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Corporations (Investigation and Management) Act 1989

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Part 1

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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An Act to enable the Registrar of Companies and the Financial Markets Authority to determine whether corporations are at risk, to enable action to be taken in relation to such corporations in appropriate cases, and to repeal the Companies Special Investigations Act 1958

Title: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

1 Short Title

This Act may be cited as the Corporations (Investigation and Management) Act 1989.

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

corporation means a body of persons, whether incorporated or not, and whether incorporated or established in New Zealand or elsewhere

court means the High Court

document means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:

- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

information includes data, documents, and forecasts

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

person includes a body of persons whether incorporated or not

Registrar means the Registrar of Companies and includes a Deputy Registrar

subsidiary means a subsidiary within the meaning of section 5 of the Companies Act 1993.

- (2) For the purposes of this Act, a person is an **associated person** of a corporation if—
- (a) that person directly or indirectly controls the management of the corporation; or
- (b) that person owns directly or indirectly 20% of the issued shares of the corporation, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital:
- (c) the corporation directly or indirectly controls that person; or
- (d) the corporation owns directly or indirectly 20% or more of the issued shares of that person, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital.
- (3) For the purposes of Part 1 an **associated person** of a corporation also includes a person who is substantially indebted to the corporation.
- (4) Where a body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, carries on business or has assets in New Zealand, the provisions of this Act shall apply in respect of that business or those assets as if the business were carried on, or the assets were held, by a separate person.

Section 2(1) **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 2(1) **Minister**: substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 2(1) **subsidiary**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(2)(b): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(2)(d): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Section 2A: inserted, on 31 August 2019, by section 15 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

3 Act to bind the Crown

This Act shall bind the Crown.

4 Application of Act

This Act applies to any corporation—

- (a) that is, or may be, operating fraudulently or recklessly; or
- (b) to which it is desirable that this Act should apply—
 - (i) for the purpose of preserving the interests of the corporation's members or creditors; or
 - (ii) for the purpose of protecting any beneficiary under any trust administered by the corporation; or
 - (iii) for any other reason in the public interest,—if those members or creditors or beneficiaries or the public interest cannot be adequately protected under the Companies Act 1993 or in any other lawful way.

Section 4(b): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 4(b)(iii): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

5 General objects of Act

- (1) The general objects of this Act are—
 - (a) to confer powers on the Registrar of Companies to obtain information concerning, and to investigate the affairs of, corporations to which this Act applies:
 - (b) in the case of a corporation that is, or may be, operating fraudulently or recklessly, to limit or prevent—
 - (i) the risk of further deterioration of the financial affairs of that corporation; and
 - (ii) the carrying out, or the effects of, any fraudulent act or activity:
 - (c) in the case of a corporation referred to in section 4(b), to preserve the interests of its members or creditors or beneficiaries or the public interest:
 - (d) to provide for the affairs of corporations to which this Act applies to be dealt with in a more orderly and expeditious way.

- (2) The powers conferred on the Governor-General, the Minister, the FMA, and the Registrar shall be exercised in accordance with the general objects of this Act.

Section 5(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

6 Meaning of operating fraudulently or recklessly

For the purposes of this Act, a corporation is **operating fraudulently or recklessly** if—

- (a) it contracts debts which the officers of the corporation did not, at the time the debts were contracted, honestly believe on reasonable grounds the corporation would be able to pay when they fell due for payment as well as all its other debts (including future and contingent debts); or
- (b) it carries on any business or operates in a reckless manner; or
- (c) it carries on any business or operates with intent to defraud its creditors or members or the creditors or members of any other person, or for any other fraudulent purpose.

Compare: 1955 No 63 s 320

7 No obligation on Registrar or FMA to supervise

Nothing in this Act shall be regarded as imposing on the Registrar, or the FMA, or any other person, any duty or obligation—

- (a) to supervise the affairs of any corporation; or
- (b) to apply or operate any system of supervision of any class of corporations or of corporations generally; or
- (c) to exercise any power conferred by this Act in respect of any particular corporation.

Section 7 heading: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 7: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

8 Consultation with Reserve Bank

- (1) For the purposes of this section—

covered bond SPV has the meaning given to it by section 139B of the Reserve Bank of New Zealand Act 1989

licensed insurer means a licensed insurer within the meaning of the Insurance (Prudential Supervision) Act 2010

registered bank means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989.

- (2) The Registrar must consult the Reserve Bank of New Zealand before—

- (a) giving a written notice requiring any licensed insurer or registered bank to supply any information under section 9:
 - (b) appointing any person to carry out an investigation of the affairs of any licensed insurer or registered bank under section 19:
 - (c) giving a written notice to any licensed insurer or registered bank that it is considered to be a corporation at risk.
- (3) The FMA must consult with the Reserve Bank of New Zealand before making a recommendation to the Minister under section 38 in respect of any licensed insurer, non-bank deposit taker licensed under the Non-bank Deposit Takers Act 2013, registered bank, or covered bond SPV.

Section 8: substituted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 8(1) **covered bond SPV**: inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 8(3): amended, on 1 May 2014, by section 90 of the Non-bank Deposit Takers Act 2013 (2013 No 104).

Section 8(3): amended, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 8(3): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Part 1

Supply of information by, and investigation of affairs of, corporations

Power to request information

9 Registrar of Companies may require corporation or associated person to supply information

- (1) The Registrar may, by notice in writing to any corporation or any associated person of a corporation, require that corporation or associated person to supply to the Registrar such information relating to the business, operation, or management of that corporation for such periods and in such form as may be specified in the notice.
- (2) Every corporation and every associated person commits an offence against this Act if, without lawful justification or excuse, it—
 - (a) fails to comply in any respect with any of the provisions of this section, or with any of the requirements of the Registrar under this section or section 10; or
 - (b) supplies any information which it is required to supply under this section which is false or misleading in a material particular.

Compare: 1964 No 134 s 38L(1), (6); 1986 No 131 s 10

10 Requirement that information be audited

The Registrar may, by notice in writing to a corporation or an associated person of a corporation, require any information which that corporation or associated person is required to supply pursuant to section 9 to be audited by an auditor approved by the Registrar.

Compare: 1964 No 134 s 38L(3); 1986 No 131 s 10

11 Disclosure of information to Registrar by statutory supervisor of retirement village

(1) This section applies if a statutory supervisor (under the Retirement Villages Act 2003) of a retirement village operated by a corporation becomes aware, in the course of or in connection with the performance of the statutory supervisor's functions, of information on the basis of which the statutory supervisor could reasonably form the opinion that—

- (a) the corporation is unable to pay the corporation's debts as they become due in the normal course of business; or
- (b) the value of the corporation's assets is less than the value of the corporation's liabilities, including contingent liabilities; or
- (c) it is likely that—
 - (i) the corporation will be unable to pay the corporation's debts as they become due in the normal course of business; or
 - (ii) the value of the corporation's assets will be less than the value of the corporation's liabilities, including contingent liabilities; or
- (d) the corporation has breached, or is likely to breach, in a material respect, the terms of the deed of supervision relating to the retirement village.

(2) The statutory supervisor must, as soon as practicable, disclose to the Registrar all information relevant to the matter referred to in subsection (1) that is in the possession or control of the statutory supervisor and was obtained in the course of, or in connection with, the performance of functions as statutory supervisor.

Section 11: substituted, on 1 October 2011, by section 58 of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

12 Trustee or statutory supervisor to inform corporation of intention to disclose

[Repealed]

Section 12: repealed, on 1 October 2011, by section 59 of the Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10).

13 Disclosure of information to Registrar by auditors

Every person who holds, or at any time has held, office as auditor of a corporation, or of an associated person of a corporation, pursuant to any enactment shall disclose to the Registrar, if requested to do so by the Registrar by notice

in writing, information relating to the affairs of that corporation obtained in the course of holding that office, in such form as may be specified in the notice.

Compare: 1964 No 134 s 38M(1); 1986 No 131 s 10

14 Registrar to inform corporation of intention to request information from auditor

The Registrar shall, before requesting an auditor to disclose information pursuant to section 13, take reasonable steps to inform the corporation of the Registrar's intention to do so and the nature of the information sought.

15 Protection of trustees, statutory supervisors, and auditors

- (1) No civil, criminal, or disciplinary proceedings shall lie against any trustee, statutory supervisor, or auditor arising from the disclosure in good faith of information to the Registrar pursuant to section 11 or section 13.
- (2) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any trustee, statutory supervisor, or auditor shall make any order against, or do any act in relation to, that person in respect of the fact of such disclosure.
- (3) No information received by the Registrar pursuant to section 11 or section 13 shall be admissible as evidence in any proceedings against the trustee, statutory supervisor, or auditor concerned.
- (4) Nothing in subsection (3) shall limit the admissibility of any information obtained in any other way.

Compare: 1964 No 134 s 38M(2), (4); 1986 No 131 s 10

16 Terms of notices

- (1) Information required to be supplied, pursuant to section 9 or section 13, by a corporation or an associated person or an auditor shall be supplied to the Registrar at such time and at such place as may be specified in the notice.
- (2) A notice given pursuant to section 9 or section 13 may, by a subsequent notice, be revoked, varied, or amended by the Registrar.

Compare: 1964 No 134 s 38L(4), (5); 1986 No 131 s 10

Powers to obtain information and documents

17 Powers to obtain information and documents

- (1) Where the Registrar is satisfied—
 - (a) that any information supplied to the Registrar by a corporation or an associated person pursuant to this Part is false or misleading in a material particular; or
 - (b) that a corporation or an associated person has failed to comply with any requirement to supply information pursuant to section 9—

the Registrar may,—

- (c) by notice in writing to that corporation or associated person, require that corporation or associated person to supply to the Registrar, within the time specified in the notice, such information relating to the business, operation, and management of that corporation as may be specified in the notice; or
 - (d) appoint in writing any person to enter upon and search any premises and inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that corporation in the possession of, or under the control of, any person and, where necessary, require the reproduction in usable form of any information recorded or stored in those documents.
- (2) Every person commits an offence against this Act who, without lawful justification or excuse, hinders, obstructs, or delays, in the conduct of any inspection pursuant to this section, any person duly authorised to make the inspection.
- (3) A corporation or an associated person commits an offence against this Act if, without lawful justification or excuse,—
- (a) it fails to comply with any requirement of the Registrar under subsection (1)(c); or
 - (b) it supplies any information required to be supplied pursuant to subsection (1)(c) that is false or misleading in a material particular.

Compare: 1964 No 134 s 38N(1), (9), (10); 1986 No 131 s 10

18 Requirements on entering and searching premises

- (1) No person appointed pursuant to section 17(1)(d) shall enter upon and search any premises, or inspect, remove, or take copies of any documents, or extracts from documents, in the possession of, or under the control of, any person, or require the reproduction in usable form of any information recorded or stored in any documents, unless—
- (a) the occupier of the premises or the person who has possession of the documents agrees; or
 - (b) that person obtains a warrant under section 24.
- (2) Every person authorised to enter upon and search any premises pursuant to a warrant obtained under section 24 shall, on first entering those premises, and, if requested, at any subsequent time, produce—
- (a) evidence of that person's authority to enter the premises; and
 - (b) evidence of that person's identity.

Compare: 1964 No 134 s 38N(2), (7); 1986 No 131 s 10

*Investigations***19 Investigation of affairs of corporation**

Where it is necessary or desirable for the purpose of determining whether to exercise the powers conferred under Part 2 or Part 3 that an investigation of the affairs of any corporation should be carried out, the Registrar may appoint in writing any person to carry out an investigation of the affairs of that corporation.

Compare: 1964 No 134 s 38O(1); 1986 No 131 s 10

20 Offence to hinder investigation, etc

- (1) Every person commits an offence against this Act who, without lawful justification or excuse,—
- (a) hinders, obstructs, or delays in the conduct of an investigation, any person appointed under section 19 to carry out that investigation; or
 - (b) refuses to answer any question put to him or her by any such person; or
 - (c) supplies any information required to be supplied pursuant to section 21(1) which is false or misleading in a material particular.
- (2) A corporation commits an offence against this Act if, without lawful justification or excuse,—
- (a) it fails to comply with any requirement of a person appointed under section 19 to carry out an investigation; or
 - (b) it supplies any information required to be supplied pursuant to section 21(1) which is false or misleading in a material particular.
- (3) A statement made by any person in answer to any question put by a person appointed under section 19 to carry out an investigation of the affairs of a corporation shall not be admissible in criminal proceedings against the maker of the statement.

Compare: 1964 No 134 s 38O(11), (12), (13); 1986 No 131 s 10

21 Powers of person appointed to carry out investigation

- (1) Any person appointed under section 19 may, for the purposes of carrying out an investigation of the affairs of a corporation,—
- (a) by notice in writing, require that corporation or any officer or employee of that corporation or any associated person or any other person to—
 - (i) supply any information relating to the business, operation, and management of the corporation:
 - (ii) produce for inspection any documents of, or relating to, the business, operation, and management of that corporation in the custody, or under the control, of that corporation, officer, employee, or person:

- (iii) where necessary, reproduce in usable form any information recorded or stored in such documents:
 - (b) take copies of any documents produced for inspection under paragraph (a):
 - (c) require any officer or employee of that corporation, or any associated person, or any other person, to answer any question relating to the business, operation, and management of that corporation.
- (2) Subject to section 22, any person appointed under section 19 may, for the purposes of carrying out an investigation of the affairs of the corporation, at any time,—
 - (a) enter upon and search any premises:
 - (b) inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that corporation in the possession, or under the control, of any person, and where necessary, require the reproduction in usable form of any information recorded or stored in such documents.

Compare: 1964 No 134 s 38O(2), (4); 1986 No 131 s 10

22 Requirements to be complied with by person carrying out investigation

- (1) Any person who exercises any powers conferred by section 21(1) shall, if requested, produce the instrument of that person's appointment under section 19.
- (2) No person who exercises any powers conferred by section 21(2) shall enter upon and search any premises, or inspect, remove, and take copies of any documents or extracts from documents, or require the reproduction in usable form of any information recorded or stored in documents, unless—
 - (a) the occupier of the premises or the person who has possession of the documents agrees; or
 - (b) that person obtains a warrant under section 24.
- (3) Every person authorised to enter upon and search any premises pursuant to a warrant obtained under section 24 shall on first entering those premises and, if requested, at any subsequent time, produce—
 - (a) evidence of that person's authority to enter the premises; and
 - (b) evidence of that person's identity.

Compare: 1964 No 134 s 38O(3), (5), (9); 1986 No 131 s 10

Miscellaneous

23 Confidentiality of information

- (1) This section applies to—
 - (a) information supplied or disclosed to, or obtained by,—

- (i) the Registrar or the FMA under, or for the purposes of, or in connection with the exercise of powers conferred by, this Part:
 - (ii) a person authorised by the Registrar under section 17 or section 19:
 - (b) information derived from, or based upon, information referred to in paragraph (a):
 - (c) information relating to the exercise, or possible exercise, of the powers conferred by this Part.
- (2) Neither the Registrar nor the FMA, nor any person authorised by the Registrar under section 17 or section 19, shall publish or disclose any information to which this section applies except—
- (a) with the consent of the person to whom the information relates:
 - (b) to the extent that the information is available to the public under any Act other than the Official Information Act 1982, or in a public document:
 - (c) for the purposes of this Act or in connection with the exercise of powers conferred under this Act:
 - (d) in connection with any proceedings for an offence against this Act:
 - (e) to any person who the Registrar or the FMA is satisfied has a proper interest in receiving such information.
- (3) No information to which this section applies shall be published or disclosed pursuant to paragraph (e) of subsection (2) unless the Registrar or the FMA is satisfied that satisfactory provision exists to protect the confidentiality of the information published or disclosed.
- (4) No person to whom any information to which this section applies is published or disclosed pursuant to paragraph (c) of subsection (2) shall publish, disclose, or use such information except—
- (a) for the purposes of this Act or in connection with the exercise of powers conferred by this Act; and
 - (b) in accordance with such conditions as may be specified by the Registrar or the FMA.
- (5) No person to whom any information to which this section applies is published or disclosed pursuant to paragraph (a) or paragraph (e) of subsection (2), shall publish, disclose, or use such information unless the publication, disclosure, or use is—
- (a) authorised by the Registrar or the FMA; or
 - (b) necessary or desirable in connection with the exercise of any function or power conferred by any enactment.
- (6) Every person who contravenes this section commits an offence against this Act.

- (7) Nothing in the Official Information Act 1982 or any other Act, other than this Act, applies to information to which this section applies whether or not such information has been published or disclosed to any person pursuant to this section.

Compare: 1964 No 134 s 38P; 1986 No 131 s 10

Section 23(1)(a)(i): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 23(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 23(2)(e): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 23(3): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 23(4)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 23(5)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

24 Procedure for obtaining warrants

- (1) Where a Judge of the High Court is satisfied, on application in writing made on oath, that there are reasonable grounds for believing—
- (a) that any information supplied to the Registrar by a corporation or an associated person pursuant to this Part is false or misleading in a material particular; or
 - (b) that a corporation or an associated person has failed to comply with any requirement to supply information pursuant to section 9—

the Judge may issue a warrant, in terms of section 25, to a person appointed pursuant to section 17(1)(d).

- (2) Where a Judge of the High Court is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that it is necessary for the purpose of determining whether to exercise the powers conferred under Part 2 or Part 3 that an investigation of the affairs of a corporation should be carried out, that Judge may issue a warrant, in terms of section 25, to a person appointed under section 19.
- (3) Every warrant issued under subsection (1) shall state whether it is issued under paragraph (a) or paragraph (b).

Compare: 1964 No 134 ss 38N(3), (5), 38O(6); 1986 No 131 s 10

25 Effect of warrant

- (1) Every warrant issued under section 24 shall authorise the person named in the warrant, at any time, by force if necessary, to enter upon and search the premises specified in the warrant and inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that corporation in the possession of, or under the control of,

any person and, where necessary, require the reproduction in usable form of any information recorded or stored in such documents.

- (2) Every such warrant shall continue in force for a period of 1 month or until the purpose for which it was granted has been satisfied, whichever is the lesser.

Compare: 1964 No 134 ss 38N(4), (6), 38O(7), (8); 1986 No 131 s 10

26 Effect of proceedings

- (1) Where any person commences any proceedings in any court in respect of—

- (a) the exercise of any powers conferred by this Part; or
- (b) the discharge of any duty imposed by this Part,—

until a final decision in relation to those proceedings is given, the powers or duty may be, or may continue to be, exercised or discharged as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation under this Part by reason of those proceedings.

- (2) This section shall apply notwithstanding any other provision of any Act or any rule of law.

Compare: 1964 No 134 ss 38N(11), 38O(14); 1986 No 131 s 10

27 Effect of final decision that exercise of powers under section 17 unlawful

In any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by section 17 that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful,—

- (a) the Registrar shall ensure that forthwith after the decision of the court is given—
 - (i) any information supplied by the corporation or an associated person pursuant to section 17(1)(c), and any record of such information, is destroyed:
 - (ii) any documents, or extracts from documents, obtained pursuant to an inspection made under section 17(1)(d) are returned to the person previously having possession of those documents, or previously having them under his or her control, and any copies of such documents or extracts are destroyed:
 - (iii) any information derived from or based upon any such information or documents or extracts is destroyed:
- (b) no information supplied by the corporation or an associated person pursuant to section 17(1)(c), and no documents, or extracts from documents, obtained pursuant to an inspection made under section 17(1)(d), and no record of any such information or documents, shall be—
 - (i) admissible in evidence in any proceedings:

- (ii) used in connection with the exercise of any power conferred by Part 2 or Part 3.

Compare: 1964 No 134 s 38N(12); 1986 No 131 s 10

28 Effect of final decision that exercise of powers under sections 19 to 21 unlawful

In any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by sections 19 to 21, that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful,—

- (a) the Registrar shall ensure that forthwith after the decision of the court is given—
 - (i) any information obtained pursuant to section 21(1)(a), and any record of such information, is destroyed:
 - (ii) any documents produced for inspection pursuant to section 21(1)(a) are returned to the person previously having possession of the documents, or previously having the documents under his or her control, and any copies of such documents, or extracts from such documents, are destroyed:
 - (iii) any documents, or extracts from documents, obtained pursuant to an investigation made under section 21(2) are returned to the person previously having possession of those documents, or previously having them under his or her control, and any copies of such documents or extracts are destroyed:
 - (iv) any information derived from or based upon such information, documents, or extracts is destroyed:
- (b) no information obtained or documents produced for inspection pursuant to section 21(1)(a), and no documents, or extracts from documents, obtained pursuant to an investigation made under section 21(2), and no record of any such information or documents, shall be—
 - (i) admissible as evidence in any proceedings:
 - (ii) used in connection with the exercise of any power conferred by Part 2 or Part 3.

Compare: 1964 No 134 s 38O(15); 1986 No 131 s 10

29 Saving for privileged communications

Nothing in this Part shall be taken to require any person who has acted as a solicitor or a barrister for any person to disclose any privileged communication made to him or her in that capacity.

Compare: 1955 No 63 s 466

Part 2

Corporations at risk

30 Registrar or FMA may declare corporation to be at risk

- (1) If the Registrar or the FMA has reasonable grounds to believe that any corporation is, or may be, a corporation to which this Act applies, the Registrar or the FMA may give written notice to the corporation that it is considered to be a corporation at risk.
- (2) Every notice given under subsection (1) must state the grounds on which it is given.
- (3) The FMA may only exercise a power under this section in respect of a corporation that is a financial markets participant (within the meaning of section 4 of the Financial Markets Authority Act 2011).

Section 30: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

31 Obligation to consult with Registrar or FMA

- (1) Every corporation to whom a notice is given under section 30 must promptly consult with the Registrar or the FMA (as the case may be)—
 - (a) as to the circumstances of that corporation; and
 - (b) as to the methods of resolving the difficulties of that corporation.
- (2) Every associated person of a corporation to whom a notice has been given under section 30, and any officer or employee of the corporation or associated person, must, when required to do so by the Registrar or the FMA (as the case may be) by notice in writing to that person, promptly consult with the Registrar or the FMA—
 - (a) as to the circumstances of that corporation; and
 - (b) as to the methods of resolving the difficulties of that corporation.

Section 31: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

32 Power of Registrar or FMA to give advice and assistance

If the Registrar or the FMA gives a notice to a corporation under section 30, or gives a notice to an associated person under section 31(2), the Registrar or the FMA may—

- (a) give advice to the corporation or associated person concerning its affairs;
- (b) give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that corporation or associated person;
- (c) give advice and assistance in connection with any scheme for resolving the difficulties of that corporation or associated person.

Section 32: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

33 Power of Registrar or FMA to give directions to corporation declared to be at risk

- (1) The Registrar or the FMA may give a direction in writing to any corporation to which a notice has been given under section 30 by the Registrar or the FMA (as the case may be) requiring it—
 - (a) not to remove from New Zealand, transfer, charge, or otherwise deal with any of its property or funds except with the prior approval of the Registrar or the FMA and subject to the terms and conditions that the Registrar or the FMA may specify:
 - (b) to place in a trust account any money received for investment:
 - (c) to take any other action that is specified in the notice to preserve the interests of the corporation's members and creditors.
- (2) The Registrar or the FMA may amend any direction that he, she, or it has given.
- (3) The Registrar may only exercise a power under subsection (1) or (2) with the prior consent of the FMA.

Section 33: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

34 Period for which directions may apply

- (1) Every direction under section 33 shall be expressed to apply for a period not exceeding 21 days.
- (2) A direction may be revoked at any time by the Registrar or the FMA (as the case may be).
- (3) Any money placed in a trust account pursuant to section 33(1)(b) may, after it has ceased to be subject to a direction, be applied for the purposes for which it was received.
- (4) Subsection (3) shall not apply if the corporation has been declared to be subject to statutory management.

Compare: 1964 No 134 s 38Q(10); 1986 No 131 s 10

Section 34(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

35 Offence to contravene directions, etc

- (1) Every corporation that acts in contravention of, or fails to comply with, a direction under section 33 commits an offence against this Act.

- (2) Every officer or employee of a corporation who obstructs, hinders, or prevents that corporation giving effect to any direction commits an offence against this Act.

Compare: 1964 No 134 s 38Q(11), (12); 1986 No 131 s 10

36 Offence to disclose that corporation declared to be at risk, etc

- (1) Subject to subsection (2), every person who discloses that a notice has been given under section 30 or section 31(2) commits an offence against this Act.
- (2) Nothing in subsection (1) applies to the disclosure or publication of the fact that a notice has been so given where the disclosure or publication is made—
- (a) to any professional or financial adviser of the corporation or associated person to which the notice relates:
 - (b) with the written consent of the Registrar or the FMA (as the case may be), for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital or business undertaking of the corporation or associated person:
 - (c) with the written consent of the Registrar or the FMA (as the case may be), to any person who has a proper interest in knowing that the notice has been given.

Compare: 1964 No 134 s 38Q(14), (15); 1986 No 131 s 10

Section 36(2)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 36(2)(c): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

37 Miscellaneous provisions relating to notices

- (1) A notice may be given to a corporation (under section 30) or an associated person (under section 31(2)) by—
- (a) delivering it to the head office, registered office, or principal place of business in New Zealand of the corporation or associated person (as the case may be); or
 - (b) emailing it to the corporation or associated person at an email address that is used by the corporation or associated person.
- (1A) In the absence of proof to the contrary, a notice that is emailed to a corporation or an associated person must be treated as received by the corporation or associated person on the second working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that it was properly addressed and sent to the email address.
- (2) A notice given under section 30 or section 31(2) may at any time be revoked by the Registrar or the FMA (as the case may be).

Compare: 1964 No 134 s 38Q(6), (7); 1986 No 131 s 10

Section 37(1): replaced, on 16 December 2017, by section 59 of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 37(1A): inserted, on 16 December 2017, by section 59 of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 37(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Part 3

Statutory management

38 Statutory management of corporations and associated persons

- (1) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the FMA,—
 - (a) declare that—
 - (i) any corporation:
 - (ii) any associated person of that corporation,—
is subject to statutory management; and
 - (b) appoint 1 or more persons as statutory manager or statutory managers of that corporation or associated person.
- (2) Where an Order in Council is made under subsection (1), every subsidiary of a corporation declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, shall be subject to statutory management, and the statutory manager or statutory managers so appointed shall be the statutory manager or statutory managers of every such subsidiary.
- (3) Every Order in Council made under subsection (1) must specify the date on which, and the time at which, the Order in Council comes into force.
- (4) The date and time as specified must not be earlier than the date on which, and the time at which, the Order in Council is made.
- (5) Subsections (1)(a) and (2) are subject to section 139J(4) of the Reserve Bank of New Zealand Act 1989.

Compare: 1964 No 134 s 38R(2), (3); 1986 No 131 s 10

Section 38(1): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 38(3): added, on 26 April 1999, by section 2 of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 38(4): added, on 26 April 1999, by section 2 of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 38(5): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

39 Grounds on which corporation can be declared to be subject to statutory management

The FMA shall not make a recommendation under section 38 in respect of a corporation unless it is satisfied on reasonable grounds—

- (a) that the corporation is, or may be, a corporation to which this Act applies; and
- (b) that, in the case of a corporation that is, or may be, operating fraudulently or recklessly, it is desirable that the corporation be declared to be subject to statutory management for the purpose of—
 - (i) limiting or preventing the risk of further deterioration of the financial affairs of the corporation; or
 - (ii) limiting or preventing the carrying out, or the effects of, any fraudulent act or activity; or
 - (iii) enabling the affairs of the corporation to be dealt with in a more orderly or expeditious way:
- (c) that, in the case of a corporation referred to in section 4(b), it is desirable that the corporation be declared to be subject to statutory management for the purpose of—
 - (i) preserving the interests of its members or creditors or beneficiaries or the public interest; or
 - (ii) enabling the affairs of the corporation to be dealt with in a more orderly or expeditious way.

Compare: 1964 No 134 s 38R(4), (6); 1986 No 131 s 10

Section 39: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

40 Grounds on which associated person can be declared to be subject to statutory management

The FMA shall not make a recommendation under section 38 in respect of an associated person of a corporation unless it is satisfied on reasonable grounds that—

- (a) an Order in Council could be made in respect of that associated person on any of the grounds specified in section 39; or
- (b) the business and affairs of the corporation are so closely connected with that associated person that the statutory manager or statutory managers would be unable to exercise effectively the powers conferred by this Act in relation to the corporation unless the statutory manager or statutory managers is or are appointed as statutory manager or statutory managers of the associated person.

Compare: 1964 No 134 s 38R(5)–(7); 1986 No 131 s 10

Section 40: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Powers of statutory manager

41 Considerations affecting exercise of powers by statutory manager

- (1) In the exercise of the powers conferred by this Part, a statutory manager of a corporation shall have regard to—
- (a) the need to preserve the interests of members and creditors of the corporation, or, where appropriate, the need to protect the beneficiaries under any trust administered by the corporation or the public interest:
 - (b) the need to resolve the difficulties of the corporation:
 - (c) as far as practicable, the need to preserve the business or undertaking of the corporation.
- (2) Every statutory manager of a corporation shall provide the Registrar with such reports as the Registrar may require as to the state of the affairs and business of the corporation.

Compare: 1964 No 134 s 38T; 1986 No 131 s 10

42 Moratorium

- (1) Where a corporation is declared under section 38 to be subject to statutory management, no person shall—
- (a) commence or continue any action or other proceedings, including proceedings by way of counterclaim, against that corporation:
 - (b) issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of that corporation:
 - (c) apply or resolve to put the corporation into liquidation or voluntary administration:
 - (d) enter into possession, sell, or appoint a receiver of the property of that corporation, or property in respect of which the corporation has an equity of redemption:
 - (e) exercise or continue any power or rights under, or in pursuance of, any mortgage, charge, debenture, instrument, or other security over the property of that corporation:
 - (f) claim or recover, pursuant to any retention of title clause, hire purchase agreement, mortgage, lease, or security, any property in the possession of the corporation:
 - (g) determine or forfeit any tenancy, retake or re-enter any premises, or exercise or continue any power or rights under, or in pursuance of, any lease, against that corporation:
 - (h) exercise any right of set-off against that corporation.

- (2) Notwithstanding the provisions of subsection (1), an action or proceeding may be commenced or continued against a corporation for the purpose of determining whether any right or liability exists if the leave of the statutory manager or the court is first obtained.
- (3) Notwithstanding the provisions of subsection (1), a statutory manager of a corporation may waive the application in whole or in part of that subsection (except paragraph (c) of that subsection) to any creditor or class of creditors in respect of the whole or part of any claim of, or security held by, that creditor or class of creditors.
- (4) Subject to the provisions of this Act, nothing in subsection (1) affects the existence of any security over the property of any corporation or its priority over other debts.
- (5) Nothing in paragraph (a) of subsection (1) limits or prevents any person commencing or continuing any action or other proceedings, including proceedings by way of counterclaim, against a corporation in respect of any contract entered into, or obligation incurred, by that corporation after the date on which, and the time at which, that corporation was declared to be subject to statutory management.
- (6) Nothing in paragraph (b) of subsection (1) limits or prevents any person issuing any execution, attaching any debt, or otherwise enforcing or seeking to enforce any judgment or order obtained against a corporation in respect of any contract entered into, or obligation incurred, by that corporation after the date on which, and the time at which, that corporation was declared to be subject to statutory management.
- (7) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 255 to 263 of the Insolvency Act 2006 apply,—
 - (a) nothing in subsection (1)(h) applies to any right of set-off provided for in the netting agreement; and
 - (b) nothing in subsection (1) limits or prevents the exercise of any of the following rights under the netting agreement:
 - (i) the termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event specified in the netting agreement, being an event (including the appointment of a statutory manager) occurring not later than the commencement of statutory management; or
 - (ii) the taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination; and
 - (c) nothing in subsection (1) limits or prevents the exercise by a recognised clearing house (within the meaning of section 310A of the Companies Act 1993), of any right referred to in subsection (1)(d) to (f) in respect of

- any property of that corporation if the right that is exercised has been granted to secure, or to assist in securing, the due performance, by that corporation, of obligations entered into by that corporation under a recognised multilateral netting agreement (within the meaning of that section).
- (8) In the case of netting under the rules of a settlement system that is declared to be a designated settlement system under Part 5C of the Reserve Bank of New Zealand Act 1989,—
- (a) nothing in subsection (1) limits or prevents the exercise of any rights relating to the calculation of a netted balance under those rules; and
 - (b) nothing in subsection (1) limits or prevents the exercise of any right referred to in paragraphs (d) to (f) of that subsection in respect of any property of that corporation if the right that is exercised—
 - (i) is provided under the rules of the designated settlement system; and
 - (ii) has been granted to secure, or to assist in securing, the due performance, by that corporation, of obligations entered into by that corporation under those rules.
- (8A) Subsection (1) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.
- (9) For the purpose of subsection (8), **netted balance**, **netting**, and **rules** have the meanings set out in section 156M of the Reserve Bank of New Zealand Act 1989.
- (10) Nothing in subsection (1) limits or prevents the exercise of any rights to enforce a security interest over collateral to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative if—
- (a) the counterparties to the derivative are—
 - (i) 2 qualifying counterparties; or
 - (ii) a qualifying counterparty and an overseas person; and
 - (b) before the exercise of the rights, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—
 - (i) the enforcing counterparty; or
 - (ii) another person (who is not the corporation that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (11) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (10) have in that subsection the same meanings as in that section.

- (12) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (10)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (10)(b) of this section and treating references to the grantor as references to the corporation that granted the security interest).

Compare: 1964 No 134 s 38V; 1986 No 131 s 10

Section 42(1)(c): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 42(1)(c): amended, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Section 42(1)(d): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 42(1)(g): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 42(5): amended, on 26 April 1999, by section 3(1) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 42(6): amended, on 26 April 1999, by section 3(1) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 42(7): added, on 26 April 1999, by section 3(2) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 42(7): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 42(8): added, on 21 August 2003, by section 48(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 42(8): amended, on 24 November 2009, by section 13(1) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 42(8)(b)(i): amended, on 24 November 2009, by section 13(1) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 42(8A): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 42(9): added, on 21 August 2003, by section 48(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 42(9): amended, on 24 November 2009, by section 13(2) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 42(10): inserted, on 31 August 2019, by section 16 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 42(11): inserted, on 31 August 2019, by section 16 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 42(12): inserted, on 31 August 2019, by section 16 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

43 Prohibition against removal of assets

- (1) Where a corporation is declared to be subject to statutory management, no person shall, except with the consent of the statutory manager, transfer, or remove from New Zealand, any property or assets of the corporation.
- (2) Any person who, after a corporation is declared to be subject to statutory management, except with the consent of the statutory manager, transfers, or

removes from New Zealand, any property or assets of the corporation, commits an offence and is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$50,000:
 - (b) in the case of a corporation, to a fine not exceeding \$250,000.
- (3) Nothing in subsection (2) shall prevent the issue of an injunction or the making of any order to prevent such property or assets being removed from New Zealand.
- (4) Subsection (1) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.

Compare: 1964 No 134 s 38X; 1986 No 131 s 10

Section 43(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 43(4): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

44 Statutory manager may suspend payment of money owing

- (1) The statutory manager of a corporation may, notwithstanding the terms of any contract, suspend in whole or in part the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person.
- (2) The suspension by a statutory manager in whole or in part of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person pursuant to subsection (1) shall not constitute a breach or repudiation of any contract entered into by the corporation with any person.
- (3) Nothing in subsection (1) shall authorise the suspension by the statutory manager of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person where the obligation to repay the deposit, or to pay the debt, or to discharge the obligation, was incurred by the corporation or by the statutory manager after the date upon which, and the time at which, the corporation became subject to statutory management.
- (4) Nothing in subsection (1) authorises the suspension by the statutory manager of the payment of any amount that would be included in the calculation of a netted balance in accordance with section 310C of the Companies Act 1993 or section 257 of the Insolvency Act 2006 or section 156T of the Reserve Bank of New Zealand Act 1989, as the case may be. However, subsection (1) applies to the payment of the netted balance.
- (5) Subsection (1) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.

Compare: 1964 No 134 s 38Y; 1986 No 131 s 10

Section 44(3): amended, on 26 April 1999, by section 4(1) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 44(4): added, on 26 April 1999, by section 4(2) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 44(4): amended, on 24 November 2009, by section 14 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 44(4): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 44(4): amended, on 21 August 2003, by section 48(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 44(5): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

45 Management of corporation to vest in statutory manager

- (1) Subject to this Part, where a corporation is declared to be subject to statutory management, the management of that corporation shall, on and after the date, and at and from the time, specified in the order, vest in the statutory manager of that corporation.
- (2) Where a corporation is declared to be subject to statutory management, it shall not be lawful or competent for any director, manager, or other person to be engaged in the management or conduct of the business of that corporation, or to act as an officer, or as the agent or servant, of the corporation, except with the permission of the statutory manager and so far as that permission extends.
- (3) Subsection (2) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.

Compare: 1964 No 134 s 38Z; 1986 No 131 s 10

Section 45(1): amended, on 26 April 1999, by section 5 of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 45(3): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

46 Powers of statutory manager

- (1) Subject to this Part, a statutory manager of a corporation shall have all such powers, rights, and authorities as may be necessary to carry out the powers conferred by this Part.
- (2) Without limiting subsection (1), a statutory manager shall have and may exercise—
 - (a) all powers, rights, and privileges that the corporation has under any contract or otherwise:
 - (b) in the case of a body corporate, all the powers of the members in general meeting and of the board of directors of that body corporate:
 - (c) in the case of a corporation other than a body corporate, all the powers exercisable by its governing body.
- (3) Without limiting subsection (1), a statutory manager of a corporation shall have and may exercise all of the powers conferred on a liquidator of a company by section 269 of the Companies Act 1993 in the same manner as if the statutory manager of the corporation were the liquidator of a company being wound up under that Act, and all the provisions of that section shall apply in respect of

the disclaimer of any property of the corporation as if that property was property of a company to which that section applied.

Compare: 1964 No 134 s 38AB; 1986 No 131 s 10

Section 46(3): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

47 Statutory manager empowered to carry on business of corporation

Subject to this Part, a statutory manager of a corporation may carry on all or any part of the business of the corporation, and shall have and may exercise, in relation to the corporation, all such powers, rights, and authorities as may be necessary to carry on that business.

Compare: 1964 No 134 s 38AC; 1986 No 131 s 10

48 Statutory manager empowered to pay creditors and compromise claims

Subject to this Part, a statutory manager of a corporation shall, for the purposes of carrying on the business of that corporation, have power to—

- (a) pay any creditor or class of creditors of the corporation in whole or in part:
- (b) make any compromise or arrangement with any creditor, or person claiming to be a creditor, of the corporation:
- (c) compromise all calls, debts, and claims subsisting or supposed to subsist between the corporation and any other person, and all questions relating to the assets of the corporation and give a complete or partial discharge in respect thereof.

Compare: 1964 No 134 s 38AD; 1986 No 131 s 10

49 Termination of contract of agency or service

- (1) The statutory manager of any corporation may, at any time, terminate any contract of service or agency between the corporation and any person who is its servant or agent, notwithstanding that by law, apart from this Act, the corporation could not have terminated the contract until some future date; and where a contract is terminated under this section the corporation shall be discharged from the further performance of the contract, and from all liabilities for subsequent non-performance of the contract.
- (2) After the termination of the contract, the other person may, within 6 months of receiving notice of the termination, apply to the court for compensation in respect of the contract; and the court may award such compensation as it considers just and reasonable having regard to the value of the consideration provided by the person, and to all amounts and benefits which the person has received under the contract, and to the conduct of the parties.

Compare: 1958 No 23 s 5A

50 Power of statutory manager to sell business undertaking of corporation

- (1) Subject to this Part, the statutory manager of a corporation may sell or otherwise dispose of the whole or any part of the business undertaking of the corporation to such person, and upon such terms and conditions, as the statutory manager thinks fit.
- (2) Without limiting any other powers of the statutory manager, for the purposes of subsection (1), the statutory manager shall have power to—
 - (a) form and register a body corporate under the Companies Act 1993 or any other Act:
 - (b) acquire all or any of the shares of that body corporate:
 - (c) transfer to that body corporate the whole or any part of the business undertaking of the corporation:
 - (d) issue all or any of the shares in that body corporate to any person credited as fully or partly paid, as the case may be, up to the value of the business undertaking transferred to that body corporate pursuant to paragraph (c):
 - (e) sell all or any of the shares of that body corporate or the whole or any part of the business undertaking of that body corporate to such person, and upon such terms and conditions, as the statutory manager thinks fit.
- (3) The provisions of any agreement requiring any consent, licence, permission, or other authority shall not have any application in respect of any sale pursuant to this section, unless the court, on application by any person who would be adversely affected, otherwise orders.

Compare: 1964 No 134 s 38AE(1), (2), (4); 1986 No 131 s 10

Section 50(2)(a): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 50(2)(b): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 50(2)(d): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

51 Sale of property or assets subject to a security

- (1) A statutory manager may—
 - (a) sell or otherwise dispose of any property or assets of a corporation pursuant to section 50(1); or
 - (b) sell or otherwise dispose of any property or assets of a corporation to any body corporate formed and registered pursuant to section 50(2)(a); or
 - (c) sell or otherwise dispose of any shares in, or property or assets of, a body corporate formed and registered pursuant to section 50(2)(a)—

notwithstanding the existence, or the terms and conditions, of any security over the property or those assets in favour of any other person.

- (2) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of that corporation under section 50(1), being property or assets subject to a security interest, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than—
 - (a) the costs of the statutory manager in selling or disposing of the property or assets; and
 - (b) claims in respect of preferential payments made under section 312 of the Companies Act 1993 (as applied by section 55), in the case of—
 - (i) proceeds of an account receivable that is subject to a security interest that—
 - (A) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (AB) is not a security interest referred to in subsection (8); and
 - (B) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the corporation was declared to be subject to statutory management and that arises from the transfer of the account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); or
 - (ii) proceeds of inventory that are subject to a security interest that—
 - (A) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (B) is not a security interest referred to in subsection (8).
- (3) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of that corporation to any body corporate formed and registered pursuant to section 50(2)(a), being property or assets subject to a security in favour of any other person, the property or those assets shall continue to be subject to that security.
- (4) If a statutory manager of a corporation sells or otherwise disposes of any shares in a body corporate formed and registered under section 50(2)(a), any property or assets of which are subject to a security interest, other than a security interest of the kind described in subsection (6), the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority

to all other claims other than the costs of the statutory manager in selling or disposing of the shares.

- (5) If a statutory manager of a corporation sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 50(2)(a), being property or assets subject to a security interest, other than a security interest of the kind described in subsection (6), the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.
- (6) The kind of security interest referred to in this subsection is a security interest that—
 - (a) is over all or any part of the corporation's accounts receivable and inventory or all or any part of either of them; and
 - (b) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the corporation was declared to be subject to statutory management and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
 - (d) is not a security interest referred to in subsection (8).
- (7) In this section, **account receivable**, **inventory**, **new value**, **non-purchase money security interest**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.
- (8) For the purposes of subsections (2)(b)(i)(AB) and (ii)(B) and (6)(d), the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—
 - (a) the counterparties to the derivative are—
 - (i) 2 qualifying counterparties; or
 - (ii) a qualifying counterparty and an overseas person; and
 - (b) before the exercise of rights to enforce the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—
 - (i) the enforcing counterparty; or

- (ii) another person (who is not the corporation that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (9) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (8) have in that subsection the same meanings as in that section.
- (10) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (8)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subsection (8)(b) of this section and treating references to the grantor as references to the corporation that granted the security interest).

Compare: 1964 No 134 s 38AE(5)–(9); 1986 No 131 s 10

Section 51(2): substituted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 51(2)(b)(i): substituted, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 51(2)(b)(i)(AB): inserted, on 31 August 2019, by section 17(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 51(2)(b)(ii): replaced, on 31 August 2019, by section 17(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 51(4): substituted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 51(5): substituted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 51(6): added, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 51(6): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 51(6)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 51(6)(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 51(6)(d): inserted, on 31 August 2019, by section 17(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 51(7): added, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 51(8): inserted, on 31 August 2019, by section 17(4) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 51(9): inserted, on 31 August 2019, by section 17(4) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 51(10): inserted, on 31 August 2019, by section 17(4) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

52 Liquidation of corporations

- (1) Subject to this Part, a statutory manager of a corporation may,—

- (a) in the case of a corporation that may be put into liquidation under the Companies Act 1993, apply under that Act to put the corporation into liquidation:
 - (b) in the case of a corporation that may be wound up or put into liquidation or dissolved under any other Act, take such steps as are provided for in that Act for the winding up or liquidation or dissolution of that corporation.
- (2) The statutory manager of a corporation, not being a corporation referred to in subsection (1), may recommend to the Minister that the corporation be wound up.
 - (3) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of a statutory manager under subsection (2), order that the corporation to which the recommendation relates shall be wound up in such manner as may be specified in the order and, in any such case, the corporation shall be wound up in the manner specified in the order.
 - (4) Nothing in this section limits or affects any other enactment which provides for the winding up or liquidation or dissolution of any body corporate or any class of body corporate.

Section 52: substituted, on 1 July 1994, by section 3 of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 52(1)(a): replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

53 Provisions applying where liabilities included in sale or other disposition of business undertaking of corporation

Where all or any part of any liability of a corporation is included in the sale or other disposition of the business undertaking of that corporation, or any part of that undertaking, pursuant to section 50—

- (a) the corporation shall, as from the date of the sale or other disposition, be relieved from all its obligations in respect of that liability, or that part of the liability; and
- (b) the person entitled to performance in respect of that liability shall be entitled to enforce performance of that liability, or that part of the liability, against the person to whom the business undertaking is sold or otherwise disposed of in the same manner and to the same extent as the person entitled to performance in respect of that liability could have enforced performance of that liability against the corporation; and
- (c) the inclusion of part of any such liability shall not relieve the corporation from any obligation in respect of any part of the liability not included in the sale or other disposition.

Compare: 1964 No 134 s 38AG; 1986 No 131 s 10

54 Power to trace property improperly disposed of

- (1) In any case where, whether before or after the passing of this Act,—
 - (a) any property has been acquired by a person in circumstances which cause it to be just and equitable that that person should hold it upon trust for any corporation that has been declared to be subject to statutory management; or
 - (b) any property has been improperly disposed of, whether or not the property has become subject to a trust,—

the court may, if it thinks fit, make an order—
 - (c) that the property be transferred or delivered to the statutory manager:
 - (d) that any person who acquired or received the property, or his or her administrator, shall pay to the statutory manager a sum not exceeding the value of that property.
- (2) For the purpose of giving effect to any such order, the court may make such further order as it thinks fit.
- (3) No order made pursuant to this section shall deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.
- (4) Nothing in this section shall restrict the operation of the Companies Act 1993.

Compare: 1958 No 23 s 23

Section 54(4): substituted, on 1 July 1994, by section 4 of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 54(4): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

55 Application of certain provisions of Companies Act 1993

- (1) Sections 275, 292 to 301, 310G, 310I, and 312 of the Companies Act 1993 shall apply to a corporation that is subject to statutory management under this Act in all respects, and with such modifications as may be necessary, as if—
 - (a) the corporation was a company in liquidation under that Act; and
 - (b) the statutory manager of the corporation was the liquidator of the company; and
 - (c) the date on which, and the time at which, the corporation became subject to statutory management was the date on which, and the time at which, the liquidation commenced.
- (2) Nothing in section 263 of the Companies Act 1993 shall apply to a corporation by reason of the application of section 312 of that Act.
- (3) To avoid doubt, the reference in section 275(4) of the Companies Act 1993 to clause 1(a) of Schedule 7 of the Companies Act 1993 must be read as a reference to section 65(1) of this Act.

Section 55: substituted, on 1 July 1994, by section 5 of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 55(1): amended, on 20 September 2007, by section 4(1) of the Corporations (Investigation and Management) Amendment Act 2007 (2007 No 50).

Section 55(1): amended, on 26 April 1999, by section 6(1) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 55(1)(c): substituted, on 26 April 1999, by section 6(2) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 55(3): added, on 20 September 2007, by section 4(2) of the Corporations (Investigation and Management) Amendment Act 2007 (2007 No 50).

Miscellaneous

56 Application of this Part to joint statutory managers, associated persons, and subsidiaries

- (1) Where an Order in Council is made under section 38 appointing 2 or more persons as statutory managers of a corporation, the order shall state whether the powers conferred by this Part shall be exercised by those persons acting together or may be exercised individually.
- (2) For the purposes of this Part, unless the context otherwise requires,—
 - (a) references to a statutory manager shall, where 2 or more persons are appointed as statutory managers of a corporation, include references to those statutory managers:
 - (b) where an associated person of a corporation is declared to be subject to statutory management, or a subsidiary of a corporation becomes subject to statutory management under section 38(2), that associated person or subsidiary, as the case may be, shall be deemed to be a corporation and references in this Part to a corporation shall be read as references to that associated person or subsidiary, as the case may be.

Compare: 1964 No 134 s 38R(11), (12); 1986 No 131 s 10

57 Termination of appointment of statutory manager

- (1) The Minister may terminate the appointment of a statutory manager of a corporation for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (2) A statutory manager of a company may resign office by notice in writing to the Minister.
- (3) Where the appointment of a statutory manager is terminated under subsection (1), or a statutory manager resigns office, or dies, the Minister may appoint a person to take the place of that statutory manager.
- (4) Where a statutory manager resigns office, that statutory manager shall continue in office until a successor is appointed.

Compare: 1964 No 134 s 38AH; 1986 No 131 s 10

Section 57(1): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

58 Statutory manager may apply to court for directions

- (1) A statutory manager of a corporation may apply to the court for directions concerning the business or property of the corporation, or the management or administration of any such business or property, or the exercise of any powers under this Part.
- (2) On any application under subsection (1), the court may give directions concerning the business or property of the corporation, or the management or administration of any such business or property, or the exercise of any powers under this Part, and every person shall be bound by any such directions.

Compare: 1964 No 134 s 38AI; 1986 No 131 s 10

59 Court may confer additional powers on statutory manager

The statutory manager of a corporation shall have, in addition to the powers conferred on him or her by this Act, such other powers (if any) in respect of the corporation as the court, on application by the statutory manager, thinks fit to confer.

Compare: 1958 No 23 s 8

59A Special considerations if insurer under Part 10 of Accident Compensation Act 2001 is subject to statutory management

A statutory manager of an insurer to whom Part 10 of the Accident Compensation Act 2001 applies must not—

- (a) exercise any power conferred by this Part if to do so would prejudice the need to ensure that arrangements are in place to ensure that the obligations of the insurer to provide statutory entitlements under that Act are met without interruption; or
- (b) enter into a contract of sale under this Part unless another insurer or the Accident Compensation Corporation is liable to provide those statutory entitlements under Part 10.

Section 59A: substituted, on 1 April 2002, by section 337(1) of the Accident Compensation Act 2001 (2001 No 49).

Section 59A heading: amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 59A: amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

60 Advisory committees

- (1) Where an Order in Council is made under section 38, the Minister may, by notice in the *Gazette*, appoint an advisory committee in relation to the statutory management of any corporation to which the order relates.
- (2) The functions of any such advisory committee shall be—

- (a) to advise the statutory manager on the conduct of the statutory management, including the exercise of the powers conferred by this Part;
 - (b) to do all such other things as may be specified by the Minister from time to time by notice in the *Gazette*.
- (3) The members of an advisory committee shall be appointed for such period as may be specified in the notice of appointment.
 - (4) The Minister may extend the term of appointment of any member of an advisory committee.
 - (5) The Minister may appoint a person to be an additional member of an advisory committee.
 - (6) The Minister may terminate the appointment of a member of an advisory committee for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.
 - (7) A member of an advisory committee may resign office by notice in writing to the Minister.
 - (8) Where a member of an advisory committee resigns, that member shall continue in office until a successor is appointed.

Compare: 1964 No 134 s 38S; 1986 No 131 s 10

Section 60(6): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

61 Prior winding up, liquidation, or receivership to cease

- (1) Where a corporation, or any subsidiary or associated person of a corporation, becomes subject to statutory management, and that corporation, subsidiary, or associated person is already being wound up or is already in liquidation or receivership,—
 - (a) the winding up or liquidation or receivership of that corporation, subsidiary, or associated person shall, for so long as it continues to be subject to statutory management, cease; and
 - (b) the person appointed as liquidator or receiver shall be discharged.
- (2) Where the statutory management of any corporation, subsidiary, or associated person referred to in subsection (1) is terminated, the liquidation or receivership of that corporation, subsidiary, or associated person shall, unless the Order in Council terminating the statutory management otherwise provides, and subject to such terms and conditions as the order may specify, revive as if it had not ceased by reason of this section.
- (3) Where any liquidation or receivership revives pursuant to subsection (2), the person specified in the order as such shall be the liquidator or receiver of that corporation, subsidiary, or associated person for the time being.

Section 61 heading: amended, on 1 July 1994, by section 7 of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 61(1): substituted, on 1 July 1994, by section 7 of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

62 Termination of statutory management

- (1) The Governor-General may, by Order in Council, declare that—
 - (a) any corporation:
 - (b) any associated person of a corporation:
 - (c) any subsidiary of a corporation—subject to statutory management, shall cease to be subject to statutory management on a date and at a time specified in the order.
- (2) Any corporation, or associated person of a corporation, or subsidiary of a corporation shall cease to be subject to statutory management if that corporation, or associated person, or subsidiary, as the case may be, is put into liquidation on the application of the statutory manager.
- (3) Where an order is made pursuant to subsection (1), or a corporation, or associated person of a corporation, or subsidiary of a corporation, as the case may be, is put into liquidation,—
 - (a) that person shall cease to be subject to statutory management at the specified time; and
 - (b) the appointment of any statutory manager appointed in respect of that person shall terminate at the specified time; and
 - (c) the appointment of any person as a member of an advisory committee under section 60 in relation to the statutory management of that person shall terminate at the specified time.
- (4) For the purposes of subsection (3), **specified time** means,—
 - (a) in any case where an Order in Council has been made pursuant to subsection (1), the date and time specified in the order:
 - (b) in any case where a liquidator is appointed, the date and time of the liquidator's appointment.
- (5) Where an Order in Council is made under subsection (1) declaring that a corporation shall cease to be subject to statutory management,—
 - (a) every subsidiary of that corporation, except any subsidiary specified in the order, shall cease to be subject to statutory management on the same date as that specified as the date upon which, and at the same time as that specified as the time at which, the corporation ceases to be subject to statutory management:
 - (b) the appointment of any person appointed as a statutory manager of every such subsidiary shall terminate on the date and at the time referred to in paragraph (a):

- (c) the appointment of any person appointed as a member of an advisory committee under section 60 in relation to the statutory management of that subsidiary shall terminate on the date and at the time referred to in paragraph (a).

Compare: 1964 No 134 s 38AJ; 1986 No 131 s 10

Section 62(1): amended, on 26 April 1999, by section 7(a) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(2): substituted, on 1 July 1994, by section 8(1) of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 62(3): amended, on 1 July 1994, by section 8(2) of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 62(3)(a): amended, on 26 April 1999, by section 7(b) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(3)(b): amended, on 26 April 1999, by section 7(b) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(3)(c): amended, on 26 April 1999, by section 7(b) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(4): amended, on 26 April 1999, by section 7(c) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(4)(a): amended, on 26 April 1999, by section 7(d) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(4)(b): substituted, on 1 July 1994, by section 8(3) of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 62(4)(b): amended, on 26 April 1999, by section 7(d) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(5)(a): amended, on 26 April 1999, by section 7(e) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(5)(b): amended, on 26 April 1999, by section 7(f) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Section 62(5)(c): amended, on 26 April 1999, by section 7(f) of the Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20).

Part 4 General

63 Indemnity

- (1) The FMA, the Registrar, every statutory manager of a corporation, every member of an advisory committee, and every person appointed under section 17 or section 19 shall be indemnified by the Crown in respect of any liability relating to the exercise, or purported exercise, or omission to exercise, any power conferred by this Act unless it is shown that the exercise, or purported exercise, or omission to exercise, the power was in bad faith.
- (2) Any money required for the purposes of this section shall be paid out of a Crown Bank Account without further appropriation than this section.

- (3) The indemnity conferred by subsection (1) extends to legal costs incurred in defending a proceeding.
- (4) No reference in this section to a liability relating to any omission to exercise any power shall limit the provisions of section 7.

Section 63(1): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 63(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

64 Corporation not entitled to be consulted about exercise of powers

Except as otherwise provided in this Act, no corporation to which this Act applies, and no director or other officer of any such corporation, shall be entitled to be consulted or informed as to the exercise or possible exercise of any of the powers conferred by this Act.

65 Expenses of statutory management

- (1) All costs, charges, and expenses properly incurred by a statutory manager or a member of an advisory committee in the exercise of the manager's or the member's functions and powers under this Act (including such remuneration as may be approved by the Minister) shall be payable out of the property of the corporation in respect of which the statutory manager or member is appointed in priority to all other claims.
- (2) Notwithstanding subsection (1), where—
 - (a) any such costs, charges, or expenses are properly incurred in respect of a corporation that is subject to statutory management under this Act; and
 - (b) any associated person of that corporation is also subject to statutory management under this Act,—

the court may, if it considers it just and equitable to do so, order that any of those costs, charges, and expenses shall be payable out of the property of the associated person of the corporation.

Section 65: substituted, on 1 July 1994, by section 2 of the Corporations (Investigation and Management) Amendment Act 1994 (1994 No 26).

66 Advances to statutory managers and members of advisory committees

- (1) With the consent of the Minister of Finance, there may be advanced, out of money in a Crown Bank Account appropriated by Parliament for the purpose, to a statutory manager of a corporation or a member of an advisory committee, such amounts as the Minister may approve in respect of costs, charges, and expenses (including remuneration) due to, or incurred by, that person.
- (2) All money so advanced to that person shall be refunded to the Crown out of money payable to that person, and the Crown shall have all the rights of the person to whom the advance was made to receive and recover any such money.

All money so refunded to the Crown shall be credited upon receipt to a Crown Bank Account.

Compare: 1958 No 23 s 30

Section 66(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 66(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

67 Duty to deliver books and property to statutory manager

- (1) It shall be the duty of all persons having possession and control of any books or records or documents or other property belonging to any corporation subject to statutory management, forthwith after it becomes subject to statutory management, to deliver or yield up possession of those books, records, documents, or other property to the statutory manager in respect of the corporation.
- (2) If any person fails for 7 days to comply with the requirements of subsection (1), that person commits an offence, and is liable on conviction to a fine not exceeding \$5,000 and to a further fine not exceeding \$100 for every day after the expiration of those 7 days during which the offence has continued.
- (3) If any person fails to comply with the requirements of subsection (1), the statutory manager may, at any time, certify the failure to the court (whether or not an offence has been committed under subsection (2)), and the court may inquire into the matter and, after hearing any witnesses who may be produced against, or by, or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender in like manner as if the offender had been guilty of contempt of court.
- (4) It shall not be a defence to any proceedings under this section that the person in possession or control of any property is, or was, a trustee of the property for the corporation, or entitled to a lien or other charge over the property, or was a receiver or manager of the property.
- (5) The rights of any person who, in accordance with this section, delivers any property to the statutory manager in respect of the corporation shall continue, while the management continues, as if the person had not so delivered the property; and on the termination of the management, subject to the provisions of this Act and unless the court otherwise orders, the property shall be returned to the person who delivered it or to someone who derives a right to possession of the property from that person. The provisions of this subsection shall apply whether the person who delivers the property is a receiver or manager, or a person entitled to a lien or charge in respect of the property, or any other person having any rights in respect thereof.

Compare: 1958 No 23 s 9

Section 67(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

68 Offence to destroy, alter, or conceal records

- (1) Every director, officer, servant, or agent of any corporation subject to statutory management, or any other person, commits an offence, and is liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000, who—
- (a) with intent to defeat the purposes of this Act, destroys, alters, or conceals any book, document, or record of, or relating to, a corporation that is subject to statutory management, or sends or attempts to send out of New Zealand any such book, document, or record; or
 - (b) fails or refuses to answer to the best of that person's knowledge and ability any question which that person may be asked by the statutory manager in relation to any such book or document or record or any property, or wilfully gives a false answer to any such question.
- (2) If, in any prosecution for an offence alleged to have been committed against this section, it is proved that the person charged with the offence has destroyed, altered, or concealed any book, document, or record, or has sent or attempted to send out of New Zealand any such book, document, or record, the onus of proving that in so doing that person had not acted in contravention of this section shall lie on that person.

Compare: 1958 No 23 s 28

Section 68(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 68(1)(a): amended, on 1 July 1994, by section 3 of the Corporations (Investigation and Management) Amendment Act 1994 (1994 No 26).

69 Duty to report offences

If it appears to any statutory manager appointed in respect of a corporation under this Act that any person has been guilty of any offence in relation to that corporation, the statutory manager shall report the matter to the Solicitor-General.

Compare: 1958 No 23 s 29

70 Penalties for offences

Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$10,000;
- (b) in the case of a corporation, to a fine not exceeding \$25,000.

Section 70: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

71 Application of other Acts

- (1) *[Repealed]*

- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) Nothing in sections 120, 207P to 209B, and 214 of the Companies Act 1993 shall apply to a company that is subject to statutory management.
- (6) Nothing in the Receiverships Act 1993 shall apply to a company that is subject to statutory management.
- (7) Nothing in any enactment other than the Income Tax Act 2007 or the Statistics Act 1975 shall require a corporation that is subject to statutory management or a statutory manager to file any annual or other return.

Section 71: substituted, on 1 July 1994, by section 9 of the Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113).

Section 71(1): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 71(2): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 71(3): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 71(4): repealed, on 1 July 1994, by section 4 of the Corporations (Investigation and Management) Amendment Act 1994 (1994 No 26).

Section 71(5): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 71(5): amended, on 18 June 2007, by section 17 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 71(7): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

71A Application of reporting requirements in other Acts

- (1) The Governor-General may, from time to time, by Order in Council, declare that the provisions of any enactment that require a corporation that is subject to statutory management, or a statutory manager, to file any annual or other return shall not apply to that corporation or statutory manager.
- (2) No such order shall exclude the application of any provision of the Statistics Act 1975 or the Income Tax Act 2007.
- (3) Any such order may apply—
 - (a) to any particular corporation or statutory manager; or
 - (b) to any class of corporations or statutory managers; or
 - (c) generally to all corporations and statutory managers to which this Act applies.

Section 71A: inserted, on 1 July 1994, by section 5 of the Corporations (Investigation and Management) Amendment Act 1994 (1994 No 26).

Section 71A(2): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

72 Proof of transactions

- (1) The presentation to any Registrar of Deeds, or the Registrar-General of Land, or any other person charged with the keeping of any books or registers, of any instrument transferring or otherwise disposing of any property or assets of a corporation subject to statutory management, or any shares in or property or assets of any body corporate incorporated pursuant to section 50(2)(a),—
- (a) executed or purporting to be executed by or on behalf of that corporation or body corporate, as the case may be; and
 - (b) containing a recital that the transfer or other disposition of the property or assets of the corporation or body corporate, as the case may be, is made pursuant to section 50—

shall, in the absence of evidence to the contrary, be sufficient proof that the transfer or other disposition is made under the authority of that section.

- (2) The presentation to any Registrar of Deeds, or the Registrar-General of Land, or any other person charged with the keeping of any books or registers, of a certificate signed by the statutory manager that the amount secured by a charge over any property or assets of a corporation subject to statutory management, or any body corporate formed and registered pursuant to section 50(2)(a), as the case may be, has been paid shall, in the absence of evidence to the contrary, be sufficient proof that the amount secured by the charge has been repaid.

Compare: 1964 No 134 s 38AE(10), (11); 1986 No 131 s 10

Section 72(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 72(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

73 Repeal of Companies Special Investigations Act 1958

[Repealed]

Section 73: repealed, on 31 August 2019, by section 18(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

74 Savings

- (1) Notwithstanding the repeal, by section 73, of the Companies Special Investigations Act 1958,—
- (a) any company to which that Act applied immediately before its repeal shall remain subject to that Act, and the provisions of that Act shall continue to apply to that company in all respects as if they had not been repealed:

- (b) any receiver and manager appointed in respect of any such company shall continue to have, in respect of that company, the same powers and functions that he or she had before the repeal of that Act.
- (2) This section shall apply unless an Order in Council has been made in respect of the company pursuant to section 75.

75 Procedure for applying this Act to company to which Companies Special Investigations Act 1958 applies

- (1) The Governor-General may, by Order in Council,—
 - (a) declare that any company which is subject to receivership under the Companies Special Investigations Act 1958 shall become subject to statutory management under this Act;
 - (b) provide such transitional provisions as are necessary or desirable for giving effect to any such declaration.
- (2) Where any such Order in Council is made, the following provisions shall apply on and after the date of commencement of the order:
 - (a) the Companies Special Investigations Act 1958 shall cease to apply to the company; and
 - (b) any person who holds office as a receiver and manager of the company under the Companies Special Investigations Act 1958 shall be deemed to have been appointed as statutory manager of the company under this Act; and
 - (c) any such person shall have in respect of the company all the powers, rights, authorities, and privileges conferred by this Act on a statutory manager; and
 - (d) any advisory committee appointed under section 26 of the Companies Special Investigations Act 1958 shall be deemed to have been appointed under this Act; and
 - (e) all the provisions of this Act shall apply in respect of the company, except for the following provisions:
 - (i) section 38(1) (which enables an associated person of a corporation to be declared to be subject to statutory management);
 - (ii) section 38(2) (which provides that every subsidiary of a corporation declared to be subject to statutory management shall also be subject to statutory management).

76 Act subject to application of Cape Town Convention and Aircraft Protocol

- (1) Sections 42, 43, 44, and 51 and all other provisions of this Act are subject to section 106 of the Civil Aviation Act 1990 (which provides for the primacy of the provisions of the Cape Town Convention and the Aircraft Protocol) and the

rest of Part 12 of the Civil Aviation Act 1990 (which implements the Cape Town Convention and the Aircraft Protocol).

(2) In this section,—

Aircraft Protocol has the same meaning as in section 104(1) of the Civil Aviation Act 1990

Cape Town Convention has the same meaning as in section 104(1) of the Civil Aviation Act 1990.

Section 76: added, on 1 November 2010, by section 14(1) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Schedule 1
Transitional, savings, and related provisions

s 2A

Schedule 1: replaced, on 31 August 2019, by section 18(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Part 1
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

1 Provision relating to enforcing security interest over collateral for qualifying derivative

The amendments made by subpart 3 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

- (a) a qualifying derivative entered into before the commencement of this clause if, on that commencement, any obligations remain under or in relation to the derivative (whether the obligations are contingent or otherwise); and
- (b) a qualifying derivative entered into on or after the commencement of this clause.

Reprints notes

1 *General*

This is a reprint of the Corporations (Investigation and Management) Act 1989 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46): Part 1 subpart 3

Electronic Interactions Reform Act 2017 (2017 No 50): Part 3 subpart 4

Land Transfer Act 2017 (2017 No 30): section 250

Non-bank Deposit Takers Act 2013 (2013 No 104): section 90

Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103): section 12

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Companies Amendment Act 2013 (2013 No 111): section 14

Criminal Procedure Act 2011 (2011 No 81): section 413

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10): sections 58, 59

Financial Markets Authority Act 2011 (2011 No 5): section 82

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(2)

Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42): section 14(1)

Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)

Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53): sections 13, 14

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Property Law Act 2007 (2007 No 91): section 364(1)

Corporations (Investigation and Management) Amendment Act 2007 (2007 No 50)

Companies Amendment Act (No 2) 2006 (2006 No 62): section 17

Companies Amendment Act 2006 (2006 No 56): section 41

Insolvency Act 2006 (2006 No 55): section 445

Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46): section 48(1)
Human Rights Amendment Act 2001 (2001 No 96): section 70(1)
Accident Compensation Act 2001 (2001 No 49): section 337(1)
Personal Property Securities Act 1999 (1999 No 126): section 191(1)
Corporations (Investigation and Management) Amendment Act 1999 (1999 No 20)
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)
Corporations (Investigation and Management) Amendment Act 1994 (1994 No 26)
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16): section 2
Corporations (Investigation and Management) Amendment Act 1993 (1993 No 113)
Public Finance Act 1989 (1989 No 44): section 65R(3)