

## COMPANIES AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends the Companies Act 1955. The main purpose of the amendments is to give effect to certain recommendations made in the interim report of a special committee appointed by the Minister of Justice to review that Act.

*Clause 1* relates to the Short Title and commencement. *Clause 2* will come into force on 1 April 1974. The other clauses will come into force when the Bill is passed.

*Clause 2* provides for the payment of a late fee if a document is submitted to the Registrar of Companies after the time limit specified in the principal Act.

The fee is \$5 if the document is submitted not more than 1 month after the time limit. Where the document is submitted more than 1 month late, the fee will be \$25.

The late fee will be payable in addition to any other fee.

However, where the document is submitted not more than 1 month late, the Registrar may remit the fee in proper cases.

*Clause 3* enables the Registrar to refuse to accept documents that do not comply with the law or contain errors or illegible matter.

*Clause 4* empowers the Registrar, or any person authorised by him, to inspect and make records of company documents for the purpose of ascertaining whether a company or an officer of a company is complying with the principal Act.

Before such powers may be exercised, the person making the inspection must make a declaration that he will not disclose, except for the purposes of the Act or in the course of criminal proceedings, any information that he obtains during the inspection.

*Clause 4* also provides a general right of appeal to the Supreme Court by any person who is aggrieved by any act or decision of the Registrar.

*Clause 5* extends section 11 of the principal Act to enable a member or creditor of the company, or the Registrar, to apply to the Supreme Court for an order requiring a company or an officer of a company to carry out any of

its or his duties under the principal Act. At present, an order may be made only in respect of a duty to make returns, and can be made against an officer only when the company itself is in default.

*Clause 6* provides that a company may be wound up if it has persistently made default in complying with any provision or provisions of the principal Act. This is a new ground for winding up.

*Clause 7* empowers the Registrar to present a petition for the winding up of a company, subject to section 219 of the principal Act.

*Clause 8* authorises the Registrar to strike off the New Zealand register certain companies that have been registered in the Cook Islands.

By section 29 of the Companies Act 1970 of the Cook Islands, companies that were then incorporated in other jurisdictions but were carrying on business principally in the Cook Islands were allowed to apply for registration in the Cook Islands under that Act. This enabling provision expired on 30 June 1972.

Certain companies that were incorporated in New Zealand made use of the procedure and to avoid the double registration of those companies in 2 jurisdictions, it is desired to give the Registrar of Companies in New Zealand the power to strike them off his register.

*Clause 9* enables the Registrar, any member of the police, and (with the written consent of the Minister) any other person, to prosecute for offences under the principal Act.

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*Hon. Dr Finlay*

## COMPANIES AMENDMENT

### ANALYSIS

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### A BILL INTITULED

#### An Act to amend the Companies Act 1955

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Companies Amendment Act 1973, and shall be read together with and deemed part of the Companies Act 1955\* (hereinafter referred to as the principal Act).
- 10 (2) Section 2 of this Act shall come into force on the 1st day of April 1974.
- (3) Except as provided in subsection (2) of this section, this Act shall come into force on its passing.

**2. Fees**—(1) Section 8 of the principal Act is hereby  
15 amended by inserting, after subsection (2), the following subsection:

\*Reprinted 1968, Vol. 3, p. 1759  
Amendments: 1969, No. 128; 1971, No. 20; 1971, No. 89

“(2A) If any document is submitted to the Registrar not more than 1 month after the time specified in this Act in respect of that document, and he is satisfied that the omission to submit the document within the time limit was accidental or due to inadvertence, or that it is just and equitable for him to do so, he may remit wholly or partly the fee payable in respect of the late submission of the document.” 5

(2) The First Schedule to the principal Act (as amended by clause 2 of the Companies Fees Order 1967) is hereby further amended by adding to Part III the following item: 10

“For the submission of any document to the Registrar after the time specified in this Act in respect of that document (whether or not any other fee is payable, and in addition to any other fee so payable)— 15

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|---|---------|----|
|   | \$      |    |
| “(a) Where submitted not more than 1 month after the time specified ..... | 5.00    |    |
| “(b) Where submitted more than 1 month after the time specified .....     | 25.00.” | 20 |

**3. Power of Registrar to refuse to register or receive documents**—The principal Act is hereby further amended by inserting, after section 8, the following section:

“8A. (1) Subject to section 9B of this Act, a document shall be deemed not to have been submitted under this Act to the Registrar (whether by delivery, filing, production, forwarding, lodging, or otherwise) until the time when it is accepted for registration or otherwise received by the Registrar. 25

“(2) If in the opinion of the Registrar any document submitted to him under this Act— 30

“(a) Contains any matter contrary to law; or

“(b) Does not comply with this Act; or

“(c) Has not been duly completed; or

“(d) Contains any misdescription or error, or any matter that is not legible— 35

he may refuse to accept for registration or otherwise receive the document, and he may request either that the document be appropriately amended or completed and submitted to him again or that a fresh document be submitted in its place.”

**4. New sections 9A and 9B inserted**—The principal Act is hereby further amended by inserting, after section 9, the following sections: 40

“9A. Powers of inspection of Registrar—(1) Subject to subsection (2) 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  
5 or has complied with this Act,—

“(a) Require the company or any officer of the company to produce for inspection any registers, records, and other books and papers that are to be kept  
10 under this Act by the company; and

“(b) Inspect and make records of any such registers, records, and other books and papers.

“(2) Neither the Registrar nor any other person may require the production of a document or make an inspection under subsection (1) of this section unless he has first made  
15 a declaration in the prescribed form that he will not, except 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.

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

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

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

“(6) Any person who wilfully obstructs or hinders the  
40 Registrar, or any person authorised by the Registrar under subsection (1) of this section, while the Registrar or authorised person is making an inspection or a record under that subsection commits an offence and shall be liable to a fine not exceeding \$1,000.

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

“9B. Appeals from decisions of Registrar—(1) Any person who is aggrieved by the refusal of the Registrar to register a company, or to register or receive any document submitted to him under this Act, or who is aggrieved by any other act or decision of the Registrar under this Act, may appeal to the Court within 21 days after the date of the refusal or other act or decision, or within such further time as the Court may allow. 5 10

“(2) On hearing the appeal, the Court may confirm the refusal or other act or decision of the Registrar, or give such directions or make such determination in the matter as the Court thinks fit.

“(3) No right of appeal shall lie under this section against any act or decision of the Registrar— 15

“(a) In respect of which there is any express provision in this Act in the nature of an appeal or review; or

“(b) That is declared by this Act to be conclusive or final, or that is embodied in any document declared by this Act to be conclusive evidence of any act, decision, matter, or thing.” 20

**5. Enforcement of statutory duties of company**—Section 11 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections: 25

“(1) If a company or any officer of a company, having made default in complying with any provision of this Act, fails to make good the default within 14 days after the service of a notice on that company or officer requiring it or him to do so, the Court may on the application of any member or creditor of the company, or of the Registrar, make an order directing the company or officer, as the case may be, to make good the default within such time as may be specified in the order. 30

“(1A) Where the Court makes an order under subsection (1) of this section against a company, it may also make the same order against any officers of the company.” 35

**6. Circumstances in which company may be wound up by Court**—Section 217 of the principal Act is hereby amended by inserting, after paragraph (e), the following paragraph: 40

“(ea) The company has persistently made default in complying with any provision or provisions of this Act.”

**7. Provisions as to applications for winding up**—Section 219 of the principal Act is hereby amended by inserting in subsection (1), after the word “contributories”, the words “, or by the Registrar”.

**5 8. Removal of Cook Islands companies from register**—The principal Act is hereby further amended by inserting, after section 336, the following section:

“336A. (1) Where a company within the meaning of section 2 of this Act (in this section referred to as the New Zealand company) has been incorporated in the Cook Islands in accordance with Part X of this Act (as applied in the Cook Islands by section 29 of the Companies Act 1970 of the Cook Islands), the Registrar may in respect of the New Zealand company exercise the powers conferred on him by section 336 of this Act as if under subsection (1) of the said section 336 he has reasonable cause to believe that the New Zealand company is not carrying on business or in operation.

“(2) In such a case, all the other provisions of section 336 of this Act, except subsection (4), the proviso to subsection (6), and subsections (7) and (8) of that section, shall apply accordingly.

“(3) Notwithstanding any other provision in this Act, on the dissolution of the New Zealand company pursuant to this section, the company incorporated in the Cook Islands shall succeed the New Zealand company, and—

“(a) All property and rights whatsoever vested in or held on trust for the New Zealand company immediately before its dissolution (including leasehold property and property held by the New Zealand company on trust for any other person) shall vest in the company incorporated in the Cook Islands for all the estate and interest therein of the New Zealand company; and

“(b) All the debts, liabilities, charges, and obligations of the New Zealand company immediately before its dissolution shall become the debts, liabilities, charges, and obligations of the company incorporated in the Cook Islands; and

“(c) All actions and other legal proceedings that, at the time of the dissolution, are pending by or against the New Zealand company shall be deemed to be pending by or against the company incorporated in the Cook Islands.

“(4) In this section, ‘the Companies Act 1970 of the Cook Islands’ includes all amendments made to that Act.”

**9. Prosecution of offences**—The principal Act is hereby further amended by inserting, after section 465, the following section:

“465A. Except where provision is otherwise made in this Act, proceedings against any person for any offence under this Act may be taken— 5

“(a) By the Registrar; or

“(b) By any member of the Police; or

“(c) With the written consent of the Minister, by any other person.” 10