



## ANALYSIS

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1988, No. 236

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

[21 December 1988]

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 Amendment Act 1988, and shall be read together with and deemed part of the Companies Act 1955 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.

(3) Section 6 of this Act shall come into force on the 1st day of July 1989.

**2. Disclosure of information relating to inspection**—The principal Act is hereby amended by repealing section 9AA (as inserted by section 25 (1) of the Official Information Amendment Act 1987) and substituting the following section:

“9AA. (1) A person authorised by the Registrar for the purposes of section 9A (1) of this Act shall not make a record of, divulge, or communicate to any person, any information acquired in exercising the powers conferred by that subsection except—

“(a) In accordance with subsections (5) and (6) of that section;  
or

“(b) For the purposes of this Act; or

“(c) In the course of any criminal proceedings.

“(2) A person so authorised who contravenes subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

“(3) Notwithstanding anything in the Official Information Act 1982, the Registrar, any Deputy Registrar, District Registrar, Assistant Registrar, and the Secretary for Justice, may refuse to disclose any information in his or her possession obtained in making, or acquired as a result of, an inspection under section 9A (1) of this Act until the purpose for which the inspection is carried out has been satisfied.

“(4) Notwithstanding anything in the Official Information Act 1982, where any person requests the Registrar, any Deputy Registrar, District Registrar, Assistant Registrar, or the Secretary for Justice, to disclose whether an inspection under section 9A (1) of this Act is being, or is proposed to be, or has been, carried out, as the case may require, the Registrar, Deputy Registrar, District Registrar, Assistant Registrar, or the Secretary for Justice shall not be required to disclose that information under the Official Information Act 1982 unless the disclosure of that information would not be likely to prejudice the commercial position of any company or person, and there is no other good reason for withholding that information under that Act.

“(5) In this section, ‘company’ includes an overseas company.”

**3. Certain persons prohibited from managing companies**—(1) The principal Act is hereby amended by repealing section 188A (as substituted by section 8 (1) of the Companies Amendment Act 1980) and substituting the following section:

“188A. (1) Where—

“(a) A person has been convicted on indictment of any offence in connection with the promotion, formation, or management of a company; or

“(b) A person has been convicted of an offence under any of sections 461 to 461D of this Act or of any crime involving dishonesty as defined in section 2 (1) of the Crimes Act 1961; or

“(c) A judgment has been obtained in an action under Part I of the Securities Amendment Act 1988 against a person as an insider (within the meaning of that Part of that Act)—

that person shall not, during the period of 5 years after the conviction or the judgment be a director or promoter of, or in any way whether directly or indirectly be concerned or take part in the management of, a company, unless that person first obtains the leave of the Court which may be given on such terms and conditions as the Court thinks fit.

“(2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than 10 days’ notice of that person’s intention to apply.

“(3) The Registrar, and such other persons as the Court thinks fit, may attend and be heard at the hearing of any application under this section.

“(4) If any person acts in contravention of this section, or of any order made under this section, that person shall be liable on conviction on indictment to imprisonment for a term not exceeding 2 years, or on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding \$5,000, or to both.

“(5) In this section, the term ‘company’ includes an overseas company that has a place of business in New Zealand.”

(2) Section 8 (2) of the Companies Amendment Act 1980 is hereby consequentially repealed.

**4. Power to restrain certain persons from managing companies**—(1) Section 189 (1) of the principal Act (as substituted by section 8 (1) of the Companies Amendment Act 1980) is hereby amended by omitting from subparagraph (iii) of paragraph (c) the word “company—”, and substituting the words “company; or”.

(2) Section 189 (1) of the principal Act (as so substituted) is hereby further amended by inserting, after paragraph (c) (as amended by subsection (1) of this section), the following paragraph:

“(d) A judgment has been obtained in an action under Part I of the Securities Amendment Act 1988 against a person as an insider (within the meaning of that Part of that Act)—”.

(3) Section 189 of the principal Act is hereby amended by inserting after subsection (4) the following subsection:

“(4A) The Registrar of the Court shall, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar shall give notice in the *Gazette* of the name of the person against whom the order is made.”

**5. Certain persons may be prohibited from managing companies by Registrar**—The principal Act is hereby amended by inserting, after section 189 (as amended by section 4 of this Act), the following section:

“189A. (1) This section applies to a company—

“(a) That has been wound up, or is being wound up, because of its inability to pay its debts as and when they became due:

“(b) That has ceased to carry on business because of its inability to pay its debts as and when they became due:

“(c) In respect of which execution is returned unsatisfied in whole or in part:

“(d) In respect of the property of which a receiver, or a receiver and manager, has been appointed by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated:

“(e) In respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or a statutory manager, or as a manager, or to exercise control, under or pursuant to any enactment, whether or not the appointment has been terminated:

“(f) That has entered into a compromise or arrangement with its creditors.

“(2) The Registrar may, by notice in writing given to a person, prohibit that person from being an officer or promoter of a company, or being concerned in, or taking part (whether directly or indirectly) in the management of, any company during such period not exceeding 5 years after the date of the notice as is specified in the notice. Every such notice shall be published in the *Gazette*.

“(3) The power conferred by subsection (2) of this section may be exercised in relation to a person who the Registrar is satisfied was, within a period of 5 years before a notice was given to that person under subsection (4) of this section (whether that period commenced before or after the commencement of this section), an officer of, or concerned in, or a person who took part in, the management of, a company to which this section applies if the Registrar is also satisfied that the manner in which the affairs of it were managed was wholly or partly responsible for the company being a company to which this section applies.

“(4) The Registrar shall not exercise the power conferred by subsection (2) of this section unless—

“(a) Not less than 14 days’ notice of the fact that the Registrar intends to consider the exercise of it is given to the person and the Registrar considers any representations made by the person; and

“(b) The Securities Commission, after considering the information in the Registrar’s possession, any representations made by the person concerned to the Registrar, and if the Commission thinks fit, any representations made by that person to the Commission, authorises the Registrar to exercise the power.

“(5) No person to whom a notice under subsection (2) of this section applies shall be an officer or promoter of any company, or be concerned or take part (whether directly or indirectly) in the management of any company.

“(6) Where a person to whom the Registrar has issued a notice under subsection (2) of this section appeals against the issue of the notice under section 9B of this Act or otherwise seeks judicial review of the notice, the notice shall remain in full force and effect pending the determination of the appeal or review, as the case may be.

“(7) The Registrar may, by notice in writing to any person to whom a notice under subsection (2) of this section has been given,—

“(a) Revoke that notice; or

“(b) Exempt that person from the notice in relation to any specified company or companies.

Every such notice shall be published in the *Gazette*.

“(8) Every person to whom a notice under subsection (2) of this section is given who fails to comply with the notice commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.

“(9) In this section ‘company’ includes an overseas company that has a place of business in New Zealand.”

**6. New sections substituted**—The principal Act is hereby amended by repealing section 195 (as amended by section 11 of the Companies Amendment Act 1966 and section 15 of the Companies Amendment Act 1982), and substituting the following sections:

**“195. Officers to notify shareholdings—**(1) Every officer of a company shall give notice in writing to the company of the shares and debentures held by, or in trust for, that officer, or of which that officer has the right to become the holder, or in which that officer has directly or indirectly any interest, in—

“(a) The company:

“(b) The company’s holding company:

“(c) Every subsidiary of the company:

“(d) Every subsidiary of the company’s holding company.

“(2) In the case of shares or debentures—

“(a) Which are acquired after the commencement of this section; or

“(b) In relation to which the officer acquires a right to become the holder after the commencement of this section; or

“(c) In which the officer acquires an interest after the commencement of this section—

the notice shall specify the date of any agreement for the acquisition of the shares or debentures, or the right or interest, as the case may be, and the consideration.

“(3) In the case of shares or debentures—

“(a) Which are disposed of after the commencement of this section; or

“(b) In relation to which the officer disposes of a right to become the holder after the commencement of this section; or

“(c) In which the officer disposes of an interest after the commencement of this section—

the officer shall give notice in writing to the company specifying the date of any agreement for the disposition of the shares or debentures, or the right or interest, as the case may be, and the consideration.

“(4) A notice is not required under this section in relation to shares or debentures in a body corporate which is the wholly owned subsidiary of another body corporate if the shares are held by the officer, or the officer has the right to become the holder, or the interest is held, as the case may be, as nominee for that other body corporate.

“(5) A company is not affected with notice of, or put on inquiry as to, the rights of any person in or over any shares or debentures by reason of any thing done for the purposes of this section.

“(6) For the purposes of this section, an officer of a company is deemed to hold, or to have an interest or right in or over,

shares or debentures if another body corporate holds them, or has an interest or rights in or over them, and either—

- “(a) That body corporate, or its directors, are accustomed or required to act in accordance with that person’s directions or instructions; or
- “(b) That person is entitled to exercise or control the exercise of one-third or more of the voting power at any general meeting of it.

“(7) Every officer of a company who fails to comply with a requirement of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

“195A. **Register of officers’ shareholdings**—(1) Every company shall keep a register in which shall be entered, in relation to each officer of the company, the particulars contained in notices given by the officer under section 195 of this Act.

“(2) The register shall be—

- “(a) Kept at the company’s registered office; and
- “(b) Open to inspection during business hours (subject to such reasonable restrictions as the company may impose in its articles or in general meeting, so that not less than 2 hours in each day are allowed for inspection) by—
  - “(i) A member or debenture holder;
  - “(ii) A person acting on behalf of the Registrar.

“(3) The Registrar is entitled to be supplied with a copy of the register or part of it.

“(4) A person who attends the company’s annual general meeting is entitled to inspect the register at the meeting.

“(5) If—

- “(a) A requirement of this section is not complied with; or
- “(b) A person who is entitled to inspect the register is prevented from doing so; or
- “(c) The Registrar is not supplied with a copy of, or extract from, the register within a reasonable time—

the company and every officer of the company who is in default commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 and also to a further fine of \$100 for each day the default continues.

“(6) If—

- “(a) A person entitled to inspect the register is prevented from doing so; or
- “(b) The Registrar is not supplied with a copy of, or extract from, the register within a reasonable time—

the Court may, on his or her application, order the company to allow the inspection or supply a copy of the register or extract from it.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 11 of the Companies Amendment Act 1966:

(b) Section 15 of the Companies Amendment Act 1982.

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This Act is administered in the Department of Justice.

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