



ANALYSIS

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1993, No. 114

An Act to amend the Incorporated Societies Act 1908

[28 September 1993]

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

1. Short Title and commencement—(1) This Act may be cited as the Incorporated Societies Amendment Act 1993, and shall be read together with and deemed part of the Incorporated Societies Act 1908 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1994.

2. Power to compromise with creditors and members—(1) Section 23A (1) of the principal Act (as inserted by section 4 of the Incorporated Societies Amendment Act 1981) is hereby amended by omitting the words “being wound up”, and substituting the words “in liquidation”.

(2) Section 23A (2) of the principal Act (as so inserted) is hereby amended by omitting the words “the course of being wound up”, and substituting the word “liquidation”.

(3) Section 23A (5) of the principal Act (as so inserted) is hereby amended by omitting the definition of the term “creditor”, and substituting the following definition:

“‘Creditor’ includes every person who has a claim that in the liquidation of a society would be admitted as a claim in accordance with Part XVI of the Companies

Act 1993 (as applied by section 24 (3) and section 26 (3) of this Act):”.

3. New sections substituted—(1) The principal Act is hereby amended by repealing sections 24 to 26, and substituting the following sections:

“24. Members may resolve to put society into liquidation—(1) A society may be put into liquidation if the society, at a general meeting of its members, passes a resolution appointing a liquidator, and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution to be confirmed was passed.

“(2) In subsection (1) of this section, the term ‘resolution’ means a resolution carried by a majority of the valid votes cast by members voting at the general meeting in person or, if so allowed by the society’s rules, by proxy; and, for the purposes of that subsection, the resolution shall be taken to be confirmed at the subsequent general meeting if the confirmation is carried by such a majority.

“(3) Subject to this Act and to any regulations made under it, the provisions of Part XVI of the Companies Act 1993 shall apply to the liquidation of the society, with such modifications as may be necessary, as if the society was a company that had been put into liquidation under section 241 (2) (a) of that Act.

“25. High Court may put society into liquidation—A society may be put into liquidation by the appointment by the High Court as liquidator of a named person or of an Official Assignee for a named district under the following circumstances, that is to say:

“(a) If the society suspends its operations for the space of a year; or

“(b) If the members of the society are reduced in number to less than 15; or

“(c) If the society is unable to pay its debts; or

“(d) If the society carries on any operation whereby any member makes any pecuniary gain contrary to the provisions of this Act; or

“(e) If the High Court or a Judge thereof is of the opinion that it is just and equitable that the society should be put into liquidation.

“26. Application to Court to appoint liquidator—(1) Any application to the High Court for the appointment of a

liquidator of a society shall be made by the society or by a member or by a creditor or by the Registrar.

“(2) All costs incurred by the Registrar in making an application shall, unless the Court or a Judge thereof otherwise orders, be a first charge on the assets of the society.

“(3) Subject to this Act and to any regulations made under it, Parts XVI and XVII of the Companies Act 1993 shall apply, with such modifications as may be necessary,—

“(a) To the application for the appointment of a liquidator as if the application was an application under section 241 (2) (c) of that Act; and

“(b) To the liquidation as if the liquidator had been appointed under section 241 (2) (c) of that Act.”

(2) Section 4 of the Incorporated Societies Amendment Act 1971 is hereby consequentially repealed.

4. Division of surplus assets—(1) Section 27 (1) of the principal Act is hereby amended by omitting the words “winding up”, and substituting the word “liquidation”.

(2) Section 27 (2) of the principal Act is hereby amended by omitting the words “of a winding up by the said Court, or as the Registrar directs in the case of a voluntary winding up”, and substituting the words “where a liquidator was appointed by the Court, or as the Registrar directs in a case where a liquidator was appointed by a resolution of the members”.

(3) Section 27 (3) of the principal Act is hereby amended by omitting from paragraph (b) the words “winding up”, in each place where they occur, and substituting the word “liquidation”.

5. Transitional provisions applying to liquidation of societies—(1) Nothing in section 2 or section 3 or section 4 of this Act shall apply to or affect the winding up of a society commenced before the commencement of this Act or anything done by or in relation to a society under Part VI of the Companies Act 1955 before the commencement of this Act, and sections 23A, 24, 25, 26, and 27 of the principal Act and Part VI of the Companies Act 1955, as in force before the commencement of this Act, shall continue in force in relation thereto as if this Act had not been passed.

(2) In the liquidation of a society under Part XVI of the Companies Act 1993, nothing in any of sections 292 to 299 of that Act applies in relation to any transaction entered into by a society, or any matter that arose, before the commencement of this Act, but sections 309, 310, 311, 311A, 311B, and 311C of the

Companies Act 1955, as in force before the commencement of this Act, shall continue to apply in respect of that transaction or matter as if this Act had not been passed.

This Act is administered in the Department of Justice.
