



## ANALYSIS

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1994, No. 7

**An Act to amend the Companies Act 1955**

[27 June 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Companies Act 1955 Amendment Act (No. 2) 1994, and shall be read together with and deemed part of the Companies Act 1955 (in sections 2 to 26 of this Act referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1994.

**2. Registers to be kept for purposes of this Act**—The principal Act is hereby amended by repealing section 7 (2).

**3. Application for reservation of name**—Section 32 (3) (b) of the principal Act (as substituted by section 16 of the Companies Amendment Act 1993), is hereby amended by inserting, after the word “that”, in the first place where it appears, the words, “unless the reservation is sooner revoked by the Registrar.”

**4. Form of contracts**—Section 42 of the principal Act (as substituted by section 19 of the Companies Amendment Act 1993), is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Nothing in subsection (1) of this section limits or prevents a company entering into a contract or other enforceable obligation in writing under a common seal, if it has one.”

**5. Jurisdiction of District Courts**—Section 42B (1) (b) of the principal Act (as inserted by section 16 of the Companies Amendment Act (No. 2) 1983), is hereby amended by omitting the expression “\$12,000”, and substituting the expression “\$200,000”.

**6. Attorneys**—Section 44 (1) of the principal Act (as substituted by section 21 of the Companies Amendment Act 1993), is hereby amended by omitting the expression “section 42”, and substituting the expression “section 42 (1) (a)”.

**7. Share certificates**—Section 90 of the principal Act (as substituted by section 25 of the Companies Amendment Act 1993), is hereby amended by inserting, after subsection (6), the following subsection:

“(6A) Nothing in this section (except subsection (2)) limits or affects section 54 of the Securities Act 1978.”

**8. Meaning of “director”**—Section 180 of the principal Act (as substituted by section 32 of the Companies Amendment Act 1993) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) In this Act, ‘director’, in relation to a company, does not include a receiver.”

**9. Qualifications of directors**—Section 199E (2) of the principal Act (as substituted by section 32 of the Companies

Amendment Act 1993) is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) A person who would, but for the repeal of section 188A or section 189 or section 189A of this Act, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company.”.

**10. Register of directors and secretaries**—Section 200 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) The company shall, within the periods respectively mentioned in subsection (5) of this section, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors or in its secretary or in any of the particulars contained in the register, specifying the date of the change. Where the return or notification notifies the appointment of the first directors or secretary, or of a new director or secretary, of the company, it shall have endorsed thereon, or be accompanied by, in respect of each such appointment:

“(a) A written consent to act as a director or secretary (as the case may be) of the company signed by the person appointed or by his or her agent authorised in writing; and

“(b) In the case of a director, a certificate by the director that he or she is not disqualified from being appointed or holding office as director of a company.”

**11. Certificate of amalgamation**—Section 209F(1) of the principal Act (as inserted by section 38 of the Companies Amendment Act 1993), is hereby amended by omitting from paragraph (a), and also from paragraph (b) (ii), the words “in the prescribed form”.

**12. Registers**—The principal Act is hereby amended by inserting, after section 209G (as so inserted), the following section:

“209GA. (1) Where an amalgamation becomes effective, no Registrar of Deeds or District Land Registrar or other person charged with the keeping of any books or registers shall be obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to

that of an amalgamated company in those books or registers or in any document.

“(2) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company—

“(a) Executed or purporting to be executed by the amalgamated company; and

“(b) Relating to any property held immediately before the amalgamation by an amalgamating company; and

“(c) Stating that that property has become the property of the amalgamated company by virtue of this Part of this Act—

shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.

“(3) Without limiting subsection (1) or subsection (2) of this section, where any security issued by any person or any rights or interests in property of any person become, by virtue of this Part of this Act, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the board of the amalgamated company, stating that that security or any such rights or interests have, by virtue of this Part of this Act, become the property of the amalgamated company, shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.

“(4) In subsection (3) of this section, ‘security’ has the same meaning as in section (2) (1) of the Securities Act 1978.

“(5) Except as provided in this section, nothing in this Part of this Act derogates from the provisions of the Land Transfer Act 1952.”

**13. Interpretation**—Section 209<sub>1</sub> (as so inserted) is hereby amended by repealing the definition of the term “creditor”, and substituting the following definition:

“‘Creditor’ includes—

“(a) A person who, in a liquidation, would be entitled to claim in accordance with section 277 of this Act that a debt is owing to that person by the company; and

“(b) A secured creditor.”

**14. Interpretation**—Section 209Q of the principal Act (as so inserted) is hereby amended by repealing the definition of the term “creditor”, and substituting the following definition:

“ ‘Creditor’ includes—

“(a) A person who, in a liquidation, would be entitled to claim in accordance with section 277 of this Act that a debt is owing to that person by the company; and

“(b) A secured creditor.”

**15. Interpretation**—Section 210 (1) of the principal Act (as substituted by section 41 of the Companies Amendment Act 1993), is hereby amended by omitting the definition of the term “creditor”, and substituting the following definition:

“ ‘Creditor’ means a person who, in a liquidation, would be entitled to claim in accordance with section 277 of this Act that a debt is owing to that person by the company; and includes a secured creditor only—

“(a) For the purposes of sections 211 (2) (c), 217, 220, and 263 of this Act; or

“(b) To the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under section 279 of this Act as an unsecured creditor:”.

**16. Other duties of liquidator**—Section 229 (2) (d) of the principal Act (as so substituted) is hereby amended by omitting the expression “20 working”, and substituting the number “28”.

**17. Power to obtain documents and information**—(1) Section 235 (2) of the principal Act (as so substituted) is hereby amended by inserting, after the word “may”, the words “from time to time”.

(2) Section 235 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Without limiting subsection (3) (a) of this section, a person may be required to attend on the liquidator under that subsection at a meeting of creditors of the company.”

**18. Qualifications of liquidators**—Section 254 (1) of the principal Act (as so substituted) is hereby amended by inserting, after paragraph (h), the following paragraph:

“(ha) A person who would, but for the repeal of section 188A or section 189 or section 189A of this Act, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company:”.

**19. Admissible claims**—The principal Act is hereby amended by repealing section 277 (as so substituted) and substituting the following section:

“277. (1) Subject to subsection (2) of this section, a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages, may be admitted as a claim against a company in liquidation.

“(2) Fines, monetary penalties, and costs to which section 282 of this Act applies are not claims that may be admitted against a company in liquidation.”

**20. Claims by unsecured creditors**—Section 278 (3) of the principal Act (as so substituted) is hereby amended by inserting, after the word “must”, the words “as soon as practicable”.

**21. Rights and duties of secured creditors**—Section 279 of the principal Act (as so substituted) is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) If a secured creditor values the security and claims as an unsecured creditor for the balance due, if any, the valuation and any claim must be made in the prescribed form and—

“(a) Contain full particulars of the valuation and any claim; and

“(b) Contain full particulars of the charge including the date on which it was given; and

“(c) Identify any documents that substantiate the claim and the charge.”

**22. Interest on claims**—Section 285 (3) of the principal Act (as so substituted), is hereby amended by inserting, after the word “at”, the words “a rate equal to the excess between the prescribed rate and”.

**23. Meetings of creditors or members**—Section 288 (2) of the principal Act (as so substituted) is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Except where a creditor or member agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company’s assets.”

**24. Grounds for removal from register**—Section 293 (1) (d) of the principal Act (as so substituted), is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) A member authorised to make the request by a special resolution of members entitled to vote and voting on the question; or”.

**25. Disclaimer of property by the Crown**—Section 300 (5) (b) of the principal Act (as so substituted), is hereby amended by omitting the number “28”, and substituting the expression “3 months”.

**26. Schedule 8D amended**—Clause 6 (b) of Schedule 8D to the principal Act (as inserted by section 61 of the Companies Amendment Act 1993) is hereby amended by inserting, after the word “director”, the words “or representative”.

*Amendments to Companies Amendment Act 1963*

**27. Interpretation**—(1) Section 2 (1) of the Companies Amendment Act 1963 (in this section and in sections 28 to 34 of this Act referred to as the principal Act) is hereby amended by inserting, after the definition of the term “acceptance”, the following definition:

“‘Company’ means a company within the meaning of section 2 of the principal Act; and includes a company within the meaning of section 2 of the Companies Act 1993:”.

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “stock exchange”, and substituting the following definition:

“‘Stock exchange’ means a stock exchange registered under the Sharebrokers Act 1908; and includes the New Zealand Stock Exchange established by the Sharebrokers Amendment Act 1981:”.

(3) Section 2 (1) of the principal Act is hereby further amended by omitting from the definition of the term “take-over scheme”, the word “general”.

(4) Section 2 (2) (b) of the principal Act is hereby amended by inserting, after the word “Act”, the words “or section 5 of the Companies Act 1993, as the case may be,”.

**28. Act not to apply in certain cases**—Section 3 (a) of the principal Act is hereby amended by omitting the words “private company”, and substituting the words “company having not more than 25 members or shareholders, as the case may be,”.

**29. Obligations of offeree company**—(1) Section 5 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) If its shares are quoted on a stock exchange, inform the stock exchange that the notice has been received:”.

(2) Section 5 of the principal Act is hereby amended by repealing subsection (4).

**30. Documents to be registered**—(1) The principal Act is hereby amended by repealing section 7 (as amended by section 26 of the Companies Amendment Act 1975), and substituting the following section:

“7. (1) On or before the date of the making to offerees of take-over offers, the offeror must deliver to the Registrar for registration a copy of one of those offers and of the notice and statement required to be sent to offerees under subsection (2) of section 4 of this Act.

“(2) Where the offeree company has received a notice under section 6 of this Act it must deliver to the Registrar for registration a copy of the statement required to be made by it under subsection (2) of section 5 of this Act. The copy shall be so filed—

“(a) Forthwith after the receipt of such notice, if the statement was sent to the offeror under paragraph (a) of the said subsection (2); or

“(b) Forthwith after the sending of the statement to offerees, if it was not sent to the offeror.”

(2) Section 26 of the Companies Amendment Act 1975 is hereby consequentially repealed.

**31. Reimbursement of offeree company and directors**—Section 11 (1) of the principal Act is hereby amended—

- (a) By inserting, after the word “articles”, the words “or the constitution”; and
- (b) By inserting, after the word “members”, the words “or shareholders”.

**32. Offences**—(1) The principal Act is hereby amended by repealing section 13 (as amended by section 48 (b) of the Companies Amendment Act 1980), and substituting the following section:

“13. (1) Where—

“(a) A take-over offer is made in contravention of any of the provisions of this Part of this Act; or

“(b) An offeror fails to comply with any such provision,—  
the offeror, and, if the offeror is a body corporate, every director or person who occupies the position of director by whatever name called, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

“(2) Where an offeree company contravenes or fails to comply with any provision of this Part of this Act, the company and every director of the company commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

“(3) It is a defence to a charge against a director or a person who occupies the position of a director under subsection (1) or subsection (2) of this section in relation to a contravention or failure by a body corporate to comply with any provision of this Part of this Act if he or she proves—

“(a) The body corporate took all reasonable and proper steps to ensure that the provision would be complied with; or

“(b) He or she took all reasonable steps to ensure that the body corporate complied with the provision; or

“(c) In the circumstances he or she could not reasonably have been expected to take steps to ensure that the body corporate complied with the provision.”

(2) Section 48 of the Companies Amendment Act 1980 is hereby consequentially repealed.

**33. First Schedule amended**—(1) Paragraph (e) (ii) of Part B of the First Schedule to the principal Act is hereby amended by inserting, after the word “Act”, the words “or section 5 of the Companies Act 1993, as the case may be,”.

(2) Clause 3 (j) of Part C of the First Schedule to the principal Act is hereby amended by omitting the words “either the official list or the unofficial list of”.

(3) Part C of the First Schedule to the principal Act is hereby amended by repealing clause 4, and substituting the following clause:

“4. (a) If the company whose securities are offered is a company under the principal Act, a copy of the latest financial statements and reports required to be laid before the company in general meeting pursuant to section 152 and section 161 of the principal Act:

“(b) If the company whose securities are offered is a company within the meaning of section 2 of the Companies Act 1993, a copy of the latest financial statements and reports required to be sent to the shareholders of the company pursuant to that Act:

“(c) If the offeror is not a company, a copy of the latest financial statements and report, being the financial statements and report that it would be required to deliver under section 19 of the Financial Reporting Act 1993 as if it were an overseas company to which that section applies.”

**34. Second Schedule amended**—Clause 2 (g) (iii) of the Second Schedule to the principal Act is hereby amended by omitting the words “either the official list or the unofficial list of”.

*Amendments to Companies Amendment Act 1993*

**35. Transitional provision in relation to powers of attorney**—The Companies Amendment Act 1993 (in sections 36 to 38 of this Act referred to as the principal Act) is hereby amended by inserting, after section 21, the following section:

“21A. Nothing in section 44 of the principal Act (as substituted by section 21 of this Act), applies to a power of attorney executed by a company before the commencement of this Act and the provisions of section 44 of the principal Act, as in force immediately before the commencement of this Act, shall continue to apply to any such power of attorney as if that section had not been repealed.”

**36. Transitional provisions applying to liquidation of companies**—Section 42 of the principal Act is hereby amended by repealing subsection (7), and substituting the following subsection:

“(7) All rules made under section 341 of the principal Act in respect of the winding up of companies and all regulations made under section 100A of the Judicature Act 1908 prescribing fees payable in relation to the winding up of companies shall continue to apply to the winding up of any company to which, pursuant to subsection (1) or subsection (2) of this section, Part VI of the principal Act, as in force before

the commencement of this Act, applies, and section 341 of the principal Act shall continue in force as if it had not been repealed.”

**37. Section 44 repealed**—Section 44 of the principal Act is hereby repealed.

**38. First Schedule amended**—The First Schedule to the principal Act is hereby amended by omitting the items relating to sections 153 (6), 154 (3), 159, and 160 of the Companies Act 1955.

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This Act is administered in the Department of Justice.

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