the report, include that auditor's report; and
 - (d) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
 - (e) contain any other information that may be required by regulations made under the Act; and
 - (f) be signed on behalf of the directors by 2 directors of the company or, if the company has only 1 director, by that director.

42 Deemed approval by all shareholders for certain purposes

For the purposes of clause 6 and subclauses 7(2), 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 subclause 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 82 of the Act; or
 - (d) dies.

44 Resignation of director

- (1) A director may resign by delivering a signed written notice of resignation to the registered office of the company.
- (2) Subject to subclauses (3) and (4), a notice of resignation is effective when it is received at the registered office, or at any later time specified in the notice.

- (3) If the company has only 1 director, that director may not resign:
- (a) until that director has called a meeting of shareholders to receive notice of the resignation;
or
 - (b) if the company has only 1 shareholder, until that director has given not less than 10 working days' notice of the resignation to that shareholder.
- (4) A notice of resignation given by the sole director of the company does not take effect until:
- (a) a new director is appointed; or
 - (b) the time and date for which the meeting of shareholders is called under paragraph (3)(a); or
 - (c) if the company has only 1 shareholder, 10 working days after notice of the resignation has been given to that shareholder.

45 Notice of change in directors

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 physical address of a director of the company.

46 Powers and duties of directors

- (1) Subject to section 49 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 a liquidator, in accordance with section 70 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 70 of the Act, the directors must consider whether to:
 - (a) appoint a 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 50 of the Act, following disclosure of the nature and extent of the director's interest to all shareholders who are not otherwise aware of those matters.
- (2) A director who is directly or indirectly materially interested in any transaction or proposed transaction must, within 10 working days of becoming aware of that interest, disclose the nature and extent of that interest in writing:
 - (a) if there is at least 1 other director who is not directly or indirectly materially interested in the transaction or proposed transaction - to the directors of the company; or
 - (b) if paragraph (a) does not apply - to all shareholders.
- (3) A director may give a general disclosure in writing to the shareholders that he or she is a director or employee or shareholder of another company, or is otherwise associated with another company or another person.
- (4) A general disclosure made under subclause (2) and (3) is a sufficient disclosure of the director's interest in any transaction entered into with that other company or person.
- (5) 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 107 of the Act.
- (6) A transaction entered into by the company as the result of action taken by a director in breach of sections 64, 65, or 66 of the Act is voidable at the option of the company in accordance with section 108 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 50 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) A director cannot 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 73 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 50 of the Act.
- (2) A director cannot vote on a resolution concerning an indemnity or insurance to be provided to him or her.
- (3) In this clause:

director includes:

- (a) a person who is liable under any of sections 64 to 66 of the Act by virtue of section 72 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 50 of the Act.
- (2) A director cannot vote on a resolution concerning remuneration or benefits to be received by him or her.

53 Procedure at meetings of directors

- (1) Clauses 54 to 60 set out the procedure to be followed at meetings of directors.
- (2) A meeting of directors may determine its own procedure to the extent that it is not governed by these rules.

54 Chairperson

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

choose 1 of their number to be the chairperson of the meeting.

55 Notice of meeting

- (1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of directors by giving notice in accordance with this clause.
- (2) Not less than 24 hours notice of a meeting of directors must be given to each director who is in Vanuatu, or who can readily be contacted outside Vanuatu.
- (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) Each director has 1 vote.
- (2) The chairperson has a casting vote.
- (3) A resolution of the directors is passed if it is agreed to by all directors present without dissent, or if a majority of the votes cast on it are in favour of it.
- (4) A director present at a meeting of directors is presumed to have agreed to, and to have voted in favour of, a resolution of the directors unless he or she expressly dissents from, or votes against, the resolution at the meeting.

59 Minutes

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

60 Unanimous resolution

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

61 Managing director and other executive directors

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

62 Delegation to managing director

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

63 Remuneration of managing director and director

- (1) Subject to shareholder approval in accordance with clause 52, the managing director, or a director (other than the managing director) who is employed by the company, may be paid such remuneration as he or she may agree with the directors.
- (2) The remuneration may be by way of salary, commission, participation in profits, or any combination of these methods, or any other method of fixing remuneration.

PART 4 - COMPANY RECORDS

64 Company records

- (1) The company must keep all the following documents at its registered office:
 - (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 physical 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 55 of the Act;
 - (f) copies of all financial statements required to be completed under section 125 of the Act for the last 7 completed accounting periods of the company;
 - (g) the accounting records required by section 124 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 subsection 113(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 115 of the Act.
- (2) A shareholder of the company is entitled:
- (a) to inspect the documents referred to in section 116 of the Act, in the manner specified in section 118 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 an annual return required under section 119 of the Act, a company must send all of 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 25 of the Act;
- (d) notice of the acquisition by the company of its own shares, under section 30 of the Act;
- (e) notice of the redemption of a share, under section 34 of the Act;
- (f) notice of a transfer of shares under section 37 of the Act;
- (g) notice of a change in the directors of the company, or of a change in the name or physical address or postal address of a director, under section 85 of the Act;
- (h) notice of the making of an order under section 99 of the Act altering or adding to the rules of the company;
- (i) notice of any place other than the registered office of the company where records are kept;
- (j) documents requested by the Registrar under section 176 of the Act.

68 Documents to be sent to shareholders

In addition to any annual report required under section 55 of the Act, the company must send all of the following documents to shareholders under the Act:

- (a) notice of any repurchase of shares to which subsection 30(4) of the Act applies;
- (b) notice of a written resolution approved under section 51 of the Act;
- (c) financial statements required to be sent under section 125 of the Act;
- (d) any written statement by an auditor under section 131 of the Act;

- (e) any report by an auditor under section 133 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) enable the financial position of the company to be determined with reasonable accuracy; and
 - (c) enable the directors to ensure that the financial statements of the company comply with section 125 of the Act; and
 - (d) 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;
 - (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.

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 55 of the Act.
- (2) The financial statements of the company must:
 - (a) give a true and fair view of the matters to which they relate; and
 - (b) comply with any applicable regulations made under the Act; and
 - (c) be dated and signed on behalf of the directors by 2 directors of the company, or, if the

company has only 1 director, by that director.

- (3) The following periods must not exceed 15 months:
 - (a) the period between the date of incorporation of the company and its first balance date;
 - (b) the period between any 2 balance dates of the company.
- (4) In this clause, financial statements, in relation to the company and a balance date, means:
 - (a) a statement of financial position for the entity as at the balance date; and
 - (b) in the case of:
 - (i) a company trading for profit, a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
 - (ii) a company not trading for profit, an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
 - (c) if required by regulations made under the Act, a statement of cash flows for the company in relation to the accounting period ending on the balance date; and
 - (d) such other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under the Act; and
 - (e) any notes or documents giving information relating to the statement of financial position and other statements.

71 Appointment of auditor

- (1) If required to do so under subclause (2), the company must appoint an auditor who is qualified to hold that office under section 130 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 128 of the Act; or
 - (c) becomes disqualified from being the auditor of the company under section 130 of the Act; or
 - (d) dies; or
 - (e) ceases to hold office under subclause (5); or
 - (f) 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 paragraph (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 (5)(b), and no notice under paragraph (2)(a) is received by the company on 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 70 of the Act, if they consider that the company is unable to meet its debts as they become due in the normal course of business.

74 Distribution of surplus assets

- (1) The surplus assets of the company available for distribution to shareholders after all creditors of the company have been paid must be distributed in proportion to the number of shares held by each shareholder, subject to the terms of issue of any shares.
- (2) The liquidator may, with the approval of a special resolution, distribute the surplus assets of the company among the shareholders in kind. For this purpose, the liquidator may set such value as he

or she considers fair on any property to be divided, and may determine how the division will be carried out as between the shareholders or different classes of shareholders.

PART 7 - MISCELLANEOUS

75 Service of documents on shareholders

- (1) A notice, statement, report, accounts, or other document to be sent to a shareholder who is a natural person may be:
- (a) delivered to that person; or
 - (b) posted to that person's postal address; or
 - (c) faxed to a fax number used by that person.
- (2) A notice, statement, report, accounts, or other document to be sent to a shareholder that is a company or an overseas company may be sent by any of the methods of serving documents referred to in sections 201 or 203 of the Act, as the case may be.

76 Authority to bind the company

A contract or other enforceable obligation may be entered into on behalf of the company in writing signed under the name of the company by:

- (a) 2 or more directors'; or
- (b) if the company has only 1 director, by that director; or
- (c) 1 or more attorneys appointed by the company under section 104 of the Act.

77 Interpretation

- (1) In these rules, Act means the Companies Act No.25 of 2012 related to local companies in Vanuatu, as amended.
- (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.

LOY PHAY XUAN


