



## ANALYSIS

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1999, No. 20

**An Act to amend the Corporations (Investigation and Management) Act 1989** [26 April 1999]

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

**1. Short Title**—This Act may be cited as the Corporations (Investigation and Management) Amendment Act 1999, and is part of the Corporations (Investigation and Management) Act 1989 (“the principal Act”).

**2. Statutory management of corporations and associated persons**—Section 38 of the principal Act is amended by adding the following subsections:

“(3) Every Order in Council made under subsection (1) must specify the date on which, and the time at which, the Order in Council comes into force.

“(4) The date and time as specified must not be earlier than the date on which, and the time at which, the Order in Council is made.”

**3. Moratorium**—(1) Section 42 of the principal Act is amended by inserting in subsections (5) and (6), after the word “which” in each place where it appears, the expression “, and the time at which,”.

(2) Section 42 of the principal Act is amended by adding the following subsection:

“(7) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 93A to 93I of the Insolvency Act 1967 apply,—

“(a) Nothing in subsection (1) (h) applies to any right of set-off provided for in the netting agreement; and

“(b) Nothing in subsection (1) limits or prevents the exercise of any of the following rights under the netting agreement:

“(i) The termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event specified in the netting agreement, being an event (including the appointment of a statutory manager) occurring not later than the commencement of statutory management; or

“(ii) The taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination; and

“(c) Nothing in subsection (1) limits or prevents the exercise by a recognised clearing house (within the meaning of section 310A of the Companies Act 1993), of any right referred to in subsection (1) (d) to (f) in respect of any property of that corporation if the right that is exercised has been granted to secure, or to assist in securing, the due performance, by that corporation, of obligations entered into by that corporation under a recognised multilateral netting agreement (within the meaning of that section).”

**4. Statutory manager may suspend payment of money owing**—(1) Section 44 (3) of the principal Act is amended by inserting, after the word “which”, the expression “, and the time at which,”.

(2) Section 44 of the principal Act is amended by adding the following subsection:

“(4) Nothing in subsection (1) authorises the suspension by the statutory manager of the payment of any amount that would be included in the calculation of a netted balance in accordance with section 310C of the Companies Act 1993 or section 93C of the Insolvency Act 1967, as the case may be. However, subsection (1) applies to the payment of the netted balance.”

**5. Management of corporation to vest in statutory manager**—Section 45 (1) of the principal Act is amended by inserting, after the word “date”, the expression “, and at and from the time,”.

**6. Application of certain provisions of Companies Act 1993**—(1) Section 55 (1) of the principal Act is amended by inserting, after the expression “301”, the expression “, 310G, 310I,”.

(2) Section 55 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) The date on which, and the time at which, the corporation became subject to statutory management was the date on which, and the time at which, the liquidation commenced.”

**7. Termination of statutory management**—Section 62 of the principal Act is amended—

- (a) By inserting in subsection (1), after the word “date”, the words “and at a time”;
- (b) By omitting from paragraphs (a), (b), and (c) of subsection (3) the words “on the specified date” in each place where they appear, and substituting in each case the words “at the specified time”;
- (c) By omitting from subsection (4) the word “date” in the first place where it appears, and substituting the word “time”;
- (d) By inserting in subsection (4) (a) and (b), after the word “date” in each place where it appears, the words “and time”;
- (e) By inserting in subsection (5) (a), after the word “which”, the expression “, and at the same time as that specified as the time at which,”;
- (f) By inserting in subsection (5) (b) and (c), after the word “date” in each place where it appears, the words “and at the time”.