



ANALYSIS

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1993, No. 117

An Act to amend the Judicature 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 Judicature Amendment Act 1993, and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).

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

2. New sections inserted—The principal Act is hereby amended by inserting, after section 17, the following sections:

“17A. Jurisdiction as to liquidation of associations—(1) In this section, ‘association’ includes any partnership, company, or other body corporate, or unincorporated body of persons other than—

“(a) A company or an overseas company, as defined in section 2 of the Companies Act 1993; or

“(b) A company as defined in section 2 of the Companies Act 1955; or

“(c) A body corporate that may be put into liquidation in accordance with the provisions of any Act under which it is constituted.

“(2) The Court has jurisdiction to appoint a named person or an Official Assignee for a named district as the liquidator of an association.

“(3) An application for the appointment of a liquidator may be made by the association or a director or member or creditor or the Registrar of Companies.

“(4) The Court may appoint a liquidator if it is satisfied that—

“(a) The association is dissolved or has ceased to carry on business or is carrying on business solely for the purpose of terminating its affairs; or

“(b) The association is unable to pay its debts; or

“(c) It is just and equitable that the association be put into liquidation.

“17B. **Application of Companies Act 1993**—Part XVI of the Companies Act 1993 (except sections 241 (1) to (4) and 268) shall apply, with such modifications as may be necessary, in relation to the liquidation of an association and as if references to—

“(a) A company registered under that Act included a reference to an association:

“(b) A director included references to any person occupying the position of director by whatever name called:

“(c) Shareholders or persons entitled to surplus assets under the constitution of a company and the Companies Act 1993 were references to such persons as the Court may determine to be justly entitled to any surplus assets after the satisfaction of the claims of all the creditors.

“17C. **Meaning of ‘inability to pay debts’**—For the purposes of section 17A of this Act, an association is unable to pay its debts—

“(a) If—

“(i) A creditor who is owed an amount exceeding \$100 by the association has served on the association a demand for payment of that amount by leaving it at the principal office of the association in New Zealand, or delivering it to the secretary or a director or manager or principal officer of the association; and

“(ii) The association has for 3 weeks after the demand was served on it failed to pay the amount due or secure the payment of it or compound for it to the satisfaction of the creditor; or

“(b) If—

“(i) An action or proceeding has been commenced against a member of the association for the payment

of an amount owing by the association or that member in his or her capacity as a member; and

“(ii) Notice in writing of the action or proceeding has been served on the association by leaving it at its principal place of business in New Zealand or by delivering it to the secretary or a director, or principal officer of the association or serving it on the association in such manner as the Court may approve or direct; and

“(iii) The association has not, within 10 days after the notice was served on it, paid or secured the debt, or compounded for it or had the action or proceeding stayed or indemnified the member for the amount of any judgment that may be entered against him or her and any costs, damages, and expenses that may be incurred by him or her in the action or proceeding; or

“(c) If execution or other process issued on a judgment, decree, or order obtained in a court in favour of a creditor against the association, or a member of the association in his or her capacity as a member, or a person authorised to be sued on behalf of the association, is returned unsatisfied; or

“(d) If it is proved to the satisfaction of the High Court that the association is unable to pay its debts, and in determining whether an association is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the association.

“17D. **Power of liquidator to enforce liabilities**—The liquidator may, by notice in writing, require any person who is liable to pay or contribute to the payment of—

“(a) Any debt or liability of the association; or

“(b) Any sum for the adjustment of the rights of the members among themselves; or

“(c) The costs and expenses of the liquidation—
to pay or contribute accordingly and every such person is liable to pay or contribute the amount due in respect of that liability.

“17E. **Actions stayed on liquidation**—Where the Court appoints a liquidator of an association, no action or proceeding shall be commenced or continued against any person referred to in section 17D of this Act in respect of any debt of the association, except with the leave of the Court, and subject to such terms as the Court may impose.”

3. Part XI of Companies Act 1955 repealed—(1) Part XI of the Companies Act 1955 is hereby repealed.

(2) Section 2 of the Companies Amendment Act 1983 is hereby consequentially repealed.

This Act is administered in the Department of Justice.
