



ANALYSIS

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1983, No. 53

An Act to amend the Companies Act 1955

[6 December 1983]

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 (No. 2) 1983, 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 sections 4 (2), 5 (2), 6 (2), 7 (2), 21 (2), and 22 (2) of this Act, this Act shall come into force on the day on which it receives the Governor-General's assent.

2. Interpretation—(1) Section 2 (1) of the principal Act (as amended by section 71 (2) of the Securities Act 1978) is hereby amended by repealing the definition of the term “minimum subscription”, and substituting the following definition:

“‘Minimum subscription’ means the amount stated in a registered prospectus for the purposes of section 37 (2) of the Securities Act 1978.”.

(2) Section 2 (1) of the principal Act (as so amended) is hereby further amended by repealing the definition of the term “prospectus”, and substituting the following definition:

“‘Prospectus’ means a registered prospectus within the meaning of the Securities Act 1978.”.

3. Powers of inspection of Registrar—The principal Act is hereby amended by repealing section 9A (as substituted by section 6 of the Companies Amendment Act 1975 and amended by section 2 of the Companies Amendment Act 1977), and substituting the following section:

“9A. (1) Subject to subsection (3) of this section, the Registrar or any person authorised by him may, for the purpose of ascertaining whether a company or any officer of a company is complying or has complied with this Act, or of ascertaining whether the Registrar should exercise any of his rights or powers under this Act, or of detecting offences against this Act—

“(a) Require a company or any officer of a company to produce for inspection any registers, records, accounts, books, or papers that are kept by the company; and

“(b) Subject to section 466 of this Act, in any case where the Registrar or the person authorised by him considers that the aforesaid purpose cannot be achieved by inspecting only the documents specified in paragraph (a) of this subsection, or where such documents are not produced for inspection, require any person (including any officer employed in or in connection with any Government Department), to produce for inspection any registers, records, accounts, books, or papers that contain information relating to any money or other property that is or has been managed, supervised, controlled, or held in trust by or for the company; and

“(c) Inspect and make records of any such registers, records, accounts, books, or papers; and

“(d) For the purpose of making records thereof, take possession of and remove from the premises where they are kept, for such period of time as is reasonable in the circumstances, any such registers, records, accounts, books, or papers.

“(2) Nothing in subsection (1) of this section limits or affects the Inland Revenue Department Act 1974 or the Statistics Act 1975.

“(3) No person authorised by the Registrar for the purposes of subsection (1) of this section may require the production of a document or make an inspection under that subsection unless he has first made a declaration in the prescribed form that he will not, except in accordance with subsections (5) and (6) of this section, or for the purposes of this Act, or in the course of any criminal proceedings, make a record of or divulge or communicate to any other person any information that he acquires by an inspection under that subsection.

“(4) Subsection (1) of this section shall apply also in relation to any registers, records, accounts, books, or papers of a person carrying on the business of banking so far as they relate to the company’s affairs.

“(5) A person who has made an inspection under subsection (1) of this section shall give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such of the following persons as may require such records or information, namely:

“(a) The Registrar:

“(b) A Deputy Registrar:

“(c) A District Registrar:

“(d) An Assistant Registrar.

“(6) A person who has made an inspection under subsection (1) of this section shall, upon being directed to do so by a person for the time being holding the office of Registrar or Deputy Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such of the following persons as that Registrar or Deputy Registrar specifies, namely:

“(a) The Minister:

“(b) The Secretary for Justice:

“(c) Any person authorised by that Registrar or Deputy Registrar to receive such records or information.

“(7) Notwithstanding anything in subsections (5), (6), and (8) of this section, the Registrar shall maintain and aid in maintaining the secrecy of all matters that come to his

knowledge as a result of any inspection made under subsection (1) of this section, and shall not communicate any such matters to any person except—

“(a) For the purpose of, or relating to,—

“(i) Carrying this Act into effect; or

“(ii) Any criminal proceedings; or

“(iii) The enactment or proposed enactment of legislation relating to a particular company or group of companies; or

“(iv) The liquidation of any company to which an inspection under subsection (1) of this section relates; or

“(b) To the Official Assignee in bankruptcy; or

“(c) To any person to whom it is desirable that such matters should be communicated in the public interest; or

“(d) To any person who the Registrar is satisfied has a proper interest in receiving such matters.

“(8) The Minister or the Secretary for Justice may, by written notice to that person, require a person for the time being holding the office of Registrar or Deputy Registrar to give a direction under subsection (6) of this section; and that person shall comply with any such requirement.

“(9) If any person makes a record of, or divulges, or communicates to, any other person, otherwise than in accordance with this section, or for the purposes of this Act, or in the course of any criminal proceedings, any information that he has acquired in the course of an inspection under subsection (1) of this section, he commits an offence and shall be liable to a fine not exceeding \$200.

“(10) If any company refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document that the Registrar or authorised person has under that subsection required it to produce, the company commits an offence and shall be liable to a fine not exceeding \$1,000.

“(11) If any officer of a company or other person refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document within the power or control of that officer or person that the Registrar or authorised person has under that subsection required him to produce, that officer or person commits an offence and shall be liable to a fine not exceeding \$1,000.

“(12) Any person who wilfully obstructs or hinders the Registrar, or any person authorised by the Registrar for the

purposes of subsection (1) of this section, while the Registrar or authorised person is making an inspection, or a record, or taking possession of, or removing any documents pursuant to that subsection, commits an offence and shall be liable to a fine not exceeding \$1,000.

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

Cf. 1955, No. 63, s. 9A; 1975, No. 137, s. 6; 1977, No. 94, s. 2

4. New sections substituted—(1) The principal Act is hereby amended by repealing section 14, and substituting the following sections:

“14. Requirements with respect to memorandum—
(1) The memorandum of every company must state the name of the company, with “Limited” as the last word of the name in the case of a company limited by shares or by guarantee.

“(2) The memorandum of a company limited by shares or by guarantee must also state that the liability of its members is limited.

“(3) The memorandum of a company limited by guarantee must also state that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

“(4) In the case of a company having a share capital—

“(a) The memorandum must also, unless the company is an unlimited company, state the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

“(b) No subscriber of the memorandum may take less than one share:

“(c) Each subscriber, or his agent authorised in writing, must write in his handwriting in words opposite the name of the subscriber the number of shares he takes:

“(d) In any case where a corporation, whether a company within the meaning of this Act or not, is a subscriber of the memorandum, the number of shares taken

shall be written on behalf of the corporation in the manner prescribed by paragraph (c) of this subsection, by—

“(i) A witness to the affixing of the seal of the corporation to the memorandum; or

“(ii) Any person who signs the memorandum pursuant to section 15 (2) of this Act.

“14A. **Memorandum not required to specify objects—** The memorandum of a company may state but shall not be required to state the objects of the company.”

(2) This section shall come into force on the 1st day of January 1984.

5. Companies to have powers of natural persons—(1) The principal Act is hereby amended by inserting, after section 15, the following section:

“15A. (1) Subject to this Act, a company has the rights, powers, and privileges of a natural person and, without limiting the generality of the foregoing, has power to—

“(a) Issue and allot fully or partly paid shares in the company;

“(b) Issue debentures of the company;

“(c) Distribute any of the property of the company among the members, in kind or otherwise;

“(d) Give security by charging uncalled capital;

“(e) Grant a floating charge on the undertaking or property of the company;

“(f) Procure the company to be registered or recognised as a body corporate in any place outside New Zealand;

“(g) Make provision in connection with the cessation of the whole or a part of the business of the company, or of any subsidiary of the company, for the benefit of employees or former employees of the company or of a subsidiary of the company or for the dependants of such employees or former employees; and

“(h) Do any other act that it is authorised to do by any other enactment or rule of law.

“(2) The power conferred by subsection (1) (g) of this section may be exercised whether or not it is in the best interests of the company.

“(3) The memorandum and articles of a company shall not contain any provision with respect to the rights, powers, and privileges of the company except a provision that restricts or

prohibits the exercise by the company of any of the rights, powers, and privileges referred to in subsection (1) of this section.

“(4) Subject to subsection (5) of this section, nothing in this section applies to a company registered before the 1st day of January 1984.

“(5) Notwithstanding subsection (4) of this section, this section applies to a company registered before the 1st day of January 1984 where the company alters its memorandum pursuant to section 18 (1) (c) of this Act by omitting the provisions with respect to the powers of the company and resolving that the company shall have the rights, powers, and privileges of a natural person (including the powers referred to in subsection (1) (a) to (h) of this section) except in so far as the exercise of those rights, powers, and privileges may be restricted or prohibited.”

(2) This section shall come into force on the 1st day of January 1984.

6. Incidental and ancillary objects and powers—(1) The principal Act is hereby amended by repealing section 16, and substituting the following section:

“16. (1) This section applies to every company registered after the commencement of this Act, not being—

“(a) A company registered after the 1st day of January 1984;
or

“(b) A company to which section 15A (5) of this Act applies.

“(2) Every company to which this section applies shall have as incidental and ancillary to the objects specified in its memorandum the objects and powers set forth in the Second Schedule to this Act, and those objects and powers shall be implied in the memorandum accordingly, except in so far as they are expressly excluded or modified by the memorandum.

“(3) This section is in addition to and not in derogation of section 19 of this Act.”

(2) This section shall come into force on the 1st day of January 1984.

7. Alteration of memorandum—(1) The principal Act is hereby amended by repealing section 18, and substituting the following section:

“18. (1) Subject to this section, a company may, by special resolution,—

“(a) Where the memorandum of the company states the objects of the company, alter the memorandum by adding to, altering, or omitting any or all of those objects:

“(b) Where the memorandum of the company does not state the objects of the company, alter the memorandum by stating the objects of the company:

“(c) Alter the memorandum of the company by altering, omitting, or inserting any provision with respect to the powers of the company.

“(2) Subject to sections 36 and 209 (3) of this Act and subject to any limitation, restriction, or prohibition contained in the memorandum of the company, where the memorandum contains a provision which could lawfully have been contained in the articles of the company, a company may by special resolution alter that provision.

“(3) Nothing in subsections (5) to (19) of this section applies to the alteration of a provision to which subsection (2) applies.

“(4) Nothing in subsection (2) of this section permits the alteration of a provision that relates to rights to which only members in a particular class of members are entitled.

“(5) Notice of a general meeting specifying the intention to propose as a special resolution, a resolution for the alteration of the provisions of the memorandum of a company with respect to the objects and powers of the company shall be given—

“(a) To every member of the company:

“(b) To any trustee for debenture holders:

“(c) To every holder of a debenture secured by a charge on the undertaking or property of the company, not being a debenture in respect of which a trustee has been appointed:

“(d) By publication in the *Gazette* and in 2 issues of a newspaper circulating in the district where the principal place of business of the company is situated.

“(6) Notice that a special resolution has been passed by the company and specifying the terms thereof shall be filed with the Registrar within 14 days after the date on which it was passed and the Registrar shall note the memorandum of the company accordingly.

“(7) The Court may, if it thinks fit, in the case of any person or class of persons dispense with the notice required by subsection (5) of this section.

“(8) An application for the cancellation of an alteration of the memorandum made by special resolution as aforesaid may be made to the Court—

“(a) By the holders of not less in the aggregate than 10 percent in nominal value of the issued share capital of the company, or any class of that capital, or if the company is not limited by shares, not less than 10 percent of the members of the company; or

“(b) By the holders of, or the trustee for the holders of, not less in the aggregate than 10 percent in nominal value of the debentures of the company; or

“(c) By the holder of any debenture referred to in subsection (5) (c) of this section; or

“(d) With the leave of the Court—

“(i) By any creditor of the company; or

“(ii) By any member of the company.

“(9) Subject to subsection (16) of this section, if an application is made to the Court under subsection (8) of this section and a copy of that application is filed with the Registrar pursuant to subsection (11) of this section, the alteration to the memorandum shall not have any effect unless it is confirmed by the Court.

“(10) An application under subsection (8) of this section shall be made within 21 days after the date on which the notice referred to in subsection (6) of this section is filed and may be made on behalf of such one or more of such persons by such one or more of their number as may be appointed in writing for the purpose.

“(11) A copy of every application made under subsection (8) of this section shall be filed with the Registrar within 21 days after the date the notice referred to in subsection (6) of this section is filed.

“(12) On an application made under subsection (8) of this section the Court may—

“(a) Make an order confirming or cancelling the alteration either wholly or in part, and on such terms and conditions as it thinks fit;

“(b) Adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court, for the purchase (otherwise than by the company) of the interests of dissentient members;

“(c) Give such directions and make such orders as it thinks fit for facilitating or carrying into effect any such arrangement.

“(13) In exercising its powers under subsection (12) of this section, the Court—

“(a) Shall have regard to the rights and interests of—

“(i) The members of the company, or any class of them; and

“(ii) The creditors of the company; and

“(b) May also have regard to any other matter it thinks fit.

“(14) Notwithstanding anything in this Act, a copy of a special resolution altering the memorandum of a company shall not be delivered to the Registrar before the expiration of the latest of the following:

“(a) Twenty-one days after the date the notice referred to in subsection (6) of this section is filed; or

“(b) If an application to the Court has been made under subsection (8) of this section, the date the application is determined by the Court; or

“(c) If there is an appeal against that determination, the date the appeal is finally determined.

“(15) A copy of the special resolution together with a copy of the memorandum as altered shall, if an application under subsection (8) of this section has not been made to the Court, be delivered to the Registrar by the company within 14 days after the expiration of the period of 21 days referred to in subsection (14) (a) of this section.

“(16) If an application has been made to the Court under subsection (8) of this section, a copy of the special resolution, together with a sealed copy of the order of the Court confirming the alteration and a copy of the memorandum as altered, shall be delivered to the Registrar by the later of the following:

“(a) Thirty days after the date the application is determined by the Court; or

“(b) If there is an appeal against that determination, 30 days after the date that appeal is finally determined.

“(17) The Registrar shall register the documents delivered in accordance with subsection (15) or subsection (16) of this section, as the case may be, and shall certify the registration under his hand and seal, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration to the memorandum have been complied with, and thenceforth the memorandum as altered shall be the memorandum of the company.

“(18) If a company makes default in delivering to the Registrar any document required by this section to be delivered

to him, the company and every officer of the company who is in default shall be liable to a default fine.

“(19) Except by special leave of the Court by whom the judgment or order appealed from was made, or by special leave of the Court of Appeal, no appeal from a judgment or order made under subsection (12) of this section shall be brought after the expiration of 30 days from the time the decision of the Court is given.”

(2) This section shall come into force on the 1st day of January 1984.

8. Ultra vires transactions—The principal Act is hereby amended by inserting, after section 18, the following section:

“18A. (1) Nothing done by a company and no conveyance or transfer of any property, whether real or personal, to or by a company shall be invalid, void, or unenforceable by reason only of the fact that the company was without capacity or power to do it, or to execute, or give, or take such conveyance or transfer.

“(2) Nothing in subsection (1) of this section shall apply:

“(a) In any proceedings against the company by any member of the company, or where the company has issued a debenture or debentures secured by a floating charge over all or any of the company’s undertaking or property, by the holder of any of those debentures or the trustee for the holder of those debentures—

“(i) To prevent the doing of any act, or the conveyance or transfer of any property to or by the company on the ground that the company is without capacity or power to do the thing or to execute or take such conveyance or transfer; or

“(ii) To obtain any other relief on the ground that the company was without capacity or power to do such thing, or to execute or take such conveyance; or

“(b) In any proceedings by the company or any member of the company against any officer or former officer of the company as a result of any thing done by the company or the conveyance or transfer of any property to or by the company on the ground that the company was without capacity or power to do such thing or to execute, give, or take such conveyance or transfer; or

“(c) In an application by the Registrar for the winding up of a company.

“(3) In any proceedings to which subsection (2) (a) (i) of this section applies to prevent the doing of any act, or the conveyance or transfer of any property by or to the company pursuant to any contract to which the company is a party, the Court may on the application of any party to the contract (including the company), in addition to making any order restraining or preventing the company from performing the contract, make an order granting such relief as the Court thinks just in respect of any loss or damage which may be sustained as a result of the company being prevented from performing the contract.

“(4) Nothing in subsection (3) of this section shall authorise the granting of relief in respect of the loss of anticipated or future profits.

“(5) Subsection (1) of this section shall apply to any thing done by a company and any conveyance or transfer of any property, whether real or personal, to or by a company whether before or after the commencement of this Act.

“(6) This section shall not apply to or affect any proceedings instituted or commenced before the coming into force of the Companies Amendment Act (No. 2) 1983.”

9. Statutory forms of memorandum and articles—Section 25 of the principal Act is hereby amended by inserting, before the words “The form of”, the words “Subject to section 14A of this Act,”.

10. Registration of memorandum and articles—The principal Act is hereby amended by repealing section 26, and substituting the following section:

“26. (1) The memorandum and articles, if any, together with any other document required to be delivered or given to the Registrar by or under this Act on or before the incorporation of a company, shall be delivered or given to the Registrar.

“(2) The Registrar shall retain and register the memorandum and articles, if any, and shall register or otherwise deal with such other documents in the manner required by or under this Act.”

Cf. 1955, No. 63, s. 26

11. Conclusiveness of certificate of incorporation—Section 29 of the principal Act is hereby amended—

- (a) By omitting from subsection (1) the words “authorised to be registered and”; and
- (b) By repealing subsection (2).

12. Change of registration—(1) The principal Act is hereby amended by repealing section 30, and substituting the following section:

“30. (1) Subject to the provisions of this section—

“(a) A company registered as an unlimited company may register under this Act as a limited company if it was not previously a limited company that became registered as an unlimited company pursuant to paragraph (b) of this subsection or any corresponding previous enactment:

“(b) A company registered as a company limited by shares may register under this Act as an unlimited company:

“(c) A company registered as a company limited by guarantee and not having a share capital may register under this Act as a company limited by guarantee and having a share capital:

“(d) A company registered as a company limited by shares may register under this Act as a company limited both by shares and guarantee:

“(e) A mining company registered as a no liability company may, if all the issued shares in that mining company are fully paid up, register under this Act as a company limited by shares:

“(f) A company already registered as a limited company may re-register under this Act.

“(2) Application to register under subsection (1) of this section shall be made to the Registrar.

“(3) A company which makes an application under subsection (1) of this section shall, subject to subsections (15) and (16) of section 18 of this Act, (as applied by subsection (10) of this section), deliver to the Registrar with the application the following documents:

“(a) A copy of a special resolution of the company—

“(i) Authorising the application by the company to be registered under subsection (1) of this section:

“(ii) Making such alterations to the memorandum of the company as are necessary for the memorandum to comply with the requirements of this Act in respect of the company to which the application relates:

“(iii) Making such alterations and additions to the articles of the company, if any, as are necessary for the articles to conform with the requirements of this Act in respect of the company to which the application relates:

“(iv) Adopting, where the company has no registered articles, such articles, if any, as are required by this Act to be registered in respect of the company to which the application relates:

“(v) Where necessary, changing the name of the company to a name by which the company to which the application relates could be registered:

“(b) Where, by a special resolution referred to in paragraph (a) of this subsection, the memorandum of a company is altered, or the articles of the company are altered or added to, or articles are adopted by the company (as the case may be), a printed or typewritten copy of the memorandum as altered, the articles as altered or added to, or the articles as adopted (as the case may be):

“(c) Where a company registered as a limited company makes an application to be registered as an unlimited company, or where a company registered as a company limited by guarantee makes application to be registered as a company limited by guarantee and having a share capital—

“(i) A memorandum signed by or on behalf of each member of the company recording the consent of each member to the registration of the company as an unlimited company, or as a company limited by guarantee and having a share capital (as the case may be); and

“(ii) A statutory declaration by a director or secretary of the company verifying that the persons by whom or on whose behalf such a memorandum is signed constitute the whole membership of the company and, if a member has not signed the memorandum himself, that the director or secretary making the declaration has taken all reasonable steps to satisfy himself that any person signing the memorandum on behalf of a member of the company, was authorised to do so:

“(d) The certificate of incorporation of the company.

“(4) The Registrar shall register the documents referred to in subsection (3) (a) to (c) of this section delivered with the application in accordance with this section.

“(5) On the registration of the documents as aforesaid, the Registrar shall cancel the certificate of incorporation of the company and shall certify under his hand and seal that the company is incorporated as a company to which the application relates pursuant to this section, and the company shall from the date mentioned in the certificate of incorporation be deemed to be a company registered as a company of the kind to which the application relates with such liability on the part of the members of the company as so registered to contribute to the assets of the company in the event of its being wound up as is provided in this Act.

“(6) The Registrar shall forthwith publish notice of the registration of a company pursuant to this section in the *Gazette*.

“(7) A special resolution passed for the purposes of this section shall not take effect until the issue under this section of a certificate of incorporation of the company.

“(8) A certificate of incorporation given by the Registrar under this section shall be conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto under this section have been complied with and that the company is a company duly registered under this Act.

“(9) Where a company is registered pursuant to this section—

“(a) The registration of the company does not—

“(i) Create a new legal entity; or

“(ii) Prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate; or

“(iii) Affect the property, rights, or liabilities of the company and those rights or liabilities may be enforced in manner provided by Part X of this Act in the case of a company registered in pursuance of that Part; or

“(iv) Affect any proceedings by or against the company; and

“(b) Any proceedings that could have been commenced or continued by or against the company before registration under this section, may be commenced or continued by or against the company after registration under this section.

“(10) Subsections (5) to (16) of section 18 of this Act shall, with all necessary modifications, apply to a special resolution to which this section applies as if it were a special resolution under that section.”

(2) Notwithstanding section 7 (2) of this Act, section 30 (10) of the principal Act, as enacted by subsection (1) of this section, shall apply as if section 7 of this Act comes into force on the day on which this Act receives the Governor-General’s assent.

13. Company names—The principal Act is hereby amended by repealing section 31 (as amended by section 27 (1) of the Flags, Emblems, and Names Protection Act 1981), and substituting the following section:

“31. (1) Subject to this section, except with the approval of the Governor-General by Order in Council, no company (including an overseas company) shall be registered by a name which—

“(a) In the opinion of the Registrar is undesirable; or

“(b) Is a name, or a name of a kind, which the Governor-General has by Order in Council declared is not available for registration.

“(2) Except with the consent of the Governor-General in Council or as expressly provided in any Act other than this Act, no company (including an overseas company) shall be registered by a name which contains any word referred to in any of sections 12 to 15 and 20 of the Flags, Emblems, and Names Protection Act 1981.

“(3) An application in the prescribed form may be made to the Registrar for the reservation of a name set out in the application as the name—

“(a) Of an intended company:

“(b) To which a company proposes to change its name:

“(c) Of an intended overseas company which is proposed to be registered:

“(d) Under which an overseas company proposes to be registered, either originally or on a change of name.

“(4) Subject to subsection (1) of this section, no company shall be registered under this Act, and no approval shall be given by the Registrar to the change of name of a company pursuant to section 32 of this Act, unless an application for reservation of the name has been made pursuant to subsection (3) of this section, and that name has been reserved.

“(5) If the name for which reservation is sought is a name by which the intended company, or company, or intended overseas company, or overseas company, as the case may be, could be registered, the Registrar may reserve that name.

“(6) Reservation of a name pursuant to subsection (5) of this section shall have effect for a period of 3 months from the date of the reservation of that name, or until revoked by the Registrar, whichever is the earlier.

“(7) During the period for which a name has been reserved pursuant to subsection (6) of this section, no company (except the intended company or company in respect of which approval has been granted) shall be registered under this Act, whether originally or on a change of name, by the name reserved by the Registrar or by a name that in the opinion of the Registrar so closely resembles that name, as to be likely to be mistaken for that name.

“(8) The reservation of a name under this section shall not entitle an intended company, or company, or intended overseas company, or overseas company, to be registered under this Act by that name, either originally or on a change of name.”

14. Change of name—The principal Act is hereby amended by repealing section 32, and substituting the following section:

“32. (1) Subject to this Act, a company may by special resolution and with the approval of the Registrar change its name to a name by which the company could be registered without contravention of section 31 (1), (2), or (7) of this Act.

“(2) Subject to this Act, if, through inadvertence or otherwise, a company on its first registration, or on its registration by a new name, is registered by a name by which the company could not be registered without contravention of section 31 (1), (2), or (7) of this Act, and if the Registrar so directs, the company shall change its name within 6 weeks after the date of the direction, or such longer period as the Registrar allows.

“(3) If a company makes default in complying with the requirements of subsection (2) of this section the company and every officer in default shall be liable to a default fine.

“(4) No fee shall be payable to the Registrar in respect of any change of name under subsection (2) of this section or in respect of any document required for the purposes of or by reason of any such change of name.

“(5) Where a company changes its name under this section, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. The Registrar shall forthwith after the alteration of the register publish in the *Gazette* a notice of the change of its name, and that notice shall be conclusive evidence of the change to which it relates.

“(6) A change of name made pursuant to this section shall not be effective until registered under this section.

“(7) A change of name by a company under this section shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.”

15. Contracts entered into before incorporation—The principal Act is hereby amended by inserting, after section 42, the following section:

“42A. (1) This section applies to—

“(a) A contract purporting to be made by a company before its incorporation:

“(b) A contract made by a person on behalf of a company before and in contemplation of its incorporation.

“(2) Notwithstanding any enactment or rule of law, a contract to which this section applies may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made. A contract so ratified shall, upon ratification, be valid and enforceable as if the company had been a party to the contract when it was made.

“(3) For the purposes of this section, a contract to which this section applies may be ratified by a company in the same manner as a contract may be made by a company under section 42 of this Act, and the provisions of section 42 of this Act shall have effect as if references in that section to making a contract were references to ratifying a contract.

“(4) Notwithstanding any enactment or rule of law, in a contract to which this section applies, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company—

“(a) That the company will be incorporated within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the making of the contract; and

“(b) That the company will ratify the contract within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.

“(5) The amount of any damages recoverable in an action for breach of the warranty implied in any such contract shall be the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract as if the contract had been ratified and cancelled.

“(6) Where a company after its incorporation does not ratify a contract to which this section applies, any party to that contract may apply to the Court for an order directing the company to return any property, whether real or personal, acquired pursuant to the contract to that party, or for any other relief in favour of that party respecting any such property, and the Court may, if it considers it just and equitable to do so, make any order or grant such relief as it thinks fit and whether or not an order has been made under subsection (5) of this section.

“(7) In any proceedings against a company for breach of a contract to which this section applies and which has been ratified by the company, the Court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief, in addition to or in substitution for any order which may be made against the company, against any person by whom that contract was made in the name of, or on behalf of the company, as the Court considers just and equitable.

“(8) Where a company, after its incorporation, enters into a contract in the same terms as, or in substitution for, a contract to which this section applies (not being a contract ratified by the company under this section), the liability of any person under subsection (4) of this section (including any liability under an order made by the Court thereunder for the payment of damages) shall be discharged.

“(9) Subsections (2) and (3) of this section shall apply to a contract to which this section applies entered into before the commencement of this section.”

16. Jurisdiction of District Courts—The principal Act is hereby amended by inserting, after section 42A, the following section:

“42B. (1) A District Court shall have jurisdiction to exercise any power conferred by section 42A of this Act in any case where—

“(a) The occasion for the exercise of the power arises in the course of civil proceedings properly before the Court; or

“(b) The amount of the claim or the value of the property or relief claimed or in issue is not more than \$12,000; or

“(c) The parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court shall have jurisdiction to determine the proceedings.

“(2) For the purposes of section 43 of the District Courts Act 1947, an application made to a District Court under section 42A of this Act shall be deemed to be an action.”

17. Restriction on alteration of the name mentioned in prospectus or statement in lieu of prospectus—Section 52 of the principal Act (as amended by section 71 (3) of the Securities Act 1978) is hereby amended by inserting, before the word “prospectus”, the word “registered”.

18. Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc.—Section 61 (1) (c) (ii) of the principal Act (as amended by section 71 (4) of the Securities Act 1978) is hereby amended by inserting, before the word “prospectus”, the word “registered”.

19. Liability as contributories of present and past members—Section 211 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of subsection (2) of this section and the following qualifications:

“(a) Subject to paragraph (b) of this subsection, a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up:

“(b) Where an unlimited company is registered as a limited company under section 30 (1) (a) of this Act within 3 years of the commencement of the winding up, a past member of the company who was a member of the company at the time of that registration—

“(i) Is liable to contribute in respect of debts and liabilities contracted before that registration; and

- “(ii) If no person who was a member of the company at the time of that registration is a member at the commencement of the winding up, is so liable to contribute notwithstanding paragraph (d) of this subsection and whether or not the existing members have satisfied the contributions required to be made by them pursuant to this Act:
- “(c) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member:
- “(d) Subject to paragraph (b) of this subsection, a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
- “(e) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:
- “(f) In the case of a company limited by guarantee, no contributions shall, subject to the provisions of subsection (3) of this section, be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up:
- “(g) Where an unlimited company is registered as a limited company under section 30 (1) (a) of this Act, the amount that a member of the company at the time of that registration, or a person who at that time was a past member of the company, is liable to contribute in respect of the debts and liabilities of the company contracted before that time is unlimited:
- “(h) Where a limited company is registered as an unlimited company under section 30 (1) (b) of this Act, a person who, at the time of that registration as an unlimited company, was a past member of the company and did not thereafter again become a member of the company is not, if the company is wound up, liable to contribute to the property of the company more than he would have been liable to contribute if the company had not registered as an unlimited company:

“(i) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract:

“(j) A sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.”

20. Formation of private companies—Section 353 (1) of the principal Act is hereby amended by adding, after the words “by guarantee”, the words “, or unlimited”.

21. Prohibition of increasing membership beyond 25—(1) Section 359 (3) of the principal Act is hereby amended by inserting, after the words “secretary of the company”, the words “, or any chartered accountant or solicitor authorised in that behalf,”.

(2) This section shall come into force on the 1st day of January 1984.

22. Prohibition of issue of share prospectus; and certificate to accompany annual return—(1) Section 360 (2) of the principal Act is hereby amended by inserting, after the words “secretary of the company”, the words “, or any chartered accountant or solicitor authorised in that behalf,”.

(2) This section shall come into force on the 1st day of January 1984.

23. Name to be reserved before overseas company establishes place of business—The principal Act is hereby amended by inserting, after section 396, the following section:
“396A. An overseas company shall not establish a place of business within New Zealand unless the name of the overseas company is reserved under section 31 of this Act.”

24. Limited application of Act to banks—Section 458 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsection:

“(6) Except as provided in the foregoing provisions of this section, subsection (2) of section 464, and subsection (4) of section 9A of this Act, nothing in this Act shall apply to banks.”

25. Amendments to other Acts—(1) Section 4 (3) of the Companies Amendment Act 1963 (as amended by section 71 (12) (a) of the Securities Act 1978) is hereby amended by inserting, before the words “prospectus and,” the word “registered”.

(2) Section 10 of the Companies Amendment Act 1963 (as amended by section 71 (12) (b) of the Securities Act 1978) is hereby amended—

- (a) By inserting before the words “prospectus inviting”, the word “registered”;
- (b) By omitting from paragraph (c) the words “sections 56 and 57”, and substituting the words “section 56”.

26. Repeals—The following enactments are hereby repealed—

- (a) Sections 449 (1) and 450 of the Companies Act 1955;
- (b) Section 7 (3) of the Unit Trusts Act 1960;
- (c) The Stamp and Cheque Duties Act 1971: so much of the Second Schedule as relates to section 32 (4) of the principal Act;
- (d) Section 6 of the Companies Amendment Act 1975;
- (e) The Companies Amendment Act 1975: so much of the First Schedule as relates to sections 18 (6) and 32 (2) of the principal Act;
- (f) Section 2 of the Companies Amendment Act 1977;
- (g) Sections 71 (2) and 73 of the Securities Act 1978;
- (h) The Flags, Emblems, and Names Protection Act 1981: so much of the Fourth Schedule as relates to the Companies Act 1955;
- (i) Section 45 of the Companies Amendment Act 1980.