



ANALYSIS

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1963, No. 136

An Act to amend the Companies Act 1955

[25 October 1963]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Companies Amendment Act 1963, and shall be read together with and deemed part of the Companies Act 1955 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-four.

PART I

TAKE-OVER OFFERS

2. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Acceptance” includes an offer made as a result of an invitation to make an offer:

“Offer” includes an invitation to make an offer:

“Offeree” means a holder of shares which are included in a take-over offer:

“Offeree company” means a company whose shares, or any of them, are proposed to be acquired under a take-over scheme:

“Offeror” means a person who makes a take-over offer, whether in concert or jointly with any other person or not:

“Stock exchange” means a stock exchange registered under the Sharebrokers Act 1908 and affiliated to the Stock Exchange Association of New Zealand:

“Take-over offer” means an offer in writing for the acquisition of shares under a take-over scheme:

“Take-over scheme” means a scheme involving the making of offers for the acquisition of any shares in a company which, together with shares, if any, to which the offeror is already beneficially entitled, carry the right to exercise or control the exercise of more than half the voting power at any general meeting of the offeree company.

(2) The reference in the definition of the expression “take-over scheme” in subsection (1) of this section to shares to which the offeror is beneficially entitled shall be read as including a reference to—

(a) Shares which the offeror is or will be entitled to acquire under any option or on the fulfilment of any condition under any agreement relating to the acquisition of any other shares in the offeree company; and

(b) If the offeror is a company within the meaning of section 158 of the principal Act, shares to which any subsidiary or holding company of the offeror or any other subsidiary of the offeror’s holding company is already beneficially entitled, or which any such subsidiary or holding company is or will be entitled to acquire in any such manner as aforesaid.

3. Act not to apply in certain cases—Nothing in this Part of this Act shall apply in respect of any scheme involving the making of offers for the acquisition of—

- (a) Any shares in a private company, where all the offerees have consented in writing, before the date of the take-over offer, to waive the requirements of this Act; or
- (b) Any shares in any company, if offers are made to not more than six members of that company.

4. Procedure in respect of take-over offers—(1) A take-over offer shall not be made to any offeree unless the offeror has, not earlier than twenty-eight days and not later than fourteen days before the take-over offer is made, served or caused to be served on the offeree company a notice in writing of the take-over scheme, together with a statement containing particulars of the terms of the offers to be made under the scheme and complying with the requirements of Part B and, where applicable, Part C of the First Schedule to this Act.

(2) Every take-over offer sent to any offeree shall comply with the requirements of Parts A and B and, where applicable, Part C of the First Schedule to this Act, and shall have attached to it—

- (a) A copy of the notice of the take-over scheme served on the offeree company as aforesaid; and
- (b) If the offeree company has sent to the offeror a statement pursuant to paragraph (a) of subsection (2) of section 5 of this Act, a copy of that statement.

(3) No take-over offer shall be made which includes a statement purporting to be made by an expert within the meaning of section 50 of the principal Act unless the requirements of that section are complied with. For the purposes of this subsection the provisions of the said section 50 shall apply, with all necessary modifications, as if the making of the take-over offer were the issue of a prospectus and as if references in that section to the delivery of a copy of the prospectus for registration were references to the making of the take-over offer.

5. Obligations of offeree company—(1) Forthwith upon receipt of the notice and statement given to it by or on behalf of the offeror, the offeree company shall—

- (a) If its shares are quoted on either the official list or the unofficial list of a stock exchange, inform the Secretary of the Stock Exchange Association of New Zealand that the notice has been received:
 - (b) If its shares are not so quoted, do all that is reasonably practicable to ensure that all members of the offeree company are informed of the receipt of the notice.
- (2) The offeree company shall either—
- (a) Within fourteen days after the receipt of the said notice and statement, send to the offeror, for transmission to the offerees, a statement in writing that complies with the requirements of the Second Schedule to this Act; or
 - (b) Within fourteen days after take-over offers are first made to offerees, send to every offeree a statement in writing that complies with the requirements of the said Second Schedule.
- (3) Any statement given by the offeree company pursuant to subsection (2) of this section may contain, in addition to the information required by the Second Schedule to this Act, such information as the directors of the offeree company think fit.
- (4) Where the requirements of this section are complied with, every director of the offeree company to whom subsection (1) of section 193 of the principal Act applies shall be deemed to have complied with the requirements of that subsection.

6. Notice to offeree company of dispatch of offers—Where take-over offers are made to offerees, the offeror shall forthwith serve or cause to be served on the offeree company notice in writing stating that offers have been made under the take-over scheme, and specifying the date of the offers.

7. Documents to be filed with District Registrar—

(1) Forthwith after the making to offerees of take-over offers, the offeror shall file or cause to be filed in the office of the District Registrar where the records of the offeree company are kept 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 shall file in the said office of the District Registrar 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.

8. Notice of offer becoming unconditional—When a conditional take-over offer has been declared to have become unconditional, the offeror shall send or cause to be sent to every member of the offeree company a notice stating the number and proportion of shares of each class in the offeree company which the offeror then holds or controls, whether as a result of the take-over offers or otherwise.

9. Variation of terms of offer—(1) Where in respect of any take-over offer made to offerees the foregoing provisions of this Part of this Act are complied with by the offeror, it shall be lawful for the offeror thereafter, without further compliance with those provisions, but subject to subsection (2) of this section, to vary the terms of the take-over offer so far only as the variation—

- (a) Increases the amount of any cash sum that is offered as consideration or part consideration for the shares that are proposed to be acquired; or
- (b) Extends the time for acceptance.

(2) On the variation of an offer under subsection (1) of this section the offeror shall forthwith serve or cause to be served on the offeree company a notice of the variation.

10. Liability for misstatements—If the offeror is a company, or is a body corporate other than a company, the provisions of sections 53, 54, and 56 of the principal Act shall, with all necessary modifications, apply in respect of any take-over offer as if it were a prospectus inviting persons to subscribe for shares in or debentures of a company, and as if—

- (a) The reference in subsection (1) of the said section 53 to persons who subscribe for shares or debentures were a reference to persons who accept take-over offers; and
- (b) All references in the said section 53 to the allotment of shares or debentures were references to the acceptance of a take-over offer; and
- (c) All references in the said section 53 to the delivery of a copy of the prospectus for registration were references to the making of the take-over offer; and

- (d) In the case of a body corporate other than a company, all references in the said section 53 to the company were references to the body corporate.

11. Reimbursement of offeree company and directors—

(1) Notwithstanding anything in the articles of the offeree company, the directors of that company shall be entitled to have refunded to them by that company any expenses properly incurred by them on behalf of and in the interests of the members of that company in relation to the take-over scheme.

(2) The offeree company may recover from the offeror, as a debt due to the offeree company, any expenses properly incurred by the offeree company in relation to the take-over scheme, whether as a result of refunds made under subsection (1) of this section or otherwise.

12. Obligations of offeror not affected by agreement—

Except as otherwise provided in this Act, no agreement between an offeror and an offeree shall be effective so as to exempt the offeror in whole or in part from his duty to comply with the provisions of this Part of this Act.

13. Offences—(1) Where any take-over offer is made in contravention of any of the provisions of this Part of this Act, or any offeror fails to comply with any such provision that is applicable to him, the offeror, and, if the offeror is a body corporate, every officer of the body corporate who is in default, shall be guilty of an offence against the principal Act and shall be liable to a fine not exceeding five hundred pounds. For the purposes of this subsection, the provisions of subsection (2) of section 463 of the principal Act shall extend and apply to an officer of a body corporate (other than a company) as if he were an officer of a company.

(2) Where any offeree company contravenes or fails to comply with any provision of this Part of this Act that is applicable to it, the offeree company, and every officer of that company who is in default, shall be guilty of an offence against the principal Act and shall be liable to a fine not exceeding five hundred pounds.

(3) Section 461 of the principal Act (which relates to false statements) is hereby amended by inserting in subsection (1), after the words "to this Act", the words "or in any statement required to be made under section 4 or section 5 of the Companies Amendment Act 1963".

14. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Amending either of the Schedules to this Act so as to vary the requirements set out therein, either by omitting or altering any such requirement or by adding additional requirements:
- (b) Making provision for and in relation to the granting of exemptions from all or any of the provisions of this Part of this Act, in any particular case or class of cases:
- (c) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for the due administration thereof.

(2) Any reference in this Part of this Act to the requirements of any of the Schedules to this Act or of any Part of any such Schedule shall be construed as a reference to those requirements as varied from time to time by any regulations made under this section.

(3) This section is in addition to the provisions of section 12 of the principal Act.

PART II

FINANCIAL ASSISTANCE BY FLAT-OWNING COMPANIES

15. Financial assistance by flat-owning companies—(1) Section 62 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

“(d) Subject to subsection (3) of this section, a flat-owning company within the meaning of this section from giving financial assistance for the purpose of or in connection with a purchase of or subscription for shares in the company where the ownership of the shares confers the right to occupy a flat, if—

“(i) The directors have sent to each member at least twenty-eight days before the date of the proposed transaction whereby the assistance is to be given a notice giving particulars thereof, which notice shall certify that the directors have investigated the financial affairs of the person to whom the assistance is to be provided and are satisfied that in all the circumstances the trans-

action is a prudent and proper one, and which notice shall also draw the member's attention to his right in accordance with subsection (3) of this section to require a general meeting to be called; and

“(ii) The company has filed with the Registrar at least fourteen days before the date of the proposed transaction a statutory declaration made by all the directors, or in the case of a company having more than two directors a majority of the directors, at a meeting of the directors, stating the form that the assistance will take, and the name of the person to whom it is to be given, and that they have made a full inquiry into the affairs of the company, and that having done so they have formed the opinion that the company after effecting the transaction whereby that assistance is to be given will be able to pay its debts as they fall due; and

“(iii) The person to whom the financial assistance is to be given has filed with the Registrar at least fourteen days before the date of the proposed transaction a statutory declaration that the flat is intended to be occupied as a dwellinghouse by that person or the husband or wife of that person or a relative of that person who is of or within the second degree of relationship.”

(2) Section 62 of the principal Act is hereby further amended by adding the following subsections:

“(3) In any case to which paragraph (d) of subsection (1) of this section applies any member may, at any time before the proposed transaction takes place, serve on the company a requisition in writing that a general meeting be called to consider the proposed transaction. Upon service of the requisition the transaction shall not take place unless it is agreed to by a special resolution of the company, and (where all the members of the company have not voted in favour of the resolution) until twenty-one days after the date of the passing of the resolution. Nothing in section 362 of this Act shall apply to any special resolution under this subsection.

“(4) Any director of a company who makes a declaration for the purposes of subparagraph (ii) of paragraph (d) of subsection (1) of this section without having reasonable grounds for any opinion expressed therein commits an offence and is liable to a fine not exceeding one hundred pounds.

“(5) For the purposes of paragraph (d) of subsection (1) of this section a ‘flat-owning company’ means a company which has all of the following characteristics:

“(a) The principal activity of the company at the relevant date shall be the ownership of residential flats and the land, or any estate or interest in the land, appurtenant thereto, and the other activities of the company (if any) shall be supplementary to this activity:

“(b) The company shall not during the twelve months immediately preceding the relevant date have carried on, and shall not be likely during the subsequent twelve months to carry on, any activities for the purposes of pecuniary gain:

“(c) At the relevant date three-quarters at least of the allotted shares in the company shall be held by persons who are or will be occupiers of the flats owned by the company, and (in the case of a company other than a private company) the return of allotments in respect of those shares shall have been filed with the Registrar.”

SCHEDULES

FIRST SCHEDULE

Section 4

REQUIREMENTS WITH WHICH TAKE-OVER OFFERS MUST COMPLY

PART A

Requirements Relating to Every Take-over Offer

1. The offer shall be dated, and shall be dispatched within three days after that date, and shall state that, except so far as it and all other take-over offers made under the take-over scheme are totally withdrawn and every person is released from every obligation incurred thereunder, it remains open for acceptance by the offeree for at least one month from that date.

2. Where the offer is conditional, a date shall be specified as the latest date on which the offeror can declare the offer to have become unconditional.

FIRST SCHEDULE—*continued*

PART B

Matters to be Specified in Every Take-over Offer

The take-over offer shall—

- (a) State the name, occupation, and address of each offeror and, if the offeror is a body corporate, its name and the address of its registered office, and the names, addresses, and occupations of all the directors thereof:
- (b) State whether or not it is conditional upon acceptances being received in respect of a minimum number of shares, and, if so, that minimum number:
- (c) If the shares are to be acquired in whole or in part for cash, state the period within which the payment will be made and the method of payment:
- (d) If the shares are to be acquired for a consideration other than cash, state the period within which the offeree will receive that consideration:
- (e) State the number, description, and amount of any shares in the offeree company to which each of the offerors is beneficially entitled; or, if there are no such shares, include a statement to that effect; and for the purposes of this paragraph the shares to which each of the offerors is beneficially entitled shall include—
 - (i) Shares which the offeror is or will be entitled to acquire under any option or on the fulfilment of any condition under any agreement relating to the acquisition of any other shares in the offeree company; and
 - (ii) If the offeror is a company within the meaning of section 158 of the principal Act, shares to which any subsidiary or holding company of the offeror or any other subsidiary of the offeror's holding company is already beneficially entitled, or which any such subsidiary or holding company is or will be entitled to acquire in any such manner as aforesaid.

PART C

Additional Matters to be Specified Where Securities of Any Company or Other Body Corporate are Offered as Consideration

1. In this Part of this Schedule, unless the context otherwise requires,—

“Company” means any company or body corporate, whether incorporated in New Zealand or elsewhere, by which securities are issued or to be issued:

“Securities” means debentures, stocks, shares, or bonds; and includes any right or option in respect of shares.
2. This Part of this Schedule applies where the consideration offered for shares in the offeree company consists in whole or in part of securities issued or to be issued by the offeror (being a company) or by any other company.
3. In any case to which this Part of this Schedule applies, the take-over offer shall, in addition to setting out the matters specified in Part B of this Schedule,—

FIRST SCHEDULE—*continued*PART C—*continued*

- (a) State the name of the company and specify the year in which, and the country in which, the company whose securities are offered was incorporated, the address of its registered or principal office in New Zealand, and, where it was incorporated outside New Zealand, the address of its registered or principal office in the country in which it was incorporated:
- (b) State the names, addresses, and occupations of all the directors of the company:
- (c) Contain a summary of the principal activities of the company:
- (d) Contain a statement of—
- (i) The profit or loss of the company and, if it has subsidiaries, the combined profits or losses of its subsidiaries or the profits or losses of each subsidiary or the profits or losses, as a whole, of the company and its subsidiaries, in respect of each of the five completed financial years preceding the date on which notice of the take-over scheme is given to the offeree company, and, if the offer is made later than six months after the end of a financial year, an estimate of the current trend of such profits or losses as aforesaid:
 - (ii) The rate per cent of dividends paid by the company, and the amount distributed by way of dividends, in respect of each class of its shares during each of the said financial years:
 - (iii) The issued and paid up capital of the company (specifying the classes of shares into which it is divided and the rights of each class of shareholders in respect of capital, dividend, and voting) as at the end of each of the said financial years:
 - (iv) Any alterations in the capital structure of the company during the said financial years and in the period since the end of the last of those years, and the sources of any increase of capital:
 - (v) The total amount of convertible notes and options to subscribe for shares outstanding at the date on which notice of the take-over scheme is given to the offeree company, and the dates on which they mature or are exercisable:
- (e) State whether or not the securities offered are, or in the case of securities to be issued will be, fully paid up; and, if not, to what extent they are or will be paid up, and, if the company has fixed a date and amount for payment of outstanding calls, the date and amount of each such call:
- (f) Where the securities offered will be uniform in all respects with securities previously issued by the company, state with what classes of such securities they will be uniform:
- (g) Where the securities offered will not be uniform in all respects with securities previously issued by the company, state—
- (i) In what respects they will differ from such previously issued securities:
 - (ii) Whether or not any voting rights will attach thereto, and, if so, any limitations on those rights:

FIRST SCHEDULE—*continued*PART C—*continued*

- (iii) Whether or not application for permission for the securities to be dealt in or quoted or listed has been or will be made to any stock exchange (whether in New Zealand or elsewhere), and, if so, to what stock exchange:
- (h) Contain a statement of any material change in the total indebtedness of the company since the end of the last financial year:
- (i) Where the securities offered have already been issued, state in respect of those securities—
- (i) The latest available sale price before the date on which notice of the take-over scheme is given to the offeree company:
- (ii) The highest and lowest available sale prices during each of the three years immediately preceding that date, with an explanation or reconciliation of any variations in those prices that are due to alterations in the capital structure of the company:
- (j) Where both the shares that are the subject of the take-over offer and the securities offered in exchange are quoted on either the official list or the unofficial list of a stock exchange, state—
- (i) The latest available sale price of each before the date on which notice of the take-over scheme is given to the offeree company:
- (ii) The latest rate of annual dividend of each:
- (iii) The yield of each, calculated on the basis of that sale price and rate of dividend:
- (k) Where either the shares that are the subject of the take-over offer or the securities offered in exchange are not quoted as aforesaid, or neither are so quoted, state the latest rate of annual dividend of each.
4. In any case to which this Part of this Schedule applies, the offer shall have attached thereto—
- (a) If the company whose securities are offered is a company under the principal Act, a copy of the latest accounts and reports required to be laid before the company in general meeting pursuant to sections 152 to 161 of the principal Act:
- (b) If that company is not a company under the principal Act, a copy of the latest accounts and reports, being the accounts and reports that it would be required to deliver under section 402 of the principal Act if it were an overseas company to which that section applies.
5. If any of the particulars required by the foregoing provisions of this Part of this Schedule are not available by reason of the fact that either the offeree company or the company whose securities are offered has not carried on business for sufficient length of time, or for any other proper reason, a statement to that effect, giving the reason for the omission, shall be included in respect of the particulars that are omitted.
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SECOND SCHEDULE

Section 5 (2)

STATEMENT TO BE GIVEN BY OFFEREE COMPANY

1. The statement shall either—

- (a) Indicate whether or not the directors of the offeree company recommend to shareholders the acceptance of take-over offers made or to be made; or
- (b) Indicate that the directors do not desire to make a recommendation or that they consider themselves not justified in making a recommendation.

2. The statement shall—

- (a) State the number, description, and amount of any shares in the offeree company held by or on behalf of each of the directors, and, if in the case of any such director none are so held, that fact:
- (b) Where the offer is being or has been made by a body corporate, state whether or not any securities of that body corporate are held by or on behalf of any director, and, if so, the number, description, and amount of the securities so held:
- (c) State, in respect of each director, whether or not he has accepted or intends to accept the offer in respect of any shares held by him or on his behalf:
- (d) State whether or not it is proposed in connection with the offer that any payment or other benefit shall be made or given to any director by way of compensation for loss of office or as consideration for or in connection with his retirement from office, and, if so, particulars of the proposed payment or benefit in respect of each director:
- (e) State whether or not there is any other agreement or arrangement made between any director and any other person in connection with or conditional on the outcome of the offer, and, if so, particulars of every such agreement or arrangement:
- (f) State whether or not any director has any interest in any contract entered into by the offeror, and, if so, particulars of the nature and extent of such interest:
- (g) In respect of the shares that are the subject of the take-over offer,—
 - (i) State the latest available sale price before the date on which notice of the take-over scheme was given by the offeror:
 - (ii) Where the offer has been the subject of a preliminary public announcement in a newspaper or by any other means, state the latest available sale price immediately before that announcement:
 - (iii) In the case of shares quoted on either the official list or the unofficial list of a stock exchange, state the highest and lowest available sale prices during each of the three years immediately preceding the date on which such notice was given by the offeror, with an explanation or reconciliation of any variations in those prices that are due to alterations in the capital structure of the company. Where the shares are so quoted on more than one stock exchange it shall be sufficient compliance with this subparagraph if the prices are stated in relation to the stock exchange nearest to the company's head office in New Zealand or, if its head office is not in New Zealand, nearest to its principal place of business in New Zealand:

SECOND SCHEDULE—*continued*

- (iv) In the case of shares not so quoted, set out whatever information the directors may have as to the highest and lowest prices at which the shares have been sold in each of the three years immediately preceding the said date, with an explanation or reconciliation of any variations in those prices that are due to alterations in the capital structure of the company:
- (h) If the offer is being or has been made later than six months after the end of the last financial year, set out an estimate of the trend of profit or loss since that date:
 - (i) Set out the capital value, according to the latest available Government valuation, of any land and buildings forming part of the company's assets:
 - (j) State whatever information is available to the directors as to the intentions of the offeror in respect of the future employment of the directors and employees of the offeree company.
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This Act is administered in the Department of Justice.
