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Schedule 1

Provisions of International Companies Act 1981-82 applicable to Company

Schedule 2

Amendments to Captive Insurance Act 2013

An Act to replace the Pacific Catastrophe Risk Insurance Facility Act 2016 and to—

- (a) convert the company established under the 2016 Act to a segregated portfolio Company with a segregated cell structure and include related changes; and**
- (b) make changes to improve the workability of the Facility; and**
- (c) make other minor and technical improvements.**

The Parliament of the Cook Islands enacts as follows—

(6 December 2021)

1 Title

This Act is the Pacific Catastrophe Risk Insurance Facility Act 2021.

2 Commencement

This Act comes into force on the day after the date on which it receives the assent of the Queen’s Representative.

Part 1

Preliminary matters

3 Purpose of this Act

The purpose of this Act is to—

- (a) continue to implement the agreement about disaster risk financing activities made at the Pacific Islands Forum Economic Ministers Meeting held at Rarotonga on 27 to 30 October 2015; and**
- (b) continue the Company and the Foundation (together comprising the Facility) with the objectives specified in this Act; and**
- (c) facilitate the development of disaster risk financing activities for the benefit of all the member countries or any of them; and**

- (d) facilitate funding to the Facility from external sources, including member countries and developing partners; and
- (e) continue to enable member countries, in partnership with developing partners, to provide guidance on, and oversee the implementation of, the Facility.

4 Interpretation

In this Act, unless the context otherwise requires,—

2016 Act means Pacific Catastrophe Risk Insurance Facility Act 2016

Board means the Board of Directors of the Company

business address means the office, on Rarotonga, that is from time to time notified to the Commission as being the office of the Foundation or the Company, as the case may be

Commission means the Financial Supervisory Commission

Company means the Pacific Catastrophe Risk Insurance Company continued by this Act

constituting documents means constituting documents of the Company under this Act as reviewed and amended by the council under this Act from time to time

council means the council of the Foundation continued under this Act

council member means the representative of a member country or a developing partner appointed to the council

court means the High Court of the Cook Islands

developing partner means a country or an organisation that is given the status of a developing partner by or under the foundation rules

enforcer means a person appointed as an enforcer under **section 14**

Facility means the Pacific Catastrophe Risk Insurance Facility that is constituted by the Foundation and the Company

Foundation means the Pacific Catastrophe Risk Insurance Foundation continued by this Act

foundation rules means the rules of the Foundation under this Act as amended from time to time

general assets means those assets of the Company that are not segregated portfolio assets

member country means a country that is treated as being a member of the Foundation by the foundation rules

record means a record of information, whether in digital or hard copy format, and includes—

- (a) a map; or
- (b) a plan; or
- (c) a graph; or
- (d) a drawing; or
- (e) a photograph

regulations means regulations made under **section 66**

segregated portfolio means a segregated portfolio created by the Company under **section 35** for the purpose of segregating the assets and liabilities of the Company in accordance with this Act

segregated portfolio assets means those assets of the Company that are held within or on behalf of the segregated portfolios of the Company

share, in relation to the Company, means a share in the share capital of the Company

special resolution means a special resolution of the council passed in accordance with **section 12(3)**.

5 Act binds the Crown

This Act binds the Crown.

Part 2

Pacific Catastrophe Risk Insurance Foundation

Subpart 1—Constitution and rules of Foundation

6 Continuation of Pacific Catastrophe Risk Insurance Foundation

There continues to be a body called the Pacific Catastrophe Risk Insurance Foundation, which is the body established by section 6 of the 2016 Act.

7 Constitution of Foundation

- (1) This Act is to be treated as the founding instrument of the Foundation.
- (2) The Foundation is a legal person capable of suing and being sued in its own name, and holds its assets for the purpose of achieving its objectives.
- (3) The Foundation, acting through the council, may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

8 Objectives of Foundation

- (1) The objectives of the Foundation are—
 - (a) to own the Company; and
 - (b) to review and approve the strategic plan for the Facility.
- (2) The foundation rules may override the objectives in **subsection (1)**.

9 Continuation of Foundation council

The Foundation council established under section 8 of the 2016 Act continues.

10 Membership of Foundation council

- (1) The council consists of—
 - (a) a representative from each member country; and
 - (b) 4 additional members to represent the developing partners.
- (2) The council members must—

- (a) act honestly and in good faith with a view to furthering the best interests of the Foundation; and
 - (b) exercise the care, diligence, and skill that reasonably prudent persons would exercise in comparable circumstances.
- (3) To avoid doubt, the duties of the council members are owed to the Foundation and not to the member countries.
- (4) An act of a council member is valid despite any defect that may afterwards be found in that council member's appointment or qualifications.

11 Functions and powers of Foundation council

- (1) The functions of the council are—
- (a) to carry out the objectives of the Foundation; and
 - (b) to administer the assets of the Foundation; and
 - (c) to conduct the operations and activities of the Foundation, including, but not limited to,—
 - (i) approving new member countries; and
 - (ii) approving the annual audited accounts of the Company; and
 - (iii) reviewing and amending the foundation rules; and
 - (iv) reviewing and approving the Company's establishment of segregated portfolios, to the extent required by the constituting documents of the Company; and
 - (v) if it considers it necessary, delegating the day-to-day management of the Foundation's activities.
- (2) The council has the powers necessary to perform its functions.
- (3) The council must conduct the Foundation's affairs in accordance with this Act and the foundation rules.

12 Decisions of Foundation council

- (1) If the council exercises a power under this Act or under the foundation rules, it must do so by—
- (a) a resolution passed at a meeting of the council in accordance with this section; or
 - (b) a written resolution in accordance with this section, if that method is expressly allowed by the foundation rules.
- (2) A resolution of the council is passed—
- (a) at a meeting of the council if it is approved by the majority of members, specified in the foundation rules, who are present at the meeting, either in person or by proxy, and entitled to vote on the matter; or
 - (b) by written resolution if the majority of members, specified in the foundation rules and entitled to vote on the matter, signs 1 or more counterpart copies of the written resolution.

- (3) A special resolution is a resolution passed by a two-thirds majority and, unless otherwise provided by the foundation rules, is passed—
- (a) at a meeting of the council at which not less than two-thirds of the members are present and the resolution is approved by a two-thirds majority of those who are present at the meeting, either in person or by proxy, and entitled to vote on the matter; or
 - (b) by written resolution if not less than two-thirds of the members sign 1 or more counterpart copies of that written resolution.

13 Foundation rules

- (1) The foundation rules must specify procedures, consistent with this Act, for—
- (a) the appointment, removal, and resignation of an enforcer; and
 - (b) the appointment, removal, and resignation of an auditor.
- (2) The foundation rules may, subject to this Act, provide for all or any of the following matters:
- (a) the appointment, retirement, removal, and qualifications of council members and observer members;
 - (b) the addition of new member countries;
 - (c) the fees to be paid by new member countries;
 - (d) the remuneration (if any) of council members;
 - (e) the functions, duties, and powers of council members;
 - (f) the development and review of the objectives and strategic plan for the Facility, including the process for the governance and performance review of the Company;
 - (g) the functions and procedures of the council, including procedures for council meetings (whether in person or by teleconferencing or email exchange where appropriate);
 - (h) the rights and interests of member countries as members of the Foundation;
 - (i) procedures for the dedication of assets to the Foundation;
 - (j) procedures for the administration of the Foundation's assets, including the appointment of any third-party service providers, which may include, but are not limited to, auditors, legal and tax advisers, investment advisers, custodians, managers, and insurance managers;
 - (k) procedures to resolve disputes (including those about the interpretation or application of the rules or this Act), which may be by way of mediation or by a binding determination by a third party, or both;
 - (l) procedures for the winding up and dissolution of the Foundation;
 - (m) review and amendment of the Company's constituting documents;
 - (n) the appointment and removal of directors of the Company;
 - (o) the appointment of an insurance manager for the Company;
 - (p) establishing investment principles and guidelines for the Foundation;

- (q) the business address of the Foundation;
 - (r) those matters that may be adopted by special resolution only, including whether to voluntarily wind up and dissolve the Foundation or the Company, or both;
 - (s) the manner in which the foundation rules may be amended;
 - (t) the publication of the Foundation rules, minutes of meetings, and decisions of the council;
 - (u) any other matters that the council considers necessary to meet the objectives of the Foundation.
- (3) The Foundation may, at any time, alter the foundation rules, subject to the provisions of this Act.

14 Appointment of enforcer

- (1) If a council member makes a written request to the Foundation to appoint an enforcer, the Foundation must do so, acting in accordance with this Act and the foundation rules.
- (2) If the council fails or refuses to do so, that council member may apply to the court for an order appointing an enforcer.
- (3) A person who is a council member or a director of the Company must not be appointed as an enforcer.
- (4) An enforcer's appointment cannot be terminated except by a special resolution of the council.
- (5) An enforcer is entitled to remuneration on terms to be agreed between the council and the enforcer or, failing agreement, as determined by the court.

15 Functions and powers of enforcer

- (1) The functions of an enforcer are—
- (a) to take reasonable steps to ensure that the council carries out its functions; and
 - (b) to enforce the foundation rules; and
 - (c) to perform any other duties specified in the foundation rules.
- (2) An enforcer has the powers necessary to carry out those functions and has the following additional powers:
- (a) to review council decisions;
 - (b) to apply to the court for directions on matters of interpretation and the application of the foundation rules and this Act;
 - (c) to adjudicate disputes between council members;
 - (d) any powers specified in the foundation rules or by the council on the appointment of an enforcer.
- (3) The council must, if requested in writing by an enforcer, provide the enforcer with the following information:
- (a) financial statements in a form reasonably requested by the enforcer that address matters and cover any period specified by the enforcer;
 - (b) other information concerning the assets, liabilities, and affairs of the Foundation;

- (c) details of the council's performance of its functions under **section 11**.
 - (4) An enforcer must keep accounts and records of their actions during their term of appointment and must retain those records for 6 years after the end of the appointment.
- 16 Liability of council members and other persons**
- (1) This section limits the liability of council members and others when acting in the course of the operations of the Foundation or the council.
 - (2) A council member is not personally liable for an act or omission of the council member, the council, or an officer or employee of the Foundation.
 - (3) An officer or employee of the Foundation is not personally liable for an act or omission of the officer or employee, another officer or employee of the Foundation, a council member, or the council.
 - (4) **Subsection (3)** does not apply if the liability arises from the person's own fraud, wilful misconduct, or gross negligence.

Subpart 2—Administration of Foundation

17 Foundation records

- (1) The Foundation must keep accurate and reliable records, including underlying documentation, that—
 - (a) are sufficient to show and explain transactions in relation to the Foundation and its operation; and
 - (b) enable the financial position of the Foundation to be determined with reasonable accuracy at any particular time; and
 - (c) allow the financial statements to be prepared and audited; and
 - (d) record minutes of meetings, transactions, and decisions made by the council.
- (2) The Foundation must keep copies of its records at its business address.
- (3) The Foundation must keep each record (or a copy of it) for at least 7 years after the later of—
 - (a) the date on which the record is made;
 - (b) the completion of the transaction or matter to which the record relates.

18 Financial statements

- (1) The Foundation must prepare financial statements for each financial year.
- (2) The financial statements must—
 - (a) be prepared in accordance with the foundation rules; and
 - (b) be prepared within 4 months after the end of the financial year to which they relate; and
 - (c) be sent to all council members upon completion, and in no circumstances later than 14 days after the expiry of the time specified in **paragraph (b)**; and
 - (d) be approved by the council.

- (3) The council or the enforcer, if appointed, may require the financial statements for any financial year to be audited.

19 Powers of court

- (1) A council member or an enforcer may apply to the court to seek directions or orders for all or any of the following purposes:
 - (a) to assist the Foundation to administer its assets or to achieve its objectives;
 - (b) to determine the meaning and effect of a provision or term in this Act or the foundation rules;
 - (c) to determine any other matters that the court considers relevant to the Foundation, its objectives, the foundation rules, or the administration of its assets.
- (2) Except where the court is satisfied that the urgency or importance of the matter requires it, neither a council member nor the enforcer may make an application under **subsection (1)** until all available procedures for dispute resolution in the foundation rules have been exhausted without achieving an agreement or a binding determination by any third party.
- (3) The court has jurisdiction, in respect of dispute resolution procedures in the foundation rules,—
 - (a) to interpret and enforce any agreement reached as a result of negotiation, mediation, or other form of alternative dispute resolution; and
 - (b) to rehear and determine any binding determination of a third party.
- (4) The court may make orders on any terms and conditions that the court thinks fit.
- (5) Any application made under this Part must be determined in accordance with the laws of the Cook Islands.
- (6) Any agreement reached under dispute resolution procedures in the foundation rules must be treated as being governed by the laws of the Cook Islands unless the parties to that agreement have provided otherwise.

Part 3

Pacific Catastrophe Risk Insurance Company

Subpart 1—Company status

20 Continuation of Pacific Catastrophe Risk Insurance Company

- (1) There continues to be a company called the Pacific Catastrophe Risk Insurance Company, which is the Company established by section 16 of the 2016 Act.
- (2) The Company continues to be, and must remain, a company limited by shares.
- (3) The Company—
 - (a) is a body corporate with perpetual succession and a common seal; and
 - (b) may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

- (4) To avoid doubt, the Company may issue debentures of the Company and grant a floating charge on the undertaking or property of the Company.
- (5) The Company may at any time change its name in the manner set out in its constituting documents.

21 Company becomes segregated portfolio company

The Company is converted to a segregated portfolio company that has the segregated portfolio structure provided for by this Act.

22 Application of International Companies Act 1981-82 to Company

- (1) The provisions of the International Companies Act 1981-82 specified in **Schedule 1** of this Act apply to the Company as if it were an international company incorporated under that Act.
- (2) Those provisions do not limit **section 35** and are subject to any express contrary provision in this Act.
- (3) **Subsection (4)** applies if applying one of the provisions referred to in **subsection (1)** to the Company would result in an outcome inconsistent with this Act.
- (4) The Company must, to the extent of the inconsistency, act in a way that best gives effect to the provisions of this Act.

23 Application of Captive Insurance Act 2013 to Company

- (1) The Company is the valid holder of a licence under the Captive Insurance Act 2013 on and from the commencement of this Act.
- (2) The provisions of the Captive Insurance Act 2013 apply to the Company as a licensed captive insurer under that Act.
- (3) Those provisions do not limit **section 35** and are subject to any express contrary provision in this Act.
- (4) Nothing in **subsection (1)** affects the power of the Commission to revoke the Company's licence under the relevant provisions of the Captive Insurance Act 2013.

Subpart 2—Company structure and governance

24 Company ownership

- (1) The Foundation is, and must remain, the sole shareholder of the Company. At the commencement date of this Act, the share capital of the Company is US\$100,000 and consists of 1 fully paid share.
- (2) The Foundation is not liable for any debt or liability that the Company owes to any person.
- (3) **Subsection (2)** does not apply to any future unpaid share capital, but the Company must not alter or increase its share capital in any way that exceeds the amount that is from time to time prescribed by regulations (if any).

25 Company objectives

The Company must act for the benefit of all the member countries, or any of them, in a manner consistent with the following objectives:

- (a) to undertake captive insurance business within the meaning of the Captive Insurance Act 2013:
- (b) to provide disaster risk management services and tools:
- (c) to enhance capacity for disaster risk management and climate change adaptation:
- (d) to develop the strategic plan for the Facility for review and approval by the Foundation:
- (e) to undertake any other activities, ancillary to its captive insurance business, that may assist in the reduction or mitigation of financial loss to the member countries caused by natural disasters.

26 Constituting documents of Company

(1) The constituting documents of the Company that were in force immediately before the repeal of the 2016 Act remain in force and may be amended by the council subject to this Act and to any restriction or condition set out in the foundation rules.

(2) The constituting documents may set out or provide for all matters reasonably necessary for the proper administration of the Company, including, but not limited to, the following matters:

- (a) the name and business address of the Company:
- (b) the form and use of its Company seal:
- (c) general meetings and procedures for those meetings:
- (d) procedures for reporting to the council:
- (e) the functions, duties, and powers of the directors:
- (f) Board meetings of directors and procedures for those meetings, including provision for a chairperson:
- (g) the appointment of the chief executive officer (**CEO**) of the Company and other Company officers and employees:
- (h) procedures to allow for robust internal governance, including detailed operational policies and procedures of the Company and provision for the delegation of powers of the Board and CEO, and for the development and ongoing review of operations manuals:
- (i) accounts and financial reporting:
- (j) the appointment and removal of all third-party service providers, including, but not limited to, auditors, legal and tax advisers, custodians, managers, investment advisers, and insurance managers:
- (k) dividends, reserves, and capitalisation of profits:
- (l) procedures, subject to the Act and the foundation rules, by which the council may exercise its power to amend the constituting documents, and providing for publication of the constituting documents and of other public Company documents.

27 Board

- (1) The Company must have a Board that is responsible for making the executive decisions of the Company as provided by its constituting documents.
- (2) The council must appoint 5 persons to be directors of the Board, but the powers of the Board are not to be treated as affected by any vacancy in the membership of the Board.
- (3) The council must not appoint a person as a director unless satisfied that the person—
 - (a) is fit and proper for appointment as a director; and
 - (b) is capable of exercising independent judgement; and
 - (c) has sufficient time and commitment to undertake the duties of director diligently; and
 - (d) is approved by the Commission for appointment as a director.
- (4) Each time the council exercises its power of appointment, it must use its best endeavours to ensure that the Board is able to fulfil its responsibilities under this Act.
- (5) Without limiting the general obligation under **subsection (4)**, the council must use its best endeavours to ensure that the Board has appropriate knowledge, skills, experience, and understanding of—
 - (a) the business of the Company; and
 - (b) the risks to which it is exposed.
- (6) Unless the foundation rules provide otherwise, the council may consult the Board about those strategic policies of the Foundation that may affect the Company.
- (7) The Board must appoint a person to be the CEO of the Company, and that person is accountable to the Board in the exercise or performance of the functions, duties, and powers of that office.

28 Directors' general duties and standard of care

- (1) A director must, in exercising the powers or performing the duties of a director, act—
 - (a) honestly and in good faith; and
 - (b) for a proper purpose; and
 - (c) in what the director believes to be the best interests of the Company; and
 - (d) in a manner that—
 - (i) is consistent with this Act, the constituting documents, and all other relevant laws that apply to the Company; and
 - (ii) takes into account directions given by the council.
- (2) A director, when exercising powers, or performing duties, as a director, must exercise the care, diligence, and skill that a reasonable director 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 responsibilities undertaken by the director.

29 Reliance on documents and advice

- (1) A director is entitled to rely on any information and advice prepared, supplied, or given by 1 or more of the following persons:
 - (a) an employee of the Company if the director believes, on reasonable grounds, that person is reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert on matters that the director believes, on reasonable grounds, are within the person's professional or expert competence;
 - (c) any other director, or committee of directors on which the director did not serve, in relation to matters within the designated authority of that director or committee.
- (2) **Subsection (1)** does not apply unless the director—
 - (a) acts in good faith; and
 - (b) makes proper inquiry where the need for the inquiry is indicated by the circumstances; and
 - (c) has no knowledge that the reliance is unwarranted.
- (3) In this section, **information and advice** means books, records, financial data or statements, or other relevant information, and relevant professional or expert advice.

30 Personal liability of directors and others

- (1) A director, an officer, or an employee of the Company is not personally liable for his or her own act or omission—
 - (a) while acting for or on behalf of the Company; or
 - (b) in the course of the duties of office or employment.
- (2) A director, an officer, or an employee of the Company is also not personally liable for an act or omission by the Board or any other director, officer, or employee of the Company.
- (3) However, the director, officer, or employee is not relieved from liability if—
 - (a) he or she acted in bad faith; or
 - (b) the liability arose from his or her own fraud, wilful misconduct, or gross negligence.

31 Documents must be kept at business address

- (1) The Company must keep accurate and reliable records in relation to its business and affairs, including underlying documentation, and must keep copies of those records at its business address.
- (2) The Company must keep each record (or a copy of it) for at least 7 years after the later of the following dates:
 - (a) the date on which the record is made;
 - (b) the date on which the transaction or matter to which the record relates is completed.
- (3) The records and underlying documentation must be sufficient to—
 - (a) show and explain transactions in relation to the Company and its operation; and
 - (b) enable the financial position of the Company to be determined with reasonable accuracy at any one time; and
 - (c) allow financial statements to be prepared and audited; and

- (d) record minutes of meetings, transactions, and decisions made by the Board; and
 - (e) achieve and demonstrate, in respect of each segregated portfolio, compliance with this section and **subpart 3**.
- (4) Without limiting **subsection (3)**, the records kept by the Company must include records that give a true and accurate record of all—
- (a) sums of money received and expended by the Company; and
 - (b) sales and purchases of goods and services by the Company; and
 - (c) insurance and reinsurance contracts entered into by the Company; and
 - (d) assignments of rights or assumptions of liabilities by the Company; and
 - (e) transactions of the Company affecting the assets and liabilities of the Company.

32 Accounts and audit

- (1) The Company must—
- (a) keep proper accounts and financial records; and
 - (b) ensure that payments are correctly made and properly authorised; and
 - (c) keep proper control of its assets (and assets of others held by it) and its liabilities; and
 - (d) ensure that the accounts and financial records show compliance with this section and **subpart 3** in respect of each segregated portfolio.
- (2) The accounts and financial records must be audited annually by an auditor.
- (3) The auditor must be approved by the Commission.

33 Annual report

- (1) The Board must submit a report of the Company's operations during each financial year to the council, unless the Company's constituting documents provide otherwise.
- (2) The report must be submitted no later than 4 months after the end of the financial year to which it relates.
- (3) The report must include statements that are current to the end of that financial year for—
- (a) the Company's general assets and undertakings; and
 - (b) the assets and undertakings of each segregated portfolio.
- (4) Each statement must, for the assets and undertakings to which it relates, address the following matters:
- (a) the financial position;
 - (b) the financial performance;
 - (c) cashflows;
 - (d) borrowings;
 - (e) other financial commitments.
- (5) Each statement must be accompanied by—
- (a) the auditor's report on that statement; and
 - (b) an assessment of fiscal risks identified by the Board that are specific to the assets and undertaking that are the subject of that statement; and

- (c) any other matters that are reasonably directed by the council in writing.
- (6) The Company must ensure that all financial information it provides is accurate, full, and transparent.
- (7) All accounts, reports, and statements must be prepared using any accounting standards specified by the Commission.

34 Prudential guidelines

- (1) The Commission may issue prudential guidelines for the Company.
- (2) The prudential guidelines may include procedures and expected conduct—
 - (a) in the operation of the Company's businesses; and
 - (b) with respect to any other matter concerning this Act or the Facility.
- (3) The Commission may determine the form of any prudential guidelines.
- (4) The guidelines may make different provision in relation to different persons, circumstances, or cases or classes of persons, circumstances, or cases.
- (5) A person's failure to follow prudential guidelines issued under this section does not make the person liable to any proceedings.
- (6) However, a failure to follow prudential guidelines may be taken into account by the court or the Commission, as the case may be, in determining whether the Company has contravened any obligation imposed on it by and under this Act or regulations.

Subpart 3—Segregated portfolio status of Company

35 Segregated portfolios

- (1) The Company may create 1 or more segregated portfolios.
- (2) A segregated portfolio has the purpose and effect of segregating assets and liabilities of the Company held within, or on behalf of, the portfolio.
- (3) A segregated portfolio is not, and must not be treated as if it were, a legal person.
- (4) The assets and liabilities of the Company held within, or on behalf of, the portfolio may be segregated from either or both of—
 - (a) the assets and liabilities of the Company that are held within, or on behalf of, any other segregated portfolio;
 - (b) the assets and liabilities of the Company that are not held within, or on behalf of, any other segregated portfolio of the Company.

36 Approval required to create segregated portfolio

- (1) The Company must, each time it creates a segregated portfolio, obtain the prior written approval of—
 - (a) the Commission; and
 - (b) if required by the constituting documents of the Company, the council.
- (2) If the Company fails to comply with **subsection (1)**,—

- (a) the segregated portfolio must be treated as validly created and of full force and effect for the purposes of this Act; and
 - (b) the Commission may treat the failure to comply as a breach of a condition of the Company's captive insurer's licence for the purposes of section 26 of the Captive Insurance Act 2013.
- (3) Each segregated portfolio must be separately identified or designated in a manner that includes the words "segregated portfolio".

37 Segregated portfolio assets

The assets of a segregated portfolio comprise assets that are intended to be attributed to, and are held within, the segregated portfolio may include (without limitation)—

- (a) funding (by grant or otherwise) and other advances provided by developing partners and other persons; and
- (b) premiums paid or payable by the Foundation or by any 1 or more member countries; and
- (c) retained earnings; and
- (d) capital reserves; and
- (e) reserves of any other kind.

38 General assets

- (1) The Company must apply to its general assets all income, receipts, and other property or rights of the Company, or acquired by the Company, that are not attributable to a segregated portfolio.
- (2) The Company must treat the amounts applied to its general assets as forming part of those general assets.

39 Assets and liabilities in segregated portfolio must be kept segregated

- (1) The directors of the Company must ensure that procedures are established and followed to—
- (a) identify assets and liabilities of the Company that are held within, or on behalf of, a segregated portfolio and segregate them from assets and liabilities of the Company that—
 - (i) are held within, or on behalf of, any other segregated portfolio; and
 - (ii) are not held within, or on behalf of, a segregated portfolio; and
 - (b) ensure that assets and liabilities are not transferred between segregated portfolios, or between a segregated portfolio and the Company's general assets, except at full value.
- (2) **Subsection (1)(b)** is subject to **section 40**.

40 Approval for transfer between portfolios at less than market value

- (1) The Company may transfer assets and liabilities between segregated portfolios at less than full market value if it has the approval of the Commission to do so.

- (2) The Commission may approve a transfer between segregated portfolios, at less than full value, if it is satisfied of the matters in **subsection (3)**.
- (3) The Commission must be satisfied that—
 - (a) all member countries interested in the segregated portfolio from which the asset will be transferred have given prior written consent to the transfer; and
 - (b) all creditors of the Company whose liabilities are attributable to the segregated portfolio from which the asset is transferred have given prior written consent to the transfer; and
 - (c) the segregated account from which the asset is transferred will remain solvent after the proposed transfer.
- (4) The Commission may impose conditions on the Company when approving a transfer under **subsection (1)**.
- (5) **Subsection (2)** does not limit **section 63(3)**.

41 Transfer between portfolios for less than market value

- (1) **Subsections (2) and (3)** apply if a transfer between segregated portfolios is for less than market value and—
 - (a) has not been approved by the Commission under **section 40(2)**; or
 - (b) is in breach of a condition imposed by the Commission under **section 40(4)**.
- (2) The Commission is entitled to treat the failure to comply with **section 39(1)(b)** as a breach of a condition of the Company's captive insurance licence for the purposes of section 26 of the Captive Insurance Act 2013.
- (3) The transfer is voidable and on application to the court by any interested party, the court may declare the transfer void, but without prejudice to the rights of any bona fide purchaser for value without notice.

42 Availability of segregated assets

- (1) The assets in a segregated portfolio—
 - (a) are available and may be used to meet liabilities that the Company has to creditors who are creditors in respect of that segregated portfolio; and
 - (b) are not available and must not be used to meet liabilities that the Company has to creditors who are not creditors in respect of that segregated portfolio.
- (2) The assets of a segregated portfolio are, and must be treated as, absolutely protected from claims of creditors who are not creditors in respect of that segregated portfolio.

43 Effect of segregation on liabilities

- (1) This section applies if the Company has a liability to a creditor and that liability—
 - (a) arises from an act, omission, dealing, or other matter that relates to a particular segregated portfolio; or
 - (b) is otherwise attributable to, or imposed in respect of, that segregated portfolio.
- (2) In those circumstances,—

- (a) the liability is limited to the assets of the Company in the order set out in **subsection (3)**; and
 - (b) the recourse of the creditor is limited to those assets.
- (3) The creditor has recourse to the Company assets in the following order:
- (a) the segregated portfolio assets attributed to that segregated portfolio;
 - (b) to the extent that the segregated portfolio assets attributed to that segregated portfolio are insufficient to satisfy the liability, the Company's general assets (but only to the extent that those assets exceed the minimum capital requirements specified in any regulations or any capital requirements that are, at any time, imposed by the Commission).
- (4) If the Company gives an indemnity in favour of a director in respect of a liability incurred by that director on behalf of a segregated portfolio, the indemnity is enforceable only against the assets of that segregated portfolio.

44 Other liabilities

- (1) This section applies if the Company has a liability to a creditor and that liability—
- (a) does not arise from an act, omission, dealing, or other matter that relates to any particular segregated portfolio; and
 - (b) is not otherwise attributable to, or imposed in respect of, any particular segregated portfolio.
- (2) The liability, and recourse of the creditor, is limited to the Company's general assets without any limitation in respect of minimum capital requirements.

45 Company obligations to give full effect to segregated portfolio dealings

- (1) This section applies if the Company acts in respect of a matter that is intended to affect 1 or more segregated portfolios but not the general assets of the Company.
- (2) The Company must, at all times, conduct itself in a way that identifies the 1 or more segregated portfolios in respect of which it acts, both in respect of its internal administration and its dealings with third parties.
- (3) Without limiting **subsection (2)**, whenever the Company executes a deed, agreement, contract, instrument under seal, or other document, it must do so in a way that correctly identifies the 1 or more segregated portfolios to which that document applies.
- (4) If the Company becomes aware that it has acted in breach of **subsection (2)** or **(3)**, it must promptly—
- (a) make any necessary inquiries to determine the nature and extent of the breach; and
 - (b) do all things reasonably necessary to remedy the breach, including—
 - (i) determining the 1 or more segregated portfolios to which the relevant document should be attributed; and
 - (ii) making the correct attribution; and
 - (iii) giving written notice to all parties to the document or persons who are known to have received the document; and
 - (c) advise all adversely affected persons of their rights under **section 47**.

46 Complying with document requirements

- (1) It is sufficient compliance with **section 45(3)** if the words “segregated portfolio” and the relevant identifier are included in the document in the places where it relates to a relevant segregated portfolio.
- (2) If the Company acts as required by **subsection (1)** with respect to a document, and does so in good faith, the recourse of any person who asserts rights against the Company under or by reason of the document (or of any related transaction or dealing) is limited to the relevant segregated portfolio.
- (3) **Subsection (2)** does not apply in the case of fraud or obvious error.
- (4) The limited right of recourse is as provided for in **section 43(3)**.
- (5) **Subsection (1)** does not limit other forms of compliance with **section 45(3)**.

47 Rights of third parties regarding attribution

- (1) This section applies to a person who—
 - (a) is adversely affected by a breach by the Company of its obligations under **section 45(2) or (3)**; or
 - (b) objects to an attribution, a corrected attribution, or other remedial action taken by the directors under **section 45(4)**.
- (2) A person may apply to the court by petition objecting to an attribution, a corrected attribution, or other remedial action.
- (3) The court, after hearing the application and taking account of the parties’ intentions and any other factors that it considers relevant, may—
 - (a) uphold the petition, absolutely or on conditions;
 - (b) reject the petition;
 - (c) make other ancillary orders to give effect to its determination.
- (4) If a person receives written notice of the breach from the Company and of that person’s rights under this section, any application under this section must be made within 30 days after the date on which the person receives the notice.
- (5) The court must dismiss the application if it is made out of time.

48 Company obligations if third party does not recognise segregation

- (1) This section applies if an act of a third party results in assets of a segregated portfolio (the **creditor portfolio**) being paid to a creditor whose recourse, under this Act, is limited to 1 or both of the following:
 - (a) the general assets of the Company;
 - (b) the assets of another segregated portfolio (the **debtor portfolio**).
- (2) If a director of the Company becomes aware of circumstances to which this section applies, the Company must immediately—
 - (a) make all necessary inquiries to determine the nature and extent of the issue; and

- (b) do all things and repay to the creditor portfolio all sums, from the appropriate source, needed to restore the creditor portfolio to the position it would have been in had its assets not been paid to the creditor.
- (3) The Company or any other interested person may apply for the debtor portfolio to become the subject of a receivership order if it is not practicable for the Company to repay the creditor portfolio in full.
- (4) The creditor portfolio must be treated as a creditor of the debtor portfolio for the purposes of **subpart 1 of Part 4**, if the debtor portfolio becomes the subject of a receivership order.
- (5) In this section, **act of a third party** includes an act of a foreign court or a person acting under an order or a direction of a foreign court.

Part 4

Winding up and dissolution, and closing of segregated portfolio

Subpart 1—Receivership of segregated portfolios

49 Receivership order in respect of segregated portfolios

- (1) The court may make a receivership order in respect of 1 or more segregated portfolios.
- (2) A receivership order directs that the business and segregated portfolio assets of, or attributed to, 1 or more segregated portfolios must be managed by a receiver specified in the order for either of the following purposes:
 - (a) the orderly closing of the business of, or attributable to, the segregated portfolio;
 - (b) undertaking a period of administration by the receiver with a view to restoring the solvency of the segregated portfolio.

50 Application for receivership order

- (1) An application for a receivership order under **section 49** may be made by 1 or more of the following persons:
 - (a) the Company, by special resolution of the council;
 - (b) the directors of the Company, but only in circumstances where the directors can satisfy the court that a receivership order is necessary to protect, maintain, or restore the value of the relevant segregated portfolio assets or general assets;
 - (c) any creditor of the Company in respect of that segregated portfolio;
 - (d) the Commission.
- (2) Notice of an application to the court for a receivership order must be served on—
 - (a) the Company; and
 - (b) the Commission; and
 - (c) the Foundation; and
 - (d) any other persons that the court directs must be served.

51 Grounds for granting receivership order

- (1) The court may only grant a receivership order if it is satisfied that the segregated portfolio assets attributable to the segregated portfolio or portfolios to which it relates are, or are likely to be, insufficient to—
 - (a) discharge the claims of creditors in respect of that segregated portfolio or, in the circumstances contemplated in **section 48(1)**; or
 - (b) repay the affected segregated portfolio.
- (2) In deciding that question, the court must take account of the Company's general assets, unless there are no creditors in respect of that segregated portfolio who are entitled to recourse to the Company's general assets.
- (3) The court must also be satisfied that—
 - (a) the Company is not being wound up; and
 - (b) if it makes an order under this section, the receivership is reasonably likely to achieve the purposes set out in **section 49(2)** in respect of that segregated portfolio.

52 Administration of receivership orders

- (1) The receiver of a segregated portfolio—
 - (a) may do anything—
 - (i) that is ordered by the court in respect of the receivership; and
 - (ii) that is necessary to achieve the purposes set out in **section 49(2)** in respect of the segregated portfolio; and
 - (b) has all the functions and powers of the directors in respect of the business and segregated portfolio assets of or attributable to that segregated portfolio.
- (2) The receiver may at any time apply to the court for any or all of the following:
 - (a) directions as to the extent or exercise of any function or power;
 - (b) discharge or variation of the receivership order;
 - (c) an order about a matter arising in the course of the receivership.
- (3) The person who is receiver must be treated as acting as the agent of the Company when performing and exercising the functions and powers of receiver.
- (4) The receiver is not personally liable except to the extent that the receiver is fraudulent, reckless, or negligent or acts in bad faith.
- (5) A person dealing with the receiver in good faith is entitled to assume, without inquiry, that the receiver is acting within the receiver's powers, unless the person has actual notice to the contrary.

53 Restrictions on certain actions after receivership order made

- (1) After an application for a receivership order has been made in respect of a segregated portfolio, the following actions cannot be taken:
 - (a) commencing or continuing proceedings by or against the Company in relation to the segregated portfolio:

- (b) taking steps to enforce any security, or execute any legal process, in respect of the business or segregated portfolio assets of, or attributable to, the segregated portfolio.
- (2) However, the actions can be taken with leave of the court, which may be granted with conditions.
- (3) The restrictions in this section apply until the earliest of the following dates:
 - (a) the date of the dismissal or withdrawal of the application;
 - (b) the date of the expiry of the term of the receivership;
 - (c) the date of the discharge of the receivership order;
 - (d) the date of the termination of the receivership order on the commencement of the winding up of the Company.

54 Modification of Company procedures in cases of receivership

- (1) After a receiver has been appointed by the court in respect of a segregated portfolio, **subsections (2) and (3)** apply until the expiry or termination of the term of the receivership.
- (2) The functions and powers of the directors cease in respect of the business of or attributable to, and the segregated portfolio assets of or attributable to that segregated portfolio.
- (3) The receiver is entitled—
 - (a) to be present at all meetings of the Company; and
 - (b) to vote at the meetings in all matters affecting the general assets of the Company, as if the receiver were a director of the Company.
- (4) **Subsection (3)** does not apply if no creditors or other persons interested in the segregated portfolio are entitled to recourse to the Company's general assets.

55 Receiver to make payments in manner consistent with this Act

- A receiver must, in making payments to third parties, do so in the following order of priority:
- (a) paying to creditors who have recourse to segregated portfolio assets the amounts to which they are entitled, having regard to the provisions of **subpart 3 of Part 3**;
 - (b) as to any balance, paying any person entitled to that balance other than the Company;
 - (c) to the extent that amounts remain to which no other person is entitled, paying those amounts to the Company to form part of its general assets.

56 Cessation of receivership order

- (1) A receivership order ceases to have effect at the commencement of the winding up of the Company or on its earlier discharge by the court.
- (2) The court may discharge a receivership order on the application of an interested party.
- (3) The court may discharge a receivership order if the court is satisfied that—
 - (a) the purpose for which the order was made has been achieved or substantially achieved, or is incapable of being achieved; or
 - (b) there is another good reason, not inconsistent with the provisions of this Act, to do so.

- (4) If the court discharges a receivership order under **subsection (2)**,—
- (a) the court may direct that a payment made by the receiver to a creditor of the Company in respect of that segregated portfolio must be treated as full satisfaction of the liabilities of the Company to that creditor in respect of that segregated portfolio; and
 - (b) any liability of that creditor against the Company in respect of that segregated portfolio must be treated, on the discharge of that order, as having been extinguished; and
 - (c) the court may direct that the segregated portfolio be dissolved on a date specified by the court.
- (5) The cessation or discharge of a receivership order does not affect the validity and effect of acts of the receiver or an agent of the receiver that occur before the cessation or discharge, as the case may be.

57 Remuneration of receiver

The remuneration and expenses of a receiver in respect of the receivership—

- (a) are payable from the segregated portfolio assets attributable to that segregated portfolio with priority over all other claims; and
- (b) are not payable from any other assets of the Company.

Subpart 2—Winding up and dissolution

58 Interpretation

In this subpart, unless the context otherwise requires, **debtor** means,—

- (a) in relation to the winding up of the Foundation, the Foundation; or
- (b) in relation to the winding up of the Company, the Company.

59 General matters regarding winding up

(1) In the winding up of the Company, the liquidator—

- (a) must deal with the Company's assets in the manner required by **Part 3**; and
- (b) must, in meeting the claims of creditors, apply the segregated portfolio assets and the general assets strictly in accordance with the provisions of that Part; and
- (c) in any case of doubt or ambiguity, or the exercise of any power or discretion, must act in respect of segregated portfolio assets in a manner that gives full effect to **Part 3**.

(2) This section applies despite any enactment or rule of law to the contrary.

(3) In particular, if an enactment or a rule of law might otherwise require that the Company's assets be realised and applied in satisfaction of the Company's debts and liabilities *pari passu*, that term must be treated as modified and as applying subject to **Part 3**.

60 Foundation or Company may be wound up

(1) The Foundation or the Company may be wound up—

- (a) voluntarily by the council by a special resolution; or

- (b) compulsorily by 1 of more of the following persons or entities:
 - (i) the council by a special resolution;
 - (ii) the enforcer in accordance with the procedures set out in the foundation rules;
 - (iii) the Financial Supervisory Commission in accordance with section 34 of the Captive Insurance Act 2013;
 - (iv) a creditor in accordance with **section 61**.
- (2) If a segregated portfolio is subject to a receivership order under this Part, a resolution for the voluntary winding up of the Company is not effective and the winding up can only proceed with leave of the court.

61 Creditor may apply for winding up of Foundation or Company

- (1) This section applies to the rights of a creditor of a debtor who petitions the court to wind up the debtor.
- (2) The winding up of the debtor does not of itself—
 - (a) entitle any person to petition the court to wind up the remaining constituent party to the Facility; or
 - (b) afford to any person any right over property legally or beneficially owned by the debtor or by the remaining constituent party to the Facility, apart from property that is beneficially owned by the debtor; or
 - (c) affect the ongoing existence of the remaining constituent party to the Facility.
- (3) A creditor may petition the court to make a winding up order if all of the following conditions are satisfied:
 - (a) the debtor owes the creditor a sum exceeding \$10,000 or any greater sum provided for by the regulations;
 - (b) the creditor has served a written demand for payment of the debt on the debtor and, in the case of a debt owed by the Company, has given written notice of that service and of the content of the demand to the Foundation;
 - (c) the debtor has not, within 21 working days after the date of service of the demand, paid the debt or given security for it to the creditor's satisfaction;
 - (d) either the debt is not disputed by the debtor or the debt is the subject of a final judgment of the court or, if appealed, of the relevant appellate court.
- (4) A creditor is liable to the debtor for full indemnity costs calculated on a solicitor-client basis if—
 - (a) the creditor files a petition to wind up the debtor knowing that the debt is disputed; and
 - (b) the court is satisfied the debt is disputed by the debtor in good faith; and
 - (c) the court either dismisses the petition or stays it pending the determination of that dispute.

62 Court may wind up debtor

- (1) If a winding-up petition is presented, the court may make an order to wind up the debtor only if—
 - (a) the conditions in **section 61(3)** are satisfied; and
 - (b) there is no other matter of general law or practice that would disentitle the petitioner to the grant of the petition.
- (2) In the case of a petition to wind up the Company, the following additional requirements must be satisfied for an order to be made:
 - (a) on or after serving the petition to wind up the Company, the petitioner has requested the council to advise in writing, within 60 days after the date of receiving that request, whether the council or any of its members are willing or able to advance funds to the debtor to enable it to meet the debt;
 - (b) the petitioner has filed the council's response or affidavit evidence of service for a non-response;
 - (c) in the case of any non-response, the court is satisfied that—
 - (i) all members have either responded or had 60 days' clear notice of their opportunity to do so; and
 - (ii) generally, each member of the Foundation has been given a reasonable opportunity to advance sufficient funds to the debtor to allow it to meet the claim of the petitioner; and
 - (iii) no member of the Foundation is both willing and able to do so within a time considered reasonable by the court in all the circumstances of the case.
- (3) Nothing in this section imposes legal liability—
 - (a) on a council member or on any other person connected to the Foundation or Company to meet the obligations of the debtor; or
 - (b) on the Foundation to meet the obligations of the Company; or
 - (c) on the Company to meet the obligations of the Foundation.

63 General provisions as to winding up

- (1) A creditor may apply to the court to wind up a debtor even if the debtor's voluntary winding up has begun.
- (2) Subject to this Act, the court may make orders in relation to the winding up of a debtor that it thinks necessary or convenient to ensure the winding up takes place as quickly and cost-effectively as is practicable, having regard to—
 - (a) the interests of its creditors; and
 - (b) the interests of the Facility, subject to the interests of its creditors.
- (3) Except to the extent that the court orders otherwise, the provisions of Part VIII (Receivers and Managers) and Part IX (Winding up) of the International Companies Act 1981-82, with the necessary modifications, apply in relation to the administration, winding up, and dissolution of a debtor as if the debtor were an international company incorporated under that Act.

- (4) Despite **subsection (3)**,—
- (a) if there is any conflict or inconsistency between the provisions of the International Companies Act 1981-82 referred to in **subsection (3)** and this Act, this Act prevails to the extent of the conflict or inconsistency; and
 - (b) in any case of doubt or ambiguity, or the exercise of any power or discretion, every receiver, manager, or liquidator must act, in respect of segregated portfolio assets, in a manner that gives full effect to **Part 3**.

Part 5 General and miscellaneous provisions

64 Service of documents

- (1) This section sets out the procedures that must be followed by a person who wishes to serve a document on the Foundation or the Company.
- (2) A person may serve a document in any legal proceeding in any 1 or more of the following ways:
 - (a) by leaving the document at—
 - (i) the business address notified to that person by the Commission; or
 - (ii) the address for service notified to that person in those legal proceedings;
 - (b) by serving the document in accordance with any direction as to service given by the court that has jurisdiction in the proceeding;
 - (c) in accordance with a written agreement made with the Foundation or the Company, as the case may be;
 - (d) by serving the document at an address for service given in accordance with the rules of the court that has jurisdiction in the proceeding or by any means that a legal practitioner has, in accordance with those rules, stated that the legal practitioner will accept as service.
- (3) A person may serve any other document in any 1 or more of the following ways:
 - (a) by leaving the document at the business address notified to that person by the Commission;
 - (b) by addressing the document or its covering envelope or package to the postal address or to the business address notified to that person by the Commission and—
 - (i) posting the document by registered or tracked post; or
 - (ii) arranging for courier delivery for the document;
 - (c) by emailing the document to an electronic address previously notified to that person by the Foundation or the Company, as the case may be;
 - (d) by faxing the document to a fax number previously notified to that person by the Foundation or the Company, as the case may be.
- (4) A document served in a manner described in **subsection (3)** must be treated as received by the recipient,—

- (a) for a document left at the business address, on the day that document is left at the business address, unless that day is a Sunday or public holiday, in which case it must be treated as received on the next day on which businesses are generally open on the island of Rarotonga; or
- (b) for a document that is posted or couriered, on the day that is notified to the sender, in writing, as the date of delivery,—
 - (i) in the case of registered or tracked post, by the Cook Islands postal service; or
 - (ii) in the case of courier delivery, by the contracted courier; or
- (c) for a document that is emailed, on the day after an email to an electronic address is sent, unless the intended recipient can reasonably show that the email was not received or was redirected as junk or spam or otherwise diverted from the inbox associated with that electronic address; or
- (d) for a document that is faxed, on the day the document is faxed to the fax number and is shown, by the transmitting fax machine, to have been successfully received by the receiving fax machine.

65 Application of other Cook Islands laws

- (1) No Act of the Cook Islands, and no regulation, by-law, or rule, may—
 - (a) impose on the Foundation or the Company—
 - (i) a liability, duty, responsibility, obligation, or restriction; or
 - (ii) a fee, impost, tax, levy, due, duty, or excise; or
 - (iii) a fine or penalty; or
 - (b) require, in relation to the Foundation or the Company,—
 - (i) the deposit of money in a public account; or
 - (ii) the filing of any accounts, returns, reports, or records; or
 - (iii) the licensing or registration of the Foundation or the Company (other than the requirement that the Company hold a captive insurer's licence issued under the Captive Insurance Act 2013).
- (2) In **subsection (1)**, Act does not include this Act, the Countering Terrorism and the Proliferation of Weapons of Mass Destruction Act 2004, the Crimes Act 1969, the Criminal Procedure Act 1980-81, the Extradition Act 2003, the Mutual Assistance in Criminal Matters Act 2003, the Financial Supervisory Commission Act 2003, the Financial Transactions Reporting Act 2017, and the Proceeds of Crime Act 2003.
- (3) To avoid doubt, the Development Investment Act 1995-96 does not apply to the Foundation or the Company.

66 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, on the advice of the Minister, make regulations for either or both of the following purposes:
 - (a) to give full legal effect to any prudential guideline issued by the Commission;
 - (b) generally for giving effect to this Act.

- (2) Without limiting **subsection (1)**, regulations may be made prescribing any 1 or more of the following matters:
- (a) the minimum share capital to be maintained by the Company;
 - (b) capital resource requirements applicable to the Company and the components that constitute capital resources;
 - (c) capital adequacy requirements applicable to the Company;
 - (d) restrictions and limits on the capital components that may be relied upon to meet the capital requirements;
 - (e) requirements in relation to the valuation of assets and liabilities, including liabilities under insurance contracts;
 - (f) methods for estimating or valuing the assets of the Company, including contingent assets, and for this purpose, the regulations may specify the assets of the Company that are admissible and that are inadmissible, whether in whole or in part;
 - (g) methods for estimating or valuing the liabilities of the Company, including contingent liabilities and its technical provisions, and for this purpose the regulations may specify types and categories of technical provisions;
 - (h) requiring the Company to establish and maintain reserves;
 - (i) requirements in relation to investments;
 - (j) other requirements or matters appropriate to—
 - (i) the maintenance by the Company of a sound financial position; and
 - (ii) the assessment of the solvency and financial position of the Company; and
 - (iii) the protection of policyholders from financial loss and the protection of policyholder funds;
 - (k) requirements in relation to the reinsurance strategy, procedures, and plans to be established and maintained by the Company;
 - (l) requirements for the mandatory reinsurance of risks;
 - (m) restrictions on the reinsurance of risks with foreign reinsurers;
 - (n) alternative risk transfer arrangements;
 - (o) the preparation and audit of financial statements;
 - (p) the strategies, policies, procedures, and controls to be established and maintained by the Company, including internal controls, risk management, and compliance;
 - (q) requirements relating to business conduct, including requirements relating to the disclosure by the Company of information to its customers and the public;
 - (r) information to be provided and returns to be submitted to the Commission by the Company;
 - (s) the responsibilities of the directors and senior management of the Company;
 - (t) the performance of the control functions of the Company and the activities and responsibilities of key persons in control functions;
 - (u) policies and procedures to be maintained by the Company with respect to the assessment and management of risk;

- (v) principles and rules of corporate governance to be adhered to by the Company;
 - (w) internal audit requirements;
 - (x) requirements relating to insurance contracts;
 - (y) outsourcing;
 - (z) the preparation of, and requirements relating to, business plans;
 - (aa) complaints made against the Company;
 - (bb) the provision of index-based or parametric insurance by the Company, including a definition of parametric insurance and requirements relating to the design, content, and sale of parametric insurance contracts.
- (3) Regulations made under the Captive Insurance Act 2013 apply to the Company, but regulations made under this section may, despite the licensing of the Company under the Captive Insurance Act 2013,—
- (a) impose requirements, obligations, and restrictions on the Company that differ from those imposed on other licensed captive insurers by the Captive Insurance Act 2013 or regulations made under that Act; and
 - (b) modify the application of regulations made under the Captive Insurance Act 2013 to the Company.
- (4) The Commission has the same powers of supervision and enforcement with respect to the regulations as if they were made under the Captive Insurance Act 2013.
- (5) Regulations made under this section must ensure that, so far as practicable, the capital and solvency requirements applicable to the Company take account of the risks to which the Company is exposed.
- (6) Regulations may, instead of specifying detailed requirements and methods in relation to any matter relating to capital, solvency, or financial condition, require the Company to comply with specified internationally recognised standards, practices, or methodologies.
- (7) Regulations made under this section prevail, in respect of the Company, to the extent of any inconsistency with regulations made under the Captive Insurance Act 2013.
- (8) Any provision of the Captive Insurance Act 2013 does not apply to the Company to the extent that its application would be inconsistent with regulations made under this section.

67 Application of Financial Supervisory Commission Act 2003

Sections 20 to 23 of the Financial Supervisory Commission Act 2003 apply to the Company as if it were a licensed financial institution.

68 Repeal of Pacific Catastrophe Risk Insurance Facility Act 2016

The Pacific Catastrophe Risk Insurance Facility Act 2016 is repealed.

69 Amendments to Captive Insurance Act 2013

The Captive Insurance Act 2013 is amended as set out in **Schedule 2**.

Schedule 1
Provisions of International Companies Act 1981-82 applicable to Company

Section 21	Ultra Vires Transactions
Section 29	Transactions and Branches
Section 29A	Persons having dealings with international companies
Section 72	Filing of Charges
Section 74A	Negation of the Rule in Re Charge Card Services Limited and Broad v Commissioner of Stamp Duties
Section 76	Endorsement of Certificate of Registration on Debentures
Section 77	Filing of Satisfaction and Release of Property from Charge
Section 78	Extension of Time and Rectification of Register of Charges
Section 79	Documents made outside the Cook Islands
Section 86	Validity of Acts of Directors
Section 88(1)	Disclosure of Interests in Contracts, Property, Offices etc
Section 214	Power to Grant Relief
Section 215	Irregularities in Proceedings
Parts VIII and IX	(To avoid doubt, the provisions relating to receivers and managers and to winding up are applicable to the Company (<i>see</i> section 63(3) of this Act)
Schedule 1	The powers of an international company

Schedule 2 Amendments to Captive Insurance Act 2013

Section 3

In section 3(1), replace the definition of **captive insurance business** with:

“**captive insurance business** means the business of a company insuring—

- “(a) the interests of its holding company, or of companies or other persons that it is affiliated or associated with or with which it is organised within a group or agency relationship;
- “(b) in the case of the Pacific Catastrophe Risk Insurance Company, the interests of all the member countries or any of them”.

In section 3(1), replace the definition of **Cook Islands company** with:

“**Cook Islands Company** means—

- “(a) an international company incorporated under the International Companies Act; or
- “(b) a company incorporated under the Companies Act, to only underwrite the interests of its holding company, which is also incorporated under the Companies Act; or
- “(c) the Pacific Catastrophe Risk Insurance Company continued by **section 20** of the Pacific Catastrophe Risk Insurance Facility Act 2021”.

Section 4

After section 4(1)(b), insert:

- “(c) the Pacific Catastrophe Risk Insurance Company continued under the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2021.”

Section 5

After section 5(2), insert:

- “(3) To avoid doubt, members of the Foundation continued by the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2021 are not to be regarded as directors.”

Section 22

Replace section 22 with:

“22 **Accounts and audit provisions of the International Companies Act, Companies Act, or Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2021**

- “(1) Except as provided by **subsection (2)** or by any other provision of this Act or the regulations, sections 18 to 21 do not limit the application of—

- “(a) provisions in the International Companies Act or the Companies Act relating to accounts and audit that apply to a licensed captive insurer; or
 - “(b) provisions in the Cook Islands Pacific Catastrophe Risk Insurance Facility Act 2021 relating to accounts and audit that apply to the Company established by that Act or in the constituting documents of the Company.
- “(2) If there is any conflict between the provisions of this Act and any of the other applicable Acts or regulations, this Act prevails.”

Section 33

Replace section 33(2) with:

- “(2) A licensed captive insurer that is an international company must not be voluntarily wound up under Part IX, Division 3 of the International Companies Act or **Part 4** of the Pacific Catastrophe Risk Insurance Facility Act 2021 unless the Commission has given its prior written consent.”

Section 34

Replace section 34(1) with:

- “(1) The Commission may apply to the Court under the Companies Act, the International Companies Act, or **Part 4** of the Pacific Catastrophe Risk Insurance Facility Act 2021 for the liquidation or winding up of—
- “(a) an unlicensed insurer; or
 - “(b) an insurer if the Commission is entitled to take enforcement action against the insurer under section 26.”

This Act is administered by the Financial Supervisory Commission.
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