

## COMPANIES AMENDMENT BILL

### EXPLANATORY NOTE

THIS Bill amends the Companies Act 1955. The principal amendments are as follows:

- (a) Part XV of the principal Act, which relates to annual licences, is replaced by a new Part XV which requires every company to pay a fee when it files its annual return or, in the case of an overseas company, copies of its accounts:
- (b) The various time limits specified in the Act for delivering documents to the Registrar of Companies are standardized:
- (c) The First Schedule to the principal Act, which prescribes fees payable to the Registrar, is replaced by a new First Schedule:
- (d) The provisions of the principal Act relating to the registered office of a company are amended to provide that notice of a change of the situation of a registered office must be given to the Registrar at least 7 days before the change takes place, and to provide that the Registrar may require a company to change its registered office.

*Clause 1* relates to the Short Title and commencement. The provisions relating to the new Part XV (annual return fees) are to come into force on 1 January 1976. The other provisions are to come into force on 7 October 1975.

*Clause 2* inserts a definition of the term "annual return fee" and substitutes new definitions of the terms "Assistant Registrar", "Deputy Registrar", "District Registrar", and "Registrar" in section 2 of the principal Act. These amendments are consequential upon other provisions in the Bill.

*Clause 3* substitutes a new section for section 4 of the principal Act (which provides for the appointment of a Deputy Registrar of Companies). The new section provides for the appointment of more than one Deputy Registrar.

*Clause 4* amends section 8 of the principal Act (which relates to fees to be paid to the Registrar). The effect of the amendment is to exempt certain persons from paying fees in certain circumstances.

*Clause 5* adds a new subsection to section 8A of the principal Act. The new subsection provides that the Registrar may refuse to accept a prospectus for registration under section 51 of the principal Act if he considers that it displays information required by the principal Act in a manner that is inadequate, misleading, or likely to deter persons from reading it.

*Clause 6* amends section 51 of the principal Act (which relates to registration of a prospectus). The effect of the amendment is to prohibit the issue of any prospectus that is not identical to a copy registered pursuant to that section.

*Clause 7* amends section 72 of the principal Act (which requires that notice of an increase in the share capital of a company be given to the Registrar).

*Subclause (1)* amends the time limit for giving such notice to 30 days. The present time limit is 15 days.

*Subclauses (2) and (3)*: At present the company must forward to the Registrar, with such notice, a copy of the resolution authorising the increase of capital. These subclauses require that, instead, the company set out in the notice the text of the resolution.

*Clauses 8 and 9* make consequential amendments.

*Clause 10* repeals section 115 of the principal Act (which relates to the registered office of a company), and substitutes a new section. The new section differs from the present section in that—

- (a) The new section provides that at any time the registered office of a company shall be the place that is described as being the registered office of that company in the records of the Registrar at that time:
- (b) Under the new section notice of a change of the situation of a registered office must be given to the Registrar at least 7 days before the date of such change. The present section provides that notice must be given within 14 days after such change:
- (c) The new section provides that the Registrar shall refuse to record a notice of change of the situation of a registered office that is not given in accordance with the section.

*Clause 11* inserts a new section 115A in the principal Act. The new section provides that the Registrar may, on the application of any person or of his own motion, require a company to change the situation of its registered office by a date specified by him (which shall not be earlier than the 30th day after the date of the notice mentioned below). To do this the Registrar must send to the company, by registered letter, a notice containing certain information. The Registrar must also send a copy of the notice to every director of the company. The company may appeal to the Supreme Court, pursuant to section 9B of the principal Act, against the Registrar's requirement.

*Clause 12* amends section 130 of the principal Act (which relates to the annual return to be made by a company having a share capital).

*Subclause (1)* substitutes a new subsection (1) which differs from the present subsection in that it—

- (a) Provides that an annual return must be made within 30 days of each annual general meeting held in accordance with section 135 of the principal Act and within 30 days of each day an annual general meeting ought to have been held:
- (b) Omits the present provision that, in certain circumstances, a company need not make a return in the year following the year of its incorporation.

*Subclause (2)* amends subsection (2) by omitting the requirement that the return be in accordance with the form set out in the Sixth Schedule to the principal Act, and substituting a requirement that the return be in the prescribed form or in a form that has been approved by the Registrar for use by the company. "Prescribed" means prescribed by regulations under the principal Act, or by the Registrar by notice in the *Gazette*.

*Subclause (3)* makes a consequential amendment.

*Subclause (4)* amends subsection (4) to provide that the list of past and present members contained in the return may be dated, at the option of the company, at the date the register of members was last closed pursuant to section 123 of the principal Act since the date of the last return, or (as provided in the present subsection) at the date of the return or at the 31 March preceding the date of the return.

*Subclause (5)* inserts new subsections (5A) and (5B). *The new subsection (5A)* defines "prescribed" as stated above, and provides that different forms of annual return may be prescribed in respect of different classes of companies.

*The new subsection (5B)* provides that the Registrar may approve the use, by a company or companies, of a form of annual return different from that prescribed.

*Subclauses (6), (7), and (8)* relate to consequential repeals and revocations and savings.

*Clause 13* substitutes a new subsection (1) in section 131 of the principal Act (which relates to the annual return to be made by a company not having a share capital). The new subsection differs from the present subsection in that it—

- (a) Provides that an annual return must be made within 30 days of each annual general meeting held in accordance with section 135 of the principal Act and within 30 days of each day an annual general meeting ought to have been held:
- (b) Omits the present provision that, in certain circumstances, a company need not make a return in the year following the year of its incorporation.

*Clause 14* repeals section 132 of the principal Act (which relates to the time for completion of the annual return), and substitutes a new section. The new section differs from the present section in that it requires the company to forward an annual return to the Registrar within the time for making the return prescribed by section 130 or section 131 (rather than complete the annual return within 1 month of the annual general meeting and forward a copy to the Registrar forthwith).

*Clause 15* amends section 135 of the principal Act (which relates to the annual general meeting).

*Subclause (1)* substitutes a new subsection (1) and inserts a new subsection (1A). These new subsections differ from the present subsection (1) in that they—

- (a) Omit the present provision that, in certain circumstances, a company need not hold an annual general meeting in the year following the year of its incorporation:

(b) Provide that, with the permission of the Registrar, a company may hold an annual general meeting more than 15 months (the present maximum period) after its last annual general meeting. The company must, however, hold an annual general meeting once in each calendar year (except the year of its incorporation). An application to the Registrar to give such permission must be accompanied by a statutory declaration of the directors to the effect that the company is, and will remain, solvent.

*Subclause (2)* inserts the word "calendar" before the word "year" where it appears in subsection (3).

*Subclause (3)* amends from 15 days to 30 days the time limit for forwarding to the Registrar a copy of the resolution referred to in subsection (4).

*Subclause (4)* is a savings provision and provides that, so long as a company incorporated between 1 July 1974 and 31 December 1974 holds its first annual general meeting within 18 months of its incorporation, it need not hold that meeting in 1974 or 1975.

*Clause 16: Subclauses (1) and (2)* amend section 152 (1) of the principal Act (which relates to profit and loss account) to provide that the directors of a company shall lay before the company in general meeting a profit and loss account in each calendar year except the calendar year of incorporation of the company. The present provision requires the directors to lay such account before the company in general meeting at some date not later than 18 months after the incorporation of the company and subsequently once in each calendar year.

*Subclause (3)* is a savings provision and provides that, so long as the directors of a company incorporated between 1 July 1974 and 31 December 1974 lay the first account before the company in general meeting within 18 months of its incorporation, they need not lay that account before the company in 1974 or 1975.

*Clause 17* inserts in section 200 of the principal Act (which relates to registers of directors and secretaries) a provision to the effect that, where a director or secretary of a company dies, the time limit for sending to the Registrar a return notifying such change in its directors or secretary is 30 days from the day on which an officer of the company learns of such death or the day on which a letter advising such death is received at the company's registered office, whichever is the earlier. The present time limit in such a situation is 14 days from the date of death.

*Clause 18* adds to section 246 of the principal Act (which relates to release of liquidators) a new subsection (7) which provides that the liquidator must deliver to the Registrar a copy of any Court order made under the section within 7 days of the making thereof.

*Clause 19:* Section 354 (3) of the principal Act relates to the option of a private company to decide that no auditor be appointed and, among other things, provides that the company shall deliver to the Registrar, in accordance with section 147 of the principal Act, a copy of any resolution of the company that no auditor be appointed. This clause amends this subsection to provide that, notwithstanding section 147 of the principal Act, if such a resolution is passed at an annual general meeting and if an annual return containing the text and date of the resolution (certified as correct by a director and the secretary of the company) is delivered to the Registrar in accordance with the principal Act, then the company need not deliver a separate copy of such resolution.

*Clause 20* makes a consequential amendment.

*Clause 21:* Part XV of the principal Act provides for annual licence fees to be paid by companies and for annual licences to be issued. This clause repeals this Part, and substitutes a new Part which provides for an annual return fee to be paid each year by each company when submitting its annual return or, in the case of an overseas company, copies of its accounts. There are 9 new sections and all, except the new section 447, are similar to sections in the present Part XV.

*The new section 446* relates to interpretation.

*The new section 447: Subsections (1) and (2)* provide that a company shall pay an annual return fee of the amount prescribed in Part III of the Table set out in the First Schedule to the principal Act each time it delivers, or ought to have delivered, to the Registrar an annual return or, in the case of an overseas company, copies of its accounts.

*Subsection (3)* provides that, if a company is exempted by any enactment from delivering to the Registrar an annual return or copies of its accounts, it shall pay the prescribed annual return fee not later than 31 March in each year.

*Subsection (4)* provides that a company shall not be required to pay an annual return fee—

- (a) In the year in which it was incorporated or, in the case of an overseas company, registered in New Zealand:
- (b) In respect of any annual return which relates to any calendar year prior to 1976.

*The new section 448* provides that an annual return fee shall be recoverable in any Court by the Registrar as a debt due to the Crown.

*The new section 449* provides for penalties for failure to pay an annual return fee.

*The new section 450* prescribes the annual return fees payable by companies formed for certain purposes (specified in subsection (1)) and by flat owning companies.

*The new section 451* prescribes the annual return fees payable by mining companies (as defined in that section).

*The new section 452* provides that the Government Life Insurance Office and the State Insurance Office shall each pay to the Registrar, not later than 31 March each year, the fee prescribed in Part III of the Table set out in the First Schedule to the principal Act.

*The new section 453* provides that every agent of an overseas insurer (as defined in the section) shall pay to the Registrar, not later than 31 March each year, the fee prescribed in Part III of the Table set out in the First Schedule to the principal Act.

*The new section 454* provides for refunds of fees paid in error or in excess.

*Clause 22* relates to amendments and repeals which are consequential on the substitution of a new Part XV in the principal Act.

*Clause 23* amends various time limits for delivering documents to the Registrar specified in the principal Act. The new time limits are mainly either 7 days (generally for copies of Court orders and documents relating to winding up) or 30 days (for most other documents).

*Clause 24* substitutes a new First Schedule to the principal Act (which prescribes fees payable to the Registrar).

*Clause 25* amends section 7 (1) of the Companies Amendment Act 1963 to provide that copies of take-over offers must be filed with the District Registrar on or before the date such offers are made to offerees (rather than forthwith after the making of such offers to offerees, as at present).

*Clause 26* is a savings provision and provides that, in general, the present time limits for delivering documents to the Registrar shall apply to documents that date from a time before 7 October 1975 (the date the time limit provisions of this Bill come into force).



*Hon. Dr Finlay*

## COMPANIES AMENDMENT

### ANALYSIS

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15. Annual general meeting	23. New time limits for registration of documents
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17. Register of directors and secretaries	25. Take-over documents to be filed with District Registrar
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20. Prohibition of increasing membership beyond twenty-five	
21. New Part XV inserted in principal Act	

### 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:

No. 100—1

**1. Short Title and commencement**—(1) This Act may be cited as the Companies Amendment Act 1975, and shall be read together with and deemed part of the Companies Act 1955\* (hereinafter referred to as the principal Act).

(2) The following provisions shall come into force on the 1st day of January 1976: 5

(a) Sections 2 (1), 21, and 22 of this Act:

(b) Section 8 (1) (d) of the principal Act (as inserted by section 4 of this Act):

(c) Part III of the Table set out in the First Schedule to the principal Act (as substituted by section 24 (1) of this Act). 10

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the 7th day of October 1975.

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “annual return”, the following definition: 15

“‘Annual return fee’ means the fee required to be paid pursuant to section 447 of this Act:”.

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definitions of the terms “Registrar”, “Deputy Registrar”, “District Registrar”, and “Assistant Registrar”, and inserting, in their appropriate alphabetical order, the following definitions: 20

“‘Assistant Registrar’ means an Assistant Registrar of Companies appointed in accordance with section 5 (1) of this Act: 25

“‘Deputy Registrar’ means a Deputy Registrar of Companies appointed in accordance with section 4 (1) of this Act: 30

“‘District Registrar’ means a District Registrar of Companies appointed in accordance with section 5 (1) of this Act:

“‘Registrar’ means the Registrar of Companies appointed in accordance with section 3 (1) of this Act, and includes a Deputy Registrar:” 35

**3. Deputy Registrars of Companies**—The principal Act is hereby amended by repealing section 4, and substituting the following section:

\*Reprinted 1968, Vol. 3, p. 1759

Amendments: 1969, No. 128; 1970, No. 54; 1971, Nos. 20 and 89; 1973, No. 13

“4. (1) There shall also from time to time be appointed under the State Services Act 1962—

“(a) A Deputy Registrar of Companies; and

5 “(b) As many additional Deputy Registrars of Companies as may be found necessary for the purposes of this Act.

“(2) Subject to the control of the Registrar of Companies, a Deputy Registrar shall have and may exercise all the powers, duties, and functions of the Registrar of Companies.

10 The fact that a Deputy Registrar exercises any power, duty, or function as aforesaid shall be conclusive evidence of his authority to do so.”

4. Fees—Section 8 of the principal Act is hereby amended by repealing subsection (1), and substituting the following  
15 subsection:

“(1) There shall be paid to the Registrar, in respect of the several matters mentioned in Parts I and II of the table set out in the First Schedule to this Act, the several fees therein specified:

20 “Provided that—

“(a) No fees shall be payable in respect of the registration in pursuance of Part X of this Act of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some  
25 Act of the United Kingdom Parliament or of the General Assembly (other than this Act) or by letters patent:

30 “(b) If, pursuant to section 32 (2) of this Act, the Registrar requires a company to change its name, no fees shall be payable in respect of an application or applications by the company for the Registrar’s approval of a new name or in respect of registering the change of name:

35 “(c) If the Registrar declines an application for his approval of a name of a company (whether a proposed company or a company which wishes to change its name), or withdraws any such approval, he may remit the fee payable in respect of another such application made on behalf of that company:

40 “(d) No fee shall be payable in respect of an application under section 454 of this Act.”

**5. Power of Registrar to refuse to register prospectus—**

(1) Section 8A of the principal Act (as inserted by section 4 of the Companies Amendment Act 1973) is hereby amended by inserting, after subsection (2), the following subsection: 5

“(2A) If in the opinion of the Registrar any copy of a prospectus delivered to him pursuant to section 51 of this Act displays the information required by this Act to be included therein in a manner that (having regard to the size, style, and setting of the print, and the colours, used throughout the copy and any other matter) is inadequate, misleading, or likely to deter persons from reading such information, he may refuse to accept such copy for registration.” 10

(2) Section 8A (3) of the principal Act (as so inserted) is hereby amended by inserting after the words “subsection (2)” the words “or subsection (2A)”. 15

**6. Identical copy of prospectus must be registered—**

(1) Section 51 (1) of the principal Act is hereby amended by omitting the words “a copy” where they first appear, and substituting the words “an identical copy”. 20

(2) Section 51 (3) (a) of the principal Act is hereby amended by omitting the words “a copy”, and substituting the words “an identical copy”.

(3) Section 51 (5) of the principal Act is hereby amended by omitting the words “a copy” in both places where they occur, and substituting in each case the words “an identical copy”. 25

**7. Notice of increase of share capital—**(1) Section 72 (1) of the principal Act is hereby amended by omitting the word “fifteen”, and substituting the expression “30”. 30

(2) Section 72 (2) of the principal Act is hereby amended by omitting the words “forwarded to the Registrar together with the notice a printed or typewritten copy”, and substituting the words “set out in the notice the text”. 35

(3) Section 72 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) Notwithstanding section 147 of this Act but subject to subsection (2) of this section, a company shall not be required to forward to the Registrar a copy of any resolution authorising an increase in its share capital.”

**5 8. Register of charges to be kept by Registrar**—Section 105 (2) of the principal Act is hereby amended by omitting the words “, on payment of the prescribed fee,”.

**10 9. Entries of satisfaction and release of property from charge**—Section 107 (1) of the principal Act is hereby amended by omitting the words “, if required, and on payment of the prescribed fee,”.

**10. Registered office of company**—The principal Act is hereby amended by repealing section 115, and substituting the following section:

**15** “115. (1) A company shall, as from the date of its incorporation, have a registered office in New Zealand to which all communications and notices may be addressed. Subject to subsection (5) of this section but notwithstanding subsection (4) of this section and any other enactment, at any time the **20** registered office of a company shall be the place that is described as being the registered office of that company in the records of the Registrar at that time.

**25** “(2) Notice of the situation of the registered office of a company shall be given to the Registrar on or before the date of the incorporation of the company and the Registrar shall record the same.

**30** “(3) Notice of any change in the situation of the registered office of a company shall be given to the Registrar not less than 7 days before the date of the change and, subject to section 8A of this Act and subsection (4) of this section, the Registrar shall record the same. The date of the change shall be stated in the notice.

**35** “(4) The Registrar shall refuse to record a notice of a change in the situation of the registered office of a company if the notice does not comply with, or is not given in accordance with, subsection (3) of this section.

**40** “(5) The inclusion in an annual return or other document (other than a notice given pursuant to subsection (2) or subsection (3) of this section) of a statement as to the situation of the registered office of a company shall not be

taken to satisfy the obligations imposed by subsections (2) and (3) of this section and no such statement shall form part of the records of the Registrar for the purposes of subsection (1) of this section.

“(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine.” 5

**11. Registrar may require registered office to be changed—**  
The principal Act is hereby amended by inserting, after section 115, the following section: 10

“115A. (1) On the application of any person or of his own motion, the Registrar may in his discretion, by notice given in accordance with subsection (2) of this section, require a company to change the situation of its registered office by a date specified by him (which shall not be earlier than the 30th day after the date of the notice). Subject to any order of the Court and to subsection (4) of this section, a company shall comply with any such requirement. 15

“(2) A notice requiring a company to change the situation of its registered office shall— 20

“(a) State that, pursuant to this section, the company is required to change the situation of its registered office not later than a specified date:

“(b) State the Registrar’s reasons for requiring the company to change the situation of its registered office: 25

“(c) State that, pursuant to section 9B of this Act, the company may appeal to the Supreme Court against the Registrar’s requirement within 21 days of the date of the notice: 30

“(d) State that, pursuant to section 115 (3) of this Act, the company must give to the Registrar notice of the change in the situation of its registered office not less than 7 days before the date of the change; and specify the latest date on which the company can give such notice to the Registrar without being in default under section 115 of this Act or this section: 35

“(e) Be dated and signed by the Registrar:

“(f) On the day the notice is dated, be posted to the company, in a registered letter addressed to the company’s registered office. 40

“ (3) On the day any such notice is dated, the Registrar shall send a copy thereof to every person who, according to the last notice of directors and secretaries sent to the Registrar pursuant to section 200 (4) of this Act and recorded by him,  
5 is a director of the company. The copy to be sent to each such person shall be sent through the post in a registered letter to the address that, according to such notice of directors and secretaries, is the address of that person.

“ (4) Where, pursuant to section 9B of this Act, a company  
10 appeals to the Court against any such requirement of the Registrar and the Court dismisses the appeal, then, unless the Court orders otherwise, the company shall change the situation of its registered office not later than the 21st day after the date the Court gives its decision on the appeal.

15 “ (5) An application to the Registrar to exercise his power under subsection (1) of this section shall be in writing and shall state the applicant’s full name and address, his connection with the company, and his reasons for making the application.

20 “ (6) If default is made in complying with this section the company and every officer of the company who is in default shall be liable to a default fine.”

**12. Annual return to be made by a company having a share capital**—(1) Section 130 of the principal Act is hereby  
25 amended by repealing subsection (1), and substituting the following subsection:

“ (1) Every company having a share capital shall make a return containing the particulars hereinafter referred to within 30 days after:

30 “ (a) Each annual general meeting of the company held in accordance with section 135 of this Act; and

“ (b) In any case where the company fails to hold an annual general meeting in accordance with section  
35 135 of this Act, the last day on which it could have held that meeting without being in default under that section:

“ Provided that a company need not make a return under this subsection in the calendar year of its incorporation.”

40 (2) Section 130 (2) of the principal Act is hereby amended by omitting the words “The return shall be in accordance with the form set out in the Sixth Schedule to this Act, or as near thereto as circumstances admit, and shall contain”, and

substituting the words "The return shall be either in the prescribed form or in a form the use of which by the company has been approved by the Registrar pursuant to subsection (5B) of this section, or as near thereto as circumstances admit, and shall contain as much of the following information as is prescribed". 5

(3) Section 130 (2) (e) of the principal Act is hereby amended by adding the following proviso:

"Provided that, if the return is made pursuant to subsection (1) (b) of this section, this paragraph shall be read as if the words 'immediately after the annual general meeting held' were omitted:". 10

(4) Section 130 (4) of the principal Act is hereby amended by omitting the words ", at the option of the company, as at the thirty-first day of March preceding the date of the return", and substituting the words "as at the 31st day of March preceding the date of the return or as at the date the register of members was last closed pursuant to section 123 of this Act since the date of the last return, at the option of the company,". 15 20

(5) Section 130 of the principal Act is hereby further amended by inserting, after subsection (5), the following subsections:

"(5A) Notwithstanding section 2 of this Act, in this section "prescribed" means prescribed by regulations under this Act, or by the Registrar by notice in the *Gazette*. Different forms of annual return may be prescribed in respect of different classes of companies. 25

"(5B) On the application of any person, the Registrar may approve the use, by such company or companies as the Registrar may specify, of a form of annual return different from that prescribed. An annual return made in any such form shall contain all the prescribed information. The Registrar may at any time revoke, either in whole or in part, any approval given pursuant to this subsection." 30 35

(6) Section 470 (1) (d) of the principal Act and the Sixth Schedule to the principal Act are hereby consequentially repealed.

(7) The Companies (Annual Return Form) Order 1967 is hereby consequentially revoked. 40

(8) Notwithstanding subsections (6) and (7) of this section and section 130 (5A) of the principal Act (as inserted by subsection (5) of this section), the form of annual return in the Sixth Schedule to the principal Act (as substituted by clause 2 of the Companies (Annual Return Form) Order 1967) shall be deemed to be the prescribed form for the purposes of section 130 (2) of the principal Act (as amended by subsection (2) of this section) until a new form of annual return is prescribed in accordance with section 130 (5A) of the principal Act (as so inserted).

**13. Annual return to be made by company not having a share capital**—(1) Section 131 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Every company not having a share capital shall make a return containing the particulars hereinafter referred to within 30 days after:

“(a) Each annual general meeting of the company held in accordance with section 135 of this Act; and

“(b) In any case where the company fails to hold an annual general meeting in accordance with section 135 of this Act, the last day on which it could have held such meeting without being in default under that section:

“Provided that a company need not make a return under this subsection in the calendar year of its incorporation.”

(2) Section 131 (2) (d) of the principal Act is hereby amended by adding the following proviso:

“Provided that, if the return is made pursuant to subsection (1) (b) of this section, this paragraph shall be read as if the words ‘immediately after the annual general meeting held’ were omitted.”

**14. Annual return to be delivered to Registrar**—The principal Act is hereby amended by repealing section 132, and substituting the following section:

“132. (1) Each annual return of a company required to be made under section 130 or section 131 of this Act shall be completed, signed by both a director and the secretary of the company, and delivered to the Registrar by the company within the time prescribed by section 130 or section 131 of this Act, as the case may be.

“(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine. For the purposes of this subsection the expression ‘officer’ shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.” 5

**15. Annual general meeting**—(1) Section 135 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) Every company shall in each calendar year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and, subject to subsection (1A) of this section, not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next: 10 15

“Provided that, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the calendar year of its incorporation.

“(1A) Subject to the requirement of subsection (1) of this section that every company hold an annual general meeting once in each calendar year, upon application by a company made at any time before the expiration of 15 months from the date of its last annual general meeting, the Registrar may in his discretion extend the period within which the next annual general meeting of the company shall be held from the period of 15 months specified in subsection (1) of this section to a period ending not later than the date required by this subsection to be specified in the statutory declaration hereinafter prescribed. An application to the Registrar to exercise his powers under this subsection shall be accompanied by a statutory declaration of the directors (or, in the case of a company having more than 2 directors, the majority of the directors) of the company to the effect that they have made a full enquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company is solvent and will remain solvent until a date specified in the declaration. Any director of a company making a declaration under this subsection without having reasonable grounds for the opinion that the company is solvent and will remain solvent until the date specified in the declaration shall be liable on summary conviction to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$1,000 or to both.” 20 25 30 35 40

(2) Section 135 (3) of the principal Act is hereby amended by inserting, before the word “year” in both places where it occurs, the word “calendar”.

5 (3) Section 135 (4) of the principal Act is hereby amended by omitting the word “fifteen”, and substituting the expression “30”.

10 (4) Notwithstanding section 135 (1) of the principal Act (as substituted by subsection (1) of this section), so long as a company incorporated during the period commencing on the 1st day of July 1974 and ending with the 31st day of December 1974 holds its first annual general meeting within 18 months of its incorporation, it need not hold that meeting in the calendar year 1974 or in the calendar year 1975.

15 **16. Profit and loss account and balance sheet**—(1) Section 152 (1) of the principal Act is hereby amended by omitting the words “at some date not later than eighteen months after the incorporation of the company and subsequently”.

20 (2) Section 152 of the principal Act is hereby further amended by inserting, before the proviso to subsection (1), the following proviso:

“Provided that, so long as the directors lay the first such account before the company in general meeting within 18 months of the incorporation of the company, they need not lay such an account before the company in general meeting in the calendar year of the incorporation of the company:”.

25 (3) Notwithstanding section 152 (1) of the principal Act (as amended by subsections (1) and (2) of this section), so long as the directors of a company incorporated during the period commencing on the 1st day of July 1974 and ending with the 31st day of December 1974 lay the first profit and loss account or income and expenditure account, as the case may be, before the company in general meeting within 18 months of the incorporation of the company, they need not lay such an account before the company in general meeting in the calendar year 1974 or in the calendar year 1975.

**17. Register of directors and secretaries**—Section 200 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

40 “(5) The periods referred to in subsection (4) of this section are the following, namely:

“*(a)* The period within which the said return is to be sent shall be a period of 30 days from the appointment of the first directors of the company; and

“(b) The period within which the said notification of a change is to be sent shall be 30 days from the happening thereof:

“Provided that where a director or the secretary dies the period shall be 30 days from the earlier of the following days, namely the day on which an officer of the company learns of the death or the day on which a letter advising the company of the death is received at the registered office of the company.”

**18. Release of liquidators**—Section 246 of the principal Act is hereby amended by adding the following subsection:

“(7) A sealed copy of any order under this section shall, within 7 days after the making thereof, be delivered by the liquidator to the Registrar for registration; and if the liquidator makes default in complying with this subsection he shall be liable to a fine not exceeding \$10 for every day during which he is in default.”

**19. Notice of resolution that no auditor be appointed**—

(1) Section 354 (3) (a) of the principal Act is hereby amended by inserting, before the word “Section”, the words “Subject to paragraph (aa) of this subsection,”.

(2) Section 354 (3) of the principal Act is hereby further amended by inserting, after paragraph (a), the following paragraph:

“(aa) Section 147 of this Act shall not apply to the resolution if:

“(i) The resolution is passed at that annual general meeting; and

“(ii) The text and date of the resolution, and a certificate (signed by both a director and the secretary of the company) that the text and date are correct, are set out in the annual return of the company required to be delivered to the Registrar pursuant to section 132 of this Act; and

“(iii) The annual return of the company is delivered to the Registrar in accordance with section 132 of this Act:”.

**20. Prohibition of increasing membership beyond twenty-five**—Section 359 (3) of the principal Act is hereby amended by omitting the words “, in accordance with the form set out in the Sixth Schedule to this Act,”.

5   **21. New Part XV inserted in principal Act**—The principal Act is hereby amended by repealing Part XV, and substituting the following Part:

“PART XV

“ANNUAL RETURN FEES

10   “446. **Interpretation**—In this Part of this Act and in Part III of the Table set out in the First Schedule to this Act, unless the context otherwise requires,—

15       “‘Company’ means a company as defined in section 2 of this Act, an overseas company as defined in section 2 of this Act, an overseas banking company, or an overseas insurance company:

      “‘Overseas banking company’ means a corporation incorporated outside New Zealand and carrying on in New Zealand the business of banking:

20       “‘Overseas insurance company’ means a corporation incorporated outside New Zealand and carrying on in New Zealand the business of insurance of any description:

25       “‘Prescribed amount’ means the amount prescribed in Part III of the Table set out in the First Schedule to this Act.

      “447. **Annual return fee**—(1) Every company shall pay to the Registrar an annual return fee of the prescribed amount each time it delivers to the Registrar an annual return in  
30 accordance with section 132 (1) of this Act or, in the case of an overseas company, copies of its accounts and documents in accordance with section 402 (3) of this Act.

      “(2) Each time a company fails to deliver to the Registrar an annual return in accordance with section 132 (1) of this  
35 Act or, in the case of an overseas company, copies of its accounts and documents in accordance with section 402 (3) of this Act, it shall pay to the Registrar an annual return fee of the prescribed amount on the day following the last day on which the company could have delivered to the Registrar

such annual return, or copies of accounts and documents, without being in default under section 132 (1) or section 402 (3) of this Act, as the case may be.

“(3) Every company that, pursuant to section 6 (1) of the Companies Amendment Act 1969 or any other enactment, is exempted from delivering to the Registrar copies of its accounts and documents in accordance with section 402 (3) of this Act or annual returns in accordance with section 132 (1) of this Act, as the case may be, shall pay to the Registrar an annual return fee of the prescribed amount not later than the 31st day of March in each calendar year.

“(4) Notwithstanding subsections (1) to (3) of this section,—

“(a) A company shall not be required to pay an annual return fee in the calendar year in which it is incorporated or, in the case of an overseas company, in the calendar year in which it delivers to the Registrar for registration the documents specified in section 397 (1) of this Act; and

“(b) A company shall not be required to pay an annual return fee in respect of any annual return which relates to any calendar year before 1976.

“448. **Recovery of annual return fee**—(1) An annual return fee payable under this Part of this Act shall be recoverable in any Court of competent jurisdiction by the Registrar, by suit in his official name, as a debt due to the Crown.

“(2) All annual return fees paid to the Registrar shall be paid into the Public Account, and shall form part of the Consolidated Revenue Account.

“449. **Penalty for failure to pay annual return fee**—(1) If any company fails to pay an annual return fee payable under this Part of this Act, the company and every officer or other person acting in the management of the business of the company shall be jointly and severally liable to a penalty of \$50 for every month or part of a month during which the company so fails to pay the annual return fee.

“(2) The amount of every penalty under this section shall be recovered as if it were an annual return fee.

“(3) The recovery of any such penalty shall not relieve the company from its liability to the Crown for any annual return fee unpaid.

“450. Annual return fee payable by certain companies—

(1) The amount of the annual return fee payable by any company formed for any one or more of the following purposes exclusively:

- 5 “(a) Owning and working factories, ironworks, and implement and machine works; flour, threshing, or saw mills; factories for the manufacture of butter, cheese, or other products of milk; farmers’ co-operative associations; or works for the cultivation, preparation, or dressing of *phormium tenax*:
- 10 “(b) Carrying passengers or goods by land or water or air:
- “(c) Towing vessels, or loading or landing passengers or cargo:
- 15 “(d) Working mines or quarries, and selling coal, stone, or lime:
- “(e) Owning and letting or conducting halls or buildings for public meetings or entertainments; or conducting or managing grounds, buildings, or other places of public recreation or amusement:
- 20 “(f) Owning or working slips or docks for building or repairing ships:
- “(g) Preserving meat, or boiling down carcasses of animals for tallow or otherwise,—
- 25 shall be the prescribed amount.
- “2) The amount of the annual return fee payable by any company that satisfies the Registrar—
- “30 “(a) That the principal object of the company is the ownership of residential flats and the land appurtenant thereto, and that any other objects of the company are supplementary to this object; and
- “35 “(b) That the company has not, during the twelve months preceding the date on which the annual return fee is payable, carried on, and is not likely, during the twelve months subsequent to that date, to carry on, any activities for the purposes of pecuniary gain; and
- “40 “(c) That at least three-quarters of the allotted shares of the company are held by persons who are or will be occupiers of the flats owned by the company and that the return of allotments in respect of those shares has been filed with the Registrar,—
- shall be the prescribed amount.

**“451. Annual return fee payable by mining companies—**

(1) ‘Mining company’ in this section means a company incorporated, whether in New Zealand or elsewhere, and whether under this Act or otherwise, and having mining purposes among its objects. 5

“(2) ‘Mining purposes’ in this section means mining purposes as defined in Part XIV of this Act, and includes mining operations as defined in the Petroleum Act 1937.

“(3) The amount of the annual return fee payable by any mining company that satisfies the Registrar— 10

“(a) That the business actually being carried on by it in New Zealand, at the date on which the annual return fee is payable, is confined to mining purposes exclusively; and

“(b) That the business that will be carried on by it in New Zealand, during the period from the date on which the annual return fee is payable to the date on which the next annual return fee is payable, will be confined to mining purposes exclusively,— 15

shall be the prescribed amount. 20

**“452. Fees payable by Government Life Insurance and State Insurance Offices—**The Government Insurance Commissioner under the Government Life Insurance Act 1953 and the State Insurance General Manager under the State Insurance Act 1963 shall each pay to the Registrar in each calendar year the fee prescribed in Part III of the Table set out in the First Schedule to this Act. Each such fee shall be paid not later than the 31st day of March in the calendar year in which it is payable and sections 448, 449, and 454 of this Act shall apply in respect of such fees as if the Government Insurance Commissioner and the State Insurance General Manager were companies and the fees were annual return fees. 25 30

**“453. Fees payable by overseas insurer—**(1) In this section and in Part III of the Table set out in the First Schedule to this Act, unless the context otherwise requires,— 35

“‘Overseas insurer’ means any person, firm, association, company, or corporation carrying on the business of insurance of any description elsewhere than in New Zealand, and not being an overseas insurance company: 40

5 “ ‘Agent of an overseas insurer’ means any person, firm, association, company, or corporation acting as an agent or intermediary through whom or by whose instrumentality contracts of insurance of any description are entered into, whether in or outside New Zealand, between an overseas insurer and any person, firm, association, company, or corporation being or carrying on business in New Zealand.

10 “(2) Every agent of an overseas insurer shall pay to the Registrar (in addition to any annual return fee payable under this Part of this Act) in each calendar year in which it carries on business as such in New Zealand the fee prescribed in Part III of the Table set out in the First Schedule to this Act.

15 “(3) Each such fee shall be paid not later than the 31st day of March in the calendar year in which it is payable:

“Provided that, if any agent of an overseas insurer commences carrying on business as such in New Zealand after the 31st day of March in any calendar year, it shall pay the fee payable in that calendar year not later than the day  
20 on which it begins to carry on business as such in New Zealand.

“ (4) The agent of two or more overseas insurers shall pay a separate fee in respect of each agency, except in any case where the Minister, in his discretion, directs that only one fee  
25 shall be charged in respect of any agencies specified by him.

“ (5) Where two or more agents of the same overseas insurer carry on business in New Zealand in any year, no fee shall be payable by any of those agents except such one of them as is declared by the Registrar to be the chief agent for  
30 the purposes of this subsection.

“ (6) Sections 448, 449, and 454 of this Act shall apply in respect of the fees payable pursuant to this section as if an agent of an overseas insurer were a company and as if those fees were annual return fees.

35 “454. **Refund of annual return fees paid in error or in excess**—(1) If in any case the Registrar is satisfied that any annual return fee or other fee has been paid under this Part of this Act, or that any licence fee or duty has been paid under any corresponding former provisions, in error, or in excess  
40 of the amount properly payable, he may, on application made at any time within 3 years after the payment of that fee or duty, refund the amount thereof or the amount of the excess, as the case may be, to the person by whom it was paid.

“(2) All money payable by way of refund under this section shall be paid out of the Consolidated Revenue Account without further appropriation than this section.”

**22. Consequential amendments and repeals relating to Part XV of principal Act**—(1) Section 458 (5) of the principal Act is hereby amended by omitting the word “licences”, and substituting the words “return fees”. 5

(2) Section 6 (2) of the Companies Amendment Act 1969 is hereby amended by omitting the words “and Part XV”.

(3) Section 6 of the Tarawera Forest Act 1967 is hereby amended— 10

(a) By omitting from subsection (3) the words “sections 134 and 447”, and substituting the words “section 134”:

(b) By adding the following subsection: 15  
 “(4) Part XV of the Companies Act 1955 shall not apply to the company while it is engaged in any capacity related solely to the objects specified in paragraph (d) of subsection (1) of this section.”

(4) The Companies Amendment Act 1959 and section 3 of the Companies Amendment Act 1967 are hereby consequentially repealed. 20

**23. New time limits for registration of documents**—The principal Act is hereby amended in the manner indicated in the First Schedule to this Act. 25

**24. New table of fees payable to Registrar**—(1) The principal Act is hereby amended by repealing the First Schedule, and substituting the First Schedule set out in the Second Schedule to this Act.

(2) Section 3 (2) of the Companies Amendment Act 1973 is hereby consequentially repealed. 30

(3) The Companies Fees Order 1967 is hereby consequentially revoked.

**25. Take-over documents to be filed with District Registrar**—Section 7 (1) of the Companies Amendment Act 1963 is hereby amended by omitting the words “Forthwith after”, and substituting the words “On or before the date of”. 35

26. **Saving**—Notwithstanding any other provision of this Act, where pursuant to a section of the principal Act (other than sections 8, 130 to 132, 135, and 152) which has been amended or repealed by this Act or to section 7 of the Companies Amendment Act 1963, a document is required to be delivered to the Registrar or any other act is required to be performed within a certain period of time commencing before the 7th day of October 1975, that document shall be delivered and that act shall be performed in accordance with that section as if the provision of this Act that amends or repeals that section had not been passed.

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## SCHEDULES

Section 23

## FIRST SCHEDULE

## AMENDMENTS TO PRINCIPAL ACT

Section of Principal Act Amended	Amendment
Section 18 (6) .....	By omitting the word "fifteen", and substituting the expression "7".
Section 21 (3) .....	By omitting the word "fifteen", and substituting the expression "30".
Section 32 (2) .....	By omitting the words "six weeks", and substituting the words "30 days".
Section 33 (7) .....	By omitting the words "six weeks", and substituting the words "30 days".
Section 60 .....	By omitting the words "one month" wherever they occur, and substituting in each case the words "30 days".
Section 71 (1) .....	By omitting the words "one month", and substituting the words "30 days".
Section 81 (5) .....	By omitting the word "fifteen", and substituting the expression "7".
Section 102 .....	By omitting from subsections (3) and (7) the word "twenty-one", and substituting in each case the expression "30".
Section 103 (3) .....	By omitting the word "twenty-one", and substituting the expression "30".
Section 104 (1) .....	By omitting the word "twenty-one" wherever it occurs, and substituting in each case the expression "30".
Section 109 (2) .....	By omitting the word "on", and substituting the words "within 7 days of".
Section 118 (4) .....	By omitting the word "fourteen", and substituting the expression "30".
Section 127 (2) .....	By omitting the word "fourteen", and substituting the expression "30".
Section 147 (1) .....	By omitting the word "fifteen", and substituting the expression "30".
Section 209 (4) .....	By omitting the word "fourteen", and substituting the expression "7".
Section 267 (2) .....	By omitting the word "fourteen", and substituting the expression "7".
Section 274 .....	By omitting from subsections (2) and (3) the words "five weeks", and substituting in each case the words "30 days".
Section 281 (3) .....	By omitting the words "one week", and substituting the words "7 days".
Section 291 (4) .....	By omitting the words "one week", and substituting the words "7 days".
Section 296 (1) .....	By omitting the word "twenty-one", and substituting the expression "7".

FIRST SCHEDULE—*continued*AMENDMENTS TO PRINCIPAL ACT—*continued*

Section of Principal Act Amended	Amendment
Section 350 (1) .....	By omitting the words "one month" in both places where they occur, and substituting in each case the words "30 days".
Section 366 (6) .....	By omitting the word "fourteen" in both places where it occurs, and substituting in each case the expression "30".
Section 397 (1) .....	By omitting the words "one month", and substituting the words "30 days".
Section 444 (1) (a) (i)	By omitting the words "one month", and substituting the words "30 days".

Section 24

## SECOND SCHEDULE

## NEW FIRST SCHEDULE TO THE PRINCIPAL ACT

“Sections 8, 379, 470;  
Part XV                    “FIRST SCHEDULE

“TABLE OF FEES AND ANNUAL RETURN FEES TO BE PAID TO THE  
REGISTRAR OF COMPANIES

I. FEES PAYABLE ON REGISTRATION OF A COMPANY OR OVERSEAS  
COMPANY

	\$
For registration of a company .....	100
For registration of any existing company (except such companies as are exempted from payment of fees in respect of registration under this Act) .....	100
For registration of an overseas company under Part XII of this Act .....	100

II. MISCELLANEOUS FEES

For registration of any increase in share capital made after the registration of the company .....	20
For registration of any increase in the number of members pursuant to section 21 (3) of this Act .....	20
For an application for the Registrar's approval or consent required under this Act or any regulations, where no other fee is prescribed .....	10
For an application to the Registrar to exercise his discretion under section 7 (3) of this Act .....	10
For recording any alteration of the objects of a company .....	20
For an application for the Registrar's approval of a name of a company (except as provided in <u>section 8 (1) (b) and</u> <u>(c)</u> of this Act) .....	10
For registering any change of name (except as provided in <u>section 8 (1) (b)</u> of this Act) .....	20
For registering any prospectus .....	20
For registering under Part IV of this Act the instrument creating or evidencing any charge required to be registered thereunder .....	10
Where two or more instruments create or evidence a charge or charges securing the same moneys, for every such instrument after the first .....	5
For registering any satisfaction or partial satisfaction of a charge or release or partial release of property from a charge under Part IV of this Act .....	5
For reregistration of a company pursuant to section 365 or section 366 of this Act .....	20
For filing the documents required to be filed under section 7 (1) of the Companies Amendment Act 1963 .....	20
For certification of a copy of or extract from any document	10

SECOND SCHEDULE—*continued*

	\$
For a copy of or extract from any document, in addition to any fee for certifying the same,—	
(a) Where a photocopy machine is provided for public use, for each A4 international metric size sheet not more than .....	0.20
(b) Where a photocopy machine is not provided for public use, for four A4 international metric size sheets or part thereof .....	1
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)—	
(a) Where submitted not more than 1 month after the time specified .....	5
(b) Where submitted more than 1 month after the time specified .....	25

III. ANNUAL RETURN AND OTHER FEES PAYABLE UNDER PART XV OF THIS ACT

The annual return fee or other fee payable under Part XV of this Act shall be an amount equal to—

In the case of any company having a nominal share capital (other than a company specified below) \$1 for every \$1,000, or part of \$1,000, of the nominal share capital of the company:

    Provided that no such fee shall be more than \$1,000 or less than \$10

In the case of any company not having a nominal share capital .....	10
In the case of any overseas insurance company or overseas banking company .....	1,000
In the case of any company to which <u>subsection (1) or subsection (2) of section 450</u> of this Act applies .....	10
In the case of any company to which <u>section 451 (3)</u> of this Act applies .....	10
In the case of the Government Insurance Commissioner and the State Insurance General Manager .....	1,000
In the case of any agent of an overseas insurer to which <u>section 453 (2)</u> of this Act applies .....	1,000"