



ANALYSIS

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1997, No. 27

An Act to amend the Companies Act 1993

[30 June 1997]

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

1. Short Title—This Act may be cited as the Companies Act 1993 Amendment Act 1997, and is part of the Companies Act 1993 (“the principal Act”).

2. Rights and powers attaching to shares—Section 36 (2) of the principal Act is amended by inserting, after the word “under”, the words “section 41 (b) or”.

3. Notice of share issue—Section 43 (1) of the principal Act is amended by inserting, after the words “or section 42”, the words “or section 107 (2)”.

4. Consideration for issue of shares on registration—The principal Act is amended by inserting, after section 46, the following section:

“46A. A shareholder is not liable to pay or provide any consideration in respect of an issue of shares under section 41 (a) unless—

“(a) The constitution of the company specifies the consideration to be paid or provided for those shares; or

“(b) The shareholder is liable to pay or provide consideration for those shares pursuant to either a pre-incorporation contract (within the meaning of section 182) or a contract entered into after the registration of the company.”

5. Redemption on fixed date—Section 75 (1) (c) of the principal Act is amended by omitting the word “sum”, and substituting the word “consideration”.

6. Statement of rights to be given to shareholders—Section 83 (2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) There are special circumstances that make it reasonable for the company to refuse the request.”

7. Company to satisfy solvency test—Section 108 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(5A) Nothing in subsection (5) limits or affects the application of section 4 (4).”

8. Resolution in lieu of meeting—(1) Section 122 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsections (2) and (3), a resolution in writing signed by not less than—

“(a) Seventy-five percent; or

“(b) Such other percentage as the constitution may require for passing a special resolution,—

whichever is the greater, of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% or, if a higher percentage is required by the constitution, that higher percentage, of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.”

(2) Section 122 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) For the purposes of subsection (2), any such resolution may consist of one or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the shareholders specified in subsection (3).”

9. Shareholders entitled to receive distributions, attend meetings, and exercise rights—(1) Section 125 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Entitled to exercise any other right or receive any other benefit under this Act or the constitution or pursuant to the terms of issue of shares—”.

(2) Section 125 (1) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register on the day on which the board or the shareholders, as the case may be, pass the resolution concerned.”

10. Major transactions—Section 129 (2A) of the principal Act (as inserted by section 17 (2) of the Companies Act 1993 Amendment Act 1994) is amended by omitting the word “floating”.

11. Duty of directors to act in good faith and in best interests of company—Section 131 (4) of the principal Act is amended by omitting the words “incorporated to carry”, and substituting the words “that is carrying”.

12. Disclosure of interest—Section 140 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) A director of a company is not required to comply with subsection (1) if—

“(a) The transaction or proposed transaction is between the director and the company; and

“(b) The transaction or proposed transaction is or is to be entered into in the ordinary course of the

company's business and on usual terms and conditions."

13. Meaning of "relevant interest"—Section 146 (2) of the principal Act is amended by omitting the words "(whether or not a director of the company) has", and substituting the words "would, if that person were a director of the company, have".

14. Method of contracting—Section 180 of the principal Act is amended by repealing subsection (1A) (as inserted by section 20 of the Companies Act 1993 Amendment Act 1994), and substituting the following subsection:

"(1A) A company may, in addition to complying with subsection (1), affix its common seal, if it has one, to the contract or document containing the enforceable obligation."

15. Appointment of auditors—Section 196 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) A company need not appoint an auditor in accordance with subsection (1) if, at or before the meeting, a unanimous resolution is passed by all the shareholders who would be entitled to vote on that resolution at a meeting of shareholders. Such a resolution ceases to have effect at the commencement of the next annual meeting."

16. Short form amalgamation—(1) Section 222 (1) (b) of the principal Act is amended by adding the expression "; and" to the end of subparagraph (iii), and also by adding the following subparagraph:

"(iv) The person or persons named in the resolution will be the director or directors of the amalgamated company."

(2) Section 222 (2) (b) of the principal Act is amended by adding the expression "; and" to the end of subparagraph (iii), and also by adding the following subparagraph:

"(iv) The person or persons named in the resolution will be the director or directors of the amalgamated company."

(3) Section 222 (5) of the principal Act is amended by omitting the words "conditions set out in subsection (1) or subsection (2) are", and substituting the words "condition set out in subsection (1) (b) (iii) or subsection (2) (b) (iii) is".

17. New heading substituted—The principal Act is amended by omitting the heading above section 316A (as inserted by section 38 of the Companies Act 1993 Amendment Act 1994), and substituting the following heading:

“Transitional Provisions”.

18. Transitional provision in relation to Liquidation Surplus Account under section 290 of Companies Act 1955—The principal Act is amended by inserting, after section 316A (as inserted by section 38 of the Companies Act 1993 Amendment Act 1994), the following section:

“316B. On the repeal of the Companies Act 1955 by section 2 of the Companies Act Repeal Act 1993,—

“(a) All money standing to the credit of the Liquidation Surplus Account established under section 290 of the Companies Act 1955 and representing unclaimed assets of an existing company is deemed to be money held in the Liquidation Surplus Account established under section 316 of this Act, and that section applies as if the money represented unclaimed assets of a company registered under this Act; and

“(b) Section 316 of this Act applies to all money to which section 290 of the Companies Act 1955 would have applied if the Companies Act 1955 had been in force, and section 316 of this Act applies as if the money represented unclaimed assets of a company registered under this Act.”

19. Notice of intention to remove where company has ceased to carry on business—Section 319 (3) (a) of the principal Act is amended by omitting the words “and its registered office”.

20. Notice of intention to remove in other cases—Section 320 (4) (a) of the principal Act is amended by omitting the words “and its registered office”.

21. Registrar may restore company to New Zealand register—Section 328 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) Before the Registrar restores a company to the New Zealand register under this section,—

- “(a) In the case of a company that was removed from the New Zealand register under paragraph (b) or paragraph (c) of section 318 (1), the Registrar must give public notice setting out—
- “(i) The name of the company; and
 - “(ii) The name and address of the applicant; and
 - “(iii) The section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and
 - “(iv) The date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice:
- “(b) In the case of a company that was removed from the New Zealand register under paragraph (d) or paragraph (e) of section 318 (1), the person who made the application under subsection (1) must give public notice setting out—
- “(i) The name of the company; and
 - “(ii) The person’s name and address; and
 - “(iii) The section under, and the grounds on which, the application is made; and
 - “(iv) The date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.”

22. Registration of documents—Section 362 (1) (b) of the principal Act is amended by omitting the word “Give”, and substituting the words “In the case of a document that is not an annual return, give”.

23. Fifth Schedule amended—(1) Clause 5 of the Fifth Schedule of the principal Act is amended by inserting in subclause (1), and also in subclause (2), after the words “proxy vote”, the words “or by postal vote”.

(2) Clause 6 (4) of the Fifth Schedule of the principal Act is amended by omitting the words “not later than 48 hours”, and substituting the words “not less than 2 working days”.

(3) Clause 7 (4) of the Fifth Schedule of the principal Act is amended by omitting the words “not later than 24 hours”, and substituting the words “not less than 2 working days”.