

[AS REPORTED FROM THE JUSTICE AND LAW REFORM  
COMMITTEE]

*House of Representatives, 11 July 1989.*

**Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.**

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

*House of Representatives, 10 October 1989.*

**Words struck out are shown with double black rule at beginning and after last line; words inserted are shown with double rule before first line and after last line.**

**[Clauses 29 to 36B of this Bill were formerly clauses 29 to 36B of the Law Reform (Miscellaneous Provisions) Bill: 122-2]**

*Hon. W. P. Jeffries*

**COMPANIES AMENDMENT (NO. 2)**

ANALYSIS

|  |   |
|--|---|
| Title  | 244A. Audit Office may audit Official Assignee's accounts   |
| 1. Short Title   | 244B. Accounts of other liquidators   |
| 29. Registration of charges created by companies                                 | 33A. Release of liquidators   |
| 30. Duty of company to register charges on property acquired                     | 34. Unclaimed assets may be paid to Public Account as unclaimed money after 6 months              |
| 30A. Register of charges to be kept by Registrar                                 | 35. Special provisions applying to unclaimed assets where Official Assignee liquidator of company |
| 31. Entries of satisfaction and release of property from charge                  | 35A. Registrar may strike defunct company off register  |
| 31AA. Form of certificates   | 36. Exemption of certain companies  |
| 31A. Appointments, style, etc., of liquidators                                   | 36A. Consequential amendment to Companies (Winding Up) Rules 1956                                 |
| 32. Official Assignee may dispense with meetings of creditors and contributories | 36B. Consequential amendment to Companies (Winding Up) Fees Regulations 1984                      |
| 33. New sections substituted   |   |
| 244. Official Assignee's accounts  |   |

No. 122—3G

*Price  
incl. GST \$2.20*

## A BILL INTITULED

**An Act to amend the Companies Act 1955**

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

**1. Short Title**—This Act may be cited as the Companies Amendment Act 1989, and shall be read together with and deemed part of the Companies Act 1955 (hereinafter referred to as the principal Act). 5

*Struck Out*

**29. Registration of charges created by companies**— Section 102 (1) of the principal Act is hereby amended by omitting the words “statutory declaration”, and substituting the words “certificate in the prescribed form by an officer of the company or its solicitor”. 10

(2) Section 102 (7) of the principal Act is hereby amended by omitting the words “statutory declaration”, and substituting the word “certificate”. 15

(3) This section shall come into force on the 1st day of *(July)* November 1989.

*New*

**29. Registration of charges created by companies**— Section 102 of the principal Act is hereby amended by repealing subsection (1) (including the proviso), and substituting the following subsections: 20

“(1) Where a company creates any charge to which this section applies, it shall be the duty of the company within the time prescribed by subsection (3) of this section to cause a copy of the instrument by which the charge is created or evidenced to be delivered to the Registrar for registration in the manner required by this Act. Every copy shall be accompanied by a certificate in the prescribed form by an officer of the company or its solicitor as to the execution of the instrument, verifying the copy as a true copy, and containing such other particulars relating to the charge as shall be prescribed. 25 30

“(1A) If the instrument by which the charge is created or evidenced is registered under any other Act the requirements 35

*New*

of subsection (1) of this section are complied with if, within the time prescribed, there is delivered to the Registrar for registration, a certificate in the prescribed form by an officer of  
5 the company or its solicitor containing such particulars relating to the charge as shall be prescribed.”

(2) Section 102 of the principal act is hereby amended by repealing subsection (7) and substituting the following subsection:

10 “(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the  
15 Registrar within 30 days, or 3 months, as the case may be, after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, a copy of the deed containing the charge, or, if there is no such deed, a copy of one of the debentures of the series, in  
20 either case accompanied by a certificate in the prescribed form by an officer of the company or its solicitor as to the execution of the deed, or the giving of the debenture, as the case may be, verifying the copy as a true copy, and containing such other particulars relating to the charge as shall be prescribed:

25 “Provided that where more than one issue is made of debentures in the series, there shall be sent to the Registrar, for entry in the register, particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.”

30 (3) This section shall come into force on the 1st day of April 1990.

*Struck Out*

**30. Duty of company to register charges on property acquired**—(1) Section 104 (1) of the principal Act is hereby  
35 amended by omitting the words “statutory declaration”, and substituting the words “certificate in the prescribed form by an officer of the company or its solicitor”.

*Struck Out*

(2) This section shall come into force on the 1st day of *(July)*  
November 1989.

*New*

**30. Duty of company to register charges on property** 5  
**acquired**—(1) The principal Act is hereby amended by  
repealing section 104 and substituting the following section:

“104. (1) Where a company acquires property that is subject  
to a charge that would, if it had been created by the company  
after the acquisition of the property, have been required to be 10  
registered under this Part of this Act, the company shall within  
30 days, or if the property is situated and the charge was  
created outside New Zealand, within 3 months, after the  
acquisition is completed, deliver to the Registrar for registration  
a copy of the instrument by which the charge was created or 15  
evidenced accompanied by a certificate in the prescribed form  
by an officer of the company or its solicitor as to the date of  
acquisition of the property, verifying the copy as a true copy,  
and containing such other particulars relating to the charge as  
shall be prescribed. 20

“(2) If the instrument by which the charge is created or  
evidenced has been already registered with the Registrar, or is  
registered under any other Act, the requirements of **subsection**  
**(1)** of this section are complied with if, within 30 days, or 3 25  
months, as the case may be, there is delivered to the Registrar  
for registration a certificate in the prescribed form by an officer  
of the company or its solicitor containing such particulars  
relating to the charge as shall be prescribed.

“(3) If default is made in complying with this section, the  
company and every officer of the company who is in default 30  
shall be liable to a default fine of \$100 unless it is proved to the  
satisfaction of the Court that a copy of the instrument required  
to be registered was not obtainable by the company.”

(2) This section shall come into force on the 1st day of April  
1990. 35

*New*

**30A. Register of charges to be kept by Registrar—**

(1) Section 105 of the principal Act (as amended by section 9 of the Companies Amendment Act 1975) is hereby amended by  
5 repealing subsection (2) and substituting the following subsection:

“(2) The Registrar shall give a certificate in the prescribed form under his or her hand of the registration of any charge registered pursuant to this Act specifying the amount secured  
10 by the charge and such other particulars relating to the charge as may be prescribed. The certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.”

(2) Section 9 of the Companies Amendment Act 1975 is  
15 hereby consequentially repealed.

(3) This section shall come into force on the 1st day of April 1990.

*Struck Out*

**31. Entries of satisfaction and release of property from**

20 **charge—**(1) Section 107 (1) of the principal Act is hereby amended by omitting the words “, and where he enters any such memorandum he shall furnish the company with a copy thereof”.

(2) This section shall come into force on the 1st day of  
25 November 1989.

*New*

**31. Entries of satisfaction and release of property from**

30 **charge—**(1) Section 107 (1) of the principal Act is hereby amended by omitting the words “, and where he enters any such memorandum he shall furnish the company with a copy thereof.”.

(2) Section 107 of the principal Act is hereby amended by inserting after subsection (1) the following subsection:

*New*


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“(1A) Every memorandum shall be in such form as shall be prescribed and may be incorporated as part of the register of charges kept under section 105 of this Act.”

(3) This section shall come into force on the 1st day of April 5 1990.

**31AA. Form of certificates**—(1) The principal Act is hereby amended by inserting after section 108 the following section:

“108A. For the purposes of sections 102 and 104 of this Act a single form of certificate may be prescribed that is adaptable 10 for use under either of those sections.”

(2) This section shall come into force on the 1st day of April 1990.

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**31A. Appointments, style, etc., of liquidators**—Section 235 (b) of the principal Act is hereby amended by omitting the 15 words “The Official Assignee”, and substituting the words “Subject to section 235A of this Act, the Official Assignee”.

**32. Official Assignee may dispense with meetings of creditors and contributories**—The principal Act is hereby amended by inserting, after section 235, the following section: 20

“235A. (1) The Official Assignee shall not be required to summon separate meetings of the creditors and contributories of a company under section 235 (b) of this Act in any case where—

“(a) The Official Assignee considers, having regard to the 25 assets and liabilities of the company, the likely result of the winding-up of the company, and any other relevant matters, that no such meetings should be summoned; and

“(b) The Official Assignee gives notice in writing to the 30 creditors and contributories stating—

“(i) That the Official Assignee does not consider that the meetings should be held; and

“(ii) The reasons for the Official Assignee’s view; 35 and

“(iii) That no such meetings will be summoned unless a creditor or contributory gives notice in writing to the Official Assignee, within 14 days after

receiving the notice, requiring such meetings to be summoned; and

“(c) No notice requiring the meetings to be summoned is received by the Official Assignee within that period.

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*New*

“(2) In a case where, in accordance with subsection (1) of this section, separate meetings of creditors and contributories are not summoned, the Official Assignee shall be the liquidator of the company.”

10 **33. New sections substituted**—(1) The principal Act is hereby amended by repealing section 244, and substituting the following sections:

15 “244. **Official Assignee’s accounts**—(1) The accounts of the Official Assignee as the liquidator of a company shall be open to the inspection of any creditor or contributory or of any person who has an interest in the liquidation.

20 “(2) Within one month after the Official Assignee has realised all the property of the company, or so much of it as can, in the Official Assignee’s opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves and made a final return (if any) to the contributories, (*or has resigned, or has been removed from office,*) the Official Assignee shall prepare a statement of accounts and balance sheet, showing in detail the receipts and payments in respect of the company. The statement of accounts and balance sheet shall be filed in the Court.

25 “(3) Every statement of accounts and balance sheet shall be verified by a statutory declaration and shall, when filed, be open to inspection without fee by any creditor or contributory or by any person (*interested*) who has an interest in the liquidation.

30 “(4) Notice of the filing of every such statement of accounts and balance sheet shall be advertised by the Official Assignee in one or more newspapers circulating in the locality in which the winding up has been conducted.

*New*

**“244A. Audit Office may audit Official Assignee’s accounts—**(1) The Audit Office may, at its discretion, audit—

“**(a)** The accounts of the Official Assignee as the liquidator of a company: 5

“**(b)** Any statement of accounts and balance sheet prepared by the Official Assignee as the liquidator of a company under **section 244 (2)** of this Act:

“**(c)** Any account maintained by the Official Assignee for the purposes of this Part of this Act. 10

“(2) For the purposes of this section, the Audit Office shall have the same powers as it has under the Public Finance Act 1977 in relation to the audit of public money and stores.

**“(244A) 244B. Accounts of other liquidators—**(1) Where in the winding up of a company by the Court a person other than the Official Assignee is appointed liquidator the accounts of that liquidator shall be audited by the Audit Office, and the Controller and Auditor-General shall have the same powers in respect of all money belonging to any such company and of all persons dealing with it as the Controller and Auditor-General has by virtue of any Act for the time being in force in respect of public money and of persons dealing with it. 15 20

“(2) The accounts so audited shall be open to the inspection of any creditor or contributory, or of any person who has an interest in the liquidation. 25

“(3) Within one month after the liquidator has realised all the property of the company, or so much of it as can, in the liquidator’s opinion, be realised without needlessly protracting the liquidation, and has distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories among themselves and made a final return (if any) to the contributories, or has resigned, or has been removed from office, the liquidator shall prepare and submit to the Audit Office a statement of accounts and balance sheet, showing in detail the receipts and payments in respect of the company; 30 35 and the Audit Office shall forthwith prepare a report on the statement of accounts and balance sheet, and file the report and statement and balance sheet in the Court, and give notice to the liquidator of the filing.

“(4) Every statement of accounts and balance sheet so submitted shall be verified by a statutory declaration of the 40



liquidator, and with the report of the Audit Office shall, when filed, be open to inspection without fee by any creditor or contributory or by any person who has an interest in the liquidation.

5 “(5) Notice of the filing of every such statement of accounts and the report of the Audit Office shall be advertised by the liquidator in one or more newspapers circulating in the locality in which the winding up has been conducted.

10 “(6) If the liquidator is dissatisfied with any decision or finding of the Controller and Auditor-General, the liquidator may, within 2 months thereafter, appeal to the Court, which shall give such decision thereon as it thinks proper.”

15 (2) Nothing in section 244 of the principal Act (as substituted by subsection (1) of this section) shall apply in respect of any company in any case where an audit of the Official Assignee’s accounts has been commenced before the coming into force of this section and the provisions of section 244 of the principal Act shall, notwithstanding its repeal by this section, continue to apply in relation to that company.

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*New*

**33A. Release of liquidators**—(1) Section 246 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) After the advertising of—

25 “(a) The statement of accounts and balance sheet referred to in section 244 of this Act; or

“(b) The statement of accounts and balance sheet and report referred to in section 244A of this Act,—

30 as the case may be, the liquidator of a company that is being wound up by the Court shall apply to the Court for an order releasing the liquidator from his or her administration of the property of the company, and shall advertise in one or more newspapers circulating in the locality in which the winding up has been conducted notice of his or her intention to make application for an order of release, and of the time at which the liquidator intends to make the application.”

35 (2) Section 246 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

40 “(3) The Court shall, on the hearing of the application and after considering—

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| <p>“(a) Any objection by a creditor or contributory or person interested against the release of the liquidator; and<br/> “(b) Where the liquidator has made a report to the Court under <b>section 244A</b> of this Act, that report,—<br/> either grant or withhold the release.”</p> | 5 |
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**34. Unclaimed assets may be paid to Public Account as unclaimed money after 6 months**—Section 330 (1) of the principal Act is hereby amended by inserting, after the words “a liquidator”, the words “, not being the Official Assignee,”. 10

**35. Special provisions applying to unclaimed assets where Official Assignee liquidator of company**—(1) The principal Act is hereby amended by inserting, after section 330 (as amended by **section 34** of this Act), the following section:

“330A. (1) Any money representing unclaimed assets of a company standing to the credit of the Official Assignee shall, after deduction of the costs of the Official Assignee’s release as liquidator, be paid to the *(Secretary for Justice)* Public Trustee. 15

“(2) At the expiration of a period of 12 months after the date on which the money is paid the *(Secretary)* Public Trustee shall, after deduction of any amount required to meet the claim of any person which is established within that period, pay the balance into an account entitled the “Liquidation Surplus Account” for distribution in accordance with this section. 20

“(3) Any money held in the Liquidation Surplus Account may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds. Interest on any investment shall be distributed in accordance with this section. 25

“(4) Money held in the Liquidation Surplus Account may be— 30

“(a) Paid or distributed to any person entitled to payment or distribution in the winding up of any company any money representing the surplus assets of which has been credited to the Account:

“(b) Paid, subject to such conditions as the Official Assignee for New Zealand may impose, in meeting the claims of the creditors of a company, in the winding up of which the Official Assignee is the liquidator, for payment of the costs of proceedings in the winding up after the making of the winding up order, legal 35 40

or other expert advice, or the costs of any expert witness, where the Official Assignee for New Zealand is satisfied that it would be unfair or unreasonable for those creditors to incur those costs:

5 “(c) Paid, subject to such conditions as the Official Assignee for New Zealand may impose, in meeting the claims of the creditors of a company, in the winding up of which a person other than the Official Assignee is liquidator, for payment of the costs of proceedings  
10 in the winding up after the making of the winding up order, legal or other expert advice, or the costs of any expert witness, where the Official Assignee for New Zealand is satisfied good reason exists for meeting those claims.

15 “(5) Payments from the Liquidation Surplus Account shall be made by the (*Secretary for Justice*) Public Trustee with the approval of the Official Assignee for New Zealand.

20 “(6) In making any payment under this section the (*Secretary for Justice*) Public Trustee shall not be required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

“(7) Nothing in the Unclaimed Money Act 1971 applies in respect of money to which this section applies.”

25 (2) **Section 330A** of the principal Act, as enacted by subsection (1) of this section, shall apply to the winding up of any company in relation to which the Official Assignee is liquidator whether or not the winding up commenced before or after the commencement of this section.

30 **35A. Registrar may strike defunct company off register**—Section 336(2) of the principal Act is hereby amended by omitting the word “registered”.

35 **36. Exemption of certain companies**—Section 6(1) of the Companies Amendment Act 1969 is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) It is not otherwise carrying on business in New Zealand and—

“(i) It has been, or remains, registered for the purpose of protecting its name in New Zealand; or

40 “(ii) It has changed its name under section 32(1) of the principal Act solely for the purpose of protecting that name in New Zealand.”

*New*

**36A. Consequential amendment to Companies (Winding Up) Rules 1956**—Rule 153 (1) of the Companies (Winding Up) Rules 1956 is hereby amended by omitting the words “The liquidator”, and substituting the words “Every liquidator other than the Official Assignee”.

**36B. Consequential amendment to Companies (Winding Up) Fees Regulations 1984**—(1) Clause 7 of the Schedule to the Companies (Winding Up) Fees Regulations 1984 is hereby consequentially amended—

(a) By omitting the words “of the Official Assignee’s or”, and substituting the words “under section 244A of the Act of the”; and

(b) By omitting from paragraph (b) the words “Official Assignee or”.

(2) Without limiting regulation 5 (2) of those regulations, clause 7 of that Schedule, as in force immediately before the commencement of this section, shall, notwithstanding its amendment by subsection (1) of this section, continue to apply in respect of any company in any case where an audit of the Official Assignee’s accounts has been commenced before the commencement of this section.