



## ANALYSIS

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1998, No. 31

**An Act to amend the Companies Act 1993**

[3 June 1998]

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

**1. Short Title**—This Act may be cited as the Companies Amendment Act 1998, and is part of the Companies Act 1993 (“the principal Act”).

**2. Meaning of “redeemable”**—The principal Act is amended by repealing section 68, and substituting the following section:

“68. For the purposes of this Act, a share is redeemable if—

“(a) The constitution of the company makes provision for the company to issue redeemable shares; and

“(b) The constitution or the terms of issue of the share makes provision for the redemption of that share by the company—

“(i) At the option of the company; or

“(ii) At the option of the holder of the share; or

“(iii) On a date specified in the constitution or the terms of issue of the share—  
for a consideration that is—

“(iv) Specified; or

“(v) To be calculated by reference to a formula; or

“(vi) Required to be fixed by a suitably qualified person who is not associated with or interested in the company.”

**3. Liability of former shareholders**—Section 98 (6) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

**4. Annual meeting of shareholders**—Section 120 (1) of the principal Act (as substituted by section 3 (1) of the Companies Act 1993 Amendment Act 1996) is amended by repealing paragraph (a).

**5. Indemnity and insurance**—Section 162 (5) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Costs incurred by that director or employee in defending any criminal proceedings—

“(i) That have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and

“(ii) In which he or she is acquitted.”

**6. Contents of annual report**—(1) Section 211 (1) of the principal Act is amended—

(a) By repealing paragraph (d):

(b) By inserting in paragraph (f), after the words “former director” in the second place where they occur, the words “from the company”:

(c) By omitting from paragraph (h) the words “and any subsidiary”.

(2) Section 211 (2) of the principal Act is amended by omitting the expression “(d)”, and substituting the expression “(e)”.

(3) Section 211 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

“(3) The annual report of a company need not comply with any of paragraphs (a), and (e) to (j) of subsection (1), and subsection (2) if all shareholders agree that the report need not do so.

“(4) Nothing in subsection (3) affects the requirements of the Financial Reporting Act 1993.”

**7. Registrar may alter New Zealand register**—The principal Act is amended by inserting, after section 214, the following section:

“214A. If the annual return contains—

“(a) An address of the registered office of the company; or

“(b) An address for service of the company; or

“(c) A postal address of the company—

that is different from the address of the registered office, the address for service, or the postal address of the company entered on the New Zealand register, the Registrar may alter the New Zealand register accordingly.”

**8. Short form amalgamation**—Section 222 (2) of the principal Act is amended by omitting the word “company” in the first place where it occurs, and substituting the word “person”.

**9. Liquidator to summon meeting of creditors**—(1) Section 243 (1) of the principal Act is amended—

(a) By inserting in paragraph (a), after the word “whether”, the words “to confirm the appointment of that liquidator or”:

(b) By inserting in paragraph (b), after the word “whether”, the words “to confirm the appointment of that liquidator or”.

(2) Section 243 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) If the appointment of a liquidator under paragraph (a) or paragraph (b) of section 241 (2) is not confirmed at a meeting of creditors and another liquidator is not appointed in place of that liquidator, the appointment of the liquidator under paragraph (a) or paragraph (b) of section 241 (2) continues until another liquidator is appointed.”

(3) Section 243 (2) (b) of the principal Act is amended by omitting the word “forthwith”, and substituting the words “within 10 working days”.

(4) Section 243 (4) of the principal Act is amended by omitting the words “Subject to subsection (2) (b) of this section”, and substituting the words “Except if subsection (2) (b) applies,”.

(5) Section 243 of the principal Act is amended by inserting, after subsection (4), the following subsection:

“(4A) If subsection (2) (b) applies, a meeting of creditors must be held within 15 working days after the liquidator receives a notice under section 245 (1) (b) (iii) requiring a meeting of creditors to be called.”

**10. Other duties of liquidator**—Section 255 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(6) If subsection (5) applies, and the liquidator does not intend to comply with the provisions of paragraph (c) or paragraph (d) of subsection (2), the liquidator must give notice to the Registrar that he or she does not intend to comply with those provisions.”

**11. Duties in relation to accounts**—Section 256 (2) (b) of the principal Act is amended by inserting, after the word “Require”, the word “any”.

**12. Transactions having preferential effect**—(1) Section 292 (5) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of 2 years before the making of the application to the Court together with the period

commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

(2) Section 292 (6) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

**13. Voidable charges**—(1) Section 293 (6) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of a year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

(2) Section 293 (7) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that

application and ending on the date of the commencement of the liquidation.”

**14. Transactions at undervalue**—Section 297 (3) (b) of the principal Act is amended by adding the expression “; and” to the end of subparagraph (ii), and also by adding the following subparagraph:

“(iii) If—

“(A) An application was made to the Court to put a company into liquidation; and

“(B) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of a year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

**15. Transactions for inadequate or excessive consideration with directors and certain other persons**—Section 298 (4) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—

the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

**16. Mutual credit and set-off**—(1) Section 310 (6) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—  
the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

(2) Section 310 (7) of the principal Act is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) If—

“(i) An application was made to the Court to put a company into liquidation; and

“(ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241 (2),—  
the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date of the commencement of the liquidation.”

**17. Establishment of Liquidation Surplus Account—**Section 316 (1) of the principal Act is amended by omitting the words “the Official Assignee”, and substituting the words “a liquidator”.

**18. Grounds for removal from register—**Section 318 (1) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) A liquidator sends or delivers to the Registrar—

“(i) The documents referred to in section 257 (1) (a); and

“(ii) A copy of the notice referred to in section 320 (4).”

**19. Service of documents on companies in legal proceedings—**Section 387 (1) of the principal Act is amended by adding the expression “; or” to the end of paragraph (e), and also by adding the following paragraph:

“(f) By serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means as a

solicitor has, in accordance with those rules, stated that the solicitor will accept service.”

**20. First Schedule amended**—(1) Clause 5 (4) of the First Schedule of the principal Act is amended by adding the expression “; or” to the end of paragraph (c), and also by adding the following paragraph:

“(d) The chairperson of the meeting.”

(2) Clause 6 (3) of the First Schedule of the principal Act is amended by omitting the words “not exceeding 12 months”.

**21. Fifth Schedule amended**—(1) Clause 2 (2) of the Fifth Schedule of the principal Act is amended by adding the expression “; and” to the end of paragraph (c), and also by adding the following paragraph:

“(d) State that if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—

“(i) The creditor’s postal vote is invalid in respect of that different resolution; but

“(ii) The creditor may vote, in respect of that different resolution, either by being present in person or by proxy.”

(2) Clause 3 of the Fifth Schedule of the principal Act is amended by repealing subclause (2), and substituting the following subclauses:

“(2) At any meeting of creditors, not being a meeting held for the purposes of section 230, where neither the liquidator nor any nominee of the liquidator is present, the creditors participating must choose 1 of their number to act as chairperson of the meeting.

“(2A) At any meeting of creditors held for the purposes of section 230 where there is no liquidator or neither the liquidator nor any nominee of the liquidator is present, the proponent of the compromise or the proponent’s nominee must act as chairperson of the meeting; but if neither the proponent nor any nominee of the proponent is present, the creditors participating must choose 1 of their number to act as chairperson of the meeting.”

(3) Clause 7 of the Fifth Schedule of the principal Act is amended by inserting, after subclause (1), the following subclause:

“(1A) If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—

“(a) The creditor’s postal vote is invalid in respect of that different resolution; but

“(b) The creditor may vote, in respect of that different resolution, either by being present in person or by proxy.”

(4) The Fifth Schedule is amended by inserting, after clause 10, the following clause:

“11. **Effect of irregularity or defect**—(1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the Court orders otherwise.

“(2) The Court may, on the application of the liquidator or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.”

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This Act is administered in the Ministry of Commerce.

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