



ANALYSIS

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1994, No. 6

An Act to amend the Companies Act 1993

[27 June 1994]

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

1. Short Title and commencement—(1) This Act may be cited as the Companies Act 1993 Amendment Act 1994, and shall be read together with and deemed part of the Companies Act 1993 (hereinafter referred to as the principal Act).

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

2. Application for reservation of name—Section 22 (3) (b) of the principal Act is hereby amended by inserting, after the word “that”, in the first place where it occurs, the words “, unless the reservation is sooner revoked by the Registrar,”.

3. Form of constitution—Section 29 (c) of the principal Act is hereby amended by inserting, after the word “constitution”, the words “under section 32 of this Act”.

4. Rights and powers attaching to shares—Section 36 (2) of the principal Act is hereby amended by inserting, after the expression “section 42”, the words “or section 44, as the case may be,”.

5. Types of shares—Section 37 (2) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Be redeemable within the meaning of section 68 of this Act; or”.

6. Issue of shares on registration and amalgamation—Section 41 (b) of the principal Act is hereby amended by omitting the word “shares”, in the second place where it appears, and substituting the word “share”.

7. Company may acquire its own shares—Section 58 (2) of the principal Act is hereby amended by inserting, after the word “cancelled”, the word “immediately”.

8. Acquisition of company's own shares—Section 59 (3) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Sections 110 and 118 of this Act (which relate to the right of a shareholder to require a company to purchase shares).”

9. Special offers to acquire shares—Section 61 (7) of the principal Act is hereby amended by omitting the words “marketable parcel”, and substituting the words “minimum holding”.

10. Stock exchange acquisitions subject to prior notice to shareholders—(1) Section 63 (1) of the principal Act is hereby amended by omitting the words “a stock exchange”, in

each place where they appear, and substituting in each case, the words “on one or more stock exchanges”.

(2) Section 63 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Offers may be made under subsection (1) of this section by any director or employee of the company who is authorised to do so by the resolution of the board under that subsection.”

(3) Section 63 (4) of the principal Act is hereby amended by omitting the words “A board must not make an offer”, and substituting the words “An offer must not be made”.

(4) Section 63 (5) of the principal Act is hereby amended by omitting the words “A board must not make an offer”, and substituting the words “An offer must not be made”.

11. Stock exchange acquisitions not subject to prior notice to shareholders—(1) Section 65 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Within 10 working days after the shares are acquired, the company must send to each stock exchange on which the shares of the company are listed a notice containing the following particulars:

“(a) The class of shares acquired:

“(b) The number of shares acquired:

“(c) The consideration paid or payable for the shares acquired:

“(d) If known to the company, the identity of the seller and, if the seller was not the beneficial owner, the beneficial owner.

“(2A) Within 3 months after the shares are acquired, the company must send to each shareholder a notice containing the particulars referred to in subsection (2) of this section.

“(2B) Acquisitions may be made under subsection (1) of this section by any director or employee of the company who is authorised to do so by the resolution of the board under that subsection.”

(2) Section 65 (3) of the principal Act is hereby amended by inserting, after the expression “subsection (2)”, the expression “or subsection (2A)”.

12. Company must satisfy solvency test—Section 77 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:

“(6) In applying the solvency test for the purposes of this section,—

“ ‘Assets’ excludes amounts of financial assistance given by the company at any time under section 76 of this Act in the form of loans; and

“ ‘Liabilities’ includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance under section 76 of this Act.

“(7) Nothing in subsection (6) of this section limits or affects the application of section 4 (4) of this Act.”

13. Share certificates—Section 95 of the principal Act is hereby amended by inserting, after subsection 6, the following subsection:

“(6A) Nothing in this section (except subsection (2)) limits or affects section 54 of the Securities Act 1978.”

14. Alteration of shareholder rights—Section 117 (3) (b) of the principal Act is hereby amended by adding the words “or under the constitution of the company”.

15. Annual meeting of shareholders—Section 120 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) A company, not being a company that is reregistered under this Act, does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

“(2A) A company that is reregistered under this Act does not have to hold its first annual meeting in the calendar year of its reregistration but must hold that meeting within 18 months of its registration under the Companies Act 1955.”

16. Meaning of “director”—Section 126 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) In this Act, ‘director’, in relation to a company, does not include a receiver.”

17. Major transactions—(1) Section 129 (2) of the principal Act is hereby amended by repealing the definition of the term “major transaction”, and substituting the following definition:

“ ‘Major transaction’, in relation to a company, means:

“(a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which

is more than half the value of the company's assets before the acquisition; or

“(b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or

“(c) A transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction.”

(2) Section 129 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Nothing in paragraph (c) of the definition of the term ‘major transaction’ in subsection (2) of this section applies by reason only of the company giving, or entering into an agreement to give, a floating charge secured over assets of the company the value of which is more than half the value of the company's assets for the purpose of securing the repayment of money or the performance of an obligation.”

18. Qualifications of directors—Section 151 (2) of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) A person who would, but for the repeal of section 188A or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act:”.

19. Director's consent required—Section 152 of the principal Act is hereby amended by omitting the words “, in the prescribed form, consented”, and substituting the words “consented in writing”.

20. Method of contracting—Section 180 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Nothing in subsection (1) of this section limits or prevents a company entering into a contract or other enforceable obligation in writing under a common seal, if it has one.”

21. Jurisdiction of District Courts—The principal Act is hereby amended by inserting, after section 185, the following section:

“185A. (1) A District Court shall have jurisdiction to exercise any power conferred by sections 182 to 185 of this Act in any case where—

“(a) The occasion for the exercise of the power arises in the course of civil proceedings properly before the Court; or

“(b) The amount of the claim or the value of the property or relief claimed or in issue is not more than \$200,000; or

“(c) The parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court shall have jurisdiction to determine the proceedings.

“(2) For the purposes of section 43 of the District Courts Act 1947, an application made to a District Court under any of sections 182 to 185 of this Act shall be deemed to be a proceeding.”

22. Company records—(1) Section 189 (1) of the principal Act is hereby amended by omitting from paragraphs (b), (d), (e), (g), (h), and (i) the number “10”, and substituting the number “7”.

(2) Section 189 (2) of the principal Act is hereby amended by omitting the number “10”, and substituting the number “7”.

(3) Section 189 (3) of the principal Act is hereby amended by omitting the expression “(h)”, and substituting the expression “(i)”.

23. Appointment of auditors—Section 196 (3) (b) (i) of the principal Act is hereby amended by omitting the words “or a subsidiary of that subsidiary”.

24. Qualifications of auditors—Section 199 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) A member, fellow, or associate of an association of accountants constituted outside New Zealand where both the member, fellow, or associate and the association are approved for the time being for the purposes of this section by the Minister of Justice by notice in the *Gazette*.”

25. Contents of annual report—Section 211 (1) of the principal Act is hereby amended by omitting the expression “(2)”, and substituting the expression “(3)”.

26. Certificate of amalgamation—(1) Section 224 (1) (a) of the principal Act is hereby amended by omitting the words “in the prescribed form”.

(2) Section 224 (1) (b) of the principal Act is hereby amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) Issue a certificate of amalgamation together with a certificate of incorporation.”

27. Registers—The principal Act is hereby amended by inserting, after section 225, the following section:

“225A. (1) Where an amalgamation becomes effective, no Registrar of Deeds or District Land Registrar or other person charged with the keeping of any books or registers shall be obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.

“(2) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company—

“(a) Executed or purporting to be executed by the amalgamated company; and

“(b) Relating to any property held immediately before the amalgamation by an amalgamating company; and

“(c) Stating that that property has become the property of the amalgamated company by virtue of this Part of this Act—

shall, in the absence of evidence to the contrary, be sufficient evidence that the property has become the property of the amalgamated company.

“(3) Without limiting subsection (1) or subsection (2) of this section, where any security issued by any person or any rights or interests in property of any person become, by virtue of this Part of this Act, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the board of the amalgamated company, stating that that security or any such rights or interests have, by virtue of this Part of this Act, become the property of the amalgamated company, shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register the

amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.

“(4) In subsection (3) of this section, ‘security’ has the same meaning as in section 2 (1) of the Securities Act 1978.

“(5) Except as provided in this section, nothing in this Part of this Act derogates from the provisions of the Land Transfer Act 1952.”

28. Interpretation—Section 227 of the principal Act is hereby amended by repealing the definition of the term “creditor”, and substituting the following definition:

“ ‘Creditor’ includes—

“(a) A person who, in a liquidation, would be entitled to claim in accordance with section 303 of this Act that a debt is owing to that person by the company; and

“(b) A secured creditor.”

29. Interpretation—Section 235 of the principal Act is hereby amended by repealing the definition of the term “creditor”, and substituting the following definition:

“ ‘Creditor’ includes—

“(a) A person who, in a liquidation, would be entitled to claim in accordance with section 303 of this Act that a debt is owing to that person by the company; and

“(b) A secured creditor.”

30. Interpretation—Section 240 (1) of the principal Act is hereby amended by omitting the definition of the term “creditor”, and substituting the following definition:

“ ‘Creditor’ means a person who, in a liquidation, would be entitled to claim in accordance with section 303 of this Act that a debt is owing to that person by the company; and includes a secured creditor only—

“(a) For the purposes of sections 241 (2) (c), 247, 250, and 289 of this Act; or

“(b) To the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under section 305 of this Act as an unsecured creditor.”

31. Power to obtain documents and information—
(1) Section 261 (2) of the principal Act is hereby amended by

inserting, after the word “may”, the words “, from time to time,”.

(2) Section 261 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Without limiting subsection (3)(a) of this section, a person may be required to attend on the liquidator under that subsection at a meeting of creditors of the company.”

32. Remuneration of liquidators—Section 276 (1) of the principal Act is hereby amended by omitting the expression “subsection (1)”, and substituting the expression “subsection (2)”.

33. Qualifications of liquidators—Section 280 (1) of the principal Act is hereby amended by inserting, after paragraph (h), the following paragraph:

“(ha) A person who would, but for the repeal of section 188A or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act:”.

34. Admissible claims—The principal Act is hereby amended by repealing section 303, and substituting the following section:

“303. (1) Subject to subsection (2) of this section, a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages, may be admitted as a claim against a company in liquidation.

“(2) Fines, monetary penalties, and costs to which section 308 of this Act applies are not claims that may be admitted against a company in liquidation.”

35. Rights and duties of secured creditors—Section 305 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) If a secured creditor values the security and claims as an unsecured creditor for the balance due, if any, the valuation and any claim must be made in the prescribed form and—

“(a) Contain full particulars of the valuation and any claim; and

“(b) Contain full particulars of the charge including the date on which it was given; and

“(c) Identify any documents that substantiate the claim and the charge.”

36. Interest on claims—Section 311 (3) of the principal Act is hereby amended by inserting, after the word “at”, the words “a rate equal to the excess between the prescribed rate and”.

37. Meetings of creditors or shareholders—Section 314 (2) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Except where a creditor or shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company’s assets.”

38. New section inserted—The principal Act is hereby amended by inserting, after section 316, the following cross-heading and section:

“Transitional Provision

“316A. Transitional provision in relation to voidable transactions—Where an existing company that reregisters as a company under this Act is put into liquidation, nothing in sections 292 to 299 of this Act shall apply in relation to any transaction entered into by the company before the commencement of this Act; but sections 309, 310, 311, 311A, 311B, and 311C of the Companies Act 1955, as in force immediately before the commencement of this Act, shall continue to apply in respect of the transaction or matter as if this Act had not been passed.”

39. Grounds for removal from register—Section 318 (1) (d) of the principal Act is hereby amended by repealing subparagraph (i), and substituting the following subparagraph:

“(i) A shareholder authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or”.

40. Disclaimer of property by the Crown—Section 325 (5) (b) of the principal Act is hereby amended by omitting the number “20”, and substituting the number “60”.

41. Use of name by overseas company—Section 338 (1) (a) of the principal Act is hereby amended by omitting the word “Communications”, and substituting the words “Written communications”.

42. Alteration of constitution—Section 339 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) An overseas company that carries on business in New Zealand must ensure that, within 20 working days of the change or alteration, notice in the prescribed form is given to the Registrar of—

“(a) An alteration to the instrument constituting or defining the constitution of the overseas company; or

“(b) A change in the directors or in the names or residential addresses of the directors of the overseas company; or

“(c) A change in the address of the place of business or principal place of business of the overseas company; or

“(d) A change in any person or the address of any person authorised to accept service in New Zealand of documents on behalf of the overseas company.”

43. Overseas company ceasing to carry on business in New Zealand—Section 341 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The Registrar must remove an overseas company from the overseas register as soon as practicable after—

“(a) The date specified in the notice given in accordance with subsection (1) (b) of this section; or

“(b) Receipt of a notice given by a liquidator in accordance with the provisions of the Ninth Schedule to this Act.”

44. Registrar’s powers of inspection—Section 365 (5) (b) of the principal Act is hereby amended by omitting the expression “(3)”, and substituting the expression “(4)”.

45. Fees—Section 372 of the principal Act is hereby amended by inserting, after subsection (3), the following subsections:

“(3A) If the Registrar declines to reserve a name or revokes the reservation of a name under section 22 of this Act, the Registrar may remit the fee payable in respect of a subsequent application on behalf of the company to reserve a name.

“(3B) If the Registrar, under section 24 (1) of this Act, requires a company to change its name, no fee is payable in

respect of an application for the reservation of a name or an application to change the name of the company.”

46. Penalty for failure to comply with Act—Section 373 (1) (2) is hereby amended by omitting the expression “section 40 (7)”, and substituting the expression “section 47 (7)”.

47. Penalties that may be imposed on directors in cases of failure by board of company to comply with Act—Section 374 (2) of the principal Act is hereby amended by repealing paragraph (1).

48. Securities Transfer Act 1991 amended—The principal Act is hereby amended by repealing section 397, and substituting the following section:

“397. Section 9 (5) of the Securities Transfer Act 1991 is hereby amended by inserting, after paragraph (a), the following paragraph:

“(ab) Sections 35, 39 (1), and 84, of the Companies Act 1993:”.

49. First Schedule amended—Clause 2 of the First Schedule to the principal Act is hereby amended by inserting, after subclause (3), the following subclause:

“(3A) Subject to the constitution of the company, the accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.”

50. Eighth Schedule amended—Clause 6 (b) of the Eighth Schedule to the principal Act is hereby amended by inserting, after the word “director”, the words “or representative”.