



## ANALYSIS

Title	
1 Short Title	
2. New sections inserted	
18B. Registration of documents not to constitute constructive notice	
	18C. Dealings between company and other persons
	18D. Effect of fraud
	3 Amendment to Property Law Act 1952

1985, No. 80

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

[11 June 1985]

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**—This Act may be cited as the Companies Amendment Act 1985, and shall be read together with and deemed part of the Companies Act 1955 (hereinafter referred to as the principal Act).

**2. New sections inserted**—(1) The principal Act is hereby amended by inserting, after section 18A (as inserted by section 8 of the Companies Amendment Act (No. 2) 1983), the following sections:

**“18B. Registration of documents not to constitute constructive notice**—(1) Subject to subsection (2) of this section, no person is affected by or is deemed to have notice or knowledge of the memorandum or articles of a company or any other documents or the contents thereof by reason only that the memorandum or articles or other documents are—

“(a) Pursuant to this Act—

    “(i) Registered by the Registrar; or

    “(ii) Filed or lodged with the Registrar; or

“(b) Available for inspection at an office of the company.

“(2) Nothing in subsection (1) of this section applies to a document registered under Part IV of this Act.

**“18c. Dealings between company and other persons—**

(1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with any person who has acquired any property, rights, or interests from the company that—

“(a) The memorandum or articles of the company have not been complied with:

“(b) A person named in the particulars sent to the Registrar under section 200 of this Act as a director or secretary of the company—

“(i) Is not a director or secretary of the company, as the case may be; or

“(ii) Has not been duly appointed; or

“(iii) Does not have authority to exercise a power which a director or secretary of a company carrying on business of the kind carried on by the company customarily has authority to exercise:

“(c) A person held out by the company as an officer or agent of the company—

“(i) Has not been duly appointed; or

“(ii) Does not have authority to exercise a power which an officer or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise:

“(d) A person held out by the company as an officer or agent of the company with authority to exercise a power which an officer or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power:

“(e) An officer or agent of the company who has authority to issue a document on behalf of the company does not have authority to warrant that the document is genuine:

“(f) An officer or agent of the company who has authority to issue a certified copy of a document on behalf of the company or otherwise certify on behalf of the company does not have authority to warrant that the copy is a true copy or to so certify—

unless that person knows or by reason of his position with or relationship to the company ought to know of the matter referred to in paragraphs (a), (b), (c), (d), (e), or (f), as the case may be, of this subsection.

“(2) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or

with any person who has acquired any property, rights, or interests from the company that a document has not been properly sealed by the company if—

“(a) The document is sealed with a seal which appears to be the seal of the company; and

“(b) The affixing of the seal appears to have been witnessed by 2 persons; and

“(c) At the time the document appears to have been sealed—

“(i) One of those persons was named in the particulars sent to the Registrar under section 200 of this Act, or was being held out by the company, as a director of the company; and

“(ii) The other person was named in the particulars sent to the Registrar under section 200 of this Act, or was being held out by the company, as a director or secretary of the company—

unless that person knows or by reason of his position with or relationship to the company ought to know that—

“(d) The seal is not the seal of the company; or

“(e) The affixing of the seal was not witnessed by 2 persons; or

“(f) A person referred to in paragraph (c) (i) of this subsection was not a director of the company; or

“(g) A person referred to in paragraph (c) (ii) of this subsection was not a director or secretary of the company, as the case may be.

“18D. **Effect of fraud**—Section 18C of this Act applies notwithstanding the fact that a person referred to in any of the provisions of paragraphs (b) to (f) of subsection (1) or paragraph (c) of subsection (2) of that section—

“(a) Acts fraudulently; or

“(b) Forges a document that purports to have been sealed on behalf of the company—

unless the person dealing with the company or with the person who has acquired any property, rights, or interests from the company has actual knowledge of the fraud or forgery.”

(2) Subject to subsection (3) of this section, this section shall be deemed to have come into force on the commencement of the principal Act.

(3) Nothing in sections 18B to 18D of the principal Act (as enacted by subsection (1) of this section) shall apply to or affect any proceedings instituted or commenced before the enactment of this section.

**3. Amendment to Property Law Act 1952**—(1) Section 5 of the Property Law Act 1952 (as amended by section 2 of the Property Law Amendment Act 1976) is hereby amended by adding the following subsection:

“(3) Nothing in subsection (1) (a) of this section applies to a deed made by a company within the meaning of the Companies Act 1955.”

(2) Subject to subsection (3) of this section, this section shall be deemed to have come into force on the commencement of the Companies Act 1955.

(3) Nothing in section 5 (3) of the Property Law Act 1952 (as enacted by subsection (1) of this section) shall apply to or affect any proceedings instituted or commenced before the enactment of this section.

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This Act is administered in the Department of Justice.

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