

Reprint
as at 1 October 2007

Companies Act 1993

Public Act 1993 No 105
Date of assent 28 September 1993

Contents

	Page
Title	25
1 Short Title and commencement	25
Part 1	
Preliminary	
2 Interpretation	25
3 Public notice	31
4 Meaning of solvency test	32
5 Meaning of holding company and subsidiary	33
6 Extended meaning of subsidiary	34
7 Control defined	34
8 Certain matters to be disregarded	34
9 Act binds the Crown	35

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Commerce.

Part 2
Incorporation

Essential requirements

10	Essential requirements	35

Method of incorporation

11	Right to apply for registration	36
12	Application for registration	36
13	Registration	37
14	Certificate of incorporation	37

Separate legal personality

15	Separate legal personality	37

Part 3
Capacity, powers, and validity of actions

16	Capacity and powers	37

Validity of actions

17	Validity of actions	38
18	Dealings between company and other persons	38
19	No constructive notice	39

Part 4
Company names

20	Name to be reserved	40
21	Name of company if liability of shareholders limited	40
22	Application for reservation of name	40
23	Change of name	41
24	Direction to change name	41
25	Use of company name	42

Part 5
Company constitution

26	No requirement for company to have constitution	43
27	Effect of Act on company having constitution	43
28	Effect of Act on company not having constitution	43
29	Form of constitution	43
30	Contents of constitution	44
31	Effect of constitution	44
32	Adoption, alteration, and revocation of constitution	44
33	New form of constitution	45
34	Court may alter constitution	46

Part 6
Shares

35	Legal nature of shares	46
36	Rights and powers attaching to shares	46
37	Types of shares	47
38	No nominal value	48
39	Transferability of shares	48
40	Contracts for issue of shares	48

Issue of shares

41	Issue of shares on registration and amalgamation	49
42	Issue of other shares	49
43	Notice of share issue	49
44	Shareholder approval for issue of shares	50
45	Pre-emptive rights	50
46	Consideration for issue of shares	51
46A	Consideration for issue of shares on registration	51
47	Consideration to be decided by board	51
48	Exceptions to section 47	53
49	Consideration in relation to issue of options and convertible securities	54
50	Consent to issue of shares	55
51	Time of issue of shares	55

Distributions to shareholders

52	Board may authorise distributions	55
53	Dividends	56
54	Shares in lieu of dividends	57
55	Shareholder discounts	58
56	Recovery of distributions	58
57	Reduction of shareholder liability a distribution	60

Company may acquire its own shares

58	Company may acquire its own shares	61
59	Acquisition of company's own shares	61
60	Board may make offer to acquire shares	62
61	Special offers to acquire shares	63
62	Disclosure document	65
63	Stock exchange acquisitions subject to prior notice to shareholders	65
64	Disclosure document	67
65	Stock exchange acquisitions not subject to prior notice to shareholders	68

66	Cancellation of shares repurchased	69
67	Enforceability of contract to repurchase shares	70
	<i>Treasury stock</i>	
67A	Company may hold its own shares	70
67B	Rights and obligations of shares company holds in itself suspended	71
67C	Reissue of shares company holds in itself	71
	<i>Redemption of shares</i>	
68	Meaning of redeemable	72
69	Redemption at option of company	73
70	Company must satisfy solvency test	74
71	Special redemption of shares	74
72	Disclosure document	76
73	Cancellation of shares redeemed	76
74	Redemption at option of shareholder	76
75	Redemption on fixed date	77
	<i>Assistance by a company in the purchase of its own shares</i>	
76	Financial assistance	77
77	Company must satisfy solvency test	78
78	Special financial assistance	79
79	Disclosure document	81
80	Financial assistance not exceeding 5 percent of shareholders' funds	81
81	Enforceability of transactions	82
	<i>Cross-holdings</i>	
82	Subsidiary may not hold shares in holding company	82
	<i>Statement of shareholder rights</i>	
83	Statement of rights to be given to shareholders	83
	<i>Transfer of shares</i>	
84	Transfer of shares	84
85	Transfer of shares under approved system	85
86	Transfer of shares by operation of law	86
	<i>Share register</i>	
87	Company to maintain share register	86
88	Place of share register	87
89	Share register as evidence of legal title	88
90	Directors' duty to supervise share register	88

91	Power of Court to rectify share register	89
92	Trusts not to be entered on register	89
93	Personal representative may be registered	89
94	Assignee of bankrupt may be registered	90

Share certificates

95	Share certificates	90

Part 7

Shareholders and their rights and obligations

96	Meaning of shareholder	92

Liability of shareholders

97	Liability of shareholders	92
98	Liability of former shareholders	93
99	Additional provisions relating to liability of shareholders and former shareholders	95
100	Liability for calls	96
101	Shareholders not required to acquire shares by alteration to constitution	97
102	Liability of personal representative	97
103	Liability of an assignee	97

Powers of Shareholders

104	Exercise of powers reserved to shareholders	98
105	Exercise of powers by ordinary resolution	98
106	Powers exercised by special resolution	98
107	Unanimous assent to certain types of action	99
108	Company to satisfy solvency test	100
109	Management review by shareholders	101

Minority buy-out rights

110	Shareholder may require company to purchase shares	102
111	Notice requiring purchase	102
112	Purchase by company	103
113	Purchase of shares by third party	104
114	Court may grant exemption	104
115	Court may grant exemption if company insolvent	105

Interest groups

116	Meaning of classes and interest groups	106
117	Alteration of shareholder rights	107
118	Shareholder may require company to purchase shares	107
119	Actions not invalid	108

<i>Meetings of shareholders</i>		
120	Annual meeting of shareholders	108
121	Special meetings of shareholders	109
122	Resolution in lieu of meeting	109
123	Court may call meeting of shareholders	111
124	Proceedings at meetings	111
<i>Ascertaining shareholders</i>		
125	Shareholders entitled to receive distributions, attend meetings, and exercise rights	111
Part 8		
Directors and their powers and duties		
126	Meaning of director	112
127	Meaning of board	114
<i>Powers of management</i>		
128	Management of company	114
129	Major transactions	115
130	Delegation of powers	116
<i>Directors' duties</i>		
131	Duty of directors to act in good faith and in best interests of company	117
132	Exercise of powers in relation to employees	118
133	Powers to be exercised for proper purpose	118
134	Directors to comply with Act and constitution	118
135	Reckless trading	118
136	Duty in relation to obligations	118
137	Director's duty of care	118
138	Use of information and advice	119
<i>Transactions involving self-interest</i>		
139	Meaning of interested	119
140	Disclosure of interest	120
141	Avoidance of transactions	121
142	Effect on third parties	122
143	Application of sections 140 and 141 in certain cases	122
144	Interested director may vote	123
145	Use of company information	123
146	Meaning of relevant interest	124
147	Relevant interests to be disregarded in certain cases	126
148	Disclosure of share dealing by directors	127

149	Restrictions on share dealing by directors	128
	<i>Appointment and removal of directors</i>	
150	Number of directors	129
151	Qualifications of directors	129
152	Director's consent required	130
153	Appointment of first and subsequent directors	130
154	Court may appoint directors	131
155	Appointment of directors to be voted on individually	131
156	Removal of directors	132
157	Director ceasing to hold office	132
158	Validity of director's acts	132
159	Notice of change of directors	133
	<i>Miscellaneous provisions relating to directors</i>	
160	Proceedings of board	133
161	Remuneration and other benefits	134
162	Indemnity and insurance	135
	Part 9	
	Enforcement	
163	Interpretation	137
	<i>Injunctions</i>	
164	Injunctions	138
	<i>Derivative actions</i>	
165	Derivative actions	138
166	Costs of derivative action to be met by company	139
167	Powers of Court where leave granted	140
168	Compromise, settlement, or withdrawal of derivative action	140
	<i>Personal actions by shareholders</i>	
169	Personal actions by shareholders against directors	140
170	Actions by shareholders to require directors to act	141
171	Personal actions by shareholders against company	141
172	Actions by shareholders to require company to act	142
173	Representative actions	142
174	Prejudiced shareholders	142
175	Certain conduct deemed prejudicial	143
176	Alteration to constitution	144

Ratification

177	Ratification of certain actions of directors	144

Inspection of records

178	Information for shareholders	145
179	Investigation of records	146

Part 10**Administration of companies***Authority to bind company*

180	Method of contracting	148
181	Attorneys	149

Pre-incorporation contracts

182	Pre-incorporation contracts may be ratified	149
183	Warranties implied in pre-incorporation contracts	150
184	Failure to ratify	151
185	Breach of pre-incorporation contract	151
185A	Jurisdiction of District Courts	151

Registered office

186	Registered office	152
187	Change of registered office	152
188	Requirement to change registered office	153

Company records

189	Company records	153
190	Form of records	155
191	Inspection of records by directors	155

Address for service

192	Address for service	156
193	Change of address for service	156
193A	Rectification or correction of address for service	156

Part 11**Accounting records and audit***Accounting records*

194	Accounting records to be kept	157
195	Place accounting records to be kept	158

Auditors

196	Appointment of auditors	159

196A	Auditor is not required to audit financial statements of non-active company	161
197	Auditors' fees and expenses	161
198	Appointment of partnership	161
199	Qualifications of auditors	162
200	Automatic reappointment	163
201	Appointment of first auditor	163
202	Replacement of auditor	164
203	Auditor not seeking reappointment or resigning	164
204	Auditor to avoid conflict of interest	165
205	Auditor's report	165
206	Access to information	165
207	Auditor's attendance at shareholders' meeting	166

Part 12

Disclosure by companies

Disclosure to shareholders

208	Obligation to prepare annual report	166
209	Obligation to make annual report available to shareholders	167
209A	Board must send copy of annual report or concise annual report on request	169
209B	Annual report and concise annual report made available by electronic means	170
210	Information for shareholders who elect not to receive annual report <i>[Repealed]</i>	171
211	Contents of annual report	171
211A	Obligations to prepare and make available annual reports or financial statements do not apply to nonactive companies	173
212	Shareholders may elect not to receive documents	173
213	Failure to disclose	174
214	Annual return	174
214A	Registrar may alter New Zealand register	175

Inspection of company records

215	Public inspection of company records	175
216	Inspection of company records by shareholders	176
217	Manner of inspection	177
218	Copies of documents	177

Part 13

Amalgamations

219	Amalgamations	178

220	Amalgamation proposal	178
221	Approval of amalgamation proposal	179
222	Short form amalgamation	180
223	Registration of amalgamation proposal	182
224	Certificate of amalgamation	183
225	Effect of certificate of amalgamation	184
225A	Registers	184
226	Powers of Court in other cases	185

Part 14**Compromises with creditors**

227	Interpretation	186
228	Compromise proposal	186
229	Notice of proposed compromise	187
230	Effect of compromise	188
231	Variation of compromise	189
232	Powers of Court	189
233	Effect of compromise in liquidation of company	190
234	Costs of compromise	191

Part 15**Approval of arrangements, amalgamations, and
compromises by Court**

235	Interpretation	191
236	Approval of arrangements, amalgamations, and compromises	192
237	Court may make additional orders	193
238	Parts 13 and 14 not affected	194
239	Application of section 233	194

Part 15A**Voluntary administration**

Subpart 1—Preliminary

239A	Objects of this Part <i>[Not-in-force]</i>	194
239B	Interpretation of some key terms <i>[Not-in-force]</i>	194
239C	Interpretation of other terms <i>[Not-in-force]</i>	194
239D	When administration begins <i>[Not-in-force]</i>	194
239E	When administration ends <i>[Not-in-force]</i>	194

Subpart 2—Appointment of administrator

239F	Who may be appointed administrator <i>[Not-in-force]</i>	194
239G	Administrator must consent in writing <i>[Not-in-force]</i>	195
239H	Who may appoint administrator <i>[Not-in-force]</i>	195

239I	Appointment by company [<i>Not-in-force</i>]	195
239J	Appointment by liquidator or interim liquidator [<i>Not-in-force</i>]	195
239K	Appointment by secured creditor [<i>Not-in-force</i>]	195
239L	Appointment by Court [<i>Not-in-force</i>]	195
239M	Appointment must not be revoked [<i>Not-in-force</i>]	195
239N	Appointment of 2 or more administrators [<i>Not-in-force</i>]	195
239O	Remuneration of administrator [<i>Not-in-force</i>]	195
Subpart 3—Resignation and removal of administrator		
239P	When office of administrator is vacant	195
239Q	Administrator may resign [<i>Not-in-force</i>]	195
239R	Removal of administrator [<i>Not-in-force</i>]	195
239S	Appointor may appoint new administrator to fill vacancy [<i>Not-in-force</i>]	195
239T	Creditors must consider appointment of replacement administrator [<i>Not-in-force</i>]	195
Subpart 4—Effect of appointment of administrator		
239U	Outline of administrator's role [<i>Not-in-force</i>]	195
239V	Administrator's powers [<i>Not-in-force</i>]	196
239W	Administrator is company's agent [<i>Not-in-force</i>]	196
239X	Effect on directors [<i>Not-in-force</i>]	196
239Y	Effect on employees [<i>Not-in-force</i>]	196
239Z	Effect on dealing with company property [<i>Not-in-force</i>]	196
239AA	Company officer's liability for compensation for void transaction or dealing [<i>Not-in-force</i>]	196
239AB	Effect on transfer of shares [<i>Not-in-force</i>]	196
239AC	Effect on liquidation [<i>Not-in-force</i>]	196
239AD	Effect on receivership [<i>Not-in-force</i>]	196
Subpart 5—Administrator's investigation of company's affairs		
239AE	Administrator must investigate company's affairs and consider possible courses of action [<i>Not-in-force</i>]	196
239AF	Directors' statement of company's position [<i>Not-in-force</i>]	196
239AG	Administrator's right to documents, etc [<i>Not-in-force</i>]	196
239AH	Administrator may lodge report with Registrar [<i>Not-in-force</i>]	196
239AI	Administrator must report misconduct [<i>Not-in-force</i>]	196
Subpart 6—Creditors' meetings generally		
239AJ	Administrator must call creditors' meetings [<i>Not-in-force</i>]	196

239AK	Conduct of creditors' meetings [<i>Not-in-force</i>]	196
239AL	Joint meetings of creditors of related companies in administration [<i>Not-in-force</i>]	197
239AM	Power of Court where outcome of voting at creditors' meeting determined by related entity [<i>Not-in-force</i>]	197
	Subpart 7—First creditors' meeting to appoint creditors' committee	
239AN	Administrator must call first creditors' meeting [<i>Not-in-force</i>]	197
239AO	Notice of first and subsequent creditors' meetings [<i>Not-in-force</i>]	197
239AP	Administrator must table interests statement [<i>Not-in-force</i>]	197
239AQ	Functions of creditors' committee [<i>Not-in-force</i>]	197
239AR	Membership of creditors' committee [<i>Not-in-force</i>]	197
	Subpart 8—Watershed meeting	
239AS	What watershed meeting is [<i>Not-in-force</i>]	197
239AT	Administrator must convene watershed meeting [<i>Not-in-force</i>]	197
239AU	Notice of watershed meeting [<i>Not-in-force</i>]	197
239AV	When watershed meeting must be held [<i>Not-in-force</i>]	197
239AW	Directors must attend watershed meeting [<i>Not-in-force</i>]	197
239AX	Disclosure of voting arrangements [<i>Not-in-force</i>]	197
239AY	Court may order that pooled property owners are separate class [<i>Not-in-force</i>]	197
239AZ	Adjournment of watershed meeting [<i>Not-in-force</i>]	197
239ABA	What creditors may decide at watershed meeting [<i>Not-in-force</i>]	198
239ABB	What happens if proposed deed not fully approved at watershed meeting [<i>Not-in-force</i>]	198
	Subpart 9—Protection of company's property during administration	
239ABC	Charge unenforceable [<i>Not-in-force</i>]	198
239ABD	Owner or lessor must not recover property used by company [<i>Not-in-force</i>]	198
239ABE	Proceeding must not be begun or continued [<i>Not-in-force</i>]	198
239ABF	Administrator not liable in damages for refusing consent [<i>Not-in-force</i>]	198
239ABG	Enforcement process halted [<i>Not-in-force</i>]	198

239ABH Duties of court officer in relation to company's property <i>[Not-in-force]</i>	198
239ABI <i>Lis pendens</i> taken to exist <i>[Not-in-force]</i>	198
239ABJ Administration not to trigger enforcement of guarantee of liability of director or relative <i>[Not-in-force]</i>	198
Subpart 10—Rights of secured creditor, owner, or lessor	
239ABK Meaning of terms used in this subpart <i>[Not-in-force]</i>	198
239ABL If secured creditor acts before or during decision period <i>[Not-in-force]</i>	198
239ABM If enforcement of charges begins before administration <i>[Not-in-force]</i>	198
239ABN Charge over perishable property <i>[Not-in-force]</i>	199
239ABO Court may limit powers of secured creditor, etc, in relation to property subject to charge <i>[Not-in-force]</i>	199
239ABP Giving notice under security agreement <i>[Not-in-force]</i>	199
239ABQ If recovery of property begins before administration <i>[Not-in-force]</i>	199
239ABR Recovering perishable property <i>[Not-in-force]</i>	199
239ABS Court may limit powers of receiver, etc, in relation to property used by company <i>[Not-in-force]</i>	199
239ABT Giving notice under agreement about property <i>[Not-in-force]</i>	199
Subpart 11—Interface with liquidation	
239ABU When liquidator may be appointed to company in administration <i>[Not-in-force]</i>	199
239ABV Court may adjourn application for liquidation <i>[Not-in-force]</i>	199
239ABW Court must not appoint interim liquidator if administration in creditors' interests <i>[Not-in-force]</i>	199
239ABX Effect of appointment of liquidator <i>[Not-in-force]</i>	199
239ABY Former administrator is default liquidator <i>[Not-in-force]</i>	199
239ABZ Person in control of company must lodge revised report with Registrar <i>[Not-in-force]</i>	199
239ACA Act of administrator in good faith must not be set aside in liquidation <i>[Not-in-force]</i>	199
239ACB Voidable transactions <i>[Not-in-force]</i>	199
Subpart 12—Deed administrator	
239ACC Who is deed administrator <i>[Not-in-force]</i>	200
239ACD Who may be appointed deed administrator <i>[Not-in-force]</i>	200

239ACE	Deed administrator must consent in writing <i>[Not-in-force]</i>	200
239ACF	Appointment of deed administrator must not be revoked <i>[Not-in-force]</i>	200
239ACG	Appointment of 2 or more deed administrators <i>[Not-in-force]</i>	200
239ACH	When office of deed administrator vacant <i>[Not-in-force]</i>	200
239ACI	Deed administrator may resign <i>[Not-in-force]</i>	200
239ACJ	Removal of deed administrator <i>[Not-in-force]</i>	200
239ACK	Remuneration of deed administrator <i>[Not-in-force]</i>	200
239ACL	Deed administrator may sell shares in company <i>[Not-in-force]</i>	200
Subpart 13—Execution and effect of deed of company arrangement		
239ACM	When this subpart applies <i>[Not-in-force]</i>	200
239ACN	Preparation and contents of deed <i>[Not-in-force]</i>	200
239ACO	Execution of deed <i>[Not-in-force]</i>	200
239ACP	Procedure if deed not fully approved at watershed meeting <i>[Not-in-force]</i>	200
239ACQ	Creditor must not act inconsistently with deed, etc, before execution <i>[Not-in-force]</i>	200
239ACR	Company's failure to execute deed <i>[Not-in-force]</i>	201
239ACS	Who is bound by deed <i>[Not-in-force]</i>	201
239ACT	Extent to which deed binds creditors <i>[Not-in-force]</i>	201
239ACU	Person bound by deed must not take steps to liquidate, etc <i>[Not-in-force]</i>	201
239ACV	Court may restrain creditors and others from enforcing charge or recovering property <i>[Not-in-force]</i>	201
239ACW	Effect of deed on company's debts <i>[Not-in-force]</i>	201
239ACX	Court may rule on validity of deed <i>[Not-in-force]</i>	201
Subpart 14—Administrator's duty to file accounts		
239ACY	Administrator includes deed administrator <i>[Not-in-force]</i>	201
239ACZ	Administrator must file accounts <i>[Not-in-force]</i>	201
Subpart 15—Variation and termination of deed		
239ADA	Creditors may vary deed <i>[Not-in-force]</i>	201
239ADB	Court may cancel creditors' variation <i>[Not-in-force]</i>	201
239ADC	Termination of deed <i>[Not-in-force]</i>	201
239ADD	Termination by Court <i>[Not-in-force]</i>	201
239ADE	Termination by creditors <i>[Not-in-force]</i>	201

239ADF Creditors' meeting to consider proposed variation or termination of deed <i>[Not-in-force]</i>	201
Subpart 16—Administrator's liability and indemnity for debts of administration	
239ADG Administrator not liable for company's debts except as provided in this subpart and in section 239Y <i>[Not-in-force]</i>	202
239ADH Administrator liable for general debts <i>[Not-in-force]</i>	202
239ADI Administrator's liability for rent <i>[Not-in-force]</i>	202
239ADJ Administrator not liable for rental if non-use notice in force <i>[Not-in-force]</i>	202
239ADK Court may exempt administrator from liability for rent <i>[Not-in-force]</i>	202
239ADL Administrator's indemnity <i>[Not-in-force]</i>	202
239ADM Administrator's right of indemnity has priority over other debts <i>[Not-in-force]</i>	202
239ADN Lien to secure indemnity <i>[Not-in-force]</i>	202
Subpart 17—Powers of Court	
239ADO Court's general power <i>[Not-in-force]</i>	202
239ADP Orders to protect creditors during administration <i>[Not-in-force]</i>	202
239ADQ Court may rule on validity of administrator's appointment <i>[Not-in-force]</i>	202
239ADR Administrator may seek directions <i>[Not-in-force]</i>	202
239ADS Court may supervise administrator or deed administrator <i>[Not-in-force]</i>	202
239ADT Court may order administrator or deed administrator to remedy default <i>[Not-in-force]</i>	203
239ADU Court's power when office of administrator or deed administrator vacant, etc <i>[Not-in-force]</i>	203
239ADV Prohibition order <i>[Not-in-force]</i>	203
Subpart 18—Notices about steps taken under this Part	
239ADW Administrator must give notice of appointment <i>[Not-in-force]</i>	203
239ADX Secured creditor who appoints administrator must give notice to company <i>[Not-in-force]</i>	203
239ADY Deed administrator must give notice of execution of deed of company arrangement <i>[Not-in-force]</i>	203
239ADZ Deed administrator must give notice of failure to execute deed of company arrangement <i>[Not-in-force]</i>	203

239AEA	Deed administrator must give notice of termination by creditors of deed of company arrangement <i>[Not-in-force]</i>	203
239AEB	Company must disclose fact of administration <i>[Not-in-force]</i>	203
239AEC	Notice of change of name <i>[Not-in-force]</i>	203
239AED	Effect of contravention of this subpart <i>[Not-in-force]</i>	203
Subpart 19—Miscellaneous		
239AEE	Effect of things done during administration of company <i>[Not-in-force]</i>	203
239AEF	Interruption of time for doing act <i>[Not-in-force]</i>	203
Subpart 20—Set-off and netting agreements		
239AEG	Mutual credit and set-off <i>[Not-in-force]</i>	204
239AEH	Application of set-off under netting agreement <i>[Not-in-force]</i>	204
239AEI	Calculation of netted balance <i>[Not-in-force]</i>	204
239AEJ	Mutuality required for transactions under bilateral netting agreements <i>[Not-in-force]</i>	204
239AEK	When mutuality required for transactions under recognised multilateral netting agreements <i>[Not-in-force]</i>	204
239AEL	Application of set-off under section 239AEG to transactions subject to netting agreements <i>[Not-in-force]</i>	204
239AEM	Transactions under netting agreement and effect on certain sections <i>[Not-in-force]</i>	204
239AEN	Rights under netting agreement not affected by commencement of administration <i>[Not-in-force]</i>	204
239AEO	Effect of declaration of person as recognised clearing house under section 310K <i>[Not-in-force]</i>	204
239AEP	Transactions under recognised multilateral netting agreement not affected by variation or revocation of declaration under section 310K <i>[Not-in-force]</i>	204
Subpart 21—Single administration of related companies in administration		
239AEQ	Interpretation of terms for purposes of this subpart <i>[Not-in-force]</i>	204
239AER	Court may order single administration for related companies in administration <i>[Not-in-force]</i>	204
239AES	Notice that application filed must be given to administrators and creditors <i>[Not-in-force]</i>	205
239AET	Guidelines for single administration order <i>[Not-in-force]</i>	205

239AEU	Court may order that related company in administration be added to existing pool <i>[Not-in-force]</i>	205
239AEV	Creditors' meetings in single administration of pool companies <i>[Not-in-force]</i>	205
239AEW	Pool companies may execute single deed of company administration <i>[Not-in-force]</i>	205

Part 16 **Liquidations**

The process of liquidation

240	Interpretation	205
241	Commencement of liquidation	206
241AA	Restriction on appointment of liquidator by shareholders or board after application filed for Court appointment <i>[Not-in-force]</i>	207
241A	Commencement of liquidation to be recorded	207
242	Liquidators to act jointly unless otherwise stated	207
243	Liquidator to summon meeting of creditors	207
244	Liquidator to summon meeting of creditors in other cases	210
245	Liquidator may dispense with meetings of creditors	211
245A	Power of Court where outcome of voting at meeting of creditors determined by related entity <i>[Not-in-force]</i>	211
246	Interim liquidator	211
247	Power to stay or restrain certain proceedings against company	212
248	Effect of commencement of liquidation	213
249	Completion of liquidation	213
250	Court may terminate liquidation	214

Provisions relating to prior execution process

251	Restriction on rights of creditors to complete execution, distraint, or attachment	214
252	Duties of officer in execution process	215

Duties, rights, and powers of liquidators

253	Principal duty of liquidator	217
254	Liquidator not required to act in certain cases	217
255	Other duties of liquidator	218
256	Duties in relation to accounts	220
257	Duties in relation to final report and accounts	220
258	Duty to have regard to views of creditors and shareholders	221
258A	Duty to notify suspected offences	222
259	Documents to state company in liquidation	223

260	Powers of liquidator	223
260A	Liquidator may assign right to sue under this Act <i>[Not-in-force]</i>	223
261	Power to obtain documents and information	223
262	Documents in possession of receiver	225
263	Restriction on enforcement of lien over documents	225
264	Delivery of document creating charge over property	226
265	Examination by liquidator	226
266	Powers of Court	226
267	Self-incrimination	227
268	Power of liquidator to enforce liability of shareholders and former shareholders	227
269	Power to disclaim onerous property	228
270	Liquidator may be required to elect whether to disclaim onerous property	229
271	Pooling of assets of related companies	229
271A	Notice that application filed must be given to administrators and creditors <i>[Not-in-force]</i>	230
272	Guidelines for orders	230
273	Certain conduct prohibited	231
274	Duty to identify and deliver property	231
275	Refusal to supply essential services prohibited	231
276	Remuneration of liquidators	232
277	Rates of remuneration	233
278	Expenses and remuneration payable out of assets of company	233
279	Liquidator ceases to hold office on completion of liquidation	233
	<i>Qualifications and supervision of liquidators</i>	
280	Qualifications of liquidators	234
281	Validity of acts of liquidators	235
282	Consent to appointment	235
283	Vacancies in office of liquidator	235
284	Court supervision of liquidation	237
285	Meaning of failure to comply	238
286	Orders to enforce liquidator's duties	238
	<i>Company unable to pay its debts</i>	
287	Meaning of inability to pay debts	240
288	Evidence and other matters	241
289	Statutory demand	241
290	Court may set aside statutory demand	242

291	Additional powers of Court on application to set aside statutory demand	242
	<i>Voidable transactions</i>	
292	Transactions having preferential effect	243
293	Voidable charges	246
294	Procedure for setting aside voidable transactions and charges	249
295	Other orders	250
296	Additional provisions relating to setting aside transactions and charges	250
	<i>Recovery in other cases</i>	
297	Transactions at undervalue	251
298	Transactions for inadequate or excessive consideration with directors and certain other persons	253
299	Court may set aside certain securities and charges	255
300	Liability if proper accounting records not kept	257
301	Power of Court to require persons to repay money or return property	258
	<i>Creditors' claims</i>	
302	Application of bankruptcy rules to liquidation of insolvent companies	259
303	Admissible claims	259
304	Claims by unsecured creditors	259
305	Rights and duties of secured creditors	260
306	Ascertainment of amount of claim	263
307	Claim not of an ascertained amount	263
308	Fines and penalties	263
309	Claims relating to debts payable after commencement of liquidation	264
310	Mutual credit and set-off	264
310A	Definitions relating to set-off under netting agreement	267
310B	Application of set-off under netting agreement	269
310C	Calculation of netted balance	269
310D	Mutuality required for transactions under bilateral netting agreements	270
310E	When mutuality required for transactions under recognised multilateral netting agreements	270
310F	Application of set-off under section 310 to transactions subject to netting agreements	270

310G	Transactions under netting agreement and effect on certain sections	271
310H	Rights under netting agreement not affected by commencement of liquidation	271
310I	Set-off under netting agreement not affected by notice under section 294	272
310J	Court may set aside bilateral netting agreement between company and related person	272
310K	Certain persons may be declared to be recognised clearing houses	273
310L	Matters that Bank must or may have regard to when making, varying, or revoking declaration under section 310K	273
310M	Bank may impose conditions in declaration under section 310K	274
310N	Bank to notify recognised clearing house about Bank's intention to revoke or vary declaration under section 310K	274
310O	Transactions under recognised multilateral netting agreement not affected by variation or revocation of declaration under section 310K	274
311	Interest on claims	275
312	Preferential claims	275
313	Claims of other creditors and distribution of surplus assets	276
	<i>Liquidation committees</i>	
314	Meetings of creditors or shareholders	276
315	Liquidation committees	277
	<i>Liquidation surplus account</i>	
316	Establishment of Liquidation Surplus Account	278
	<i>Transitional provisions</i>	
316A	Transitional provision in relation to voidable transactions	280
316B	Transitional provision in relation to Liquidation Surplus Account under section 290 of Companies Act 1955	280

Part 17

Removal from the New Zealand register

317	Removal from register	280
318	Grounds for removal from register	281
319	Notice of intention to remove where company has ceased to carry on business or application fee not paid	283
320	Notice of intention to remove in other cases	285

321	Objection to removal from register	286
322	Duties of Registrar if objection received	287
323	Powers of Court	288
324	Property of company removed from register	289
325	Disclaimer of property by the Crown	290
326	Liability of directors, shareholders, and others to continue	291
327	Liquidation of company removed from New Zealand register <i>[Repealed]</i>	291
328	Registrar may restore company to New Zealand register	291
329	Court may restore company to New Zealand register	293
330	Restoration to register	294
331	Vesting of property in company on restoration to register	294

Part 18

Overseas companies

332	Meaning of carrying on business	295
332A	Registrar may approve use of different form	296
333	Name to be reserved before carrying on business	297
334	Overseas companies to register under this Act	297
335	Validity of transactions not affected	298
336	Application for registration	298
337	Registration of overseas company	299
338	Use of name by overseas company	300
339	Alteration of constitution	300
339A	Rectification or correction of name or address of person authorised to accept service	301
340	Annual return of overseas company	301
341	Overseas company ceasing to carry on business in New Zealand	302
342	Liquidation of assets in New Zealand	302
343	Attorneys of overseas companies	303
343A	Overseas company not required to provide information, notice, or document in certain circumstances	303

Part 19

Transfer of registration

Registration of overseas companies as companies under this Act

344	Overseas companies may be registered as companies under this Act	304
345	Application for registration	304
346	Overseas companies must be authorised to register	305
347	Overseas companies that cannot be registered	305

348	Registration	306
349	Effect of registration	306
	<i>Transfer of registration of companies to other jurisdictions</i>	
350	Companies may transfer incorporation	307
351	Application to transfer incorporation	307
352	Approval of shareholders	307
353	Company to give public notice	307
354	Companies that cannot transfer incorporation	308
355	Removal from register	308
356	Effect of removal from register	309

Part 20**Registrar of companies**

357	Registrar and Deputy Registrars of Companies	309
358	District and Assistant Registrars of Companies	310
359	Responsible District Registrar	310
360	Registers	311
360A	Rectification or correction of New Zealand register and overseas register	311
360B	Powers of Court	312
361	Registrar may direct transfer	313
362	Registration of documents	313
363	Inspection and evidence of registers	314
364	Notice by Registrar	316
365	Registrar's powers of inspection	316
366	Disclosure of information and reports	318
367	Application of Official Information Act 1982 and Privacy Act 1993	320
368	Appeals from decisions under section 367	320
369	Inspector's report admissible in liquidation proceedings	321
370	Appeals from Registrar's decisions	321
371	Exercise of powers under section 365 not affected by appeal	321
372	Fees	322

Part 21**Offences and penalties**

373	Penalty for failure to comply with Act	323
374	Penalties that may be imposed on directors in cases of failure by board or company to comply with Act	327
375	Proceedings for offences	330
376	Defences	330

377	False statements	331
378	Fraudulent use or destruction of property	332
379	Falsification of records	332
380	Carrying on business fraudulently	333
381	Improper use of “Limited”	333
382	Persons prohibited from managing companies	334
383	Court may disqualify directors	335
384	Liability for contravening sections 382 and 383	337
385	Registrar may prohibit persons from managing companies	337
386	Liability for contravening section 385	339
386A	Director of failed company must not be director, etc, of phoenix company with same or substantially similar name <i>[Not-in-force]</i>	340
386B	Definitions for purpose of phoenix company provisions <i>[Not-in-force]</i>	340
386C	Liability for debts of phoenix company <i>[Not-in-force]</i>	340
386D	Exception for person named in successor company notice <i>[Not-in-force]</i>	340
386E	Exception for temporary period while application for exemption is made <i>[Not-in-force]</i>	340
386F	Exception in relation to non-dormant phoenix company known by pre-liquidation name of failed company for at least 12 months before liquidation <i>[Not-in-force]</i>	340

Part 22

Miscellaneous

387	Service of documents on companies in legal proceedings	340
388	Service of other documents on companies	341
389	Service of documents on overseas companies in legal proceedings	341
390	Service of other documents on overseas companies	342
391	Service of documents on shareholders and creditors	342
392	Additional provisions relating to service	343
393	Privileged communications	344
394	Directors’ certificates	345
395	Regulations	346
396	Summary Proceedings Act 1957 amended	346
397	Securities Transfer Act 1991 amended	347

Schedule 1	347
Proceedings at meetings of shareholders	
Schedule 2	355
Sections of this Act that confer powers on directors that cannot be delegated	
Schedule 3	356
Proceedings of the board of a company	
Schedule 4	358
Information to be contained in annual return	
Schedule 5	362
Proceedings at meetings of creditors	
Schedule 6	368
Powers of liquidators	
Schedule 7	369
Preferential claims	
Schedule 8	377
Proceedings at meetings of liquidation committees	
Schedule 9	378
Liquidation of assets of overseas companies	

An Act to reform the law relating to companies, and, in particular,—

- (a) To reaffirm the value of the company as a means of achieving economic and social benefits through the aggregation of capital for productive purposes, the spreading of economic risk, and the taking of business risks; and**
- (b) To provide basic and adaptable requirements for the incorporation, organisation, and operation of companies; and**
- (c) To define the relationships between companies and their directors, shareholders, and creditors; and**
- (d) To encourage efficient and responsible management of companies by allowing directors a wide discretion in matters of business judgment while at the same time**

- providing protection for shareholders and creditors against the abuse of management power; and**
- (e) **To provide straightforward and fair procedures for realising and distributing the assets of insolvent companies**

1 Short Title and commencement

- (1) This Act may be cited as the Companies Act 1993.
- (2) This Act shall come into force on the 1st day of July 1994.

Part 1
Preliminary

2 Interpretation

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

Accounting period, in relation to a company, means a year ending on a balance date of the company and, if as a result of the date of the registration of the company or a change of the balance date of the company, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period

Address for service in relation to a company, means the company's address for service adopted in accordance with section 192 of this Act

Annual meeting means a meeting required to be held by section 120 of this Act

annual report—

- (a) means a report prepared under section 208; and
- (b) does not include a concise annual report

annual report: this definition was inserted, as from 18 June 2007, by section 4(3) Companies Amendment Act (No 2) 2006 (2006 No 62). See clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Balance date has the meaning set out in section 7 of the Financial Reporting Act 1993

Board and **board of directors** have the meanings set out in section 127 of this Act

Charge includes a right or interest in relation to property owned by a company, by virtue of which a creditor of the company is entitled to claim payment in priority to creditors

entitled to be paid under section 313 of this Act; but does not include a charge under a charging order issued by a court in favour of a judgment creditor

Class has the meaning set out in section 116 of this Act

Company means—

- (a) A company registered under Part 2 of this Act;
- (b) A company reregistered under this Act in accordance with the Companies Reregistration Act 1993:

concise annual report, in relation to a company and an accounting period, means a report on the affairs of the company during that period that is prepared in accordance with the requirements prescribed in regulations made under this Act

concise annual report: this definition was inserted, as from 18 June 2007, by section 4(3) Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Constitution means a document referred to in section 29 of this Act

Court means the High Court of New Zealand

Director has the meaning set out in section 126 of this Act

Distribution, in relation to a distribution by a company to a shareholder, means—

- (a) The direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder; or
- (b) The incurring of a debt to or for the benefit of the shareholder—

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means

Dividend has the meaning set out in section 53 of this Act

Document means a document in any form; and includes—

- (a) Any writing on any material; and
- (b) Information recorded or stored by means of a tape-recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) A book, graph, or drawing; and

- (d) A photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced:

Entitled person, in relation to a company, means—

- (a) A shareholder; and
- (b) A person upon whom the constitution confers any of the rights and powers of a shareholder:

exempt company has the meaning set out in section 6A of the Financial Reporting Act 1993.

Exempt company: this definition was inserted, as from 2 September 1996, by section 2 Companies Act 1993 Amendment Act 1996 (1996 No 115).

Exempt company: this definition was substituted, as from 22 November 2006, by section 4(1) Companies Amendment Act (No 2) 2006 (2006 No 62). *See* section 4(2) of that Act as to the application of this amendment in relation to accounting periods.

Existing company means a body corporate registered or deemed to be registered under Part 2 or Part 10 of the Companies Act 1955, or under the Companies Act 1933, the Companies Act 1908, the Companies Act 1903, the Companies Act 1882, or the Joint Stock Companies Act 1860

Financial statements has the meaning set out in section 8 of the Financial Reporting Act 1993

Group financial statements has the meaning set out in section 9 of the Financial Reporting Act 1993

Group of companies has the meaning set out in section 2 of the Financial Reporting Act 1993

Holding company has the meaning set out in section 5 of this Act

Interested, in relation to a director, has the meaning set out in section 139 of this Act

Interest group has the meaning set out in section 116 of this Act

Interests register means the register kept under section 189(1)(c) of this Act

Major transaction has the meaning set out in section 129(2) of this Act

New Zealand register means the register of companies incorporated in New Zealand kept pursuant to section 360(1)(a) of this Act

Ordinary resolution has the meaning set out in section 105(2) of this Act

Overseas company means a body corporate that is incorporated outside New Zealand

Overseas register means the register of bodies corporate that are incorporated outside New Zealand kept pursuant to section 360(1)(b) of this Act

Personal representative, in relation to an individual, means the executor, administrator or trustee of the estate of that individual

Pre-emptive rights means the rights conferred on shareholders under section 45 of this Act

Prescribed form means a form prescribed by regulations made under this Act that contains, or has attached to it, such information or documents as those regulations may require

Property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and includes rights, interests, and claims of every kind in relation to property however they arise

receiver

Records means the documents required to be kept by a company under section 189(1) of this Act

Redeemable has the meaning set out in section 68 of this Act

Registered office has the meaning set out in section 186 of this Act

Registrar means the Registrar of Companies appointed in accordance with section 357(1) of this Act

Related company has the meaning set out in subsection (3) of this section

Relative, in relation to any person, means—

- (a) any parent, child, brother, or sister of that person; or
- (b) any spouse, civil union partner, or de facto partner of that person; or

- (ba) any parent, child, brother, or sister of a spouse, civil union partner, or de facto partner of that person; or
- (c) A nominee or trustee for any of those persons:

Relative: paragraphs (a) and (b) of this definition were substituted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Relative: paragraph (ba) of this definition was inserted, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Relevant interest has the meaning set out in section 146 of this Act

Secured creditor, in relation to a company, means a person entitled to a charge on or over property owned by that company

Securities has the same meaning as in the Securities Act 1978

Share has the meaning set out in section 35 of this Act

Shareholder has the meaning set out in section 96 of this Act

Share register means the share register required to be kept under section 87 of this Act

Solvency test has the meaning set out in section 4 of this Act

Special meeting means a meeting called in accordance with section 121 of this Act

Special resolution means a resolution approved by a majority of 75 percent or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question

Spouse

Spouse: this definition was repealed, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3).

Subsidiary has the meaning set out in section 5 of this Act

Surplus assets means the assets of a company remaining after the payment of creditors' claims and available for distribution in accordance with section 313 of this Act prior to its removal from the New Zealand register

Working day means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and

- (b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and
 - (c) If the 1st day of January in any year falls on a Friday, the following Monday; and
 - (d) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.
- (2) Where,—
 - (a) In relation to a company or an overseas company, any document is required to be delivered or any thing is required to be done to a District Registrar or an Assistant Registrar in whose office the records relating to the company or overseas company are kept within a period specified by this Act; and
 - (b) The last day of that period falls on the day of the anniversary of the province in which that office is situated,—

the document may be delivered or that thing may be done to that District Registrar or Assistant Registrar on the next working day.
- (3) In this Act, a company is related to another company if—
 - (a) The other company is its holding company or subsidiary; or
 - (b) More than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other company and companies related to that other company (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (c) More than half of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (d) The businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or

- (e) There is another company to which both companies are related;—
and **related company** has a corresponding meaning.
- (4) For the purposes of subsection (3) of this section, a company within the meaning of section 2 of the Companies Act 1955 is related to another company if, were it a company within the meaning of subsection (1) of this section, it would be related to that other company.
- (5) A reference in this Act to an address means,—
 - (a) In relation to an individual, the full address of the place where that person usually lives:
 - (b) In relation to a body corporate, its registered office or, if it does not have a registered office, its principal place of business.

Subsection (3)(b) was amended, as from 15 April 2004, by section 3 Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting the expression “capital,” for the word “capital”.

3 Public notice

- (1) Where, pursuant to this Act, public notice must be given of any matter affecting a company, that notice must be given by publishing notice of the matter—
 - (a) In at least 1 issue of the *Gazette*; and
 - (b) In at least 1 issue of a newspaper circulating in the area in which is situated—
 - (i) The company’s place of business; or
 - (ii) If the company has more than 1 place of business, the company’s principal place of business; or
 - (iii) If the company has no place of business or neither its place of business nor its principal place of business is known, the company’s registered office.
- (2) Where, pursuant to this Act, public notice must be given of any matter affecting an overseas company, that notice must be given by publishing notice of the matter—
 - (a) In at least 1 issue of the *Gazette*; and
 - (b) In at least 1 issue of a newspaper circulating in the area in which is situated—

- (i) The place of business in New Zealand of the overseas company; or
- (ii) If the overseas company has more than 1 place of business in New Zealand, the principal place of business in New Zealand of the overseas company.

4 Meaning of solvency test

- (1) For the purposes of this Act, a company satisfies the solvency test if—
 - (a) The company is able to pay its debts as they become due in the normal course of business; and
 - (b) The value of the company's assets is greater than the value of its liabilities, including contingent liabilities.
- (2) Without limiting sections 52 and 55(3) of this Act, in determining for the purposes of this Act (other than sections 221 and 222 which relate to amalgamations) whether the value of a company's assets is greater than the value of its liabilities, including contingent liabilities, the directors—
 - (a) Must have regard to—
 - (i) The most recent financial statements of the company that comply with section 10 of the Financial Reporting Act 1993; and
 - (ii) All other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities:
 - (b) May rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.
- (3) Without limiting sections 221 and 222 of this Act, in determining for the purposes of those sections whether the value of the amalgamated company's assets will be greater than the value of its liabilities, including contingent liabilities, the directors of each amalgamating company—
 - (a) Must have regard to—
 - (i) Financial statements that comply with section 10 of the Financial Reporting Act 1993 and that

- are prepared as if the amalgamation had become effective; and
- (ii) All other circumstances that the directors know or ought to know would affect, or may affect, the value of the amalgamated company's assets and the value of its liabilities, including contingent liabilities:
- (b) May rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.
- (4) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of—
 - (a) The likelihood of the contingency occurring; and
 - (b) Any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

5 Meaning of holding company and subsidiary

- (1) For the purposes of this Act, a company is a subsidiary of another company if, but only if,—
 - (a) That other company—
 - (i) Controls the composition of the board of the company; or
 - (ii) Is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company; or
 - (iii) Holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (iv) Is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (b) The company is a subsidiary of a company that is that other company's subsidiary.

- (2) For the purposes of this Act, a company is another company's holding company, if, but only if, that other company is its subsidiary.
- (3) In this section and sections 7 and 8 of this Act, the expression **company** includes a body corporate.

Compare: Corporations Act 1989 (Aust) s 46

6 Extended meaning of subsidiary

For the purposes of this Act, a company within the meaning of section 2 of the Companies Act 1955 is a subsidiary of another company if, were it a company within the meaning of section 2 of this Act, it would be a subsidiary of that other company.

7 Control defined

For the purposes of section 5 of this Act, without limiting the circumstances in which the composition of a company's board is to be taken to be controlled by another company, the composition of the board is to be taken to be so controlled if the other company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all the directors of the company, or such number of directors as together hold a majority of the voting rights at meetings of the board of the company, and for this purpose, the other company is to be taken as having power to make such an appointment if—

- (a) A person cannot be appointed as a director of the company without the exercise by the other company of such a power in the person's favour; or
- (b) A person's appointment as a director of the company follows necessarily from the person being a director or other officer of the other company.

Compare: Corporations Act 1989 (Aust) s 47

8 Certain matters to be disregarded

In determining whether a company is a subsidiary of another company,—

- (a) Shares held or a power exercisable by that other company in a fiduciary capacity are not to be treated as held or exercisable by it:

- (b) Subject to paragraphs (c) and (d) of this section, shares held or a power exercisable—
 - (i) By a person as a nominee for that other company, except where that other company is concerned only in a fiduciary capacity; or
 - (ii) By, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,—are to be treated as held or exercisable by that other company:
- (c) Shares held or a power exercisable by a person under the provisions of debentures of the company or of a trust deed for securing an issue of debentures shall be disregarded:
- (d) Shares held or a power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable in the manner described in paragraph (c) of this section) are not to be treated as held or exercisable by that other company if—
 - (i) The ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money; and
 - (ii) The shares are held or the power is exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

Compare: Corporations Act 1989 (Aust) s 48

9 Act binds the Crown
This Act binds the Crown.

Part 2
Incorporation

Essential requirements

- 10 Essential requirements**
A company must have—
- (a) A name; and
 - (b) One or more shares; and

- (c) One or more shareholders, having limited or unlimited liability for the obligations of the company; and
- (d) One or more directors.

Method of incorporation

11 Right to apply for registration

Any person may, either alone or together with another person, apply for registration of a company under this Act.

12 Application for registration

- (1) An application for registration of a company under this Act must be sent or delivered to the Registrar, and must be—
 - (a) In the prescribed form; and
 - (b) Signed by each applicant; and
 - (c) Accompanied by a document in the prescribed form signed by every person named as a director, containing his or her consent to be a director and a certificate that he or she is not disqualified from being appointed or holding office as a director of a company; and
 - (d) Accompanied by—
 - (i) A document in the prescribed form signed by every person named as a shareholder, or by an agent of that person authorised in writing, containing his or her consent to being a shareholder and to taking the class and number of shares specified in the document; and
 - (ii) If the document has been signed by an agent, the instrument authorising the agent to sign it; and
 - (e) Accompanied by a notice reserving a name for the proposed company; and
 - (f) If the proposed company is to have a constitution, accompanied by a document certified by at least one applicant as the company's constitution.
- (2) Without limiting subsection (1) of this section, the application must state—
 - (a) The full name and address of each applicant; and
 - (b) The full name and residential address of every director of the proposed company; and

- (c) The full name and residential address of every shareholder of the proposed company, and the number of shares to be issued to every shareholder; and
- (d) The registered office of the proposed company; and
- (e) The address for service of the proposed company.

13 Registration

As soon as the Registrar receives a properly completed application for registration of a company, the Registrar must—

- (a) Register the application; and
- (b) Issue a certificate of incorporation.

14 Certificate of incorporation

A certificate of incorporation of a company issued under section 13 of this Act is conclusive evidence that—

- (a) All the requirements of this Act as to registration have been complied with; and
- (b) On and from the date of incorporation stated in the certificate, the company is incorporated under this Act.

Separate legal personality

15 Separate legal personality

A company is a legal entity in its own right separate from its shareholders and continues in existence until it is removed from the New Zealand register.

Part 3

Capacity, powers, and validity of actions

16 Capacity and powers

- (1) Subject to this Act, any other enactment, and the general law, a company has, both within and outside New Zealand,—
 - (a) Full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and
 - (b) For the purposes of paragraph (a) of this subsection, full rights, powers, and privileges.
- (2) The constitution of a company may contain a provision relating to the capacity, rights, powers, or privileges of the com-

pany only if the provision restricts the capacity of the company or those rights, powers, and privileges.

Validity of actions

17 Validity of actions

- (1) No act of a company and no transfer of property to or by a company is invalid merely because the company did not have the capacity, the right, or the power to do the act or to transfer or take a transfer of the property.
- (2) Subsection (1) of this section does not limit—
 - (a) Section 164 of this Act (which relates to injunctions to restrain conduct by a company that would contravene its constitution); or
 - (b) Section 165 of this Act (which relates to derivative actions by directors and shareholders); or
 - (c) Section 169 of this Act (which relates to actions by shareholders of a company against the directors); or
 - (d) Section 170 of this Act (which relates to actions by shareholders to require the directors of a company to take action under the constitution or this Act).
- (3) The fact that an act is not, or would not be, in the best interests of a company does not affect the capacity of the company to do the act.

Compare: 1955 No 63 s 18A; 1983 No 53 s 8

18 Dealings between company and other persons

- (1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired property, rights, or interests from the company that—
 - (a) This Act or the constitution of the company has not been complied with:
 - (b) A person named as a director of the company in the most recent notice received by the Registrar under section 159 of this Act—
 - (i) Is not a director of a company; or
 - (ii) Has not been duly appointed; or

- (iii) Does not have authority to exercise a power which a director of a company carrying on business of the kind carried on by the company customarily has authority to exercise:
 - (c) A person held out by the company as a director, employee, or agent of the company—
 - (i) Has not been duly appointed; or
 - (ii) Does not have authority to exercise a power which a director, employee, or agent of a company carrying on business of the kind carried on by the company customarily has authority to exercise:
 - (d) A person held out by the company as a director, employee, or agent of the company with authority to exercise a power which a director, employee, or agent of a company carrying on business of the kind carried on by the company does not customarily have authority to exercise, does not have authority to exercise that power:
 - (e) A document issued on behalf of a company by a director, employee, or agent of the company with actual or usual authority to issue the document is not valid or not genuine—

unless the person has, or ought to have, by virtue of his or her position with or relationship to the company, knowledge of the matters referred to in any of paragraphs (a), (b), (c), (d), or (e), as the case may be, of this subsection.
- (2) Subsection (1) of this section applies even though a person of the kind referred to in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired property, rights, or interests from the company has actual knowledge of the fraud or forgery.

Compare: 1955 No 63 ss 18C, 18D; 1985 No 80 s 2

19 No constructive notice

A person is not affected by, or deemed to have notice or knowledge of the contents of, the constitution of, or any other document relating to, a company merely because—

- (a) The constitution or document is registered on the New Zealand register; or
 - (b) It is available for inspection at an office of the company.
- Compare: 1955 No 63 s 18B; 1985 No 80 s 2

Part 4

Company names

20 Name to be reserved

The Registrar must not register a company under a name or register a change of the name of a company unless the name has been reserved.

21 Name of company if liability of shareholders limited

The registered name of a company must end with the word “Limited” or the words “Tapui (Limited)” if the liability of the shareholders of the company is limited.

22 Application for reservation of name

- (1) An application for reservation of the name of a company must be sent or delivered to the Registrar, and must be in the prescribed form.
- (2) The Registrar must not reserve a name—
 - (a) The use of which would contravene an enactment; or
 - (b) That is identical or almost identical to the name of another company or another company under the Companies Act 1955; or
 - (c) That is identical or almost identical to a name that the Registrar has already reserved under this Act or the Companies Act 1955 and that is still available for registration; or
 - (d) That, in the opinion of the Registrar, is offensive.
- (3) The Registrar must advise the applicant by notice in writing—
 - (a) Whether or not the Registrar has reserved the name; and
 - (b) If the name has been reserved, that, unless the reservation is sooner revoked by the Registrar, the name is available for registration of a company with that name or on a change of name for 20 working days after the date stated in the notice.

Subsection (3)(b) was amended, as from 1 July 1994, by section 2 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “, unless the reservation is sooner revoked by the Registrar,”.

23 Change of name

- (1) An application to change the name of a company must—
 - (a) Be in the prescribed form; and
 - (b) Be accompanied by a notice reserving the name; and
 - (c) Subject to the constitution of the company, be made by a director of the company with the approval of its board.
- (2) Subject to its constitution, an application to change the name of a company is not an amendment of the constitution of the company for the purposes of this Act.
- (3) As soon as the Registrar receives a properly completed application, the Registrar must—
 - (a) Enter the new name of the company on the New Zealand register; and
 - (b) Issue a certificate of incorporation for the company recording the change of name of the company.
- (4) A change of name of a company—
 - (a) Takes effect from the date of the certificate issued under subsection (3) of this section; and
 - (b) Does not affect rights or obligations of the company, or legal proceedings by or against the company, and legal proceedings that might have been continued or commenced against the company under its former name may be continued or commenced against it under its new name.

24 Direction to change name

- (1) If the Registrar believes on reasonable grounds that the name under which a company is registered should not have been reserved, the Registrar may serve written notice on the company to change its name by a date specified in the notice, being a date not less than 20 working days after the date on which the notice is served.
- (2) If the company does not change its name within the period specified in the notice, the Registrar may enter on the New Zealand register a new name for the company selected by the

Registrar, being a name under which the company may be registered under this Part of this Act.

- (3) If the Registrar registers a new name under subsection (2) of this section, the Registrar must issue a certificate of incorporation for the company recording the new name of the company, and section 23(4) of this Act applies in relation to the registration of the new name as if the name of the company had been changed under that section.

25 Use of company name

- (1) A company must ensure that its name is clearly stated in—
- (a) Every written communication sent by, or on behalf of, the company; and
 - (b) Every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company.
- (2) Where—
- (a) A document that evidences or creates a legal obligation of a company is issued or signed by or on behalf of the company; and
 - (b) The name of the company is incorrectly stated in the document,—
- every person who issued or signed the document is liable to the same extent as the company if the company fails to discharge the obligation unless—
- (c) The person who issued or signed the document proves that the person in whose favour the obligation was incurred was aware at the time the document was issued or signed that the obligation was incurred by the company; or
 - (d) The Court is satisfied that it would not be just and equitable for the person who issued or signed the document to be so liable.
- (3) For the purposes of subsections (1) and (2) of this section and of section 180 of this Act (which relates to the manner in which a company may enter into contracts and other obligations), a company may use a generally recognised abbreviation of a word or words in its name if it is not misleading to do so.

- (4) If, within the period of 12 months immediately preceding the giving by a company of any public notice, the name of the company was changed, the company must ensure that the notice states—
 - (a) That the name of the company was changed in that period; and
 - (b) The former name or names of the company.
- (5) If a company fails to comply with subsection (1) or subsection (4) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Part 5

Company constitution

- 26 No requirement for company to have constitution**
A company may but does not have to have a constitution.
- 27 Effect of Act on company having constitution**
If a company has a constitution, the company, the board, each director, and each shareholder of the company have the rights, powers, duties, and obligations set out in this Act except to the extent that they are negated or modified, in accordance with this Act, by the constitution of the company.
- 28 Effect of Act on company not having constitution**
If a company does not have a constitution, the company, the board, each director, and each shareholder of the company have the rights, powers, duties, and obligations set out in this Act.
- 29 Form of constitution**
The constitution of a company, if it has one, is,—

- (a) In the case of a company registered under Part 2 of this Act, a document certified by the applicant for registration of the company as the company's constitution; or
- (b) In the case of an existing company that is reregistered pursuant to the Companies Reregistration Act 1993, a document certified by the applicant for reregistration as the company's constitution; or
- (c) A document that is adopted by the company as its constitution under section 32 of this Act; or
- (d) A document described in section 33 of this Act; or
- (e) A document described in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of this section as altered by the company under section 32 of this Act or varied by the Court under section 34 of this Act.

Section 29(c) was amended, as from 1 July 1994, by section 3 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words "under section 32 of this Act".

30 Contents of constitution

Subject to section 16(2) of this Act, the constitution of a company may contain—

- (a) Matters contemplated by this Act for inclusion in the constitution of a company:
- (b) Such other matters as the company wishes to include in its constitution.

31 Effect of constitution

- (1) The constitution of a company has no effect to the extent that it contravenes, or is inconsistent with, this Act.
- (2) Subject to this Act, the constitution of a company is binding as between—
 - (a) The company and each shareholder; and
 - (b) Each shareholder—
in accordance with its terms.

32 Adoption, alteration, and revocation of constitution

- (1) The shareholders of a company that does not have a constitution may, by special resolution, adopt a constitution for the company.

- (2) Without limiting section 117 of this Act (which relates to an alteration of shareholders' rights) and section 174 of this Act (which relates to the right of a shareholder to apply to the Court for relief in cases of prejudice), but subject to section 57 of this Act (which relates to the reduction of shareholders' liability), the shareholders of a company may, by special resolution, alter or revoke the constitution of the company.
- (3) Within 10 working days of the adoption of a constitution by a company, or the alteration or revocation of the constitution of a company, as the case may be, the board must ensure that a notice in the prescribed form of the adoption of the constitution or of the alteration or revocation of the constitution is delivered to the Registrar for registration.
- (4) If the board of a company fails to comply with subsection (3) of this section, every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 374(2) of this Act.

33 New form of constitution

- (1) A company may, from time to time, deliver to the Registrar a single document that incorporates the provisions of a document referred to in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) or paragraph (e) of section 29 of this Act, together with all amendments to it.
- (2) The Registrar may, if the Registrar considers that by reason of the number of amendments to a company's constitution it would be desirable for the constitution to be contained in a single document, by notice in writing, require a company to deliver to the Registrar a single document that incorporates the provisions of a document referred to in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of section 29 of this Act, together with all amendments to it.
- (3) Within 20 working days of receipt by a company of a notice under subsection (2) of this section, the board must ensure that the document required by that subsection is received by the Registrar for registration.
- (4) The board must ensure that a document delivered to the Registrar under this section is accompanied by a certificate signed

by a person authorised by the board that the document complies with subsection (1) or subsection (2), as the case may be, of this section.

- (5) As soon as the Registrar receives a document certified in accordance with subsection (4) of this section, the Registrar must register the document.
- (6) If the board of a company fails to comply with subsection (3) or subsection (4) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

34 Court may alter constitution

- (1) The Court may, on the application of a director or shareholder of a company, if it is satisfied that it is not practicable to alter the constitution of the company using the procedure set out in this Act or in the constitution itself, make an order altering the constitution of a company on such terms and conditions that it thinks fit.
- (2) The applicant for the order must ensure that a copy of an order made under subsection (1) of this section, together with a copy of the constitution as altered, is delivered to the Registrar for registration within 10 working days.
- (3) A person who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.

Part 6 Shares

35 Legal nature of shares

A share in a company is personal property.

36 Rights and powers attaching to shares

- (1) Subject to subsection (2) of this section, a share in a company confers on the holder—
 - (a) The right to one vote on a poll at a meeting of the company on any resolution, including any resolution to—
 - (i) Appoint or remove a director or auditor:
 - (ii) Adopt a constitution:

- (iii) Alter the company's constitution, if it has one:
 - (iv) Approve a major transaction:
 - (v) Approve an amalgamation of the company under section 221 of this Act:
 - (vi) Put the company into liquidation:
 - (b) The right to an equal share in dividends authorised by the board:
 - (c) The right to an equal share in the distribution of the surplus assets of the company.
- (2) Subject to section 53 of this Act, the rights specified in subsection (1) of this section may be negated, altered, or added to by the constitution of the company or in accordance with the terms on which the share is issued under section 41(b) or section 42 or section 44 or section 107(2), as the case may be, of this Act.

Subsection (2) was amended, as from 1 July 1994, by section 4 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “or section 44, as the case may be,”.

Subsection (2) was amended, as from 30 June 1997, by section 3 Companies Act 1993 Amendment Act 1997 (1997 No 27) by inserting the words “section 41(b) or”.

Subsection (2) was further amended, as from 3 May 2001, by section 3 Companies Act 1993 Amendment Act 2001 (2001 No 18) by inserting the expression “or section 107(2)”.

37 Types of shares

- (1) Subject to the constitution of the company, different classes of shares may be issued in a company.
- (2) Without limiting subsection (1) of this section, shares in a company may—
- (a) Be redeemable within the meaning of section 68 of this Act; or
 - (b) Confer preferential rights to distributions of capital or income; or
 - (c) Confer special, limited, or conditional voting rights; or
 - (d) Not confer voting rights.

Subsection (2)(a) was substituted, as from 1 July 1994, by section 5 Companies Act 1993 Amendment Act 1994 (1994 No 6).

38 No nominal value

- (1) A share must not have a nominal or par value.
- (2) Nothing in subsection (1) of this section prevents the issue by a company of a redeemable share.

39 Transferability of shares

- (1) Subject to any limitation or restriction on the transfer of shares in the constitution, a share in a company is transferable.
- (2) A share is transferred by entry in the share register in accordance with section 84 of this Act.
- (3) The personal representative of a deceased shareholder may transfer a share even though the personal representative is not a shareholder at the time of transfer.

40 Contracts for issue of shares

A contract or deed under which a company is or may be required to issue shares, whether on the exercise of an option or on the conversion of securities or otherwise, is an illegal contract for the purposes of the Illegal Contracts Act 1970 unless—

- (a) the board is entitled to issue the shares; and
- (b) either—
 - (i) the board has complied with section 47 or section 49; or
 - (ii) all entitled persons agree or concur with the issue of the shares under section 107(2); or
 - (iii) the contract or deed expressly provides that the contract or deed is subject to—
 - (A) the board complying with section 47 or section 49; or
 - (B) all entitled persons agreeing to or concurring with the issue of the shares under section 107(2).

Section 40 was substituted, as from 3 May 2001, by section 4 Companies Act 1993 Amendment Act 2001 (2001 No 18).

Issue of shares

41 Issue of shares on registration and amalgamation

A company must,—

- (a) Forthwith after the registration of the company, issue to any person or persons named in the application for registration as a shareholder or shareholders, the number of shares specified in the application as being the number of shares to be issued to that person or those persons:
- (b) In the case of an amalgamated company, forthwith after the amalgamation is effective, issue to any person entitled to a share or shares under the amalgamation proposal, the share or shares to which that person is entitled.

Section 41(b) was amended, as from 1 July 1994, by section 6 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the word “share” for the word “shares”, in the second place where that word occurs.

42 Issue of other shares

Subject to this Act and the constitution of the company, the board of a company may issue shares at any time, to any person, and in any number it thinks fit.

43 Notice of share issue

- (1) The board of a company must deliver to the Registrar for registration, within 10 working days of the issue of shares under section 41(b) or section 42 or section 107(2) of this Act, a notice in the prescribed form of the issue of the shares by the company.
- (2) If the board of a company fails to comply with subsection (1) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Subsection (1) was amended, as from 30 June 1997, by section 3 Companies Act 1993 Amendment Act 1997 (1997 No 27) by inserting the words “or section 107(2)”.

44 Shareholder approval for issue of shares

- (1) Notwithstanding section 42 of this Act, if shares cannot be issued by reason of any limitation or restriction in the company's constitution, the board may issue shares if the board obtains the approval for the issue in the same manner as approval is required for an alteration to the constitution that would permit such an issue.
- (2) Subject to the terms of the approval, the shares may be issued at any time, to any person, and in any number the Board thinks fit.
- (3) Within 10 working days of approval being given under subsection (1) of this section, the board must ensure that notice of that approval in the prescribed form is delivered to the Registrar for registration.
- (4) Nothing in this section affects the need to obtain the approval of an interest group in accordance with section 117 of this Act (which relates to the alteration of shareholders' rights) if the issue of shares affects the rights of that interest group.
- (5) A failure to comply with this section does not affect the validity of an issue of shares.
- (6) If the board of a company fails to comply with subsection (3) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

45 Pre-emptive rights

- (1) Shares issued or proposed to be issued by a company that rank or would rank as to voting or distribution rights, or both, equally with or prior to shares already issued by the company must be offered for acquisition to the holders of the shares already issued in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights, or both, of those holders.
- (2) An offer under subsection (1) of this section must remain open for acceptance for a reasonable time.
- (3) The constitution of a company may negate, limit, or modify the requirements of this section.

46 Consideration for issue of shares

The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

46A Consideration for issue of shares on registration

A shareholder is not liable to pay or provide any consideration in respect of an issue of shares under section 41(a) unless—

- (a) The constitution of the company specifies the consideration to be paid or provided for those shares; or
- (b) The shareholder is liable to pay or provide consideration for those shares pursuant to either a pre-incorporation contract (within the meaning of section 182) or a contract entered into after the registration of the company.

Section 46A was inserted, as from 30 June 1997, by section 4 Companies Act 1993 Amendment Act 1997 (1997 No 27).

47 Consideration to be decided by board

- (1) Before the board of a company issues shares under section 42 or section 44 of this Act, the board must—
 - (a) Decide the consideration for which the shares will be issued and the terms on which they will be issued; and
 - (b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
 - (c) Resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing shareholders; and
 - (d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.
- (2) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate—
 - (a) Stating the consideration for, and the terms of, the issue; and

- (b) Describing the consideration in sufficient detail to identify it; and
 - (c) Where a present cash value has been determined in accordance with subsection (1)(b) of this section, stating that value and the basis for assessing it; and
 - (d) Stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders; and
 - (e) If the shares are to be issued other than for cash stating that, in their opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.
- (3) Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must—
 - (a) Determine the reasonable present cash value of the consideration; and
 - (b) Resolve that, in its opinion, the present cash value of the consideration is—
 - (i) Fair and reasonable to the company and to all existing shareholders; and
 - (ii) Not less than the amount to be credited in respect of the shares.
- (4) The directors who vote in favour of a resolution under subsection (3) of this section must sign a certificate—
 - (a) Describing the consideration in sufficient detail to identify it; and
 - (b) Stating—
 - (i) The present cash value of the consideration and the basis for assessing it; and
 - (ii) That the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and
 - (iii) That the present cash value of the consideration is not less than the amount to be credited in respect of the shares.
- (5) The Board must deliver a copy of a certificate that complies with subsection (2) or subsection (4) of this section to the

Registrar for registration within 10 working days after it is given.

- (6) For the purposes of this section, shares that are or are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.
- (7) A director who fails to comply with subsection (2) or subsection (4) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (8) Nothing in this section applies to the issue of shares in a company on—
 - (a) The conversion of any convertible securities; or
 - (b) The exercise of any option to acquire shares in the company.
- (9) If the board of a company fails to comply with subsection (5) of this section, every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 374(2) of this Act.

48 Exceptions to section 47

Section 47 of this Act does not apply to—

- (a) The issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each shareholder;
- (b) The consolidation and division of the shares or any class of shares in the company in proportion to those shares or the shares in that class;
- (c) The subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class.

49 Consideration in relation to issue of options and convertible securities

- (1) Before the board of a company issues any securities that are convertible into shares in the company or any options to acquire shares in the company, the board must—
 - (a) Decide the consideration for which the convertible securities or options, and, in either case, the shares will be issued and the terms on which they will be issued; and
 - (b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
 - (c) Resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options, and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
 - (d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.
- (2) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate—
 - (a) Stating the consideration for, and the terms of, the issue of the convertible securities or options, and, in either case, the shares; and
 - (b) Describing the consideration in sufficient detail to identify it; and
 - (c) Where a present cash value has been determined in accordance with subsection (1)(b) of this section, stating that value and the basis for assessing it; and
 - (d) Stating that, in their opinion, the consideration for and terms of issue of the convertible securities or options, and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
 - (e) If the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

- (3) The Board must deliver a copy of a certificate that complies with subsection (2) of this section to the Registrar for registration within 10 working days after it is given.
- (4) For the purposes of this section, shares that are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.
- (5) A director who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (6) If the Board of a company fails to comply with subsection (3) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

50 Consent to issue of shares

The issue by a company of a share that—

- (a) Increases a liability of a person to the company; or
 - (b) Imposes a new liability on a person to the company—
- is void if that person or an agent of that person authorised in writing does not consent in writing to becoming the holder of the share before it is issued.

51 Time of issue of shares

A share is issued when the name of the holder is entered on the share register.

Distributions to shareholders

52 Board may authorise distributions

- (1) The board of a company that is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test may, subject to section 53 of this Act and the constitution of the company, authorise a distribution by the company at a time, and of an amount, and to any shareholders it thinks fit.

- (2) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion.
- (3) If, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.
- (4) In applying the solvency test for the purposes of this section and section 56 of this Act,—
 - (a) **Debts** includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the constitution as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation; and
 - (b) **Liabilities** includes the amount that would be required, if the company were to be removed from the New Zealand register after the distribution, to repay all fixed preferential amounts payable by the company to shareholders, at that time, or on earlier redemption (except where such fixed preferential amounts are expressed in the constitution as being subject to the power of directors to make distributions); but, subject to paragraph (a) of this subsection, does not include dividends payable in the future.
- (5) Every director who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

53 Dividends

- (1) A dividend is a distribution other than a distribution to which section 59 or section 76 of this Act applies.
- (2) The board of a company must not authorise a dividend—
 - (a) In respect of some but not all the shares in a class; or
 - (b) That is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class—

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under the constitution of the company or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2004.

- (3) Notwithstanding subsection (2) of this section, a shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the shareholder.

Section 53(2): amended, on 1 October 2007, by section 70 of the Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19).

Section 53(2): amended, on 1 October 2007, by section 219 of the Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81).

54 Shares in lieu of dividends

Subject to the constitution of the company, the board of a company may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if—

- (a) The right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms; and
- (b) If all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and
- (c) The shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- (d) The shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares; and
- (e) The provisions of section 47 of this Act are complied with by the board.

55 Shareholder discounts

- (1) The board of a company may resolve that the company offer shareholders discounts in respect of some or all of the goods sold or services provided by the company.
- (2) The board may approve a discount scheme under subsection (1) of this section only if it has previously resolved that the proposed discounts are—
 - (a) Fair and reasonable to the company and to all shareholders; and
 - (b) To be available to all shareholders or all shareholders of the same class on the same terms.
- (3) A discount scheme may not be approved or continued by the board unless it is satisfied on reasonable grounds that the company satisfies the solvency test.
- (4) Subject to subsection (5) of this section, a discount accepted by a shareholder under a discount scheme approved under this section is not a distribution for the purposes of this Act.
- (5) Where—
 - (a) A discount is accepted by a shareholder under a scheme approved or continued by the board; and
 - (b) At the time the scheme was approved or the discount was offered, the board ceased to be satisfied on reasonable grounds that the company would satisfy the solvency test,—the provisions of section 56 of this Act shall apply in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorised.

56 Recovery of distributions

- (1) A distribution made to a shareholder at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the shareholder unless—
 - (a) The shareholder received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test; and
 - (b) The shareholder has altered the shareholder's position in reliance on the validity of the distribution; and

- (c) It would be unfair to require repayment in full or at all.
- (2) If, in relation to a distribution made to shareholders,—
 - (a) The procedure set out in section 52 or section 70 or section 77 of this Act, as the case may be, has not been followed; or
 - (b) Reasonable grounds for believing that the company would satisfy the solvency test in accordance with section 52 or section 70 or section 77 of this Act, as the case may be, did not exist at the time the certificate was signed,—
a director who—
 - (c) Failed to take reasonable steps to ensure the procedure was followed; or
 - (d) Signed the certificate, as the case may be,—
is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.
- (3) If, by virtue of section 52(3) or section 70(3) or section 77(3) of this Act, as the case may be, a distribution is deemed not to have been authorised, a director who—
 - (a) Ceased after authorisation but before the making of the distribution to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made; and
 - (b) Failed to take reasonable steps to prevent the distribution being made,—
is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.
- (4) If, by virtue of section 55(5) of this Act, a distribution is deemed not to have been authorised, a director who failed to take reasonable steps to prevent the distribution being made is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.
- (5) If, in an action brought against a director or shareholder under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may—

- (a) Permit the shareholder to retain; or
- (b) Relieve the director from liability in respect of—
an amount equal to the value of any distribution that could properly have been made.

57 Reduction of shareholder liability a distribution

- (1) If a company proposes to alter its constitution, or to acquire shares issued by it, or redeem shares under section 69 of this Act, as the case may be, in a manner which would cancel or reduce the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, the proposed cancellation or reduction of liability is to be treated,—
 - (a) For the purposes of section 52 of this Act, as if it were a distribution; and
 - (b) For the purposes of subsections (2) and (3) of section 53 of this Act, as if it were a dividend.
- (2) If a company has altered its constitution, or acquired shares, or redeemed shares under section 69 of this Act, as the case may be, in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition, or redemption, that cancellation or reduction of liability is to be treated for the purposes of section 56 of this Act as a distribution of the amount by which that liability was reduced.
- (3) If the liability of a shareholder of an amalgamating company to that company in relation to a share held before the amalgamation is—
 - (a) Greater than the liability of that shareholder to the amalgamated company in relation to a share or shares into which that share is converted; or
 - (b) Cancelled by the cancellation of that share in the amalgamation,—
the reduction of liability effected by the amalgamation is to be treated for the purposes of section 56(1) and (5) of this Act as a distribution by the amalgamated company to that shareholder, whether or not that shareholder becomes a shareholder of the amalgamated company of the amount by which that liability was reduced.

Company may acquire its own shares

58 Company may acquire its own shares

- (1) A company may, in accordance with sections 59 to 66, section 107, and sections 110 to 112 of this Act, but not otherwise, acquire its own shares.
- (2) Shares acquired by a company otherwise than in accordance with sections 59 to 66 and 110 to 112 of this Act are deemed to be cancelled immediately on acquisition.
- (3) Within 10 working days of the purchase or acquisition of the shares, the board of the company must ensure that notice in the prescribed form of the purchase or acquisition is delivered to the Registrar for registration.
- (4) If the board of a company fails to comply with subsection (3) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Subsection (2) was amended, as from 1 July 1994, by section 7 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the word “immediately”.

59 Acquisition of company’s own shares

- (1) Subject to section 52 of this Act, a company may purchase or otherwise acquire shares issued by it if it is expressly permitted to do so by its constitution.
- (2) The purchase or acquisition of the shares must be made in accordance with section 60 or section 63 or section 65 of this Act.
- (3) Nothing in this section or in sections 60 to 67 of this Act limits or affects—
 - (a) An order of the Court that requires a company to purchase or acquire its own shares; or
 - (b) Sections 110 and 118 of this Act (which relate to the right of a shareholder to require a company to purchase shares).

Subsection (3)(b) was substituted, as from 1 July 1994, by section 8 Companies Act 1993 Amendment Act 1994 (1994 No 6).

60 Board may make offer to acquire shares

- (1) The board of a company may make an offer to acquire shares issued by the company if the offer is—
 - (a) An offer to all shareholders to acquire a proportion of their shares, that—
 - (i) Would, if accepted, leave unaffected relative voting and distribution rights; and
 - (ii) Affords a reasonable opportunity to accept the offer; or
 - (b) An offer to one or more shareholders to acquire shares—
 - (i) To which all shareholders have consented in writing; or
 - (ii) That is expressly permitted by the constitution, and is made in accordance with the procedure set out in section 61 of this Act.
- (2) Where an offer is made in accordance with subsection (1)(a) of this section,—
 - (a) The offer may also permit the company to acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and
 - (b) If the number of additional shares exceeds the number of shares that the company is entitled to acquire, the number of additional shares shall be reduced rateably.
- (3) The board may make an offer under subsection (1) of this section only if it has previously resolved—
 - (a) That the acquisition in question is in the best interests of the company; and
 - (b) That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company; and
 - (c) That it is not aware of any information that will not be disclosed to shareholders—
 - (i) Which is material to an assessment of the value of the shares; and
 - (ii) As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

- (4) The resolution must set out in full the reasons for the director's conclusions.
- (5) The directors who vote in favour of a resolution required by subsection (3) of this section must sign a certificate as to the matters set out in that subsection, and may combine it with the certificate required by section 52 of this Act and any certificate required under section 61 of this Act.
- (6) The board of a company must not make an offer under subsection (1) of this section if, after the passing of a resolution under subsection (3) of this section and before the making of the offer to acquire the shares,—
 - (a) The board ceases to be satisfied that the acquisition in question is in the best interests of the company; or
 - (b) The board ceases to be satisfied that the terms of the offer and the consideration offered for the shares are fair and reasonable to the company; or
 - (c) The board becomes aware of any information that will not be disclosed to shareholders—
 - (i) Which is material to an assessment of the value of the shares; or
 - (ii) As a result of which the terms of the offer and consideration offered for the shares would be unfair to shareholders accepting the offer.
- (7) Every director who fails to comply with subsection (5) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

61 Special offers to acquire shares

- (1) The board may make an offer under section 60(1)(b)(ii) of this Act only if it has previously resolved—
 - (a) That the acquisition is of benefit to the remaining shareholders; and
 - (b) That the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.
- (2) The resolution must set out in full the reasons for the directors' conclusions.

- (3) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate as to the matters set out in that subsection.
- (4) A board must not make an offer under section 60(1)(b)(ii) of this Act if, after the passing of a resolution under subsection (1) of this section and before the making of the offer to acquire the shares, the board ceases to be satisfied that—
 - (a) The acquisition is of benefit to the remaining shareholders; or
 - (b) The terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.
- (5) Before an offer is made pursuant to a resolution under subsection (1) of this section, the company must send to each shareholder a disclosure document that complies with section 62 of this Act.
- (6) The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.
- (7) Nothing in subsections (5) and (6) applies to an offer to a shareholder by a company if—
 - (a) the company is a party to a listing agreement with a registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988); and
 - (b) the offer is to acquire fewer of the shares quoted on the registered exchange's market than is the minimum holding of shares in the company determined by that exchange.
- (8) A shareholder or the company may apply to the Court for an order restraining the proposed acquisition on the grounds that—
 - (a) It is not in the best interests of the company and of benefit to remaining shareholders; or
 - (b) The terms of the offer and the consideration offered for the shares are not fair and reasonable to the company and remaining shareholders.

- (9) Every director who fails to comply with subsection (3) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (10) If a company fails to comply with subsection (5) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

The original subsection (7) was amended, as from 1 July 1994, by section 9 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the words “minimum holding” for the words “marketable parcel”.

Subsection (7) was substituted, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44).

62 Disclosure document

For the purposes of section 61 of this Act, a disclosure document is a document that sets out—

- (a) The nature and terms of the offer, and if made to specified shareholders, to whom it will be made; and
- (b) The nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and
- (c) The text of the resolution required by section 61 of this Act, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.

63 Stock exchange acquisitions subject to prior notice to shareholders

- (1) The board of a company may make offers on one or more stock exchanges to all shareholders to acquire shares only if it has previously resolved—
 - (a) To acquire, by means of offers on one or more stock exchanges to all shareholders, not more than a specified number of shares; and

- (b) That the acquisition is in the best interests of the company and its shareholders; and
 - (c) That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and its shareholders; and
 - (d) That it is not aware of any information that will not be disclosed to shareholders—
 - (i) Which is material to an assessment of the value of the shares; and
 - (ii) As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.
- (2) The resolution must set out in full the reasons for the directors' conclusions.
- (3) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate as to the matters set out in that subsection and may combine it with the certificate required by section 52 of this Act.
- (3A) Offers may be made under subsection (1) of this section by any director or employee of the company who is authorised to do so by the resolution of the board under that subsection.
- (4) An offer must not be made under subsection (1) of this section if the number of shares to be acquired together with any shares already acquired would exceed the maximum number of shares the board has resolved to acquire under that subsection.
- (5) An offer must not be made under subsection (1) of this section if, after the passing of a resolution under that subsection and before the making of the offer to acquire the shares,—
 - (a) The board ceases to be satisfied that the acquisition is in the best interests of the company and its shareholders; or
 - (b) The board ceases to be satisfied that the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and its shareholders; or
 - (c) The board becomes aware of any information that will not be disclosed to shareholders—
 - (i) Which is material to an assessment of the value of the shares; or

- (ii) As a result of which the terms of the offer and consideration offered for the shares would be unfair to shareholders accepting the offer.
- (6) Before an offer is made pursuant to a resolution under subsection (1) of this section, the company must send to each shareholder a disclosure document that complies with section 64 of this Act.
- (7) The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.
- (8) A shareholder or the company may apply to the Court for an order restraining the proposed acquisition on the grounds that—
 - (a) It is not in the best interests of the company or the shareholders; or
 - (b) The terms of the offer and, if it is disclosed, the consideration offered for the shares are not fair and reasonable to the company or the shareholders.
- (9) Every director who fails to comply with subsection (3) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (10) If the board of a company fails to comply with subsection (5) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Subsection (1) was amended, as from 1 July 1994, by section 10(1) Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the words “on one or more stock exchanges” for the words “a stock exchange”, in two places. It would appear that the word “on” which appears before the substituted words should also have been omitted by the amendment provision.

Subsection (3A) was inserted, as from 1 July 1994, by section 10(2) Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsections (4) and (5) were amended, as from 1 July 1994, by section 10(3) and (4) Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the words “An offer must not be made” for the words “A board must not make an offer”.

64 Disclosure document

- (1) For the purposes of section 63 of this Act, a disclosure document is a document that sets out—

- (a) The maximum number of shares that the board has resolved to acquire under section 63(1) of this Act; and
 - (b) The nature and terms of the offer; and
 - (c) The nature and extent of any relevant interest of any director of the company in any shares that may be acquired; and
 - (d) The text of the resolution required by section 63(1) of this Act, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.
- (2) Nothing in subsection (1) of this section requires the disclosure of the consideration the board proposes to offer to acquire the shares.

65 Stock exchange acquisitions not subject to prior notice to shareholders

- (1) The board of a company may acquire shares on a stock exchange from its shareholders if the following conditions are satisfied:
- (a) That, prior to the acquisition, the board of the company has resolved—
 - (i) That the acquisition in question is in the best interests of the company and the shareholders; and
 - (ii) That the terms of and consideration for the acquisition are fair and reasonable to the company; and
 - (iii) That it is not aware of any information that is not available to shareholders—
 - (A) That is material to an assessment of the value of the shares; and
 - (B) As a result of which the terms of and consideration for the acquisition are unfair to shareholders from whom any shares are acquired; and
 - (b) That the number of shares acquired together with any other shares acquired under this section in the preceding

12 months does not exceed 5 percent of the shares in the same class as at the date 12 months prior to the acquisition of the shares.

- (2) Within 10 working days after the shares are acquired, the company must send to each stock exchange on which the shares of the company are listed a notice containing the following particulars:
 - (a) The class of shares acquired:
 - (b) The number of shares acquired:
 - (c) The consideration paid or payable for the shares acquired:
 - (d) If known to the company, the identity of the seller and, if the seller was not the beneficial owner, the beneficial owner.
- (2A) Within 3 months after the shares are acquired, the company must send to each shareholder a notice containing the particulars referred to in subsection (2) of this section.
- (2B) Acquisitions may be made under subsection (1) of this section by any director or employee of the company who is authorised to do so by the resolution of the board under that subsection.
- (3) If a company fails to comply with subsection (2) or subsection (2A) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Subsection (2) was substituted, and subsections (2A) and (2B) were inserted, as from 1 July 1994, by section 11(1) Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (3) was amended, as from 1 July 1994, by section 11(2) Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “or subsection (2A)”.

66 Cancellation of shares repurchased

- (1) Subject to sections 67A to 67C of this Act, shares that are acquired by a company pursuant to section 59 or section 112 of this Act are deemed to be cancelled immediately on acquisition.

- (2) Shares are acquired for the purposes of subsection (1) of this section on the date on which the company would, apart from this section, become entitled to exercise the rights attached to the shares.
- (3) On the cancellation of a share under this section,—
 - (a) The rights and privileges attached to that share expire; but
 - (b) The share may be reissued in accordance with this Part of this Act.

Subsection (1) was substituted, as from 1 July 1994, by section 2 Companies Act 1993 Amendment Act (No 2) (1994 No 82).

67 Enforceability of contract to repurchase shares

- (1) A contract with a company providing for the acquisition by the company of its shares is specifically enforceable against the company except to the extent that the company would, by performance, be unable to satisfy the solvency test in accordance with section 52 of this Act.
- (2) The company has the burden of proving that performance of the contract would result in the company being unable to satisfy the solvency test in accordance with section 52 of this Act.
- (3) Until the company has fully performed a contract referred to in subsection (1) of this section, the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, prior to the removal of the company from the New Zealand register, to be ranked subordinate to the rights of creditors but in priority to the other shareholders.

Treasury stock

Sections 67A to 67C and the preceding heading were inserted, as from 1 July 1994, by section 3 Companies Act 1993 Amendment Act (No 2) (1994 No 82).

67A Company may hold its own shares

- (1) Shares acquired by a company pursuant to section 59 or section 112 of this Act shall not be deemed to be cancelled under section 66(1) of this Act if—
 - (a) The constitution of the company expressly permits the company to hold its own shares; and

- (b) The board of the company resolves that the shares concerned shall not be cancelled on acquisition; and
 - (c) The number of shares acquired, when aggregated with shares of the same class held by the company pursuant to this section at the time of the acquisition, does not exceed 5 percent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under section 66(1) of this Act.
- (2) Shares acquired by a company pursuant to section 59 or section 112 of this Act that, pursuant to this section, are not deemed to be cancelled shall be held by the company in itself.
- (3) A share that a company holds in itself under subsection (2) of this section may be cancelled by the board of the company resolving that the share is cancelled; and the share shall be deemed to be cancelled on the making of such a resolution.

Sections 67A to 67C and the preceding heading were inserted, as from 1 July 1994, by section 3 Companies Act 1993 Amendment Act (No 2) (1994 No 82).

67B Rights and obligations of shares company holds in itself suspended

- (1) The rights and obligations attaching to a share that a company holds in itself pursuant to section 67A of this Act shall not be exercised by or against a company while it holds the share.
- (2) Without limiting subsection (1) of this section, while a company holds a share in itself pursuant to section 67A of this Act, the company shall not—
 - (a) Exercise any voting rights attaching to the share; or
 - (b) Make or receive any distribution authorised or payable in respect of the share.

Sections 67A to 67C and the preceding heading were inserted, as from 1 July 1994, by section 3 Companies Act 1993 Amendment Act (No 2) (1994 No 82).

67C Reissue of shares company holds in itself

- (1) Subject to subsection (2) of this section, section 47 of this Act shall apply to the transfer of a share held by a company in itself as if the transfer were the issue of the share under section 42 or section 44 of this Act.
- (2) Section 47(2) of this Act shall not apply to the transfer of a share held by a company in itself if the share is transferred

by means of a system that is approved under section 7 of the Securities Transfer Act 1991.

- (3) Subject to subsection (1) of this section, the transfer of a share by a company in itself shall not be subject to any provisions in this Act or the company's constitution relating to the issue of shares, except to the extent the company's constitution expressly applies those provisions.
- (4) A company shall not grant an option to acquire a share it holds in itself or enter into any obligations to transfer such a share where the company has received notice in writing of a takeover offer made under the takeovers code in force under the Takeovers Act 1993 or, in the case of a company that is a party to a listing agreement with a stock exchange, where the exchange makes a public release to the sharemarket that a takeover offer for more than 20 percent of the company's shares is to be made.

Sections 67A to 67C and the preceding heading were inserted, as from 1 July 1994, by section 3 Companies Act 1993 Amendment Act (No 2) (1994 No 82).

Subsection (4) was amended, as from 25 October 2006, by section 30(1) Takeovers Amendment Act 2006 (2006 No 48) by substituting the words "a takeover offer made under the takeovers code in force under the Takeovers Act 1993" for the words "a takeover scheme under section 4 of the Companies Amendment Act 1963". See sections 31 and 32 of that Act for the transitional provisions.

Redemption of shares

68 Meaning of redeemable

For the purposes of this Act, a share is redeemable if—

- (a) The constitution of the company makes provision for the company to issue redeemable shares; and
- (b) The constitution or the terms of issue of the share makes provision for the redemption of that share by the company—
 - (i) At the option of the company; or
 - (ii) At the option of the holder of the share; or
 - (iii) On a date specified in the constitution or the terms of issue of the share—
for a consideration that is—
 - (iv) Specified; or
 - (v) To be calculated by reference to a formula; or

- (vi) Required to be fixed by a suitably qualified person who is not associated with or interested in the company.

Section 68 was substituted, as from 3 June 1998, by section 2 Companies Amendment Act 1998 (1998 No 31).

69 Redemption at option of company

- (1) A company must not exercise an option to redeem shares unless—
 - (a) The option is exercised in relation to all shareholders of the same class and in a manner that will leave unaffected relative voting and distribution rights; or
 - (b) The option is exercised in relation to one or more shareholders and—
 - (i) All shareholders have consented in writing; or
 - (ii) The option is expressly permitted by the constitution and is exercised in accordance with the procedure set out in section 71 of this Act.
- (2) A company must not exercise an option to redeem shares unless, before the exercise of the option, the board of the company has resolved—
 - (a) That the redemption of the shares is in the best interests of the company; and
 - (b) The consideration for the redemption of the shares is fair and reasonable to the company.
- (3) The resolution must set out in full the grounds for the director's conclusions.
- (4) The directors who vote in favour of a resolution required by subsection (2) of this section must sign a certificate as to the matters set out in that subsection and may combine it with the certificate required by section 70 of this Act and any certificate required by section 71 of this Act.
- (5) A company must not exercise an option to redeem shares under subsection (1) of this section if, after the passing of a resolution under that subsection and before the exercise of the option to redeem the shares, the board ceases to be satisfied that—
 - (a) The redemption of the shares is in the best interests of the company; or

- (b) The consideration for the exercise of the option is fair and reasonable to the company.
- (6) Every director who fails to comply with subsection (4) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

70 Company must satisfy solvency test

- (1) A company must not exercise an option to redeem a share unless the board of the company is satisfied on reasonable grounds that the company will, immediately after the share is redeemed, satisfy the solvency test in accordance with section 52 of this Act.
- (2) The directors who vote in favour of exercising the option must sign a certificate stating that, in their opinion, the company will, immediately after the share is redeemed, satisfy the solvency test and the grounds for that opinion.
- (3) If, after a resolution is passed under subsection (1) of this section and before the option is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the share is redeemed, satisfy the solvency test in accordance with section 52 of this Act, any redemption of the share is deemed not to have been authorised for the purpose of that section.
- (4) Every director who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (5) The provisions of section 56 of this Act apply in relation to the redemption of a share at the option of the company with such modifications as may be necessary.

71 Special redemption of shares

- (1) A company may exercise an option to redeem shares under section 69(1)(b)(ii) of this Act only if the board has previously resolved—
 - (a) That the redemption of the shares is of benefit to the remaining shareholders; and
 - (b) That the consideration for the redemption of the shares is fair and reasonable to the remaining shareholders.

- (2) The resolution must set out in full the grounds for the directors' conclusions.
- (3) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate as to the matters set out in that subsection.
- (4) A company must not exercise an option to redeem shares under section 69(1)(b)(ii) of this Act if, after the passing of a resolution under subsection (1) of this section and before the option is exercised, the board ceases to be satisfied that—
 - (a) The redemption of the shares is of benefit to the remaining shareholders; or
 - (b) The consideration for the redemption of the shares is fair and reasonable to the remaining shareholders.
- (5) Before the option is exercised pursuant to a resolution under subsection (1) of this section, the company must send to each shareholder a disclosure document that complies with section 72 of this Act.
- (6) The option must be exercised not less than 10 and not more than 30 working days after the disclosure document has been sent to each shareholder.
- (7) A shareholder or the company may apply to the Court for an order restraining the proposed exercise of the option on the grounds that—
 - (a) It is not in the best interests of the company or of benefit to remaining shareholders; or
 - (b) The consideration for the redemption is not fair or reasonable to the company or remaining shareholders.
- (8) Every director who fails to comply with subsection (3) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (9) If a company fails to comply with subsection (5) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

72 Disclosure document

For the purposes of section 71 of this Act, a disclosure document is a document that sets out—

- (a) The nature and terms of the redemption of the shares, and if the option to redeem the shares is to be exercised in relation to specified shareholders, the names of those shareholders; and
- (b) The text of the resolution required by section 71 of this Act, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed redemption.

73 Cancellation of shares redeemed

- (1) Shares that are redeemed by a company pursuant to section 69 of this Act are deemed to be cancelled immediately on redemption.
- (2) On the cancellation of a share under this section,—
 - (a) The rights and privileges attached to that share expire; but
 - (b) The share may be reissued in accordance with this Part of this Act.

74 Redemption at option of shareholder

- (1) Subject to this section, if a share is redeemable at the option of the holder of the share, and the holder gives proper notice to the company requiring the company to redeem the share,—
 - (a) The company must redeem the share on the date specified in the notice, or if no date is specified, on the date of receipt of the notice; and
 - (b) The share is deemed to be cancelled on the date of redemption; and
 - (c) From the date of redemption the former shareholder ranks as an unsecured creditor of the company for the consideration payable on redemption.
- (2) A redemption under this section—
 - (a) Is not a distribution for the purposes of sections 52 and 53 of this Act; but

- (b) Is deemed to be a distribution for the purposes of subsections (1) and (5) of section 56 of this Act.

Subsection (1)(c) was amended, as from 15 April 2004, by section 4 Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting the word “consideration” for the word “sum”.

75 Redemption on fixed date

- (1) Subject to this section, if a share is redeemable on a specified date—

- (a) The company must redeem the share on that date; and
- (b) The share is deemed to be cancelled on that date; and
- (c) From that date the former shareholder ranks as an unsecured creditor of the company for the consideration payable on redemption.

- (2) A redemption under this section—

- (a) Is not a distribution for the purposes of sections 52 and 53 of this Act; but
- (b) Is deemed to be a distribution for the purposes of subsections (1) and (5) of section 56 of this Act.

Subsection (1)(c) was amended, as from 30 June 1997, by section 5 Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the word “consideration” for the word “sum”.

Assistance by a company in the purchase of its own shares

76 Financial assistance

- (1) A company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly, only if the financial assistance is given in accordance with subsection (2) of this section; and—

- (a) All shareholders have consented in writing to the giving of the assistance; or
- (b) The procedure set out in section 78 of this Act is followed; or
- (c) The financial assistance is given in accordance with section 80 of this Act.

- (2) A company may give financial assistance under subsection (1) of this section if the board has previously resolved that—
 - (a) The company should provide the assistance; and
 - (b) Giving the assistance is in the best interests of the company; and
 - (c) The terms and conditions under which the assistance is given are fair and reasonable to the company.
- (3) The resolution must set out in full the grounds for the directors' conclusions.
- (4) The directors who vote in favour of a resolution under subsection (2) of this section must sign a certificate as to the matters set out in that subsection and may combine that certificate with the certificate required under section 77 of this Act and any certificate required under section 78 of this Act.
- (5) A company must not give financial assistance under subsection (1) of this section if, after the passing of a resolution under subsection (2) of this section and before the assistance is given, the board ceases to be satisfied that—
 - (a) The giving of the assistance is in the best interests of the company; or
 - (b) The terms and conditions under which the assistance is proposed are fair and reasonable to the company.
- (6) For the purposes of this section, **financial assistance** includes a loan, a guarantee, and the provision of a security.
- (7) Every director who fails to comply with subsection (4) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

77 Company must satisfy solvency test

- (1) A company must not give any financial assistance under section 76 of this Act unless the board of the company is satisfied on reasonable grounds that the company will, immediately after the giving of the financial assistance, satisfy the solvency test.
- (2) The directors who vote in favour of the giving of the financial assistance must sign a certificate stating that, in their opinion, the company will, immediately after the financial assistance is

given, satisfy the solvency test and the grounds for that opinion.

- (3) If, after a resolution is passed under subsection (1) of this section and before the financial assistance is given, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the financial assistance is given, satisfy the solvency test, any financial assistance given by the company is deemed not to have been authorised.
- (4) Every director of a company who fails to comply with subsection (2) of this section commits an offence and is liable to the penalty set out in section 373(1) of this Act.
- (5) The provisions of section 56 of this Act apply in relation to the giving of financial assistance by a company with such modifications as may be necessary.
- (6) In applying the solvency test for the purposes of this section,—
Assets excludes amounts of financial assistance given by the company at any time under section 76 or section 107(1)(e) of this Act in the form of loans; and

Subsection (6) assets: this term was amended, as from 15 April 2004, by section 5(a) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “or section 107(1)(e)” after the expression “section 76”.

Liabilities includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance under section 76 or section 107(1)(e) of this Act.

Subsection (6) liabilities: this term was amended, as from 15 April 2004, by section 5(b) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “or section 107(1)(e)” after the expression “section 76”.

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

Subsection (6) was substituted, as from 1 July 1994, by section 12 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (7) was inserted, as from 1 July 1994, by section 12 Companies Act 1993 Amendment Act 1994 (1994 No 6).

78 Special financial assistance

- (1) Financial assistance may be given under section 76(1)(b) of this Act only if the Board has previously resolved—
 - (a) That giving the assistance in question is of benefit to those shareholders not receiving the assistance; and

- (b) That the terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving the assistance.
- (2) The resolution must set out in full the reasons for the directors' conclusions.
- (3) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate as to the matters set out in that subsection.
- (4) A company must not give financial assistance under section 76(1)(b) of this Act if, after the passing of a resolution under subsection (1) of this section and before the financial assistance is given, the board ceases to be satisfied that—
 - (a) The giving of the financial assistance is of benefit to those shareholders not receiving the assistance; or
 - (b) The terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving it.
- (5) Before the financial assistance is given under section 76(1)(b) of this Act, the company must send to each shareholder a disclosure document that complies with section 79 of this Act.
- (6) The assistance may be given not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.
- (7) A shareholder or the company may apply to the Court for an order restraining the proposed assistance being given on the ground that—
 - (a) It is not in the best interests of the company and of benefit to those shareholders not receiving the assistance; or
 - (b) The terms and conditions under which the assistance is to be given are not fair and reasonable to the company and to those shareholders not receiving the assistance.
- (8) Every director who fails to comply with subsection (3) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.
- (9) If a company fails to comply with subsection (5) of this section,—

- (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
- (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

79 Disclosure document

For the purposes of section 78 of this Act, a disclosure document is a document that sets out—

- (a) The nature and terms of the financial assistance to be given, and to whom it will be given; and
- (b) If the financial assistance is to be given to a nominee for another person, the name of that other person; and
- (c) The text of the resolution required by section 78(1) of this Act, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed transaction.

80 Financial assistance not exceeding 5 percent of shareholders' funds

- (1) Financial assistance may be given under section 76(1)(c) of this Act, only if—
 - (a) The amount of the financial assistance, together with any other financial assistance given by the company pursuant to this paragraph, repayment of which remains outstanding, would not exceed 5 percent of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with section 10 of the Financial Reporting Act 1993, and the company receives fair value in connection with the assistance; and
 - (b) Within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:

- (i) The class and number of shares in respect of which the financial assistance has been provided:
 - (ii) The consideration paid or payable for the shares in respect of which the financial assistance has been provided:
 - (iii) The identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner:
 - (iv) The nature and, if quantifiable, the amount of the financial assistance.
- (2) If a company fails to comply with subsection (1)(b) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

81 Enforceability of transactions

- (1) Failure to comply with section 76 or section 78 or section 79 or section 80 of this Act does not affect the validity of a transaction.
- (2) This section does not affect a liability of a director or any other person for breach of a duty, or as a constructive trustee, or otherwise.

Cross-holdings

82 Subsidiary may not hold shares in holding company

- (1) Subject to this section, a subsidiary must not hold shares in its holding company.
- (2) An issue of shares by a holding company to its subsidiary is void and of no effect.
- (3) A transfer of shares in a holding company to its subsidiary is void and of no effect.

- (4) Where a company that holds shares in another company becomes a subsidiary of that other company—
 - (a) The company may, notwithstanding subsection (1) of this section, continue to hold those shares; but
 - (b) The exercise of any voting rights attaching to those shares shall be of no effect.
- (5) Where a company on reregistration under this Act in accordance with the Companies Reregistration Act 1993 held shares in another company and was a subsidiary of that other company,—
 - (a) The company may, notwithstanding subsection (1) of this section, continue to hold those shares; but
 - (b) The exercise of any voting rights attaching to those shares shall be of no effect.
- (6) Nothing in this section prevents a subsidiary holding shares in its holding company in its capacity as a personal representative or a trustee unless the holding company or another subsidiary has a beneficial interest under the trust other than an interest that arises by way of security for the purposes of a transaction made in the ordinary course of the business of lending money.
- (7) This section applies to a nominee for a subsidiary in the same way as it applies to the subsidiary.

Statement of shareholder rights

83 Statement of rights to be given to shareholders

- (1) Every company must issue to a shareholder, on request, a statement that sets out—
 - (a) The class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder; and
 - (b) The rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and
 - (c) The relationship of the shares held by the shareholder to other classes of shares.
- (2) The company is not obliged to provide a shareholder with a statement if—

- (a) A statement has been provided within the previous 6 months; and
 - (b) The shareholder has not acquired or disposed of shares since the previous statement was provided; and
 - (c) The rights attached to shares of the company have not been altered since the previous statement was provided; and
 - (d) There are special circumstances that make it reasonable for the company to refuse the request.
- (3) The statement is not evidence of title to the shares or of any of the matters set out in it.
- (4) The statement must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.
- (5) If a company fails to comply with subsection (1) of this section,—
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalties set out in section 374(1) of this Act.

Subsection (2)(d) was substituted, as from 30 June 1997, by section 6 Companies Act 1993 Amendment Act 1997 (1997 No 27).

Transfer of shares

84 Transfer of shares

- (1) Subject to the constitution of the company, shares in a company may be transferred by entry of the name of the transferee on the share register.
- (2) For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by his or her personal representative must be delivered to—
- (a) The company; or
 - (b) An agent of the company who maintains the share register under section 87(3) of this Act.
- (3) The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee.

- (4) On receipt of a form of transfer in accordance with subsection (2) and, if applicable, subsection (3) of this section, the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless—
 - (a) The board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
 - (b) Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
 - (c) The Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated.
- (5) Subject to the constitution of a company, the board may refuse or delay the registration of a transfer of shares if the holder of the shares has failed to pay to the company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with the constitution.
- (6) If a company fails to comply with subsection (4) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

85 Transfer of shares under approved system

- (1) Where shares in a company are transferred under a system of transfer approved under section 7 of the Securities Transfer Act 1991, the company may refuse to complete or delay the registration of the transfer of the shares if—
 - (a) The board resolves, within 30 working days of such date as may be specified for the purpose in the Order in Council approving the system, to refuse or delay registration of the transfer, and the resolution sets out in full the reasons for doing so; and

- (b) Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
- (c) either—
 - (i) the Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated; or
 - (ii) any identification number assigned to the shares or issued to the holder of the shares under a system of transfer approved under section 7 of the Securities Transfer Act 1991 is not recorded on the form of transfer of the shares or otherwise communicated in writing to the company by or on behalf of the transferor.
- (2) Subject to subsection (1) of this section, if a company fails to enter or cause to be entered the name of the transferee on the share register on a transfer of shares under a system approved under section 7 of the Securities Transfer Act 1991,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Subsection (1)(c) was substituted, as from 3 May 2001, by section 5 Companies Act 1993 Amendment Act 2001 (2001 No 18).

86 Transfer of shares by operation of law

Shares in a company may pass by operation of law notwithstanding the constitution of the company.

Share register

87 Company to maintain share register

- (1) A company must maintain a share register that records the shares issued by the company and states—
 - (a) Whether, under the constitution of the company or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

- (b) Where any document that contains the restrictions or limitations may be inspected.
- (2) The share register must state, with respect to each class of shares,—
 - (a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 10 years been, a shareholder; and
 - (b) The number of shares of that class held by each shareholder within the last 10 years; and
 - (c) The date of any—
 - (i) Issue of shares to; or
 - (ii) Repurchase or redemption of shares from; or
 - (iii) Transfer of shares by or to—each shareholder within the last 10 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred.
- (3) An agent may maintain the share register of the company.
- (4) If a company fails to comply with subsection (1) or subsection (2) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

88 Place of share register

- (1) The share register may, if expressly permitted by the constitution, be divided into 2 or more registers kept in different places.
- (2) The principal register must be kept in New Zealand.
- (3) If a share register is divided into 2 or more registers kept in different places,—
 - (a) Notice of the place where each register is kept must be delivered to the Registrar for registration within 10 working days after the share register is divided or any place where a register is kept is altered; and

- (b) A copy of every register must be kept at the same place as the principal register; and
 - (c) If an entry is made in a register other than the principal register, a corresponding entry must be made within 10 working days in the copy of that register kept with the principal register.
- (4) In this section, **principal register**, in relation to a company, means—
 - (a) If the share register is not divided into 2 or more registers, the share register;
 - (b) If the share register is divided into 2 or more registers, the register described as the principal register in the last notice sent to the Registrar.
- (5) If a company fails to comply with subsection (2) or subsection (3) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

89 Share register as evidence of legal title

- (1) Subject to section 91 of this Act, the entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person.
- (2) A company may treat the registered holder of a share as the only person entitled to—
 - (a) Exercise the right to vote attaching to the share; and
 - (b) Receive notices; and
 - (c) Receive a distribution in respect of the share; and
 - (d) Exercise the other rights and powers attaching to the share.

90 Directors' duty to supervise share register

- (1) It is the duty of each director to take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered on it in accordance with section 84 of this Act.

- (2) A director who fails to comply with subsection (1) of this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.

91 Power of Court to rectify share register

- (1) If the name of a person is wrongly entered in, or omitted from, the share register of a company, the person aggrieved, or a shareholder, may apply to the Court—
 - (a) For rectification of the share register; or
 - (b) For compensation for loss sustained; or
 - (c) For both rectification and compensation.
- (2) On an application under this section the Court may order—
 - (a) Rectification of the register; or
 - (b) Payment of compensation by the company or a director of the company for any loss sustained; or
 - (c) Rectification and payment of compensation.
- (3) On an application under this section, the Court may decide—
 - (a) A question relating to the entitlement of a person who is a party to the application to have his or her name entered in, or omitted from, the register; and
 - (b) A question necessary or expedient to be decided for rectification of the register.

92 Trusts not to be entered on register

No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

93 Personal representative may be registered

- (1) Notwithstanding section 92 of this Act, a personal representative of a deceased person whose name is registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as personal representative.
- (2) Notwithstanding section 92 of this Act, a personal representative of a deceased person beneficially entitled to a share in a company, being a share registered in a share register of that company, is with the consent of the company and the registered

holder of that share, entitled to be registered as the holder of that share as personal representative.

- (3) The registration of a trustee, executor, or administrator pursuant to this section does not constitute notice of a trust.

94 Assignee of bankrupt may be registered

- (1) Notwithstanding section 92 of this Act, the Assignee of the property of a bankrupt registered in a share register of a company as the holder of a share in that company is entitled to be registered as the holder of that share as the Assignee of the property of the bankrupt.
- (2) Notwithstanding section 92 of this Act, the Assignee of the property of a bankrupt beneficially entitled to a share in a company, being a share registered in a register of that company, is, with the consent of the company and the registered holder of that share, entitled to be registered as the holder of that share as the Assignee of the property of the bankrupt.

Share certificates

95 Share certificates

- (1) Subject to subsection (2) of this section, a company whose shares are subject to a listing agreement with a stock exchange must, within 20 working days after the issue, or registration of a transfer, of shares in the company, as the case may be, send a share certificate to every holder of those shares stating—
- (a) The name of the company; and
 - (b) The class of shares held by that person; and
 - (c) The number of shares held by that person.
- (2) Nothing in subsection (1) or subsection (5) applies in relation to a company the shares in which can be transferred under a system authorised or approved under the Securities Transfer Act 1991 that does not require a share certificate for the transfer of shares.
- (3) A shareholder in a company, not being a company to which subsection (1) or subsection (2) of this section applies, may apply to the company for a certificate relating to some or all of the shareholder's shares in the company.

- (4) On receipt of an application for a share certificate under subsection (3) of this section, the company must, within 20 working days after receiving the application,—
 - (a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
 - (b) In all cases send to the shareholder a certificate stating—
 - (i) The name of the company; and
 - (ii) The class of shares held by the shareholder; and
 - (iii) The number of shares held by the shareholder to which the certificate relates.
- (5) Notwithstanding section 84 of this Act, where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer required by that section is accompanied by the share certificate relating to the share, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.
- (6) Subject to subsection (1) of this section, where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.
- (6A) Nothing in this section (except subsection (2)) limits or affects section 54 of the Securities Act 1978.
- (7) If a company fails to comply with subsection (1) or subsection (4) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Subsection (2) was amended, as from 3 May 2001, by section 6 Companies Act 1993 Amendment Act 2001 (2001 No 18) by substituting the words “or subsection (5)” for the words “of this section”.

Subsection (6A) was inserted, as from 1 July 1994, by section 13 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Part 7

Shareholders and their rights and obligations

96 Meaning of shareholder

In this Act, the term **shareholder**, in relation to a company, means—

- (a) A person whose name is entered in the share register as the holder for the time being of one or more shares in the company:
- (b) Until the person’s name is entered in the share register, a person named as a shareholder in an application for the registration of a company at the time of registration of the company:
- (c) Until the person’s name is entered in the share register, a person who is entitled to have that person’s name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company.

Liability of shareholders

97 Liability of shareholders

- (1) Except where the constitution of a company provides that the liability of the shareholders of the company is unlimited, a shareholder is not liable for an obligation of the company by reason only of being a shareholder.
- (2) Except where the constitution of a company provides that the liability of the shareholders of the company is unlimited, the liability of a shareholder to the company is limited to—
 - (a) Any amount unpaid on a share held by the shareholder:
 - (b) Any liability expressly provided for in the constitution of the company:

- (c) Any liability under sections 131 to 137 of this Act that arises by reason of section 126(2) of this Act:
 - (d) Any liability to repay a distribution received by the shareholder to the extent that the distribution is recoverable under section 56 of this Act:
 - (e) Any liability under section 100 of this Act.
- (3) Nothing in this section affects the liability of a shareholder to a company under a contract, including a contract for the issue of shares, or for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the shareholder.

98 Liability of former shareholders

- (1) A former shareholder who ceased to be a shareholder during the specified period is liable to the company in respect of any amount unpaid on the shares held by that former shareholder or any liability provided for in the constitution of the company for which that former shareholder was liable to the company if the Court is satisfied that the shareholders of the company are unable to discharge any liability—
- (a) For any amount unpaid on shares held by them; or
 - (b) Expressly provided for in the constitution of the company.
- (2) A former shareholder is not liable under subsection (1) of this section for any debt or liability of the company contracted after ceasing to be a shareholder.
- (3) Subsections (1) and (2) of this section apply, with such modifications as may be necessary, in relation to an existing company that has become reregistered under this Act in accordance with the Companies Reregistration Act 1993 and as if the reference to a former shareholder included a reference to a person who was a member of the company before the reregistration of the company.
- (4) Where a person ceased to be a shareholder of a company before the liability of the shareholders of the company ceased to be limited and became unlimited and that person has not since become a shareholder of the company, that person is liable to the company only to the same extent as if the liability of the shareholders had remained limited.

- (5) Subsection (4) of this section applies, with such modifications as may be necessary, in relation to an existing company that has become reregistered under this Act in accordance with the Companies Reregistration Act 1993, whether or not the liability of the shareholders ceased to be limited before, on, or after the reregistration of the company and as if the reference to a person who was a shareholder included a reference to a person who was a member of the company before reregistration.
- (6) For the purposes of subsection (1) of this section, **specified period** means—
- (a) A period of 1 year before the date of commencement of the liquidation of the company together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that has been put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order was made; and
 - (c) If—
 - (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Subsection (6)(a) was substituted, as from 26 April 1999, by section 2(1) Companies Amendment Act 1999 (1999 No 19).

Subsection (6)(b) was amended, as from 3 June 1998, by section 2 Companies Amendment Act 1998 (1998 No 31) by adding the expression “; and”.

Subsection (6)(b) was further amended, as from 26 April 1999, by section 2(2)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (6)(c) was inserted, as from 3 June 1998, by section 2 Companies Amendment Act 1998 (1998 No 31).

Subsection (6)(c) was amended, as from 26 April 1999, by section 2(2)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

99 Additional provisions relating to liability of shareholders and former shareholders

- (1) If—
- (a) A shareholder or former shareholder of a company was, at any time, liable to the company in respect of a share held by that person; and
 - (b) That liability was cancelled or reduced by—
 - (i) An alteration of the constitution, repurchase or redemption of the share, or amalgamation; or
 - (ii) Reregistration under this Act in accordance with the Companies Reregistration Act 1993; or
 - (iii) A change of registration under section 30 of the Companies Act 1955; and
 - (c) The company is, at the commencement of its liquidation, subject to liabilities incurred prior to the alteration of the constitution, repurchase or redemption of the share, amalgamation, reregistration, or change of registration, as the case may be; and
 - (d) The assets of the company are not sufficient to discharge those liabilities in full,—
- that person is liable to the company for the amount specified in subsection (2) of this section.
- (2) A person is liable under subsection (1) of this section for the lesser of—
- (a) The amount by which the liability in respect of that share was reduced;
 - (b) The amount required to be contributed in respect of each such share in order to discharge those liabilities.
- (3) The liability of a person under subsection (1) of this section is reduced by an amount received by that person as a distribution under section 57 of this Act and recovered from that person by the company.
- (4) The amount received by a person as a distribution under section 57 of this Act is reduced by any amount recovered from that person pursuant to subsection (1) of this section.

- (5) For the purposes of this section,—
- (a) The term **company** includes an amalgamating company which amalgamated with one or more other amalgamating companies to continue as that company;
 - (b) A member of a company limited by guarantee registered under the Companies Act 1955 is to be treated as if the member was, prior to reregistration of that company under this Act in accordance with the Companies Reregistration Act 1993, the holder of a share which rendered the member liable to calls not exceeding the amount of contribution specified in the memorandum of association as the amount undertaken to be contributed by that member in a winding up;
 - (c) A member of an unlimited company registered under the Companies Act 1955 is to be treated as if the member was, prior to reregistration of that company under this Act in accordance with the Companies Reregistration Act 1993, the holder of a share which rendered the member liable to unlimited calls.

100 Liability for calls

- (1) Where a share renders its holder liable to calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the share for the time being, and not to a prior holder of the share, whether or not the liability became enforceable before the share was registered in the name of the current holder.
- (2) Where—
- (a) All or part of the consideration payable in respect of the issue of a share remains unsatisfied; and
 - (b) The person to whom the share was issued no longer holds that share,—
- liability in respect of that unsatisfied consideration does not attach to subsequent holders of the share, but remains the liability of the person to whom the share was issued, or of any other person who assumed that liability at the time of issue.

101 Shareholders not required to acquire shares by alteration to constitution

Notwithstanding anything in the constitution of the company, a shareholder is not bound by an alteration of the constitution of a company that—

- (a) Requires the shareholder to acquire or hold more shares in the company than the number held on the date the alteration is made; or
- (b) Increases the liability of the shareholder to the company—

unless the shareholder agrees in writing to be bound by the alteration either before, on, or after it is made.

102 Liability of personal representative

- (1) The liability of the personal representative of the estate of a deceased person, who is registered as the holder of a share comprised in the estate, does not, in respect of that share, exceed the proportional amount available from the assets of the estate, after satisfaction of prior claims, for distribution among creditors of the estate, being assets which, at the time when any demand is made for the satisfaction of the liability, are held by that personal representative on the same trusts as apply to that share.
- (2) For the purposes of this section, **trust** extends to the duties of a personal representative.

103 Liability of an assignee

- (1) The liability of the assignee of the property of a bankrupt, who is registered as the holder of a share which is comprised in the property of the bankrupt, does not, in respect of that share, exceed the proportional amount available from the property of the estate of the bankrupt, after satisfaction of prior claims, for distribution among creditors of the estate, being property of the bankrupt which, at the time when demand is made for the satisfaction of the liability, is vested in the assignee.
- (2) In this section, **assignee** means the assignee in whom the property of a bankrupt is vested pursuant to the Insolvency Act 1967.

*Powers of Shareholders***104 Exercise of powers reserved to shareholders**

- (1) Powers reserved to the shareholders of a company by this Act may be exercised only—
 - (a) At a meeting of shareholders pursuant to section 120 or section 121 of this Act; or
 - (b) By a resolution in lieu of a meeting pursuant to section 122 of this Act.
- (2) Powers reserved to the shareholders of a company by the constitution of the company may, subject to the constitution, be exercised—
 - (a) At a meeting of shareholders pursuant to section 120 or section 121 of this Act; or
 - (b) By a resolution in lieu of a meeting pursuant to section 122 of this Act.

105 Exercise of powers by ordinary resolution

- (1) Unless otherwise specified in this Act or the constitution of a company, a power reserved to shareholders may be exercised by an ordinary resolution.
- (2) An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

106 Powers exercised by special resolution

- (1) Notwithstanding the constitution of a company, when shareholders exercise a power to—
 - (a) Adopt a constitution or, if it has one, alter or revoke the company's constitution:
 - (b) Approve a major transaction:
 - (c) Approve an amalgamation of the company under section 221 of this Act:
 - (d) Put the company into liquidation,—the power must be exercised by special resolution.
- (2) A special resolution pursuant to paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section can be rescinded only by a special resolution.

- (3) A special resolution pursuant to paragraph (d) of subsection (1) of this section cannot be rescinded in any circumstances.

107 Unanimous assent to certain types of action

- (1) Notwithstanding section 52 but subject to section 108 of this Act, if all entitled persons have agreed or concur,—
 - (a) A dividend may be authorised otherwise than in accordance with section 53 of this Act:
 - (b) A discount scheme may be approved otherwise than in accordance with section 55 of this Act:
 - (c) Shares in a company may be acquired otherwise than in accordance with sections 59 to 65 of this Act:
 - (d) Shares in a company may be redeemed otherwise than in accordance with sections 69 to 72 of this Act:
 - (e) Financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with sections 76 to 80 of this Act:
 - (f) Any of the matters referred to in section 161(1) of this Act may be authorised otherwise than in accordance with that section.
- (2) If all entitled persons have agreed or concur, shares may be issued otherwise than in accordance with section 42 or section 44 or section 45 of this Act.
- (3) If all entitled persons have agreed to or concur in a company entering into a transaction in which a director is interested, nothing in sections 140 and 141 of this Act shall apply in relation to that transaction.
- (4) For the purposes of this section, no agreement or concurrence of the entitled persons is valid or enforceable unless the agreement or concurrence is in writing.
- (5) An agreement or concurrence may be—
 - (a) A separate agreement to, or concurrence in, the particular exercise of the power referred to; or
 - (b) An agreement to, or concurrence in, the exercise of the power generally or from time to time.
- (6) An entitled person may at any time, by notice in writing to the company, withdraw from any agreement or concurrence

referred to in subsection (5)(b) of this section and any such notice shall have effect accordingly.

- (7) Where a power is exercised pursuant to an agreement or concurrence referred to in subsection (5)(b) of this section, the board of the company must, within 10 working days of the exercise of the power, send to every entitled person a notice in writing containing details of the exercise of the power.
- (8) If the board of a company fails to comply with subsection (7) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Subsection (1)(c) was amended, as from 3 May 2001, by section 7 Companies Act 1993 Amendment Act 2001 (2001 No 18) by substituting the expression “59” for the expression “58”.

108 Company to satisfy solvency test

- (1) A power referred to in subsection (1) of section 107 of this Act must not be exercised unless the board of the company is satisfied on reasonable grounds that the company will, immediately after the exercise of the power, satisfy the solvency test.
- (2) The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company will, after the exercise of the power, satisfy the solvency test.
- (3) If, after a resolution is passed under subsection (1) of this section and before the power is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised.
- (4) The provisions of section 56 of this Act apply in relation to the exercise of a power referred to in subsection (1) of section 107 of this Act, with such modifications as may be necessary.
- (5) In applying the solvency test for the purposes of section 107(1)(e) of this Act,—
 - (a) **Assets** excludes all amounts of financial assistance given by the company at any time under section 76 or section 107(1)(e) in the form of loans; and

- (b) **Liabilities** includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance under section 76 or section 107(1)(e).
- (5A) Nothing in subsection (5) limits or affects the application of section 4(4).
- (6) Every director who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

Subsection (5)(a) was amended, as from 15 April 2004, by section 6(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “under section 76 or section 107(1)(e)” after the words “at any time”.

Subsection (5)(b) was amended, as from 15 April 2004, by section 6(2) Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting the words “financial assistance under section 76 or section 107(1)(e)” for the words “the financial assistance”.

Subsection (5A) was inserted, as from 30 June 1997, by section 7 Companies Act 1993 Amendment Act 1997 (1997 No 27).

109 Management review by shareholders

- (1) Notwithstanding anything in this Act or the constitution of the company, the chairperson of a meeting of shareholders of a company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.
- (2) Notwithstanding anything in this Act or the constitution of the company, but subject to subsections (2A) and (3), a meeting of shareholders may pass a resolution under this section relating to the management of a company.
- (2A) The provisions of Schedule 1 govern proceedings at a meeting of shareholders at which a resolution under this section is passed except to the extent that the constitution of the company provides for matters that are expressed in that schedule to be subject to the constitution of the company.
- (3) Unless the constitution provides that the resolution is binding, a resolution passed pursuant to subsection (2) of this section is not binding on the board.

Subsection (2) was amended, as from 15 April 2004, by section 7(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting the words “subsections (2A) and (3)” for the words “subsection (3) of this section”.

Subsection (2A) was inserted, as from 15 April 2004, by section 7(2) Companies Amendment Act (No 2) 2004 (2004 No 24).

Minority buy-out rights

110 Shareholder may require company to purchase shares

Where—

- (a) A shareholder is entitled to vote on the exercise of one or more of the powers set out in—
 - (i) Section 106(1)(a) of this Act, and the proposed alteration imposes or removes a restriction on the activities of the company; or
 - (ii) Section 106(1)(b) or (c) of this Act; and
- (b) The shareholders resolved, pursuant to section 106 of this Act, to exercise the power; and
- (c) The shareholder cast all the votes attached to shares registered in the shareholder’s name and having the same beneficial owner against the exercise of the power; or
- (d) Where the resolution to exercise the power was passed under section 122 of this Act, the shareholder did not sign the resolution,—

that shareholder is entitled to require the company to purchase those shares in accordance with section 111 of this Act.

111 Notice requiring purchase

- (1) A shareholder of a company who is entitled to require the company to purchase shares by virtue of section 110 or section 118 of this Act may,—
 - (a) Within 10 working days of the passing of the resolution at a meeting of shareholders; or
 - (b) Where the resolution was passed under section 122 of this Act, before the expiration of 10 working days after the date on which notice of the passing of the resolution is given to the shareholder,—give a written notice to the company requiring the company to purchase those shares.

- (2) Within 20 working days of receiving a notice under subsection (1) of this section, the board must—
 - (a) Agree to the purchase of the shares by the company; or
 - (b) Arrange for some other person to agree to purchase the shares; or
 - (c) Apply to the Court for an order under section 114 or section 115 of this Act; or
 - (d) Arrange, before taking the action concerned, for the resolution to be rescinded in accordance with section 106 of this Act or decide in the appropriate manner not to take the action concerned, as the case may be; and
 - (e) Give written notice to the shareholder of the board's decision under this subsection.

112 Purchase by company

- (1) Where the board agrees under section 111(2)(a) of this Act to the purchase of the shares by the company, it must, on giving notice under that subsection or within 5 working days thereafter,—
 - (a) Nominate a fair and reasonable price for the shares to be acquired; and
 - (b) Give notice of the price to the holder of those shares.
- (2) A shareholder who considers that the price nominated by the board is not fair or reasonable, must forthwith give notice of objection to the company.
- (3) If, within 10 working days of giving notice to a shareholder under subsection (1) of this section, no objection to the price has been received by the company, the company must, on such date as the company and the shareholder agree or, in the absence of agreement, as soon as practicable, purchase all the shares at the nominated price.
- (4) If, within 10 working days of giving notice to a shareholder under subsection (1) of this section, an objection to the price has been received by the company, the company must—
 - (a) Refer the question of what is a fair and reasonable price to arbitration; and
 - (b) Within 5 working days, pay a provisional price in respect of each share equal to the price nominated by the board.

- (5) A reference to arbitration under this section is deemed to be a **submission** for the purpose of the Arbitration Act 1908.
- (6) The arbitrator must expeditiously determine a fair and reasonable price for the shares to be purchased.
- (7) If the price determined—
 - (a) Exceeds the provisional price, the company must forthwith pay the balance owing to the shareholder;
 - (b) Is less than the provisional price paid, the company may recover the excess paid from the shareholder.
- (8) The arbitrator may—
 - (a) Award interest on any balance payable or excess to be repaid under subsection (7) of this section at such rate as he or she thinks fit having regard to whether the provisional price paid or the reference to arbitration, as the case may be, was reasonable; and
 - (b) Provide for interest to be paid to or by the shareholder whose shares are to be purchased.

113 Purchase of shares by third party

- (1) Section 112 of this Act applies to the purchase of shares by a person with whom the company has entered into an arrangement for purchase in accordance with section 111(2)(b) of this Act subject to such modifications as may be necessary, and, in particular, as if references in that section to the board and the company were references to that person.
- (2) Every holder of shares that are to be purchased in accordance with the arrangement is indemnified by the company in respect of loss suffered by reason of the failure by the person who has agreed to purchase the shares to purchase them at the price nominated or fixed by arbitration, as the case may be.

114 Court may grant exemption

- (1) A company to which a notice has been given under section 111 of this Act may apply to the Court for an order exempting it from the obligation to purchase the shares to which the notice relates on the grounds that—
 - (a) The purchase would be disproportionately damaging to the company; or

- (b) The company cannot reasonably be required to finance the purchase; or
 - (c) It would not be just and equitable to require the company to purchase the shares.
- (2) On an application under this section, the Court may make an order exempting the company from the obligation to purchase the shares, and may make any other order it thinks fit, including an order—
 - (a) Setting aside a resolution of the shareholders:
 - (b) Directing the company to take, or refrain from taking, any action specified in the order:
 - (c) Requiring the company to pay compensation to the shareholders affected:
 - (d) That the company be put into liquidation.
- (3) The Court shall not make an order under subsection (2) of this section on either of the grounds set out in paragraph (a) or paragraph (b) of subsection (1) of this section unless it is satisfied that the company has made reasonable efforts to arrange for another person to purchase the shares in accordance with section 111(2)(b) of this Act.

115 Court may grant exemption if company insolvent

- (1) If—
 - (a) A notice is given to a company under section 111 of this Act; and
 - (b) The board has resolved that the purchase by the company of the shares to which the notice relates would result in it failing to satisfy the solvency test; and
 - (c) The company has, having made reasonable efforts to do so, been unable to arrange for the shares to be purchased by another person in accordance with section 111(2)(b) of this Act,—the company must apply to the Court for an order exempting it from the obligation to purchase the shares.
- (2) The Court may, on an application under subsection (1) of this section, if it is satisfied that—
 - (a) The purchase of the shares would result in the company failing to satisfy the solvency test; and

- (b) The company has made reasonable efforts to arrange for the shares to be purchased by another person in accordance with section 111(2)(b) of this Act,—
make—
- (c) An order exempting the company from the obligation to purchase the shares:
- (d) An order suspending the obligation to purchase the shares:
- (e) Such other order as it thinks fit, including any order referred to in section 114(2) of this Act.

Interest groups

116 Meaning of classes and interest groups

- (1) In this Act, unless the context otherwise requires,—
Class means a class of shares having attached to them identical rights, privileges, limitations, and conditions
Interest group, in relation to any action or proposal affecting rights attached to shares, means a group of shareholders—
 - (a) Whose affected rights are identical; and
 - (b) Whose rights are affected by the action or proposal in the same way; and
 - (c) Subject to subsection (2)(b) of this section, who comprise the holders of one or more classes of shares in the company.
- (2) For the purposes of this Act and the definition of the term **interest group**,—
 - (a) One or more interest groups may exist in relation to any action or proposal; and
 - (b) If—
 - (i) Action is taken in relation to some holders of shares in a class and not others; or
 - (ii) A proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class,—
holders of shares in the same class may fall into 2 or more interest groups.

117 Alteration of shareholder rights

- (1) A company must not take action that affects the rights attached to shares unless that action has been approved by a special resolution of each interest group.
- (2) For the purposes of subsection (1) of this section, the rights attached to a share include—
 - (a) The rights, privileges, limitations, and conditions attached to the share by this Act or the constitution, including voting rights and rights to distributions;
 - (b) Pre-emptive rights arising under section 45 of this Act;
 - (c) The right to have the procedure set out in this section, and any further procedure required by the constitution for the amendment or alteration of rights, observed by the company;
 - (d) The right that a procedure required by the constitution for the amendment or alteration of rights not be amended or altered.
- (3) For the purposes of subsection (1) of this section, the issue of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions, is deemed to be action affecting the rights attached to the existing shares, unless—
 - (a) The constitution of the company expressly permits the issue of further shares ranking equally with, or in priority to, those shares; or
 - (b) The issue is made in accordance with the pre-emptive rights of shareholders under section 45 of this Act or under the constitution of the company.

Subsection (3)(b) was amended, as from 1 July 1994, by section 14 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “or under the constitution of the company”.

118 Shareholder may require company to purchase shares

Where—

- (a) An interest group has, under section 117 of this Act, approved, by special resolution, the taking of action that affects the rights attached to shares; and
- (b) The company becomes entitled to take the action; and

- (c) A shareholder who was a member of the interest group cast all the votes attached to the shares registered in that shareholder's name and having the same beneficial owner against approving the action; or
 - (d) Where the resolution approving the taking of the action was passed under section 122 of this Act, a shareholder who was a member of the interest group did not sign the resolution,—
- that shareholder is entitled to require the company to purchase those shares in accordance with section 111 of this Act.

119 Actions not invalid

The taking of action by a company affecting the rights attached to shares is not invalid by reason only that the action was not approved in accordance with section 117 of this Act.

Meetings of shareholders

120 Annual meeting of shareholders

- (1) Subject to subsections (2) and (3) of this section, the board of a company must call an annual meeting of shareholders to be held—
 - (a)
 - (b) Either—
 - (i) In the case of an exempt company, if all the shareholders of the company agree, not later than 10 months after the balance date of the company; or
 - (ii) In the case of a company, not being a company to which subparagraph (i) of this paragraph applies, not later than 6 months after the balance date of the company; and
 - (c) Not later than 15 months after the previous annual meeting.
- (2) A company, not being a company that is reregistered under this Act, does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.
- (3) A company that is reregistered under this Act does not have to hold its first annual meeting in the calendar year of its rereg-

istration but must hold that meeting within 18 months of its registration under the Companies Act 1955.

- (4) The company must hold the meeting on the date on which it is called to be held.

The original subsection (2) was substituted, and subsection (2A) was inserted, as from 1 July 1994, by section 15 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 120 was substituted, as from 2 September 1996, by section 3 Companies Act 1993 Amendment Act 1996 (1996 No 115).

Subsection (1)(a) was repealed, as from 3 June 1998, by section 4 Companies Amendment Act 1998 (1998 No 31).

121 Special meetings of shareholders

A special meeting of shareholders entitled to vote on an issue—

- (a) May be called at any time by—
 - (i) The board; or
 - (ii) A person who is authorised by the constitution to call the meeting;
- (b) Must be called by the board on the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

122 Resolution in lieu of meeting

- (1) Subject to subsections (2) and (3), a resolution in writing signed by not less than—

- (a) Seventy-five percent; or
- (b) Such other percentage as the constitution may require for passing a special resolution,—

whichever is the greater, of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% or, if a higher percentage is required by the constitution, that higher percentage, of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.

- (2) A resolution in writing that—
- (a) Relates to a matter that is required by this Act or by the constitution to be decided at a meeting of the shareholders of a company; and

- (b) Is signed by the shareholders specified in subsection (3) of this section—
is made in accordance with this Act or the constitution of the company.
- (3) For the purposes of subsection (2)(b) of this section, the shareholders are,—
 - (a) In the case of a resolution under section 196(2) of this Act, all the shareholders who are entitled to vote on the resolution:
 - (b) In any other case, the shareholders referred to in subsection (1) of this section.
- (3A) Any resolution in writing under this section may consist of one or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the shareholders specified in subsection (3).
- (4) It shall not be necessary for a company to hold an annual meeting of shareholders under section 120 of this Act if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subsections (2) and (3) of this section.
- (5) Within 5 working days of a resolution being passed under this section, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed.
- (6) A resolution may be signed under subsection (1) or subsection (2) of this section without any prior notice being given to shareholders.
- (7) If a company fails to comply with subsection (5) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act:
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Subsection (1) was substituted, as from 30 June 1997, by section 8(1) Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (3A) was inserted, as from 30 June 1997, by section 8(2) Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (3A) was amended, as from 3 May 2001, by section 8 Companies Act 1993 Amendment Act 2001 (2001 No 18) by substituting the words “Any resolution in writing under this section” for the words “For the purposes of subsection (2), any such resolution”.

123 Court may call meeting of shareholders

- (1) If the Court is satisfied that—
 - (a) It is impracticable to call or conduct a meeting of shareholders in the manner prescribed by this Act or the constitution; or
 - (b) It is in the interests of a company that a meeting of shareholders be held,—the Court may order a meeting of shareholders to be held or conducted in such manner as the Court directs.
- (2) Application to the Court may be made by a director, or a shareholder, or a creditor of the company.
- (3) The Court may make the order on such terms as to the costs of conducting the meeting and as to security for those costs as the Court thinks fit.

124 Proceedings at meetings

The provisions of Schedule 1 to this Act govern proceedings at meetings of shareholders of a company except to the extent that the constitution of the company makes provision for the matters that are expressed in that Schedule to be subject to the constitution of the company.

Ascertaining shareholders

125 Shareholders entitled to receive distributions, attend meetings, and exercise rights

- (1) The shareholders who are—
 - (a) Entitled to receive distributions; or
 - (b) Entitled to exercise pre-emptive rights to acquire shares in accordance with section 45 of this Act; or
 - (c) Entitled to exercise any other right or receive any other benefit under this Act or the constitution or pursuant to the terms of issue of shares—

are,—

- (d) If the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date:
 - (e) If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register on the day on which the board or the shareholders, as the case may be, pass the resolution concerned.
- (2) A date must not be fixed under subsection (1) of this section that precedes by more than 20 working days the date on which the proposed action will be taken.
 - (3) The shareholders who are entitled to receive notice of a meeting of shareholders are,—
 - (a) If the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date:
 - (b) If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
 - (4) A date must not be fixed under subsection (3) of this section that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

Subsection (1)(c) was substituted, as from 30 June 1997, by section 9(1) Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (1)(e) was substituted, as from 30 June 1997, by section 9(2) Companies Act 1993 Amendment Act 1997 (1997 No 27).

Part 8

Directors and their powers and duties

126 Meaning of director

- (1) In this Act, **director**, in relation to a company, includes—
 - (a) A person occupying the position of director of the company by whatever name called; and
 - (b) For the purposes of sections 131 to 141, 145 to 149, 298, 299, 301, 383, 385, and clause 12(ab) of Schedule 7,—
 - (i) A person in accordance with whose directions or instructions a person referred to in paragraph

- (a) of this subsection may be required or is accustomed to act; and
 - (ii) A person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act; and
 - (iii) A person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which, apart from the constitution of the company, would fall to be exercised by the board; and
 - (c) For the purposes of sections 131 to 149, 298, 299, 301, 383, 385, and clause 12(ab) of Schedule 7, a person to whom a power or duty of the board has been directly delegated by the board with that person's consent or acquiescence, or who exercises the power or duty with the consent or acquiescence of the board; and
 - (d) For the purposes of sections 145 to 149, and clause 12(ab) of Schedule 7 of this Act, a person in accordance with whose directions or instructions a person referred to in paragraphs (a) to (c) of this subsection may be required or is accustomed to act in respect of his or her duties and powers as a director.
- (1A) In this Act, **director**, in relation to a company, does not include a receiver.
- (2) If the constitution of a company confers a power on shareholders which would otherwise fall to be exercised by the board, any shareholder who exercises that power or who takes part in deciding whether to exercise that power is deemed, in relation to the exercise of the power or any consideration concerning its exercise, to be a director for the purposes of sections 131 to 138 of this Act.
- (3) If the constitution of a company requires a director or the board to exercise or refrain from exercising a power in accordance with a decision or direction of shareholders, any shareholder who takes part in—
- (a) The making of any decision that the power should or should not be exercised; or
 - (b) The making of any decision whether to give a direction,—

as the case may be, is deemed, in relation to making any such decision, to be a director for the purposes of sections 131 to 138 of this Act.

- (4) Paragraphs (b) to (d) of subsection (1) of this section do not include a person to the extent that the person acts only in a professional capacity.

Subsection (1)(b) was amended, as from 3 May 2001, by section 9 Companies Act 1993 Amendment Act 2001 (2001 No 18) by substituting the expression “301, 383, and 385” for the expression “and 301 of this Act”.

Subsection (1)(b) was amended, as from 29 May 2004, by section 3(1) Companies Amendment Act 2004 (2004 No 10) by substituting the words “385, and clause 12(ab) of Schedule 7” for the expression “and 385”.

Subsection (1)(c) was amended, as from 3 May 2001, by section 9 Companies Act 1993 Amendment Act 2001 (2001 No 18) by substituting the expression “301, 383, and 385” for the expression “and 301 of this Act”.

Subsection (1)(c) was amended, as from 29 May 2004, by section 3(2) Companies Amendment Act 2004 (2004 No 10) by substituting the words “385, and clause 12(ab) of Schedule 7” for the expression “and 385”.

Subsection (1)(d) was amended, as from 29 May 2004, by section 3(3) Companies Amendment Act 2004 (2004 No 10) by inserting the words “, and clause 12(ab) of Schedule 7” after the expression “149”.

Subsection (1A) was inserted, as from 1 July 1994, by section 16 Companies Act 1993 Amendment Act 1994 (1994 No 6).

127 **Meaning of board**

In this Act, the terms **board** and **board of directors**, in relation to a company, mean—

- (a) Directors of the company who number not less than the required quorum acting together as a board of directors;
or
- (b) If the company has only one director, that director.

Powers of management

128 **Management of company**

- (1) The business and affairs of a company must be managed by, or under the direction or supervision of, the board of the company.
- (2) The board of a company has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

- (3) Subsections (1) and (2) of this section are subject to any modifications, exceptions, or limitations contained in this Act or in the company's constitution.

129 Major transactions

- (1) A company must not enter into a major transaction unless the transaction is—
- (a) Approved by special resolution; or
 - (b) Contingent on approval by special resolution.

- (2) In this section,—

Assets includes property of any kind, whether tangible or intangible;

Major transaction, in relation to a company, means

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or
- (b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
- (c) A transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the company's assets before the transaction.

Subsection (2) Major transaction: substituted, as from 1 July 1994, by section 17(1) Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (2) major transaction: paragraph (c) of this definition was amended, as from 15 April 2004, by section 8(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “, including contingent liabilities,” after the word “liabilities”.

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

- (2B) In assessing the value of any contingent liability for the purposes of paragraph (c) of the definition of **major transaction** in subsection (2), the directors—
- (a) must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
 - (b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - (c) may take account of—
 - (i) the likelihood of the contingency occurring; and
 - (ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.
- (3) Nothing in this section applies to a major transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of a company.

Subsection (2A) was inserted, as from 1 July 1994, by section 17(2) Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (2A) was amended, as from 30 June 1997, by section 10 Companies Act 1993 Amendment Act 1997 (1997 No 27) by omitting the word “floating”.

Subsection (2A) was amended, as from 3 May 2001, by section 9 Companies Act 1993 Amendment Act 2001 (2001 No 18) by inserting the words “paragraph (b) or”.

Subsection (2B) was inserted, as from 15 April 2004, by section 8(2) Companies Amendment Act (No 2) 2004 (2004 No 24).

130 Delegation of powers

- (1) Subject to any restrictions in the constitution of the company, the board of a company may delegate to a committee of directors, a director or employee of the company, or any other person, any one or more of its powers other than its powers under any of the sections of this Act set out in Schedule 2 to this Act.
- (2) A board that delegates a power under subsection (1) of this section is responsible for the exercise of the power by the delegate as if the power had been exercised by the board, unless the board—
- (a) Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise

the power in conformity with the duties imposed on directors of the company by this Act and the company's constitution; and

- (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Directors' duties

131 Duty of directors to act in good faith and in best interests of company

- (1) Subject to this section, a director of a company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.
- (2) A director of a company that is a wholly-owned subsidiary may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (3) A director of a company that is a subsidiary (but not a wholly-owned subsidiary) may, when exercising powers or performing duties as a director, if expressly permitted to do so by the constitution of the company and with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of that company's holding company even though it may not be in the best interests of the company.
- (4) A director of a company that is carrying out a joint venture between the shareholders may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, if expressly permitted to do so by the constitution of the company, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

Subsection (4) was amended, as from 30 June 1997, by section 11 Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the words "that is carrying" for the words "incorporated to carry".

132 Exercise of powers in relation to employees

- (1) Nothing in section 131 of this Act limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business.

- (2) In subsection (1) of this section,—

Employees includes former employees and the dependants of employees or former employees; but does not include an employee or former employee who is or was a director of the company

Company includes a subsidiary of a company.

133 Powers to be exercised for proper purpose

A director must exercise a power for a proper purpose.

134 Directors to comply with Act and constitution

A director of a company must not act, or agree to the company acting, in a manner that contravenes this Act or the constitution of the company.

135 Reckless trading

A director of a company must not—

- (a) Agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or
- (b) Cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

136 Duty in relation to obligations

A director of a company must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so.

137 Director's duty of care

A director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence, and

skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,—

- (a) The nature of the company; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

138 Use of information and advice

- (1) Subject to subsection (2) of this section, a director of a company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
 - (a) An employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
- (2) Subsection (1) of this section applies to a director only if the director—
 - (a) Acts in good faith; and
 - (b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) Has no knowledge that such reliance is unwarranted.

Transactions involving self-interest

139 Meaning of interested

- (1) Subject to subsection (2) of this section, for the purposes of this Act, a director of a company is interested in a transaction to which the company is a party if, and only if, the director—
 - (a) Is a party to, or will or may derive a material financial benefit from, the transaction; or

- (b) Has a material financial interest in another party to the transaction; or
 - (c) Is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is—
 - (i) The company's holding company being a holding company of which the company is a wholly-owned subsidiary; or
 - (ii) A wholly-owned subsidiary of the company; or
 - (iii) A wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary; or
 - (d) Is the parent, child, spouse, civil union partner, or de facto partner of another party to, or person who will or may derive a material financial benefit from, the transaction; or
 - (e) Is otherwise directly or indirectly materially interested in the transaction.
- (2) For the purposes of this Act, a director of a company is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.

Subsection (1)(d) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by substituting the words "spouse, civil union partner, or de facto partner" for the words "or spouse".

140 Disclosure of interest

- (1) A director of a company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board of the company—

- (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- (1A) A director of a company is not required to comply with subsection (1) if—
 - (a) The transaction or proposed transaction is between the director and the company; and
 - (b) The transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- (2) For the purposes of subsection (1) of this section, a general notice entered in the interests register and, if the company has more than 1 director, disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- (3) A failure by a director to comply with subsection (1) of this section does not affect the validity of a transaction entered into by the company or the director.
- (4) Every director who fails to comply with subsection (1) of this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.

Compare: 1955 No 63 s 199

Subsection (1A) was inserted, as from 30 June 1997, by section 12 Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (2) was amended, as from 3 May 2001, by section 11 Companies Act 1993 Amendment Act 2001 (2001 No 18) by substituting the words “and, if the company has more than 1 director,” for the word “or” where it first appeared.

141 Avoidance of transactions

- (1) A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time before the expiration of 3 months after the transaction is disclosed to all the shareholders (whether by means of the company's annual report or otherwise).

- (2) A transaction cannot be avoided if the company receives fair value under it.
- (3) For the purposes of subsection (2) of this section, the question whether a company receives fair value under a transaction is to be determined on the basis of the information known to the company and to the interested director at the time the transaction is entered into.
- (4) If a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company is presumed to receive fair value under the transaction.
- (5) For the purposes of this section,—
 - (a) A person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction was entered into has the onus of establishing fair value; and
 - (b) In any other case, the company has the onus of establishing that it did not receive fair value.
- (6) A transaction in which a director is interested can only be avoided on the ground of the director's interest in accordance with this section or the company's constitution.

142 Effect on third parties

The avoidance of a transaction under section 141 of this Act does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—

- (a) From a person other than the company; and
- (b) For valuable consideration; and
- (c) Without knowledge of the circumstances of the transaction under which the person referred to in paragraph (a) of this section acquired the property from the company.

143 Application of sections 140 and 141 in certain cases

Nothing in section 140 and section 141 of this Act applies in relation to—

- (a) Remuneration or any other benefit given to a director in accordance with section 161 of this Act; or

- (b) An indemnity given or insurance provided in accordance with section 162 of this Act.

144 Interested director may vote

Subject to the constitution of the company, a director of a company who is interested in a transaction entered into, or to be entered into, by the company, may—

- (a) Vote on a matter relating to the transaction; and
- (b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
- (c) Sign a document relating to the transaction on behalf of the company; and
- (d) Do any other thing in his or her capacity as a director in relation to the transaction—

as if the director were not interested in the transaction.

145 Use of company information

- (1) A director of a company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except—
 - (a) For the purposes of the company; or
 - (b) As required by law; or
 - (c) In accordance with subsection (2) or subsection (3) of this section; or
 - (d) In complying with section 140 of this Act.
- (2) A director of a company may, unless prohibited by the board, disclose information to—
 - (a) A person whose interests the director represents; or
 - (b) A person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

- (3) A director of a company may disclose, make use of, or act on the information if—
- (a) Particulars of the disclosure, use, or the act in question are entered in the interests register; and
 - (b) The director is first authorised to do so by the board; and
 - (c) The disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

146 Meaning of relevant interest

- (1) For the purposes of section 148 of this Act, a director of a company has a relevant interest in a share issued by a company (whether or not the director is registered in the share register as the holder of it) if the director—
- (a) Is a beneficial owner of the share; or
 - (b) Has the power to exercise any right to vote attached to the share; or
 - (c) Has the power to control the exercise of any right to vote attached to the share; or
 - (d) Has the power to acquire or dispose of the share; or
 - (e) Has the power to control the acquisition or disposition of the share by another person; or
 - (f) Under, or by virtue of, any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it)—
 - (i) May at any time have the power to exercise any right to vote attached to the share; or
 - (ii) May at any time have the power to control the exercise of any right to vote attached to the share; or
 - (iii) May at any time have the power to acquire or dispose of, the share; or
 - (iv) May at any time have the power to control the acquisition or disposition of the share by another person.
- (2) Where a person would, if that person were a director of the company, have a relevant interest in a share by virtue of subsection (1) of this section and—
- (a) That person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in

- accordance with the directions, instructions, or wishes of a director of the company in relation to—
- (i) The exercise of the right to vote attached to the share; or
 - (ii) The control of the exercise of any right to vote attached to the share; or
 - (iii) The acquisition or disposition of the share; or
 - (iv) The exercise of the power to control the acquisition or disposition of the share by another person; or
- (b) A director of the company has the power to exercise the right to vote attached to 20 percent or more of the shares of that person; or
 - (c) A director of the company has the power to control the exercise of the right to vote attached to 20 percent or more of the shares of that person; or
 - (d) A director of the company has the power to acquire or dispose of 20 percent or more of the shares of that person; or
 - (e) A director of the company has the power to control the acquisition or disposition of 20 percent or more of the shares of that person,—
- that director has a relevant interest in the share.
- (3) A person who has, or may have, a power referred to in any of paragraphs (b) to (f) of subsection (1) of this section, has a relevant interest in a share regardless of whether the power—
 - (a) Is expressed or implied:
 - (b) Is direct or indirect:
 - (c) Is legally enforceable or not:
 - (d) Is related to a particular share or not:
 - (e) Is subject to restraint or restriction or is capable of being made subject to restraint or restriction:
 - (f) Is exercisable presently or in the future:
 - (g) Is exercisable only on the fulfilment of a condition:
 - (h) Is exercisable alone or jointly with another person or persons.
 - (4) A power referred to in subsection (1) of this section exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.

- (5) A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.

Subsection (2) was amended, as from 30 June 1997, by section 13 Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the words “would, if that person were a director of the company, have” for the words “(whether or not a director of the company) has”.

147 Relevant interests to be disregarded in certain cases

- (1) For the purposes of section 148 of this Act, no account shall be taken of a relevant interest of a person in a share if—
- (a) The ordinary business of the person who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person; or
 - (b) That person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person in the ordinary course of business of a sharebroker and that person is a person authorised to undertake trading activities on a stock exchange; or
 - (c) That person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the company and the instrument of that person’s appointment is produced before the start of the meeting in accordance with clause 6(4) of Schedule 1 to this Act or by a time specified in the company’s constitution, as the case may be; or
 - (d) That person—
 - (i) Is a trustee corporation or a nominee company; and
 - (ii) Has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or

- (e) The person has the relevant interest by reason only that the person is a bare trustee of a trust to which the share is subject.
- (2) For the purposes of subsection (1)(e) of this section, a trustee may be a bare trustee notwithstanding that he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

Subsection (1)(b) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “person authorised to undertake trading activities on” for the words “member of”.

148 Disclosure of share dealing by directors

- (1) A director of a company that has become registered under this Act in accordance with the Companies Reregistration Act 1993 and who has a relevant interest in any shares issued by the company must, forthwith after the reregistration of the company,—
 - (a) Disclose to the board the number and class of shares in which the relevant interest is held and the nature of the relevant interest; and
 - (b) Ensure that the particulars disclosed to the board under paragraph (a) of this subsection are entered in the interests register.
- (2) A director of a company who acquires or disposes of a relevant interest in shares issued by the company must, forthwith after the acquisition or disposition,—
 - (a) Disclose to the board—
 - (i) The number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be; and
 - (ii) The nature of the relevant interest; and
 - (iii) The consideration paid or received; and
 - (iv) The date of the acquisition or disposition; and
 - (b) Ensure that the particulars disclosed to the board under paragraph (a) of this subsection are entered in the interests register.

149 Restrictions on share dealing by directors

- (1) If a director of a company has information in his or her capacity as a director or employee of the company or a related company, being information that would not otherwise be available to him or her, but which is information material to an assessment of the value of shares or other securities issued by the company or a related company, the director may acquire or dispose of those shares or securities only if,—
 - (a) In the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities; or
 - (b) In the case of a disposition, the consideration received for the disposition is not more than the fair value of the shares or securities.
- (2) For the purposes of subsection (1) of this section, the fair value of shares or securities is to be determined on the basis of all information known to the director or publicly available at the time.
- (3) Subsection (1) of this section does not apply in relation to a share or security that is acquired or disposed of by a director only as a nominee for the company or a related company.
- (4) Where a director acquires shares or securities in contravention of subsection (1)(a) of this section, the director is liable to the person from whom the shares or securities were acquired for the amount by which the fair value of the shares or securities exceeds the amount paid by the director.
- (5) Where a director disposes of shares or securities in contravention of subsection (1)(b) of this section, the director is liable to the person to whom the shares or securities were disposed of for the amount by which the consideration received by the director exceeds the fair value of the shares or securities.
- (6) Nothing in this section applies in relation to a company to which Part 1 of the Securities Markets Amendment Act 1988 applies.

Subsection (6) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the word “Markets” for the word “Amendment”.

Appointment and removal of directors

150 Number of directors

A company must have at least one director.

151 Qualifications of directors

- (1) A natural person who is not disqualified by subsection (2) of this section may be appointed as a director of a company.
- (2) The following persons are disqualified from being appointed or holding office as a director of a company:
 - (a) A person who is under 18 years of age:
 - (b) A person who is an undischarged bankrupt:
 - (ba) A person who would, but for the repeal of section 188A or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act:
 - (c) A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 199K or section 199L of the Companies Act 1955 or who would be so prohibited but for the repeal of that Act:
 - (d) A person who is prohibited from being an officer or promoter of or being concerned or taking part in the management of a company under section 199N of the Companies Act 1955 or who would be so prohibited but for the repeal of that Act:
 - (e) A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 382 or section 383 or section 385 of this Act:
 - (ea) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978 or the Securities Markets Act 1988 or the Takeovers Act 1993:
 - (eb) a person who is prohibited from 1 or more of the following under an order made, or a notice given, under a law of a prescribed country, State, or territory outside New Zealand:

- (i) being a director of an overseas company:
 - (ii) being a promoter of an overseas company:
 - (iii) being concerned or taking part in the management of an overseas company:
- (f) A person who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988:
- (g) In relation to any particular company, a person who does not comply with any qualifications for directors contained in the constitution of that company.
- (3) A person that is not a natural person cannot be a director of a company.
- (4) A person who is disqualified from being a director but who acts as a director is a director for the purposes of a provision of this Act that imposes a duty or an obligation on a director of a company.

Subsection (2)(ba) was inserted, as from 1 July 1994, by section 18 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (2)(ea) was inserted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

Subsection (2)(eb) was inserted, as from 18 June 2007, by section 5(1) Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108). *See* section 5(2) of that Act relating to, immediately before the commencement of this amendment, a person who is a director of a company and is subject to an order or notice of a kind referred to in the new paragraph (eb).

152 Director's consent required

A person must not be appointed a director of a company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of a company.

Section 152 was amended, as from 1 July 1994, by section 19 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the words "consented in writing" for the words "in the prescribed form, consented".

153 Appointment of first and subsequent directors

- (1) A person named as a director in an application for registration or in an amalgamation proposal holds office as a director from the date of registration or the date the amalgamation proposal

is effective, as the case may be, until that person ceases to hold office as a director in accordance with this Act.

- (2) All subsequent directors of a company must, unless the constitution of the company otherwise provides, be appointed by ordinary resolution.

154 Court may appoint directors

- (1) If—
 - (a) There are no directors of a company, or the number of directors is less than the quorum required for a meeting of the board; and
 - (b) It is not possible or practicable to appoint directors in accordance with the company's constitution,—a shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make an appointment if it considers that it is in the interests of the company to do so.
- (2) An appointment may be made on such terms and conditions as the Court thinks fit.

155 Appointment of directors to be voted on individually

- (1) Subject to the constitution of the company, the shareholders of a company may vote on a resolution to appoint a director of the company only if—
 - (a) The resolution is for the appointment of one director; or
 - (b) The resolution is a single resolution for the appointment of 2 or more persons as directors of the company and a separate resolution that it be so voted on has first been passed without a vote being cast against it.
- (2) A resolution moved in contravention of subsection (1) of this section is void even though the moving of it was not objected to at the time.
- (3) Subsection (2) of this section does not limit the operation of section 158 of this Act.
- (4) No provision for the automatic reappointment of retiring directors in default of another appointment applies on the passing of a resolution in contravention of subsection (1) of this section.

- (5) Nothing in this section prevents the election of 2 or more directors by ballot or poll.

156 Removal of directors

- (1) Subject to the constitution of a company, a director of the company may be removed from office by ordinary resolution passed at a meeting called for the purpose or for purposes that include the removal of the director.
- (2) The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the director.

157 Director ceasing to hold office

- (1) The office of director of a company is vacated if the person holding that office—
- (a) Resigns in accordance with subsection (2) of this section; or
 - (b) Is removed from office in accordance with this Act or the constitution of the company; or
 - (c) Becomes disqualified from being a director pursuant to section 151 of this Act; or
 - (d) Dies; or
 - (e) Otherwise vacates office in accordance with the constitution of the company.
- (2) A director of a company may resign office by signing a written notice of resignation and delivering it to the address for service of the company. The notice is effective when it is received at that address or at a later time specified in the notice.
- (3) Notwithstanding the vacation of office, a person who held office as a director remains liable under the provisions of this Act that impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

158 Validity of director's acts

The acts of a person as a director are valid even though—

- (a) The person's appointment was defective; or
- (b) The person is not qualified for appointment.

159 Notice of change of directors

- (1) The board of a company must ensure that notice in the prescribed form of—
- (a) A change in the directors of a company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or
 - (b) A change in the name or the residential address of a director of a company—
- is delivered to the Registrar for registration.
- (2) A notice under subsection (1) of this section must—
- (a) Specify the date of the change; and
 - (b) Include the full name and residential address of every person who is a director of the company from the date of the notice; and
 - (c) In the case of the appointment of a new director, have attached the form of consent and certificate required pursuant to section 152 of this Act; and
 - (d) Be delivered to the Registrar within 20 working days of—
 - (i) The change occurring, in the case of the appointment or resignation of a director; or
 - (ii) The company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address of a director.
- (3) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Miscellaneous provisions relating to directors

160 Proceedings of board

Subject to the constitution of a company, the provisions set out in Schedule 3 to this Act govern the proceedings of the board of a company.

161 Remuneration and other benefits

- (1) The board of a company may, subject to any restrictions contained in the constitution of the company, authorise—
- (a) The payment of remuneration or the provision of other benefits by the company to a director for services as a director or in any other capacity;
 - (b) The payment by the company to a director or former director of compensation for loss of office;
 - (c) The making of loans by the company to a director;
 - (d) The giving of guarantees by the company for debts incurred by a director;
 - (e) The entering into of a contract to do any of the things set out in paragraphs (a), (b), (c), and (d) of this subsection,—
- if the board is satisfied that to do so is fair to the company.
- (2) The board must ensure that forthwith after authorising the making of the payment or the provision of the benefit or the making of the loan or the giving of the guarantee or the entering into of the contract, as the case may be, particulars of the payment or benefit or loan or guarantee or contract are entered in the interests register.
- (3) The payment of remuneration or the giving of any other benefit to a director in accordance with a contract authorised under subsection (1) of this section need not be separately authorised under that subsection.
- (4) Directors who vote in favour of authorising a payment, benefit, loan, guarantee, or contract under subsection (1) of this section must sign a certificate stating that, in their opinion, the making of the payment or the provision of the benefit, or the making of the loan, or the giving of the guarantee, or the entering into of the contract is fair to the company, and the grounds for that opinion.
- (5) Where a payment is made or other benefit provided or a guarantee is given to which subsection (1) of this section applies and either—
- (a) The provisions of subsections (1) and (4) of this section have not been complied with; or

- (b) Reasonable grounds did not exist for the opinion set out in the certificate given under subsection (4) of this section,—
the director or former director to whom the payment is made or the benefit is provided, or in respect of whom the guarantee is given, as the case may be, is personally liable to the company for the amount of the payment, or the monetary value of the benefit, or any amount paid by the company under the guarantee, except to the extent to which he or she proves that the payment or benefit or guarantee was fair to the company at the time it was made, provided, or given.
- (6) Where a loan is made to which subsection (1) of this section applies and either—
 - (a) The provisions of subsections (1) and (4) of this section have not been complied with; or
 - (b) Reasonable grounds did not exist for the opinion set out in the certificate given under subsection (4) of this section,—
the loan becomes immediately repayable to the company by the director, notwithstanding the terms of any agreement relating to the giving of the loan, except to the extent to which he or she proves that the loan was fair to the company at the time it was given.

162 Indemnity and insurance

- (1) Except as provided in this section, a company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the company or a related company in respect of—
 - (a) Liability for any act or omission in his or her capacity as a director or employee; or
 - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.
- (2) An indemnity given in breach of this section is void.
- (3) A company may, if expressly authorised by its constitution, indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding—

- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
 - (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- (4) A company may, if expressly authorised by its constitution, indemnify a director or employee of the company or a related company in respect of—
 - (a) Liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
 - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,—not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of this Act or, in the case of an employee, of any fiduciary duty owed to the company or related company.
- (5) A company may, if expressly authorised by its constitution and with the prior approval of the board, effect insurance for a director or employee of the company or a related company in respect of—
 - (a) Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
 - (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
 - (c) Costs incurred by that director or employee in defending any criminal proceedings—
 - (i) That have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and
 - (ii) In which he or she is acquitted.
- (6) The directors who vote in favour of authorising the effecting of insurance under subsection (5) of this section must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
- (7) The board of a company must ensure that particulars of any indemnity given to, or insurance effected for, any director or

employee of the company or a related company are forthwith entered in the interests register.

- (8) Where insurance is effected for a director or employee of a company or a related company and—
- (a) The provisions of either subsection (5) or subsection (6) of this section have not been complied with; or
 - (b) Reasonable grounds did not exist for the opinion set out in the certificate given under subsection (6) of this section,—

the director or employee is personally liable to the company for the cost of effecting the insurance except to the extent that he or she proves that it was fair to the company at the time the insurance was effected.

- (9) In this section,—

Director includes a former director

Effect insurance includes pay, whether directly or indirectly, the costs of the insurance

Employee includes a former employee

Indemnify includes relieve or excuse from liability, whether before or after the liability arises; and **indemnity** has a corresponding meaning.

Subsection (5)(c) was substituted, as from 3 June 1998, by section 5 Companies Amendment Act 1998 (1998 No 31).

Part 9 Enforcement

163 Interpretation

In this Part of this Act, unless the context otherwise requires, the terms **entitled person**, **former shareholder**, and **shareholder** include a reference to a personal representative of an entitled person, former shareholder, or shareholder and a person to whom shares of any of those persons have passed by operation of law.

*Injunctions***164 Injunctions**

- (1) The Court may, on an application under this section, make an order restraining a company that, or a director of a company who, proposes to engage in conduct that would contravene the constitution of the company or this Act or the Financial Reporting Act 1993 from engaging in that conduct.
- (2) An application may be made by—
 - (a) The company; or
 - (b) A director or shareholder of the company; or
 - (c) An entitled person.
- (3) If the Court makes an order under subsection (1) of this section, it may also grant such consequential relief as it thinks fit.
- (4) An order may not be made under this section in relation to conduct or a course of conduct that has been completed.
- (5) The Court may, at any time before the final determination of an application under subsection (1) of this section, make, as an interim order, any order that it is empowered to make under that subsection.

*Derivative actions***165 Derivative actions**

- (1) Subject to subsection (3) of this section, the Court may, on the application of a shareholder or director of a company, grant leave to that shareholder or director to—
 - (a) Bring proceedings in the name and on behalf of the company or any related company; or
 - (b) Intervene in proceedings to which the company or any related company is a party for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or related company, as the case may be.
- (2) Without limiting subsection (1) of this section, in determining whether to grant leave under that subsection, the Court shall have regard to—
 - (a) The likelihood of the proceedings succeeding;
 - (b) The costs of the proceedings in relation to the relief likely to be obtained:

- (c) Any action already taken by the company or related company to obtain relief:
 - (d) The interests of the company or related company in the proceedings being commenced, continued, defended, or discontinued, as the case may be.
- (3) Leave to bring proceedings or intervene in proceedings may be granted under subsection (1) of this section, only if the Court is satisfied that either—
 - (a) The company or related company does not intend to bring, diligently continue or defend, or discontinue the proceedings, as the case may be; or
 - (b) It is in the interests of the company or related company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.
- (4) Notice of the application must be served on the company or related company.
- (5) The company or related company—
 - (a) May appear and be heard; and
 - (b) Must inform the Court, whether or not it intends to bring, continue, defend, or discontinue the proceedings, as the case may be.
- (6) Except as provided in this section, a shareholder is not entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or a related company.

166 Costs of derivative action to be met by company

The Court shall, on the application of the shareholder or director to whom leave was granted under section 165 of this Act to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under section 168 of this Act, must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

167 Powers of Court where leave granted

The Court may, at any time, make any order it thinks fit in relation to proceedings brought by a shareholder or a director or in which a shareholder or director intervenes, as the case may be, with leave of the Court under section 165 of this Act, and without limiting the generality of this section may—

- (a) Make an order authorising the shareholder or any other person to control the conduct of the proceedings:
- (b) Give directions for the conduct of the proceedings:
- (c) Make an order requiring the company or the directors to provide information or assistance in relation to the proceedings:
- (d) Make an order directing that any amount ordered to be paid by a defendant in the proceedings must be paid, in whole or part, to former and present shareholders of the company or related company instead of to the company or the related company.

168 Compromise, settlement, or withdrawal of derivative action

No proceedings brought by a shareholder or a director or in which a shareholder or a director intervenes, as the case may be, with leave of the Court under section 165 of this Act, may be settled or compromised or discontinued without the approval of the Court.

*Personal actions by shareholders***169 Personal actions by shareholders against directors**

- (1) A shareholder or former shareholder may bring an action against a director for breach of a duty owed to him or her as a shareholder.
- (2) An action may not be brought under subsection (1) of this section to recover any loss in the form of a reduction in the value of shares in the company or a failure of the shares to increase in value by reason only of a loss suffered, or a gain forgone, by the company.
- (3) Without limiting subsection (1) of this section, the duties of directors set out in—

- (a) Section 90 of this Act (which relates to the duty to supervise the share register); and
 - (b) Section 140 of this Act (which relates to the duty to disclose interests); and
 - (c) Section 148 of this Act (which relates to the duty to disclose share dealings)—
- are duties owed to shareholders, while the duties of directors set out in—
- (d) Section 131 of this Act (which relates to the duty of directors to act in good faith and in the best interests of the company); and
 - (e) Section 133 of this Act (which relates to the duty to exercise powers for a proper purpose); and
 - (f) Section 135 of this Act (which relates to reckless trading); and
 - (g) Section 136 of this Act (which relates to the duty not to agree to a company incurring certain obligations); and
 - (h) Section 137 of this Act (which relates to a director's duty of care); and
 - (i) Section 145 of this Act (which relates to the use of company information)—
- are duties owed to the company and not to shareholders.

170 Actions by shareholders to require directors to act

Notwithstanding section 169 of this Act, the Court may, on the application of a shareholder of a company, if it is satisfied it is just and equitable to do so, make an order requiring a director of the company to take any action that is required to be taken by the directors under the constitution of the company or this Act or the Financial Reporting Act 1993 and, on making the order, the Court may grant such other consequential relief as it thinks fit.

171 Personal actions by shareholders against company

A shareholder of a company may bring an action against the company for breach of a duty owed by the company to him or her as a shareholder.

172 Actions by shareholders to require company to act

Notwithstanding section 171 of this Act, the Court may, on the application of a shareholder of a company, if it is satisfied that it is just and equitable to do so, make an order requiring the board of the company to take any action that is required to be taken by the constitution of the company or this Act or the Financial Reporting Act 1993 and, on making the order, the Court may grant such other consequential relief as it thinks fit.

173 Representative actions

Where a shareholder of a company brings proceedings against the company or a director, and other shareholders have the same or substantially the same interest in relation to the subject-matter of the proceedings, the Court may appoint that shareholder to represent all or some of the shareholders having the same or substantially the same interest, and may, for that purpose, make such order as it thinks fit including, without limiting the generality of this section, an order—

- (a) As to the control and conduct of the proceedings:
- (b) As to the costs of the proceedings:
- (c) Directing the distribution of any amount ordered to be paid by a defendant in the proceedings among the shareholders represented.

174 Prejudiced shareholders

- (1) A shareholder or former shareholder of a company, or any other entitled person, who considers that the affairs of a company have been, or are being, or are likely to be, conducted in a manner that is, or any act or acts of the company have been, or are, or are likely to be, oppressive, unfairly discriminatory, or unfairly prejudicial to him or her in that capacity or in any other capacity, may apply to the Court for an order under this section.
- (2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit including, without limiting the generality of this subsection, an order—
 - (a) Requiring the company or any other person to acquire the shareholder's shares; or

- (b) Requiring the company or any other person to pay compensation to a person; or
 - (c) Regulating the future conduct of the company's affairs; or
 - (d) Altering or adding to the company's constitution; or
 - (e) Appointing a receiver of the company; or
 - (f) Directing the rectification of the records of the company; or
 - (g) Putting the company into liquidation; or
 - (h) Setting aside action taken by the company or the board in breach of this Act or the constitution of the company.
- (3) No order may be made against the company or any other person under subsection (2) of this section unless the company or that person is a party to the proceedings in which the application is made.

175 Certain conduct deemed prejudicial

- (1) Failure to comply with any of the following sections of this Act is conduct which is unfairly prejudicial for the purposes of section 174 of this Act:
- (a) Section 45 (which relates to pre-emptive rights to the issue of shares):
 - (b) Section 47 (which relates to the consideration for which shares are issued):
 - (c) Section 53 (which relates to dividends):
 - (d) Section 60 (which relates to offers by a company to acquire its own shares):
 - (e) Section 61 (which relates to special offers to acquire shares):
 - (f) Section 63 (which relates to stock exchange acquisitions subject to prior notice to shareholders):
 - (g) Section 65 (which relates to stock exchange acquisitions not subject to prior notice to shareholders):
 - (h) Section 76 (which relates to the provision of financial assistance by a company to acquire its own shares):
 - (i) Section 78 (which relates to special financial assistance):
 - (j) Section 80 (which relates to financial assistance not exceeding 5 percent of shareholders' funds):

- (k) Section 117 (which relates to the alteration of shareholder rights):
- (l) Section 129 (which relates to major transactions).
- (2) The signing by the directors of a company of a certificate required by this Act without reasonable grounds existing for an opinion set out in it is conduct that is unfairly prejudicial for the purposes of section 174 of this Act.

176 Alteration to constitution

- (1) Notwithstanding anything in this Act, but subject to the order, where the Court makes an order under section 174 of this Act altering or adding to the constitution of a company, the constitution must not, to the extent that it has been altered or added to by the Court, again be altered or added to without the leave of the Court.
- (2) Any alteration or addition to the constitution of a company made by an order under section 174 of this Act has the same effect as if it had been made by the shareholders of the company pursuant to section 32 of this Act and the provisions of this Act shall apply to the constitution as altered or added to.
- (3) Within 10 working days of the making of an order under section 174 of this Act altering or adding to the constitution of a company, the board of the company must ensure that a copy of the order and the constitution as altered or added to is delivered to the Registrar for registration.
- (4) If the board of a company fails to comply with subsection (3) of this section, every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 374(2) of this Act.

*Ratification***177 Ratification of certain actions of directors**

- (1) The purported exercise by a director or the board of a company of a power vested in the shareholders or any other person may be ratified or approved by those shareholders or that person in the same manner in which the power may be exercised.

- (2) The purported exercise of a power that is ratified under subsection (1) of this section is deemed to be, and always to have been, a proper and valid exercise of that power.
- (3) The ratification or approval under this section of the purported exercise of a power by a director or the board does not prevent the Court from exercising a power which might, apart from the ratification or approval, be exercised in relation to the action of the director or the board.
- (4) Nothing in this section limits or affects any rule of law relating to the ratification or approval by the shareholders or any other person of any act or omission of a director or the board of a company.

Inspection of records

178 Information for shareholders

- (1) A shareholder may at any time make a written request to a company for information held by the company.
- (2) The request must specify the information sought in sufficient detail to enable it to be identified.
- (3) Within 10 working days of receiving a request under subsection (1) of this section, the company must either—
 - (a) Provide the information; or
 - (b) Agree to provide the information within a specified period; or
 - (c) Agree to provide the information within a specified period if the shareholder pays a reasonable charge to the company (which must be specified and explained) to meet the cost of providing the information; or
 - (d) Refuse to provide the information specifying the reasons for the refusal.
- (4) Without limiting the reasons for which a company may refuse to provide information under this section, a company may refuse to provide information if—
 - (a) The disclosure of the information would or would be likely to prejudice the commercial position of the company; or
 - (b) The disclosure of the information would or would be likely to prejudice the commercial position of any other

- person, whether or not that person supplied the information to the company; or
- (c) The request for the information is frivolous or vexatious.
- (5) If the company requires the shareholder to pay a charge for the information, the shareholder may withdraw the request, and is deemed to have done so unless, within 10 working days of receiving notification of the charge, the shareholder informs the company—
- (a) That the shareholder will pay the charge; or
- (b) That the shareholder considers the charge to be unreasonable.
- (6) The Court may, on the application of a person who has made a request for information, if it is satisfied that—
- (a) The period specified for providing the information is unreasonable; or
- (b) The charge set by the company is unreasonable,—
- as the case may be, make an order requiring the company to supply the information within such time or on payment of such charge as the Court thinks fit.
- (7) The Court may, on the application of a person who has made a request for information, if it is satisfied that—
- (a) The company does not have sufficient reason to refuse to supply the information; or
- (b) The company has sufficient reason to refuse to supply the information but that other reasons exist that outweigh the refusal,—
- the Court may make an order requiring the company to supply the information.
- (8) Where the Court makes an order under subsection (7) of this section, it may specify the use that may be made of the information and the persons to whom it may be disclosed.
- (9) On an application for an order under this section, the Court may make such order for the payment of costs as it thinks fit.

179 Investigation of records

- (1) The Court may, on the application of a shareholder or creditor of a company, make an order authorising a person named in the

order at a time specified in the order, to inspect and to make copies of, or take extracts from, the records or other documents of the company, or such of the records or documents of the company as are specified in the order, and may make such ancillary order as it thinks fit, including an order that the accounts of the company be audited by that person.

- (2) The Court may make an order under subsection (1) of this section only if it is satisfied that—
 - (a) In making the application, the shareholder or creditor is acting in good faith and that the inspection is proposed to be made for a proper purpose; and
 - (b) The person to be appointed is a proper person for the task.
- (3) A person appointed by the Court under subsection (1) of this section must diligently carry out the inspection and, having done so, must make a full report to the Court.
- (4) On receiving the report of an inspector, the Court may make such order in relation to the disclosure and use that may be made of records and information obtained as it thinks fit.
- (5) An order made under subsection (4) of this section may be varied from time to time.
- (6) The reasonable costs of the inspection must be met by the company unless the Court orders otherwise.
- (7) A person may only disclose or make use of information or records obtained under this section in accordance with an order made under subsection (4) or subsection (5) of this section.
- (8) A person who discloses or makes use of information or records obtained under this section other than in accordance with an order made under subsection (4) or subsection (5) of this section commits an offence, and is liable on conviction to the penalty set out in section 373(2) of this Act.

Part 10

Administration of companies

Authority to bind company

180 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by a company as follows:
- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by—
 - (i) Two or more directors of the company; or
 - (ii) If there is only one director, by that director whose signature must be witnessed; or
 - (iii) If the constitution of the company so provides, a director, or other person or class of persons whose signature or signatures must be witnessed; or
 - (iv) One or more attorneys appointed by the company in accordance with section 181 of this Act:
 - (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority:
 - (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.
- (1A) A company may, in addition to complying with subsection (1), affix its common seal, if it has one, to the contract or document containing the enforceable obligation.
- (2) Subsection (1) of this section applies to a contract or other obligation—
- (a) Whether or not that contract or obligation was entered into in New Zealand; and
 - (b) Whether or not the law governing the contract or obligation is the law of New Zealand.

Subsection (1A) was inserted, as from 1 July 1994, by section 20 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (1A) was substituted, as from 30 June 1997, by section 14 Companies Act 1993 Amendment Act 1997 (1997 No 27).

181 Attorneys

- (1) Subject to its constitution, a company may, by an instrument in writing executed in accordance with section 180(1)(a) of this Act, appoint a person as its attorney either generally or in relation to a specified matter.
- (2) An act of the attorney in accordance with the instrument binds the company.
- (3) The provisions of Part 12 of the Property Law Act 1952 apply, with the necessary modifications, in relation to a power of attorney executed by a company to the same extent as if the company was a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal from the register, of the company was the death of a person within the meaning of that Part.

Pre-incorporation contracts

182 Pre-incorporation contracts may be ratified

- (1) In this section and in sections 183 to 185 of this Act, the term **pre-incorporation contract** means—
 - (a) A contract purporting to be made by a company before its incorporation; or
 - (b) A contract made by a person on behalf of a company before and in contemplation of its incorporation.
- (2) Notwithstanding any enactment or rule of law, a pre-incorporation contract may be ratified within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company in the name of which, or on behalf of which, it has been made.
- (3) A contract that is ratified is as valid and enforceable as if the company had been a party to the contract when it was made.

- (4) A pre-incorporation contract may be ratified by a company in the same manner as a contract may be entered into on behalf of a company under section 180 of this Act.
- (5) Notwithstanding the Contracts (Privity) Act 1982, if a pre-incorporation contract has not been ratified by a company, or validated by the Court under section 184 of this Act, the company may not enforce it or take the benefit of it.
Compare: 1955 No 63 s 42A(1)-(3); 1983 No 53 s 15

183 Warranties implied in pre-incorporation contracts

- (1) Notwithstanding any enactment or rule of law, in a pre-incorporation contract, unless a contrary intention is expressed in the contract, there is an implied warranty by the person who purports to make the contract in the name of, or on behalf of, the company—
 - (a) That the company will be incorporated within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the making of the contract; and
 - (b) That the company will ratify the contract within such period as may be specified in the contract, or if no period is specified, then within a reasonable time after the incorporation of the company.
- (2) The amount of damages recoverable in an action for breach of a warranty implied by subsection (1) of this section is the same as the amount of damages that would be recoverable in an action against the company for damages for breach by the company of the unperformed obligations under the contract if the contract had been ratified and cancelled.
- (3) If, after its incorporation, a company enters into a contract in the same terms as, or in substitution for, a pre-incorporation contract (not being a contract ratified by the company under section 182 of this Act), the liability of a person under subsection (1) of this section (including any liability under an order made by the Court for the payment of damages) is discharged.

Compare: 1955 No 63 s 42A(4), (5), (8); 1983 No 53 s 15

184 Failure to ratify

- (1) A party to a pre-incorporation contract that has not been ratified by the company after its incorporation may apply to the Court for an order—
 - (a) Directing the company to return property, whether real or personal, acquired under the contract to that party; or
 - (b) For any other relief in favour of that party relating to that property; or
 - (c) Validating the contract whether in whole or in part.
- (2) The Court may, if it considers it just and equitable to do so, make any order or grant any relief it thinks fit and may do so whether or not an order has been made under section 183(2) of this Act.

Compare: 1955 No 63 s 42A(6); 1983 No 53 s 15

185 Breach of pre-incorporation contract

In proceedings against a company for breach of a pre-incorporation contract which has been ratified by the company, the Court may, on the application of the company, any other party to the proceedings, or of its own motion, make such order for the payment of damages or other relief as the Court considers just and equitable, in addition to or in substitution for any order which may be made against the company, against a person by whom the contract was made.

Compare: 1955 No 63 s 42A(7); 1983 No 53 s 15

185A Jurisdiction of District Courts

- (1) A District Court shall have jurisdiction to exercise any power conferred by sections 182 to 185 of this Act in any case where—
 - (a) The occasion for the exercise of the power arises in the course of civil proceedings properly before the Court; or
 - (b) The amount of the claim or the value of the property or relief claimed or in issue is not more than \$200,000; or
 - (c) The parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court shall have jurisdiction to determine the proceedings.

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

Section 185A was inserted, as from 1 July 1994, by section 21 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Registered office

186 Registered office

- (1) A company must always have a registered office in New Zealand.
- (2) Subject to section 187 of this Act, the registered office of a company at a particular time is the place that is described as its registered office in the New Zealand register at that time.
- (3) The description of the registered office must—
- (a) State the address of the registered office; and
 - (b) If the registered office is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state—
 - (i) That the registered office of the company is at the offices of that firm or person; and
 - (ii) Particulars of the location in any building of those offices; or
 - (c) If the registered office is not at the offices of any such firm or person but is located in a building occupied by persons other than the company, state particulars of its location in the building.

Compare: 1955 No 63 s 115(1)

187 Change of registered office

- (1) Subject to the company's constitution and to subsection (3) of this section, the board of a company may change the registered office of the company at any time.
- (2) Notice in the prescribed form of the change must be given to the Registrar for registration.
- (3) The change in the registered office takes effect on a date stated in the notice not being a date that is earlier than 5 working days after the notice is registered.

Compare: 1955 No 63 s 115(3)

188 Requirement to change registered office

- (1) Subject to this section, a company must change its registered office if it is required to do so by the Registrar.
- (2) The Registrar may require a company to change its registered office by notice in writing delivered or sent to the company at its registered office.
- (3) The notice must—
 - (a) State that the company is required to change its registered office by a date stated in the notice, not being a date that is earlier than 20 working days after the date of the notice:
 - (b) State the reasons for requiring the change:
 - (c) State that the company has the right to appeal to the Court under section 370 of this Act:
 - (d) Be dated and signed by the Registrar.
- (4) A copy of the notice must also be sent to each director of the company.
- (5) The Company must change its registered office—
 - (a) By the date stated in the notice; or
 - (b) If it appeals to the Court and the appeal is dismissed, within 5 working days after the decision of the Court.
- (6) If a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Compare: 1955 No 63 s 115A; 1975 No 137 s 12

Company records

189 Company records

- (1) Subject to subsection (3) of this section and to section 88 and section 195 of this Act, a company must keep the following documents at its registered office:
 - (a) The constitution of the company:
 - (b) Minutes of all meetings and resolutions of shareholders within the last 7 years:
 - (c) An interests register:
 - (d) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years:

- (e) Certificates given by directors under this Act within the last 7 years:
 - (f) The full names and addresses of the current directors:
 - (g) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under section 208 of this Act:
 - (h) Copies of all financial statements and group financial statements required to be completed by this Act or the Financial Reporting Act 1993 for the last 7 completed accounting periods of the company:
 - (i) The accounting records required by section 194 of this Act for the current accounting period and for the last 7 completed accounting periods of the company:
 - (j) The share register.
- (2) The references in paragraphs (b), (d), (e), and (g) of subsection (1) of this section to 7 years and the references in paragraphs (h) and (i) of that subsection to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company.
 - (3) The records referred to in paragraphs (a) to (i) of subsection (1) of this section may be kept at a place in New Zealand, notice of which is given to the Registrar in accordance with subsection (4) of this section.
 - (4) If any records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar for registration of the places where the records are kept.
 - (5) If a company fails to comply with subsection (1) or subsection (4) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act:
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Subsection (1)(b), (d), (e), (g), (h) and (i) and subsection (2) were amended, as from 1 July 1994, by section 22(1) and (2) Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “7” for the expression “10”.

Subsection (3) was amended, as from 1 July 1994, by section 22(3) Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “(i)” for the expression “(h)”.

190 Form of records

- (1) The records of a company must be kept—
 - (a) In written form; or
 - (b) In a form or in a manner that allows the documents and information that comprise the records to be easily accessible and convertible into written form.
- (2) The board must ensure that adequate measures exist to—
 - (a) Prevent the records being falsified; and
 - (b) Detect any falsification of them.
- (3) If the board fails to comply with subsection (2) of this section, every director commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Compare: 1955 No 63 s 459(2); 1980 No 7 (4)

191 Inspection of records by directors

- (1) Subject to subsection (2) of this section, every director of a company is entitled, on giving reasonable notice, to inspect the records of the company—
 - (a) In written form; and
 - (b) Without charge; and
 - (c) At a reasonable time specified by the director.
- (2) The Court may, on application by the company, if it is satisfied that—
 - (a) It would not be in the company’s interests for a director to inspect the records; or
 - (b) The proposed inspection is for a purpose that is not properly connected with the director’s duties,—direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit.

*Address for service***192 Address for service**

- (1) A company must have an address for service in New Zealand.
- (2) The address for service may be the company's registered office or another place, but it must not be at a postal centre or document exchange.
- (3) A company's address for service at any particular time is the address that is described as its address for service in the New Zealand register at that time.
- (4) The description of the address for service must state that it is at the registered office of the company, or if it is at another place, must—
 - (a) State the address of that place; and
 - (b) If the address for service is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state—
 - (i) That the address for service of the company is at the offices of that firm or person; and
 - (ii) Particulars of the location in any building of those offices; or
 - (c) If the address for service is not at the offices of any such firm or person but is located in a building occupied by persons other than the company, state particulars of its location in the building.

193 Change of address for service

- (1) Subject to the company's constitution and to subsection (3) of this section, the board of a company may change the address for service of the company at any time.
- (2) Notice in the prescribed form of the change must be given to the Registrar for registration.
- (3) A change of address for service takes effect on a date stated in the notice, not being a date that is earlier than 5 working days after the notice is registered.

193A Rectification or correction of address for service

- (1) This section applies if the address for service of a company is rectified or corrected under section 360A or section 360B.

- (2) The rectification or correction takes effect at the time that the rectification or correction is made to the New Zealand register.
- Section 193A was inserted, as from 15 April 2004, by section 9 Building Societies Amendment Act 2004 (2004 No 24).

Part 11

Accounting records and audit

Accounting records

194 Accounting records to be kept

- (1) The board of a company must cause accounting records to be kept that—
- (a) Correctly record and explain the transactions of the company; and
 - (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
 - (c) Will enable the directors to ensure that the financial statements of the company comply with section 10 of the Financial Reporting Act 1993 and any group financial statements comply with section 13 of that Act; and
 - (d) Will enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting subsection (1) of this section, the accounting records must contain—
- (a) Entries of money received and spent each day and the matters to which it relates;
 - (b) A record of the assets and liabilities of the company;
 - (c) If the company's business involves dealing in goods—
 - (i) A record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices;
 - (ii) A record of stock held at the end of the financial year together with records of any stocktakings during the year;
 - (d) If the company's business involves providing services, a record of services provided and relevant invoices.
- (3) The accounting records must be kept—
- (a) In written form and in English; or

- (b) In a form or manner in which they are easily accessible and convertible into written form in English.
- (4) If the board of a company fails to comply with the requirements of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Compare: 1955 No 63 s 151(1), (2), (4), (6), (7); 1980 No 43 s 7(1)

195 Place accounting records to be kept

- (1) A company need not keep its accounting records in New Zealand.
- (2) If the records are not kept in New Zealand,—
 - (a) The company must ensure that accounts and returns for the operations of the company that—
 - (i) Disclose with reasonable accuracy the financial position of the company at intervals not exceeding 6 months; and
 - (ii) Will enable the preparation in accordance with the Financial Reporting Act 1993 of the company's financial statements and any group financial statements and any other document required by this Act—
are sent to, and kept at, a place in New Zealand; and
 - (b) Notice of the place where—
 - (i) The accounting records; and
 - (ii) The accounts and returns required under paragraph (a) of this subsection—
are kept, must be given to the Registrar.
- (3) If a company fails to comply with subsection (2) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act:
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Compare: 1955 No 63 s 151; 1980 No 43 s 7(1)

Auditors

196 Appointment of auditors

- (1) Subject to this section, a company must, at each annual meeting, appoint an auditor to—
 - (a) Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
 - (b) Audit the financial statements of the company and, if the company is required to complete group financial statements, those group financial statements, for the accounting period next after the meeting.
- (1A) If a company is a public entity as defined in section 4 of the Public Audit Act 2001, the Auditor-General is its auditor in accordance with that Act; and subsection (2) does not apply in respect of that company.
- (2) A company need not appoint an auditor in accordance with subsection (1) if, at or before the meeting, a unanimous resolution is passed by all the shareholders who would be entitled to vote on that resolution at a meeting of shareholders. Such a resolution ceases to have effect at the commencement of the next annual meeting.
- (3) Nothing in subsection (2) of this section applies to a company—
 - (a) That is a subsidiary of a company or body corporate incorporated outside New Zealand; or
 - (b) In which shares that in aggregate carry the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of the company are held by—
 - (i) A subsidiary of a company or body corporate incorporated outside New Zealand;
 - (ii) A company or body corporate incorporated outside New Zealand;
 - (iii) A person not ordinarily resident in New Zealand; or
 - (c) That is an issuer within the meaning of section 4 of the Financial Reporting Act 1993.

- (3A) An auditor may resign at any time by giving written notice to the board of the company, and the company must, as soon as practicable, notify its shareholders of the auditor's resignation.
- (3B) If a company fails to comply with subsection (3A), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).
- (4) The board of a company may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.
- (5) If—
- (a) At an annual meeting of a company no auditor is appointed or reappointed and no resolution has been passed pursuant to subsection (2) of this section; or
 - (b) A casual vacancy in the office of auditor is not filled within one month of the vacancy occurring,—
- the Registrar may appoint an auditor.
- (6) A company must, within 5 working days of the power becoming exercisable, give written notice to the Registrar of the fact that the Registrar is entitled to appoint an auditor under subsection (5) of this section.
- (7) If a company fails to comply with subsection (6) of this section,—
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.
- (8) For the purposes of subsection (3)(b)(iii) of this section, a person is ordinarily resident in New Zealand if that person—
- (a) Is domiciled in New Zealand; or
 - (b) Is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period.

Compare: 1955 No 63 ss 163(1), (5)-(7), 354(3)-(3C); 1969 No 128 s 2(2); 1976 No 80 s 2(1); 1982 No 152 s 19(2)

Subsection (1A) was inserted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

Subsection (2) was substituted, as from 30 June 1997, by section 15 Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (3)(b)(i) was amended, as from 1 July 1994, by section 23 Companies Act 1993 Amendment Act 1994 (1994 No 6) by omitting the words “or a subsidiary of that subsidiary”.

Subsections (3A) and (3B) were inserted, as from 15 April 2004, by section 10 Building Societies Amendment Act 2004 (2004 No 24).

196A Auditor is not required to audit financial statements of non-active company

If, by virtue of section 10A of the Financial Reporting Act 1993, the directors of a company are not required to comply with section 10 of that Act in respect of an accounting period, the auditor of the company is not required to audit financial statements of the company for that period

Section 196A was inserted, as from 18 June 2007, by section 6 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

197 Auditors’ fees and expenses

The fees and expenses of an auditor of a company shall be fixed,—

- (a) If the auditor is appointed at a meeting of the company, by the company at the meeting or in such manner as the company determines at the meeting:
- (b) If the auditor is appointed by the directors, by the directors:
- (c) If the auditor is appointed by the Registrar, by the Registrar.
- (d) If the auditor is the Auditor-General, in accordance with the Public Audit Act 2001.

Paragraph (d) was inserted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

198 Appointment of partnership

- (1) A partnership may be appointed by the firm name to be the auditor of a company if all or some of the partners are persons who are qualified to be appointed as auditors of the company.

- (2) The appointment of a partnership by the firm name to be the auditor of a company is deemed, notwithstanding section 199 of this Act, to be the appointment of all the persons who are partners in the firm from time to time.
- (3) Where a partnership that includes persons who are not qualified to be appointed as auditors of a company is appointed as auditor of a company, the persons who are not qualified to be appointed as auditors must not act as auditors of the company.
Compare: 1955 No 63 s 163(2)

199 Qualifications of auditors

- (1) A person must not be appointed or act as an auditor of a company unless—
 - (a) The person is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996); or
 - (b)
 - (c) The person is a member, fellow, or associate of an association of accountants constituted outside New Zealand where—
 - (i) The association is, by notice in the *Gazette*, approved for the time being for the purposes of this section by the Registrar; and
 - (ii) The person is eligible to act as an auditor in the country, state, or territory in which the association is constituted; or
 - (d) The person, not being a person to whom paragraph (c) of this subsection applies, is—
 - (i) Eligible to act as an auditor in a country, state, or territory outside New Zealand; and
 - (ii) Approved for the time being for the purposes of this section by the Registrar by notice in the *Gazette*.
- (2) None of the following persons may be appointed or act as auditor of a company:
 - (a) A director or employee of the company;
 - (b) A person who is a partner, or in the employment, of a director or employee of the company;

- (c) A liquidator or a person who is a receiver in respect of the property of the company:
- (d) A body corporate:
- (e) A person who, by virtue of paragraph (a) or paragraph (b) of this subsection, may not be appointed or act as auditor of a related company.

Compare: 1955 No 63 s 165

The original subsection (1)(c) was substituted, as from 1 July 1994, by section 24 Companies Act 1993 Amendment Act 1994 (1994 No 6).

The original subsection (1)(c) was further substituted, as from 1 October 1995, by section 10(3) Department of Justice (Restructuring) Act 1995 (1995 No 39).

Subsection (1) was substituted, as from 16 September 1996, by section 4 Companies Act 1993 Amendment Act 1996 (1996 No 115).

Subsection (1)(a) was substituted, as from 1 October 1996, by section 23 Institute of Chartered Accountants of New Zealand Act 1996 (1996 No 39).

Subsection (1)(b) was repealed, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

200 Automatic reappointment

- (1) An auditor of a company, other than an auditor appointed under section 201(1) of this Act, is automatically reappointed at an annual meeting of the company unless—
 - (a) The auditor is not qualified for appointment; or
 - (b) The company passes a resolution at the meeting appointing another person to replace him or her as auditor; or
 - (c) The company passes a resolution under section 196(2) of this Act that no auditor be appointed; or
 - (d) The auditor has given notice to the company that he or she does not wish to be reappointed.
- (2) An auditor is not automatically reappointed if the person who it is proposed will replace him or her dies, or is, or becomes incapable of, or disqualified from, appointment.

Compare: 1963 No 155 s 163(2)

201 Appointment of first auditor

- (1) The first auditor of a company may be appointed by the directors of the company before the first annual meeting, and, if so appointed, holds office until the conclusion of that meeting.

- (2) If the directors do not appoint an auditor under subsection (1) of this section, the company must appoint the first auditor at a meeting of the company.
- (3) Neither the directors nor the company need appoint an auditor in accordance with this section if a unanimous resolution is passed by the company that no auditor be appointed. Such a resolution ceases to have effect at the commencement of the first annual meeting.
- (4) Nothing in subsection (3) of this section applies to a company referred to in section 196(3) of this Act.

Compare: 1955 No 63 s 163(4)

202 Replacement of auditor

- (1) A company must not appoint a new auditor in the place of an auditor who is qualified for reappointment, unless—
 - (a) At least 20 working days' written notice of a proposal to do so has been given to the auditor; and
 - (b) The auditor has been given a reasonable opportunity to make representations to the shareholders on the appointment of another person either in writing or by the auditor or his or her representative speaking at a shareholders' meeting (whichever the auditor may choose).
- (2) An auditor is entitled to be paid by the company reasonable fees and expenses for making the representations to shareholders.

Compare: 1955 No 63 s 164

203 Auditor not seeking reappointment or resigning

- (1) If an auditor gives the board of a company written notice that he or she does not wish to be reappointed or of his or her resignation, the board must, if requested to do so by that auditor,—
 - (a) distribute, as soon as practicable, to all shareholders, at the expense of the company, a written statement of the auditor's reasons for his or her wish not to be reappointed or for his or her resignation; or
 - (b) permit the auditor or his or her representative to explain at a shareholders' meeting the reasons for his or her wish not to be reappointed or for his or her resignation.

- (2) An auditor is entitled to be paid by the company reasonable fees and expenses for making the representations to shareholders.

The heading to section 203 was amended, as from 15 April 2004, by section 11(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “or resigning”.

Subsection (1) was substituted, as from 15 April 2004, by section 11(2) Companies Amendment Act (No 2) 2004 (2004 No 24).

204 Auditor to avoid conflict of interest

An auditor of a company must ensure, in carrying out the duties of an auditor under this Part of this Act, that his or her judgment is not impaired by reason of any relationship with or interest in the company or any of its subsidiaries.

205 Auditor’s report

- (1) The auditor of a company must make a report to the shareholders on the financial statements audited by him or her.
- (2) The auditor’s report must state the matters required to be stated in an auditor’s report under the Financial Reporting Act 1993.
- Compare: 1955 No 63 s 166(1)

206 Access to information

- (1) The board of a company must ensure that an auditor of a company has access at all times to the accounting records and other documents of the company.
- (2) An auditor of a company is entitled to require from a director or employee of the company such information and explanations as he or she thinks necessary for the performance of his or her duties as auditor.
- (3) If the board of a company fails to comply with subsection (1) of this section, every director commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.
- (4) A director or employee who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.
- (5) It is a defence to an employee charged with an offence against subsection (4) of this section if he or she proves that—

- (a) He or she did not have the information required in his or her possession or under his or her control; or
 - (b) By reason of the position occupied by him or her or the duties assigned to him or her, he or she was unable to give the explanations required,—
- as the case may be.

Compare: 1955 No 63 s 166(3), (5)

207 Auditor's attendance at shareholders' meeting

- (1) The board of a company must ensure that an auditor of the company—
 - (a) Is permitted to attend a meeting of shareholders of the company; and
 - (b) Receives the notices and communications that a shareholder is entitled to receive relating to a meeting of shareholders; and
 - (c) May be heard at a meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.
- (2) If the board of a company fails to comply with subsection (1) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Compare: 1955 No 63 s 166(4)

Part 12 **Disclosure by companies**

Disclosure to shareholders

208 Obligation to prepare annual report

- (1) Subject to subsection (2) of this section, the board of every company must, within 5 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.
- (2) The board of an exempt company to which section 120(1)(b)(i) of this Act applies, must, within 9 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.

- (3) If the board of a company fails to comply with subsection (1) or subsection (2) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Section 208 was substituted, as from 2 September 1996, by section 5 Companies Act 1993 Amendment Act 1996 (1996 No 115).

209 Obligation to make annual report available to shareholders

- (1) The board of a company must send to every shareholder of the company, not less than 20 working days before the date fixed for holding the annual meeting of shareholders,—
- (a) a copy of the annual report; or
 - (b) a notice containing the statements specified in subsection (3).
- (2) Subsection (1) is subject to section 212.
- (3) The notice referred to in subsection (1)(b) must contain—
- (a) a statement to the effect that the shareholder has a right to receive from the company, free of charge, a copy of the annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the annual report; and
 - (b) a statement to the effect that the shareholder may obtain a copy of the annual report by electronic means; and
 - (c) a statement as to how the shareholder may obtain a copy of the annual report by electronic means (for example, from a specified website address); and
 - (d) a statement as to whether the board of the company has prepared, in relation to the same accounting period as the annual report, a concise annual report and, if so, a statement—
 - (i) to the effect that the shareholder has a right to receive from the company, free of charge, a copy of the concise annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the concise annual report; and

- (ii) to the effect that the shareholder may obtain a copy of the concise annual report by electronic means; and
 - (iii) as to how the shareholder may obtain a copy of the concise annual report by electronic means (for example, from a specified website address).
- (4) The notice referred to in subsection (1)(b) may be accompanied by any additional information or documentation that the board of the company thinks fit.
- (5) For the purposes of this section and sections 209A and 209B, every concise annual report for a company must, in relation to an accounting period, include,—
 - (a) in relation to a company that has, on the balance date of the company, no subsidiaries,—
 - (i) financial statements for the accounting period and any auditor's report on those financial statements required under Part 11; or
 - (ii) summary financial statements for the accounting period:
 - (b) in relation to a company that has, on the balance date of the company, 1 or more subsidiaries,—
 - (i) group financial statements for the accounting period and any auditor's report on those group financial statements required under Part 11; or
 - (ii) summary financial statements for the accounting period prepared in relation to the group comprising the company and its subsidiaries.
- (6) For the purposes of subsection (5),—
 - (a) financial statements must be completed and signed in accordance with section 10 of the Financial Reporting Act 1993:
 - (b) group financial statements must be completed and signed in accordance with section 13 of the Financial Reporting Act 1993:
 - (c) summary financial statements must give a true and fair view of the matters to which they relate and comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993).

- (7) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Subsection (1) was amended, as from 15 April 2004, by section 12(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting “Subject to section 212” for “Subject to subsection (2) of this section”.

Subsection (2) was repealed, as from 15 April 2004, by section 12(2) Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 209 was substituted, as from 18 June 2007, by section 7 Companies Amendment Act (No 2) 2006 (2006 No 62). See clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

209A Board must send copy of annual report or concise annual report on request

- (1) If the board of a company has sent a notice to a shareholder under section 209(1)(b) and the shareholder, within 15 working days of receiving that notice, makes a request to the company to receive a copy of the annual report, the board of the company must, as soon as practicable, send to the shareholder, free of charge, a copy of that annual report.
- (2) If a shareholder makes a request under subsection (1),—
- (a) the request must be treated as a request by the shareholder to send to the shareholder each year a copy of the annual report under section 209(1)(a); and
 - (b) the board of the company must send to the shareholder each year a copy of the annual report under section 209(1)(a) until the shareholder revokes the request by notice to the company.
- (3) Subsection (4) applies if—
- (a) the board of a company has sent a notice to a shareholder under section 209(1)(b); and
 - (b) that notice states that the board has prepared a concise annual report; and
 - (c) the shareholder, within 15 working days of receiving that notice, makes a request to the company to receive a copy of the concise annual report.
- (4) The board of the company must send to the shareholder a copy of the concise annual report, free of charge, as soon as practicable after receiving the request.

- (5) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Sections 209A and 209B were inserted, as from 18 June 2007, by section 7 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

209B Annual report and concise annual report made available by electronic means

- (1) If the board of a company has sent a notice to a shareholder under section 209(1)(b), the board must ensure that—
- (a) a copy of the annual report is available in the manner described in the notice under section 209(3)(c) at all reasonable times during the period beginning on the date the notice is sent and ending on the date the board acts under section 209(1) in relation to the next accounting period; and
 - (b) the manner described in the notice under section 209(3)(c) allows a copy of the annual report to be readily accessible so as to be usable for subsequent reference.
- (2) If the board of a company has sent a notice to a shareholder under section 209(1)(b) and that notice states that the board has prepared a concise annual report, the board must—
- (a) ensure that a copy of the concise annual report is available in the manner described in the notice under section 209(3)(d)(iii) at all reasonable times during the period beginning on the date the notice is sent and ending on the date the board acts under section 209(1) in relation to the next accounting period; and
 - (b) ensure that the manner described in the notice under section 209(3)(d)(iii) allows a copy of the concise annual report to be readily accessible so as to be usable for subsequent reference.
- (3) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Sections 209A and 209B were inserted, as from 18 June 2007, by section 7 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

210 Information for shareholders who elect not to receive annual report

[Repealed]

Section 210 was substituted, as from 15 April 2004, by section 13 Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 210 was repealed, as from 18 June 2007, by section 8 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

211 Contents of annual report

- (1) Every annual report for a company must be in writing and be dated and, subject to subsection (3) of this section, must—
 - (a) Describe, so far as the board believes is material for the shareholders to have an appreciation of the state of the company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in—
 - (i) The nature of the business of the company or any of its subsidiaries; or
 - (ii) The classes of business in which the company has an interest, whether as a shareholder of another company or otherwise; and
 - (b) Include financial statements for the accounting period completed and signed in accordance with section 10 of the Financial Reporting Act 1993 and any group financial statements for the accounting period completed and signed in accordance with section 13 of that Act; and
 - (c) Where an auditor's report is required under Part 11 of this Act in relation to the financial statements or group financial statements, as the case may be, included in the report, include that auditor's report; and
 - (d)
 - (e) State particulars of entries in the interests register made during the accounting period; and
 - (f) State, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director from the company during the accounting period; and

- (g) State the number of employees or former employees of the company, not being directors of the company, who, during the accounting period, received remuneration and any other benefits in their capacity as employees, the value of which was or exceeded \$100,000 per annum, and must state the number of such employees or former employees in brackets of \$10,000; and
 - (h) State the total amount of donations made by the company during the accounting period; and
 - (i) State the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period; and
 - (j) State the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm; and
 - (k) Be signed on behalf of the board by 2 directors of the company or, if the company has only one director, by that director.
- (2) A company that is required to include group financial statements in its annual report must include, in relation to its subsidiaries, the information specified in paragraphs (e) to (j) of subsection (1) of this section.
- (3) The annual report of a company need not comply with any of paragraphs (a), and (e) to (j) of subsection (1), and subsection (2) if all shareholders agree that the report need not do so.
- (4) Nothing in subsection (3) affects the requirements of the Financial Reporting Act 1993.

Subsection (1) was amended, as from 1 July 1994, by section 25 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “(3)” for the expression “(2)”.

Subsection (1)(d) was repealed, as from 3 June 1998, by section 6(1)(a) Companies Amendment Act 1998 (1998 No 31).

Subsection (1)(f) was amended, as from 3 June 1998, by section 6(1)(b) Companies Amendment Act 1998 (1998 No 31) by inserting the words “from the company”.

Subsection (1)(h) was amended, as from 3 June 1998, by section 6(1)(c) Companies Amendment Act 1998 (1998 No 31) by omitting the words “and any subsidiary”.

Subsection (2) was amended, as from 3 June 1998, by section 6(2) Companies Amendment Act 1998 (1998 No 31) by substituting the expression “(e)” for the expression “(d)”.

Subsection (3) was substituted, and subsection (4) was inserted, as from 3 June 1998, by section 6(3) Companies Amendment Act 1998 (1998 No 31).

211A Obligations to prepare and make available annual reports or financial statements do not apply to nonactive companies

If, under section 10A of the Financial Reporting Act 1993, the directors of a company are not required to comply with section 10 of that Act in respect of an accounting period, the board of the company is not required to—

- (a) prepare an annual report under section 208 in respect of that accounting period; or
- (b) send or make available under sections 209 to 209B any annual report, notice, or other document in respect of that accounting period.

Section 211A was inserted, as from 18 June 2007, by section 9 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

212 Shareholders may elect not to receive documents

- (1) A shareholder of a company may from time to time, by written notice to the company, waive the right to receive all or any documents from the company and may revoke the waiver in the same manner and, while the waiver is in effect, the company need not send to the shareholder the documents to which the waiver relates.
- (2) However, if a shareholder of a company purports to waive the right to receive both a copy of the annual report and a notice under section 209(1)(b),—
 - (a) the purported waiver is invalid; and
 - (b) the board of the company must, in accordance with section 209(1), send to the shareholder a copy of the annual report or a notice under section 209(1)(b).

Section 212 was amended, as from 18 June 2007, by section 10(1) Companies Amendment Act (No 2) 2006 (2006 No 62) by substituting “A” for “Subject

to section 210, a". See clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Subsection (2) was inserted, as from 18 June 2007, by section 10(2) Companies Amendment Act (No 2) 2006 (2006 No 62). See clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

213 Failure to disclose

Subject to the constitution of a company, the failure to send an annual report, notice, or other document to a shareholder in accordance with this Act does not affect the validity of proceedings at a meeting of the shareholders of the company if the failure to do so was accidental.

214 Annual return

- (1) The board of a company must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the company for the purpose, an annual return in the prescribed form or in a form the use of which by the company has been approved by the Registrar pursuant to subsection (8) of this section, or as near to it as circumstances allow, and containing as much of the information specified in Schedule 4 to this Act as is prescribed.
- (2) The annual return must be dated as at a day within the month during which the return is required to be delivered to the Registrar and the information required to be contained in it must be compiled as at that date.
- (3) The annual return must be signed by a director of the company or by a solicitor or chartered accountant authorised for that purpose.
- (4) On registration of a company under Part 2 of this Act, the Registrar must allocate a month to the company for the purposes of this section.
- (5) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (4) of this section.
- (6) Notwithstanding subsection (1) of this section,—
 - (a) A company need not make an annual return in the calendar year of its registration:

- (b) A subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company instead of during the month allocated to it.
 - (7) For the purposes of this section, **prescribed** means prescribed by regulations made under this Act or by the Registrar by notice in the *Gazette* and different forms of annual return may be prescribed in respect of different classes of companies.
 - (8) The Registrar may, on the application of any person, approve the use, by such company or companies as the Registrar may specify, of a form of annual return different from that prescribed, and may at any time, revoke, in whole or in part, any such approval.
 - (9) An annual return in a form approved under subsection (8) of this section must contain all the prescribed information.
 - (10) If the board of a company fails to comply with subsection (1) or subsection (2) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.
- Compare: 1955 No 63 ss 130, 131, 132; 1975 No 137 s 13; 1982 No 152 ss 8, 9, 10

214A Registrar may alter New Zealand register

If the annual return contains—

- (a) An address of the registered office of the company; or
 - (b) An address for service of the company; or
 - (c) A postal address of the company—
- that is different from the address of the registered office, the address for service, or the postal address of the company entered on the New Zealand register, the Registrar may alter the New Zealand register accordingly.

Section 214A was inserted, as from 3 June 1998, by section 7 Companies Amendment Act 1998 (1998 No 31).

Inspection of company records

215 Public inspection of company records

- (1) A company must keep the following records available for inspection in the manner prescribed in section 217 of this Act by

a person who serves written notice of intention to inspect on the company:

- (a) The certificate of incorporation or registration of the company;
 - (b) The constitution of the company, if it has one;
 - (c) The share register;
 - (d) The full names and residential addresses of the directors;
 - (e) The registered office and address for service of the company.
- (2) If a company fails to comply with subsection (1) of this section,—
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

216 Inspection of company records by shareholders

- (1) In addition to the records available for public inspection, a company must keep the following records available for inspection in the manner prescribed in section 217 of this Act by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company:
- (a) Minutes of all meetings and resolutions of shareholders;
 - (b) Copies of written communications to all shareholders or to all holders of a class of shares during the preceding 10 years, including annual reports, financial statements, summary financial statements (if any), and group financial statements;
 - (c) Certificates given by directors under this Act;
 - (d) The interests register of the company.
- (2) If a company fails to comply with subsection (1) of this section,—
- (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and

- (b) Every director of a company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Subsection (1)(b) was amended, as from 15 April 2004, by section 14 Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “summary financial statements (if any),” after the words “financial statements,”.

217 Manner of inspection

- (1) Documents which may be inspected under section 215 or section 216 of this Act must be available for inspection at the place at which the company’s records are kept between the hours of 9.00 am and 5.00 pm on each working day during the inspection period.
- (2) In this section, the term **inspection period** means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

218 Copies of documents

- (1) A person may require a copy of, or extract from, a document which is available for inspection by him or her under section 215 or section 216 of this Act to be sent to him or her—
 - (a) Within 5 working days after he or she has made a request in writing for the copy or extract; and
 - (b) If he or she has paid a reasonable copying and administration fee prescribed by the company.
- (2) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (1) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1) of this Act.

Part 13

Amalgamations

219 Amalgamations

Two or more companies may amalgamate, and continue as one company, which may be one of the amalgamating companies, or may be a new company.

220 Amalgamation proposal

- (1) An amalgamation proposal must set out the terms of the amalgamation, and in particular—
 - (a) The name of the amalgamated company, if it is the same as the name of one of the amalgamating companies:
 - (b) The registered office of the amalgamated company:
 - (c) The full name or names and residential address or addresses of the director or directors of the amalgamated company:
 - (d) The address for service of the amalgamated company:
 - (e) The share structure of the amalgamated company, specifying—
 - (i) The number of shares of the company:
 - (ii) The rights, privileges, limitations, and conditions attached to each share of the company, if different from those set out in section 36 of this Act:
 - (f) The manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company:
 - (g) If shares of an amalgamating company are not to be converted into shares of the amalgamated company, the consideration that the holders of those shares are to receive instead of shares of the amalgamated company:
 - (h) Any payment to be made to a shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (g) of this subsection:
 - (i) Details of any arrangement necessary to complete the amalgamation and to provide for the subsequent management and operation of the amalgamated company.
- (2) An amalgamation proposal may specify the date on which the amalgamation is intended to become effective.

- (3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal—
 - (a) Must provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective;
 - (b) Must not provide for the conversion of those shares into shares of the amalgamated company.

221 Approval of amalgamation proposal

- (1) The board of each amalgamating company must resolve that—
 - (a) In its opinion the amalgamation is in the best interest of the company; and
 - (b) It is satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.
- (2) The directors who vote in favour of a resolution required by subsection (1) of this section must sign a certificate stating that, in their opinion, the conditions set out in that subsection are satisfied, and the grounds for that opinion.
- (3) The board of each amalgamating company must send to each shareholder of the company, not less than 20 working days before the amalgamation is proposed to take effect,—
 - (a) A copy of the amalgamation proposal;
 - (b) Copies of the certificates given by the directors of each board;
 - (c) A summary of the principal provisions of the constitution of the amalgamated company, if it has one;
 - (d) A statement that a copy of the constitution of the amalgamated company will be supplied to any shareholder who requests it;
 - (e) A statement setting out the rights of shareholders under section 110 of this Act;
 - (f) A statement of any material interests of the directors in the proposal, whether in that capacity or otherwise;
 - (g) Such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation.

- (4) The board of each amalgamating company must, not less than 20 working days before the amalgamation is proposed to take effect,—
- (a) Send a copy of the amalgamation proposal to every secured creditor of the company; and
 - (b) Give public notice of the proposed amalgamation, including a statement that—
 - (i) Copies of the amalgamation proposal are available for inspection by any shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation at the registered offices of the amalgamating companies and at such other places as may be specified during normal business hours; and
 - (ii) A shareholder or creditor of an amalgamating company or any person to whom an amalgamating company is under an obligation is entitled to be supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating company.
- (5) The amalgamation proposal must be approved—
- (a) By the shareholders of each amalgamating company, in accordance with section 106 of this Act; and
 - (b) If a provision in the amalgamation proposal would, if contained in an amendment to an amalgamating company's constitution or otherwise proposed in relation to that company, require the approval of an interest group, by a special resolution of that interest group.
- (6) A director who fails to comply with subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

222 Short form amalgamation

- (1) A company and one or more other companies that is or that are directly or indirectly wholly owned by it may amalgamate and continue as one company (being the company first referred to) without complying with section 220 and section 221 of this Act if—

- (a) The amalgamation is approved by a resolution of the board of each amalgamating company; and
 - (b) Each resolution provides that—
 - (i) The shares of each amalgamating company, other than the amalgamated company, will be cancelled without payment or other consideration; and
 - (ii) The constitution of the amalgamated company, if it has one, will be the same as the constitution of the company first referred to, if it has one; and
 - (iii) The board is satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test; and
 - (iv) The person or persons named in the resolution will be the director or directors of the amalgamated company.
- (2) Two or more companies, each of which is directly or indirectly wholly owned by the same person, may amalgamate and continue as one company without complying with section 220 or section 221 of this Act if—
- (a) The amalgamation is approved by a resolution of the board of each amalgamating company; and
 - (b) Each resolution provides that—
 - (i) The shares of all but one of the amalgamating companies will be cancelled without payment or other consideration; and
 - (ii) The constitution of the amalgamated company, if it has one, will be the same as the constitution of the amalgamating company whose shares are not cancelled, if it has one; and
 - (iii) The board is satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test; and
 - (iv) The person or persons named in the resolution will be the director or directors of the amalgamated company.

- (3) The board of each amalgamating company must, not less than 20 working days before the amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every secured creditor of the company.
- (4) The resolutions approving an amalgamation under this section, taken together, shall be deemed to constitute an amalgamation proposal that has been approved.
- (5) The directors who vote in favour of a resolution required by subsection (1) or subsection (2) of this section, as the case may be, must sign a certificate stating that, in their opinion, the condition set out in subsection (1)(b)(iii) or subsection (2)(b)(iii) is satisfied, and the grounds for that opinion.
- (6) A director who fails to comply with subsection (5) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

Subsection (1)(b)(iii) was amended by inserting the expression “; and”, and subsection (1)(b)(iv) was inserted, as from 30 June 1997, by section 16(1) Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (2) was amended, as from 3 June 1998, by section 8 Companies Amendment Act 1998 (1998 No 31) by substituting the word “person” for the word “company”.

Subsection (2)(b)(iii) was amended by inserting the expression “; and”, and subsection (2)(b)(iv) was inserted, as from 30 June 1997, by section 16(2) Companies Act 1993 Amendment Act 1997 (1997 No 27).

Subsection (5) was amended, as from 30 June 1997, by section 16(3) Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the words “condition set out in subsection (1)(b)(iii) or subsection (2)(b)(iii) is” for the words “conditions set out in subsection (1) or subsection (2) are”.

223 Registration of amalgamation proposal

For the purpose of effecting an amalgamation the following documents must be delivered to the Registrar for registration:

- (a) The approved amalgamation proposal; and
- (b) Any certificates required under section 221(2) or section 222(5) of this Act; and
- (c) A certificate signed by the board of each amalgamating company stating that the amalgamation has been approved in accordance with this Act and the constitution of the company, if it has one; and
- (d) If the amalgamated company is a new company or the amalgamation proposal provides for a change of the

- name of the amalgamated company, a copy of the notice reserving the name of the company; and
- (e) A certificate signed by the board, or proposed board, of the amalgamated company stating that, where the proportion of the claims of creditors of the amalgamated company in relation to the value of the assets of the company is greater than the proportion of the claims of creditors of an amalgamating company in relation to the value of the assets of that amalgamating company, no creditor will be prejudiced by that fact; and
 - (f) A document in the prescribed form signed by each of the persons named in the amalgamation proposal as a director of the amalgamated company containing his or her consent to be a director and a certificate that he or she is not disqualified from being appointed or holding office as a director of a company.

224 Certificate of amalgamation

- (1) Forthwith after receipt of the documents required under section 223 of this Act, the Registrar must,—
 - (a) If the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation; or
 - (b) If the amalgamated company is a new company,—
 - (i) Enter particulars of the company on the New Zealand register; and
 - (ii) Issue a certificate of amalgamation together with a certificate of incorporation.
- (2) If an amalgamation proposal specifies a date on which the amalgamation is intended to become effective, and that date is the same as, or later than, the date on which the Registrar receives the documents, the certificate of amalgamation, and any certificate of incorporation must be expressed to have effect on the date specified in the amalgamation proposal.

Subsection (1)(a) was amended, as from 1 July 1994, by section 26(1) Companies Act 1993 Amendment Act 1994 (1994 No 6) by omitting the words “in the prescribed form”.

Subsection (1)(b)(ii) was substituted, as from 1 July 1994, by section 26(2) Companies Act 1993 Amendment Act 1994 (1994 No 6).

225 Effect of certificate of amalgamation

On the date shown in a certificate of amalgamation,—

- (a) The amalgamation is effective; and
- (b) If it is the same as a name of one of the amalgamating companies, the amalgamated company has the name specified in the amalgamation proposal; and
- (c) The Registrar must remove the amalgamating companies, other than the amalgamated company, from the New Zealand register; and
- (d) The amalgamated company succeeds to all the property, rights, powers, and privileges of each of the amalgamating companies; and
- (e) The amalgamated company succeeds to all the liabilities and obligations of each of the amalgamating companies; and
- (f) Proceedings pending by, or against, an amalgamating company may be continued by, or against, the amalgamated company; and
- (g) A conviction, ruling, order, or judgment in favour of, or against, an amalgamating company may be enforced by, or against, the amalgamated company; and
- (h) Any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

225A Registers

- (1) Where an amalgamation becomes effective, no Registrar of Deeds or District Land Registrar or other person charged with the keeping of any books or registers shall be obliged, solely by reason of the amalgamation becoming effective, to change the name of an amalgamating company to that of an amalgamated company in those books or registers or in any documents.
- (2) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by the amalgamated company—
 - (a) Executed or purporting to be executed by the amalgamated company; and

- (b) Relating to any property held immediately before the amalgamation by an amalgamating company; and
- (c) Stating that that property has become the property of the amalgamated company by virtue of this Part of this Act—

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

- (3) Without limiting subsection (1) or subsection (2) of this section, where any security issued by any person or any rights or interests in property of any person become, by virtue of this Part of this Act, the property of an amalgamated company, that person, on presentation of a certificate signed on behalf of the board of the amalgamated company, stating that that security or any such rights or interests have, by virtue of this Part of this Act, become the property of the amalgamated company, shall, notwithstanding any other enactment or rule of law or the provisions of any instrument, register the amalgamated company as the holder of that security or as the person entitled to such rights or interests, as the case may be.
- (4) In subsection (3) of this section, **security** has the same meaning as in section 2(1) of the Securities Act 1978.
- (5) Except as provided in this section, nothing in this Part of this Act derogates from the provisions of the Land Transfer Act 1952.

Section 225A was inserted, as from 1 July 1994, by section 27 Companies Act 1993 Amendment Act 1994 (1994 No 6).

226 Powers of Court in other cases

- (1) If the Court is satisfied that giving effect to an amalgamation proposal would unfairly prejudice a shareholder or creditor of an amalgamating company or a person to whom an amalgamating company is under an obligation, it may, on the application, made at any time before the date on which the amalgamation becomes effective, of that person, make any order it thinks fit in relation to the proposal, and may, without limiting the generality of this subsection, make an order—
 - (a) Directing that effect must not be given to the proposal:

- (b) Modifying the proposal in such manner as may be specified in the order;
 - (c) Directing the company or its board to reconsider the proposal or any part of it.
- (2) An order may be made under subsection (1) of this section on such conditions as the Court thinks fit.

Part 14

Compromises with creditors

227 Interpretation

In this Part of this Act, unless the context otherwise requires,—
company

Compromise means a compromise between a company and its creditors, including a compromise—

- (a) Cancelling all or part of a debt of the company; or
- (b) Varying the rights of its creditors or the terms of a debt; or
- (c) Relating to an alteration of a company's constitution that affects the likelihood of the company being able to pay a debt:

Creditor includes—

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

Creditor: this definition was substituted, as from 1 July 1994, by section 28 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Proponent means a person referred to in section 228 of this Act who proposed a compromise in accordance with this Part.

228 Compromise proposal

- (1) Any of the following persons may propose a compromise under this Part of this Act if that person has reason to believe that a company is or will be unable to pay its debts within the meaning of section 287 of this Act—
 - (a) The board of directors of the company:

- (b) A receiver appointed in relation to the whole or substantially the whole of the assets and undertaking of the company:
 - (c) A liquidator of the company:
 - (d) With the leave of the Court, any creditor or shareholder of the company.
- (2) Where the Court grants leave to a creditor or shareholder under subsection (1)(d) of this section, the Court may make an order directing the company to supply to the creditor or shareholder, within such time as may be specified, a list of the names and addresses of the company's creditors showing the amounts owed to each of them or such other information as may be specified to enable the creditor or shareholder to propose a compromise.

229 Notice of proposed compromise

- (1) The proponent must compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out—
 - (a) The amount owing or estimated to be owing to each of them; and
 - (b) The number of votes which each of them is entitled to cast on a resolution approving the compromise.
- (2) The proponent must give to each known creditor, the company, any receiver or liquidator, and deliver to the Registrar for registration,—
 - (a) Notice in accordance with Schedule 5 to this Act of the intention to hold a meeting of creditors, or any 2 or more classes of creditors, for the purpose of voting on the resolution; and
 - (b) A statement—
 - (i) Containing the name and address of the proponent and the capacity in which the proponent is acting; and
 - (ii) Containing the address and telephone number to which inquiries may be directed during normal business hours; and

- (iii) Setting out the terms of the proposed compromise and the reasons for it; and
 - (iv) Setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved; and
 - (v) Setting out the extent of any interest of a director in the proposed compromise; and
 - (vi) Explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will be binding on all creditors, or on all creditors of that class, if approved in accordance with section 230 of this Act; and
 - (vii) Containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and
- (c) A copy of the list or lists of creditors referred to in subsection (1) of this section.

230 Effect of compromise

- (1) A compromise, including any amendment proposed at the meeting, is approved by creditors, or a class of creditors, if, at a meeting of creditors or that class of creditors conducted in accordance with Schedule 5 to this Act, the compromise, including any amendment, is adopted in accordance with clause 5 of that Schedule.
- (2) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this Part of this Act is binding on the company and on—
- (a) All creditors; or
 - (b) If there is more than one class of creditors, on all creditors of that class—
- to whom notice of the proposal was given under section 229 of this Act.
- (3) If a resolution proposing a compromise, including any amendment, is put to the vote of more than one class of creditors, it is to be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval

of the compromise, including any amendment, by every other class voting on the resolution.

- (4) The proponent must give written notice of the result of the voting to each known creditor, the company, any receiver or liquidator, and the Registrar.

231 Variation of compromise

- (1) A compromise approved under section 230 of this Act may be varied either—
 - (a) In accordance with any procedure for variation incorporated in the compromise as approved; or
 - (b) By the approval of a variation of the compromise in accordance with this Part of this Act which, for that purpose, shall apply with such modifications as may be necessary as if any proposed variation were a proposed compromise.
- (2) The provisions of this Part of this Act shall apply to any compromise that is varied in accordance with this section.

232 Powers of Court

- (1) On the application of the proponent or the company, the Court may—
 - (a) Give directions in relation to a procedural requirement imposed by this Part of this Act, or waive or vary any such requirement, if satisfied that it would be just to do so; or
 - (b) Order that, during a period specified in the order, beginning not earlier than the date on which notice was given of the proposed compromise and ending not later than 10 working days after the date on which notice was given of the result of the voting on it,—
 - (i) Proceedings in relation to a debt owing by the company be stayed; or
 - (ii) A creditor refrain from taking any other measure to enforce payment of a debt owing by the company.
- (2) Nothing in subsection (1)(b) of this section affects the right of a secured creditor during that period to take possession of,

realise, or otherwise deal with, property of the company over which that creditor has a charge.

- (3) If the Court is satisfied, on the application of a creditor of a company who was entitled to vote on a compromise that—
- (a) Insufficient notice of the meeting or of the matter required to be notified under section 229 of this Act was given to that creditor; or
 - (b) There was some other material irregularity in obtaining approval of the compromise; or
 - (c) In the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs,—
- the Court may order that the creditor is not bound by the compromise or make such other order as it thinks fit.
- (4) An application under subsection (3) of this section must be made not later than 10 working days after the date on which notice of the result of the voting was given to the creditor.

233 Effect of compromise in liquidation of company

- (1) Where a compromise is approved under section 230 of this Act, the Court may, on the application of—
- (a) The company; or
 - (b) A receiver appointed in relation to property of the company; or
 - (c) With the leave of the Court, any creditor or shareholder of the company,—
- make such order as the Court thinks fit with respect to the extent, if any, to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator of the company.
- (2) Where a compromise is approved under section 230 of this Act and the company is subsequently put into liquidation, the Court may, on the application of—
- (a) The liquidator; or
 - (b) A receiver appointed in relation to property of the company; or
 - (c) With the leave of the Court, any creditor or shareholder of the company,—

make such order as the Court thinks fit with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

234 Costs of compromise

Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise—

- (a) Must be met by the company; or
- (b) If incurred by a receiver or a liquidator, are a cost of the receivership or liquidation; or
- (c) If incurred by any other person, are a debt due to that person by the company and, if the company is put into liquidation, are payable in the order of priority specified in Schedule 7 to this Act.

Part 15
Approval of arrangements,
amalgamations, and compromises
by Court

235 Interpretation

In this Part of this Act, unless the context otherwise requires,—

Arrangement includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods

Company means—

- (a) A company within the meaning of section 2 of this Act;
- (b) An overseas company that is registered on the overseas register;
- (c) An association that may be put into liquidation under section 17A of the Judicature Act 1908:

Creditor includes—

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

Creditor: this definition was substituted, as from 1 July 1994, by section 29 Companies Act 1993 Amendment Act 1994 (1994 No 6).

236 Approval of arrangements, amalgamations, and compromises

- (1) Notwithstanding the provisions of this Act or the constitution of a company, the Court may, on the application of a company or any shareholder or creditor of a company, order that an arrangement or amalgamation or compromise shall be binding on the company and on such other persons or classes of persons as the Court may specify and any such order may be made on such terms and conditions as the Court thinks fit.
- (2) Before making an order under subsection (1) of this section, the Court may, on the application of the company or any shareholder or creditor or other person who appears to the Court to be interested, or of its own motion, make any one or more of the following orders:
 - (a) An order that notice of the application, together with such information relating to it as the Court thinks fit, be given in such form and in such manner and to such persons or classes of persons as the Court may specify:
 - (b) An order directing the holding of a meeting or meetings of shareholders or any class of shareholders or creditors or any class of creditors of a company to consider and, if thought fit, to approve, in such manner as the Court may specify, the proposed arrangement or amalgamation or compromise and, for that purpose, may determine the shareholders or creditors that constitute a class of shareholders or creditors of a company:
 - (c) An order requiring that a report on the proposed arrangement or amalgamation or compromise be prepared for the Court by a person specified by the Court and, if the Court thinks fit, be supplied to the shareholders or any class of shareholders or creditors or any class of creditors of a company or to any other person who appears to the Court to be interested:
 - (d) An order as to the payment of the costs incurred in the preparation of any such report:

- (e) An order specifying the persons who shall be entitled to appear and be heard on the application to approve the arrangement or amalgamation or compromise.
- (3) An order made under this section has effect on and from the date specified in the order.
- (4) Within 10 working days of an order being made by the Court, the board of the company must ensure that a copy of the order is delivered to the Registrar for registration.
- (5) If the board of a company fails to comply with subsection (4) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

237 Court may make additional orders

- (1) Without limiting section 236 of this Act, the Court may, for the purpose of giving effect to any arrangement or amalgamation or compromise approved under that section, either by the order approving the arrangement or amalgamation or compromise, or by any subsequent order, provide for, and prescribe terms and conditions relating to,—
 - (a) The transfer or vesting of real or personal property, assets, rights, powers, interests, liabilities, contracts, and engagements:
 - (b) The issue of shares, securities, or policies of any kind:
 - (c) The continuation of legal proceedings:
 - (d) The liquidation of any company:
 - (e) The provisions to be made for persons who voted against the arrangement or amalgamation or compromise at any meeting called in accordance with any order made under subsection (2)(b) of that section or who appeared before the Court in opposition to the application to approve the arrangement or amalgamation or compromise:
 - (f) Such other matters that are necessary or desirable to give effect to the arrangement or amalgamation or compromise.
- (2) Within 10 working days of an order being made by the Court, the board of the company must ensure that a copy of the order is delivered to the Registrar for registration.

- (3) If the board of a company fails to comply with subsection (2) of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

238 Parts 13 and 14 not affected

The Court may—

- (a) Approve an amalgamation under section 236 of this Act even though the amalgamation could be effected under Part 13 of this Act;
- (b) Approve a compromise under section 236 of this Act even though the compromise could be approved under Part 14 of this Act.

239 Application of section 233

The provisions of section 233 of this Act shall apply with such modifications as may be necessary in relation to any compromise approved under section 236 of this Act.

Part 15A

Voluntary administration

Subpart 1—Preliminary

239A Objects of this Part

239B Interpretation of some key terms

239C Interpretation of other terms

239D When administration begins

239E When administration ends

Subpart 2—Appointment of administrator

239F Who may be appointed administrator

239G Administrator must consent in writing

239H Who may appoint administrator

239I Appointment by company

239J Appointment by liquidator or interim liquidator

239K Appointment by secured creditor

239L Appointment by Court

239M Appointment must not be revoked

239N Appointment of 2 or more administrators

239O Remuneration of administrator

Subpart 3—Resignation and removal of
administrator

239P When office of administrator is vacant

239Q Administrator may resign

239R Removal of administrator

239S Appointor may appoint new administrator to fill vacancy

**239T Creditors must consider appointment of replacement
administrator**

Subpart 4—Effect of appointment of
administrator

239U Outline of administrator's role

239V Administrator's powers

239W Administrator is company's agent

239X Effect on directors

239Y Effect on employees

239Z Effect on dealing with company property

239AA Company officer's liability for compensation for void transaction or dealing

239AB Effect on transfer of shares

239AC Effect on liquidation

239AD Effect on receivership

Subpart 5—Administrator's investigation of
company's affairs

239AE Administrator must investigate company's affairs and consider possible courses of action

239AF Directors' statement of company's position

239AG Administrator's right to documents, etc

239AH Administrator may lodge report with Registrar

239AI Administrator must report misconduct

Subpart 6—Creditors' meetings generally

239AJ Administrator must call creditors' meetings

239AK Conduct of creditors' meetings

239AL Joint meetings of creditors of related companies in administration

239AM Power of Court where outcome of voting at creditors' meeting determined by related entity

Subpart 7—First creditors' meeting to
appoint creditors' committee

239AN Administrator must call first creditors' meeting

239AO Notice of first and subsequent creditors' meetings

239AP Administrator must table interests statement

239AQ Functions of creditors' committee

239AR Membership of creditors' committee

Subpart 8—Watershed meeting

239AS What watershed meeting is

239AT Administrator must convene watershed meeting

239AU Notice of watershed meeting

239AV When watershed meeting must be held

239AW Directors must attend watershed meeting

239AX Disclosure of voting arrangements

**239AY Court may order that pooled property owners are
separate class**

239AZ Adjournment of watershed meeting

239ABA What creditors may decide at watershed meeting

**239ABB What happens if proposed deed not fully approved
at watershed meeting**

Subpart 9—Protection of company's
property during administration

239ABC Charge unenforceable

**239ABD Owner or lessor must not recover property used by
company**

239ABE Proceeding must not be begun or continued

**239ABF Administrator not liable in damages for refusing
consent**

239ABG Enforcement process halted

**239ABH Duties of court officer in relation to company's
property**

239ABI *Lis pendens* taken to exist

**239ABJ Administration not to trigger enforcement of
guarantee of liability of director or relative**

Subpart 10—Rights of secured creditor,
owner, or lessor

239ABK Meaning of terms used in this subpart

**239ABL If secured creditor acts before or during decision
period**

**239ABM If enforcement of charges begins before
administration**

239ABN Charge over perishable property

239ABO Court may limit powers of secured creditor, etc, in relation to property subject to charge

239ABP Giving notice under security agreement

239ABQ If recovery of property begins before administration

239ABR Recovering perishable property

239ABS Court may limit powers of receiver, etc, in relation to property used by company

239ABT Giving notice under agreement about property

Subpart 11—Interface with liquidation

239ABU When liquidator may be appointed to company in administration

239ABV Court may adjourn application for liquidation

239ABW Court must not appoint interim liquidator if administration in creditors' interests

239ABX Effect of appointment of liquidator

239ABY Former administrator is default liquidator

239ABZ Person in control of company must lodge revised report with Registrar

239ACA Act of administrator in good faith must not be set aside in liquidation

239ACB Voidable transactions

Subpart 12—Deed administrator

239ACC Who is deed administrator

239ACD Who may be appointed deed administrator

239ACE Deed administrator must consent in writing

**239ACF Appointment of deed administrator must not be
revoked**

239ACG Appointment of 2 or more deed administrators

239ACH When office of deed administrator vacant

239ACI Deed administrator may resign

239ACJ Removal of deed administrator

239ACK Remuneration of deed administrator

239ACL Deed administrator may sell shares in company

Subpart 13—Execution and effect of deed of company arrangement

239ACM When this subpart applies

239ACN Preparation and contents of deed

239ACO Execution of deed

**239ACP Procedure if deed not fully approved at watershed
meeting**

**239ACQ Creditor must not act inconsistently with deed, etc,
before execution**

239ACR Company's failure to execute deed

239ACS Who is bound by deed

239ACT Extent to which deed binds creditors

**239ACU Person bound by deed must not take steps to liquidate,
etc**

**239ACV Court may restrain creditors and others from
enforcing charge or recovering property**

239ACW Effect of deed on company's debts

239ACX Court may rule on validity of deed

Subpart 14—Administrator's duty to file
accounts

239ACY Administrator includes deed administrator

239ACZ Administrator must file accounts

Subpart 15—Variation and termination of
deed

239ADA Creditors may vary deed

239ADB Court may cancel creditors' variation

239ADC Termination of deed

239ADD Termination by Court

239ADE Termination by creditors

**239ADF Creditors' meeting to consider proposed variation or
termination of deed**

Subpart 16—Administrator’s liability and
indemnity for debts of administration

**239ADG Administrator not liable for company’s debts except
as provided in this subpart and in section 239Y**

239ADH Administrator liable for general debts

239ADI Administrator’s liability for rent

**239ADJ Administrator not liable for rental if non-use notice
in force**

**239ADK Court may exempt administrator from liability for
rent**

239ADL Administrator’s indemnity

**239ADM Administrator’s right of indemnity has priority over
other debts**

239ADN Lien to secure indemnity

Subpart 17—Powers of Court

239ADO Court’s general power

239ADP Orders to protect creditors during administration

**239ADQ Court may rule on validity of administrator’s
appointment**

239ADR Administrator may seek directions

**239ADS Court may supervise administrator or deed
administrator**

239ADT Court may order administrator or deed administrator to remedy default

239ADU Court's power when office of administrator or deed administrator vacant, etc

239ADV Prohibition order

Subpart 18—Notices about steps taken
under this Part

239ADW Administrator must give notice of appointment

239ADX Secured creditor who appoints administrator must give notice to company

239ADY Deed administrator must give notice of execution of deed of company arrangement

239ADZ Deed administrator must give notice of failure to execute deed of company arrangement

239AEA Deed administrator must give notice of termination by creditors of deed of company arrangement

239AEB Company must disclose fact of administration

239AEC Notice of change of name

239AED Effect of contravention of this subpart

Subpart 19—Miscellaneous

239AEE Effect of things done during administration of company

239AEF Interruption of time for doing act

Subpart 20—Set-off and netting agreements

239AEG Mutual credit and set-off

239AEH Application of set-off under netting agreement

239AEI Calculation of netted balance

239AEJ Mutuality required for transactions under bilateral netting agreements

239AEK When mutuality required for transactions under recognised multilateral netting agreements

239AEL Application of set-off under section 239AEG to transactions subject to netting agreements

239AEM Transactions under netting agreement and effect on certain sections

239AEN Rights under netting agreement not affected by commencement of administration

239AEO Effect of declaration of person as recognised clearing house under section 310K

239AEP Transactions under recognised multilateral netting agreement not affected by variation or revocation of declaration under section 310K

Subpart 21—Single administration of related companies in administration

239AEQ Interpretation of terms for purposes of this subpart

239AER Court may order single administration for related companies in administration

239AES Notice that application filed must be given to administrators and creditors

239AET Guidelines for single administration order

239AEU Court may order that related company in administration be added to existing pool

239AEV Creditors' meetings in single administration of pool companies

239AEW Pool companies may execute single deed of company administration

Part 16 **Liquidations**

The process of liquidation

240 Interpretation

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

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

- (a) For the purposes of sections 241(2)(c), 247, 250, and 289 of this Act; or
- (b) To the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under section 305 of this Act as an unsecured creditor:

Creditor: this definition was substituted, as from 1 July 1994, by section 30 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Liquidation committee means a liquidation committee appointed under section 314 of this Act

Official Assignee means an Official Assignee or Deputy Assignee appointed under the Insolvency Act 1967

Statutory demand has the meaning set out in section 289 of this Act.

- (2) For the purposes of this Act, the power to appoint a liquidator of a company includes the power to appoint 2 or more persons as liquidators of a company.

241 Commencement of liquidation

- (1) A company may be put into liquidation by the appointment as liquidator of a named person or of an Official Assignee for a named district.
- (2) A liquidator may be appointed by—
- (a) Special resolution of those shareholders entitled to vote and voting on the question; or
 - (b) The board of the company on the occurrence of an event specified in the constitution; or
 - (c) The Court, on the application of the company, or a director or shareholder, or other entitled person, or a creditor of the company (including any contingent or prospective creditor), or the Registrar.
- (3) An Official Assignee may be appointed liquidator of a company only—
- (a) If the special resolution passed in accordance with paragraph (a) of subsection (2) of this section is passed by reason of the Official Assignee exercising voting rights attaching to shares in the company of—
 - (i) A person who has been adjudged bankrupt; or
 - (ii) Another company of which the Official Assignee is liquidator; or
 - (b) By the Court.
- (4) The Court may appoint a liquidator if it is satisfied that—
- (a) The company is unable to pay its debts; or
 - (b) The company or the board has persistently or seriously failed to comply with this Act; or
 - (c) The company does not comply with section 10 of this Act; or
 - (d) It is just and equitable that the company be put into liquidation.
- (5) The liquidation of a company commences on the date on which, and at the time at which, the liquidator is appointed.

Subsection (5) was substituted, as from 26 April 1999, by section 3 Companies Amendment Act 1999 (1999 No 19).

241AA Restriction on appointment of liquidator by shareholders or board after application filed for Court appointment

241A Commencement of liquidation to be recorded

- (1) If—
- (a) A liquidator is appointed under section 241(2)(a), the shareholders must record in the special resolution appointing the liquidator the date on which, and the time at which, the special resolution was passed; or
 - (b) A liquidator is appointed under section 241(2)(b), the board of the company must record in the instrument appointing the liquidator the date on which, and the time at which, the liquidator was appointed; or
 - (c) A liquidator is appointed under section 241(2)(c), the Court must record in the order appointing the liquidator the date on which, and the time at which, the order was made.
 - (d)
- (2) If any question arises as to whether on the date on which a liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

Section 241A was inserted, as from 26 April 1999, by section 4 Companies Amendment Act 1999 (1999 No 19).

242 Liquidators to act jointly unless otherwise stated

Where 2 or more persons are appointed as liquidators of a company, those persons must act jointly unless the special resolution of shareholders or the resolution of the board of the company or the order of the Court appointing the liquidators states that the liquidators may exercise their powers individually.

243 Liquidator to summon meeting of creditors

- (1) Subject to section 245 of this Act and to subsection (8) of this section, the liquidator of a company must call a meeting of the creditors of the company for the purpose,—

- (a) In the case of a liquidator appointed pursuant to paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act, of resolving whether to confirm the appointment of that liquidator or to appoint another liquidator in place of the liquidator so appointed:
 - (b) In the case of a liquidator appointed pursuant to paragraph (c) of subsection (2) of section 241 of this Act, of resolving whether to confirm the appointment of that liquidator or to make an application to the Court for the appointment of a liquidator in place of the liquidator so appointed:
 - (c) In either case, of determining whether to pass a resolution for the purposes of section 258(1)(b) of this Act.
- (1A) If the appointment of a liquidator under paragraph (a) or paragraph (b) of section 241(2) is not confirmed at a meeting of creditors and another liquidator is not appointed in place of that liquidator, the appointment of the liquidator under paragraph (a) or paragraph (b) of section 241(2) continues until another liquidator is appointed.
- (2) Notice in writing of a meeting of creditors must be given to every known creditor and,—
 - (a) If paragraph (c) of subsection (2) of section 255 of this Act applies, must be given together with the report and notice referred to in that paragraph; and
 - (b) If the liquidator receives a notice under section 245(1)(b)(iii) of this Act requiring a meeting of creditors to be called, must be given within 10 working days after receiving the notice.
- (3) Public notice of the meeting of creditors must also be given by the liquidator not less than 5 working days before the date of the meeting.
- (4) Except if subsection (2)(b) applies, a meeting of creditors must be held,—
 - (a) In the case of a liquidator appointed under paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act, within 10 working days of the liquidator's appointment; or

- (b) In the case of a liquidator appointed under paragraph (c) of subsection (2) of section 241 of this Act, within 30 working days of the liquidator's appointment; or
 - (c) In either case, within such longer period as the Court may allow.
- (4A) If subsection (2)(b) applies, a meeting of creditors must be held within 15 working days after the liquidator receives a notice under section 245(1)(b)(iii) requiring a meeting of creditors to be called.
- (5) Every meeting of creditors must be held in accordance with Schedule 5 to this Act.
- (6) If at a meeting of creditors it is resolved to appoint a person as liquidator of the company in place of the liquidator appointed pursuant to paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act, the person who it is resolved to appoint as liquidator shall, subject to section 282 of this Act, be the liquidator of the company.
- (7) If at a meeting of creditors it is resolved to apply to the Court for the appointment of a person as liquidator in place of the liquidator appointed pursuant to paragraph (c) of subsection (2) of section 241 of this Act, the liquidator of the company must forthwith apply to the Court for the appointment of that person as liquidator and the Court may, if it thinks fit, appoint that person as the liquidator of the company.
- (8) Nothing in this section applies to the liquidator of a company appointed pursuant to paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act if, within 20 working days before the appointment of the liquidator, the board of the company resolved that the company would, on the appointment of a liquidator under either paragraph (a) or paragraph (b) of that subsection, be able to pay its debts and a copy of the resolution is delivered to the Registrar for registration.
- (9) The directors who vote in favour of such a resolution must sign a certificate stating that, in their opinion, the company would, on the appointment of a liquidator under either paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act, as the case may be, be able to pay its debts, and the grounds for that opinion.

(10) Every director who fails to comply with subsection (9) of this section commits an offence and is liable on conviction to the penalty set out in section 373(1) of this Act.

(11)

Subsection (1)(a) was amended, as from 3 June 1998, by section 9(1)(a) Companies Amendment Act 1998 (1998 No 31) by inserting the words “to confirm the appointment of that liquidator or”.

Subsection (1)(b) was amended, as from 3 June 1998, by section 9(1)(b) Companies Amendment Act 1998 (1998 No 31) by inserting the words “to confirm the appointment of that liquidator or”.

Subsection (1A) was inserted, as from 3 June 1998, by section 9(2) Companies Amendment Act 1998 (1998 No 31).

Subsection (2)(b) was amended, as from 3 June 1998, by section 9(3) Companies Amendment Act 1998 (1998 No 31) by substituting the words “within 10 working days” for the word “forthwith”.

Subsection (4) was amended, as from 3 June 1998, by section 9(4) Companies Amendment Act 1998 (1998 No 31) by substituting the words “Except if subsection (2)(b) applies,” for the words “Subject to subsection (2)(b) of this section”.

Subsection (4A) was inserted, as from 3 June 1998, by section 9(5) Companies Amendment Act 1998 (1998 No 31).

244 Liquidator to summon meeting of creditors in other cases

Subject to section 245 of this Act, the liquidator of a company who was not, by reason of section 243(8) of this Act, required to call a meeting of creditors of the company must,—

(a) If the liquidator is satisfied that the directors who voted in favour of a resolution referred to in that subsection did not have reasonable grounds to believe that the company would, on the appointment of a liquidator under paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act, be able to pay its debts; or

(b) If the liquidator is satisfied that the company is not able to pay its debts,—

forthwith call a meeting of the creditors of the company for the purpose specified in paragraph (a) or paragraph (b) of subsection (1) of section 243 of this Act, as the case may be; and the provisions of that section shall apply accordingly with such modifications as may be necessary.

245 Liquidator may dispense with meetings of creditors

- (1) A liquidator is not required to call a meeting of creditors under section 243 or section 244 of this Act, as the case may be, if—
- (a) The liquidator considers, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company, and any other relevant matters, that no such meeting should be held; and
 - (b) The liquidator gives notice in writing to the creditors stating—
 - (i) That the liquidator does not consider that a meeting should be held; and
 - (ii) The reasons for the liquidator's view; and
 - (iii) That no such meeting will be called unless a creditor gives notice in writing to the liquidator, within 10 working days after receiving the notice, requiring a meeting to be called; and
 - (c) No notice requiring the meeting to be called is received by the liquidator within that period.
- (2) Notice under subsection (1)(b) of this section must be given to every known creditor,—
- (a) If paragraph (c) of subsection (2) of section 255 of this Act applies, together with the report and notice referred to in that paragraph; or
 - (b) If paragraph (c) of subsection (2) of section 255 of this Act is not applicable, at the time the liquidator would have been required to send the report and notice referred to in that paragraph if it were applicable.

Compare: 1955 No 63 s 235A; 1989 No 101 s 8

245A Power of Court where outcome of voting at meeting of creditors determined by related entity

246 Interim liquidator

- (1) If an application has been made to the Court for an order that a company be put into liquidation, the Court may, if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the company, appoint a named person, or an Official Assignee for a named district, as interim liquidator.

- (2) Subject to subsection (3) of this section, an interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company.
- (3) The Court may limit the rights and powers of an interim liquidator in such manner as it thinks fit.
- (4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing that interim liquidator is made.
- (5) The Court must record in the order appointing the interim liquidator the date on which, and the time at which, the order was made.
- (6) If any question arises as to whether on the date on which an interim liquidator was appointed an act was done or a transaction was entered into or effected before or after the time at which the interim liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time.

Subsections (4) to (6) were inserted, as from 26 April 1999, by section 5 Companies Amendment Act 1999 (1999 No 19).

247 Power to stay or restrain certain proceedings against company

At any time after the making of an application to the Court under section 241(2)(c) of this Act to appoint a liquidator of a company and before a liquidator is appointed, the company or any creditor or shareholder of the company may,—

- (a) In the case of any application or proceeding against the company that is pending in the Court or Court of Appeal, apply to the Court or Court of Appeal, as the case may be, for a stay of the application or proceeding:
- (b) In the case of any other application or proceeding pending against the company in any court or tribunal, apply to the Court to restrain the application or proceeding—and the Court or Court of Appeal, as the case may be, may stay or restrain the application or proceeding on such terms as it thinks fit.

Compare: 1955 No 63 s 221

248 Effect of commencement of liquidation

- (1) With effect from the commencement of the liquidation of a company,—
- (a) The liquidator has custody and control of the company's assets;
 - (b) The directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Part of this Act;
 - (c) Unless the liquidator agrees or the Court orders otherwise, a person must not—
 - (i) Commence or continue legal proceedings against the company or in relation to its property; or
 - (ii) Exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company;
 - (d) Unless the Court orders otherwise, a share in the company must not be transferred;
 - (e) An alteration must not be made to the rights or liabilities of a shareholder of the company;
 - (f) A shareholder must not exercise a power under the constitution of the company or this Act except for the purposes of this Part of this Act;
 - (g) The constitution of the company must not be altered.
- (2) Subsection (1) of this section does not affect the right of a secured creditor, subject to section 305 of this Act, to take possession of, and realise or otherwise deal with, property of the company over which that creditor has a charge.

249 Completion of liquidation

The liquidation of a company is completed when the liquidator—

- (a) Complies with section 257(1)(b) of this Act; or
 - (b) Delivers to the Registrar for registration—
 - (i) A copy of any order made by the Court under section 257(2)(a) of this Act; or
 - (ii) A copy of any order made by the Court under section 257(2)(b) of this Act together with any documents required to comply with the order,—
- as the case may be.

250 Court may terminate liquidation

- (1) The Court may, at any time after the appointment of a liquidator of a company, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company.
- (2) An application under this section may be made by the liquidator, or a director or shareholder of the company, or any other entitled person, or a creditor of the company, or the Registrar.
- (2A)
- (3) The Court may require the liquidator of the company to furnish a report to the Court with respect to any facts or matters relevant to the application.
- (4) The Court may, on making an order under subsection (1) of this section, or at any time thereafter, make such other order as it thinks fit in connection with the termination of the liquidation.
- (5) Where the Court makes an order under this section, the person who applied for the order must, within 10 working days after the order was made, deliver a copy of the order to the Registrar for registration.
- (6) Where the Court makes an order under subsection (1) of this section, the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or such other date as may be specified in the order.
- (7) Every person who fails to comply with subsection (5) of this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.

*Provisions relating to prior execution process***251 Restriction on rights of creditors to complete execution, distraint, or attachment**

- (1) Subject to subsection (3) of this section, a creditor is not entitled to retain the benefit of any execution process, distress, or attachment over or against the property of a company unless the execution process, distress, or attachment is completed before—
 - (a) The passing of a special resolution under section 241(2)(a) of this Act appointing a liquidator of the company, or the date on which the creditor had notice

- of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or
- (b) The passing of a resolution by the board of a company under section 241(2)(b) of this Act appointing a liquidator or the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or
 - (c) The making of an application to the Court under section 241(2)(c) of this Act to appoint a liquidator of the company.
- (2) Notwithstanding subsection (1) of this section,—
- (a) A person who, in good faith, purchases property of a company from an officer charged with an execution process acquires a good title as against the liquidator of the company:
 - (b) A person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.
- (3) The Court may set aside the application of subsection (1) of this section to such an extent and on such terms and conditions as the Court thinks fit.
- (4) For the purposes of this section,—
- (a) An execution or distraint against personal property is completed by seizure and sale:
 - (b) An attachment of a debt is completed by receipt of the debt:
 - (c) An execution against land is completed by sale, and, in the case of an equitable interest, by the appointment of a receiver.
- (5) Nothing in this section limits or affects section 292 of this Act.
- Compare: 1955 No 63 s 314; 1980 No 43 s 29

252 Duties of officer in execution process

- (1) Subject to subsection (6) of this section, where—
- (a) Property of a company is taken in an execution process; and
 - (b) Before completion of the execution process the officer charged with the execution process receives notice that a liquidator of the company has been appointed,—

- he or she must, on being required by the liquidator to do so, deliver or transfer the property and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the property, as the case may be, to the liquidator.
- (2) The costs of the execution process are a first charge on any property or money delivered or transferred to the liquidator under subsection (1) of this section and the liquidator may sell all or some of the property to satisfy that charge.
- (3) Subject to subsection (6) of this section, where—
- (a) Property of a company is sold in an execution process in respect of a judgment for a sum exceeding \$500; or
 - (b) Money is paid to the officer charged with the execution process to avoid a sale of the property,—
- the officer must retain the proceeds of sale or the money so paid for 10 working days.
- (4) Subject to subsection (6) of this section, if,—
- (a) Within the period of 10 working days, the officer has notice of—
 - (i) The calling of a meeting at which a special resolution is proposed to appoint a liquidator pursuant to section 241(2)(a) of this Act; or
 - (ii) The calling of a meeting of the board at which a resolution is proposed to appoint a liquidator pursuant to section 241(2)(b) of this Act; or
 - (iii) The making of an application to the Court to appoint a liquidator pursuant to section 241(2)(c) of this Act; and
 - (b) The company is put into liquidation—
- the officer must deduct from the amount the costs of the execution process and pay the balance to the liquidator.
- (5) A liquidator to whom money is paid under subsection (4) of this section is entitled to retain it as against the execution creditor.
- (6) The Court may set aside the application of this section to such extent and on such terms and conditions as it thinks fit.

Compare: 1955 No 63 s 315

Duties, rights, and powers of liquidators

253 Principal duty of liquidator

Subject to section 254 of this Act, the principal duty of a liquidator of a company is—

- (a) To take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and
- (b) If there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets, in accordance with section 313(4) of this Act—
in a reasonable and efficient manner.

254 Liquidator not required to act in certain cases

Notwithstanding any other provisions of this Part of this Act,—

- (a) Except where the charge is surrendered or taken to be surrendered or redeemed under section 305 of this Act, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge:
- (b) Where—
 - (i) A company is put into liquidation under section 241(2)(c) of this Act; and
 - (ii) The Official Assignee is the liquidator of the company; and
 - (iii) The company has no assets available for distribution to creditors of the company,—

the Official Assignee shall not be required, without the consent of 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, to carry out any duty or exercise any power in connection with the liquidation if, to do so, would or would be likely to involve incurring any expense.

Paragraph (b) was amended, as from 1 October 1995, by section 10(3) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words “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” for the words “Minister of Justice”.

255 Other duties of liquidator

- (1) Without limiting section 253 of this Act, a liquidator has the other functions and duties specified in this Act.
- (2) Without limiting subsection (1) of this section, a liquidator must,—
 - (a) Forthwith after being appointed or being notified of his or her appointment, give public notice of—
 - (i) The liquidator's appointment; and
 - (ii) The date and time of the commencement of the liquidation; and
 - (iii) The address and telephone number to which, during normal business hours, inquiries may be directed by a creditor or shareholder; and
 - (b) Within 10 working days of being appointed or being notified of his or her appointment, deliver to the Registrar for registration a notice of the liquidator's appointment; and
 - (c) Within the applicable period referred to in subsection (3) of this section,—
 - (i) Prepare a list of every known creditor of the company; and
 - (ii) Prepare and send to every known creditor, every shareholder, and the Registrar for registration,—
 - (A) A report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and
 - (B) A notice explaining the right of a creditor or shareholder to require the liquidator to call a meeting of creditors under section 314 of this Act; and
 - (C)
 - (d) Within 20 working days of the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, and send or deliver to the Registrar, a report—
 - (i) On the conduct of the liquidation during the preceding 6 months; and

- (ii) Of any further proposals which the liquidator has for completing the liquidation.
- (3) For the purposes of subsection (2)(c) of this section, **applicable period** means,—
 - (a) In the case of a liquidator appointed under paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act, 5 working days after the liquidator's appointment; or
 - (b) In the case of a liquidator appointed under paragraph (c) of subsection (2) of section 241 of this Act, 25 working days after the liquidator's appointment; or
 - (c) In either case, such longer period as the Court may allow.
- (4) The Court may, on the application of a liquidator,—
 - (a) Exempt the liquidator from compliance with the provisions of paragraph (c) or paragraph (d) of subsection (2) of this section; or
 - (b) Modify the application of those provisions in relation to the liquidator,—
on such terms and conditions as the Court thinks fit.
- (5) The liquidator is not required to comply with the provisions of paragraph (c) or paragraph (d) of subsection (2) of this section if the liquidator is satisfied that the value of the assets of the company available for distribution to unsecured creditors, not being creditors entitled to be paid in the order of priority set out in Schedule 7 to this Act, is not likely to exceed 20 cents, or such other sum as may be prescribed, in every dollar owed to such creditors.
- (6) If subsection (5) applies, and the liquidator does not intend to comply with the provisions of paragraph (c) or paragraph (d) of subsection (2), the liquidator must give notice to the Registrar that he or she does not intend to comply with those provisions.

Subsection (2)(a)(ii) was amended, as from 26 April 1999, by section 6(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and time”.

Subsection (2)(d) was amended, as from 26 April 1999, by section 6(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “date of”.

Subsection (6) was inserted, as from 3 June 1998, by section 10 Companies Amendment Act 1998 (1998 No 31).

256 Duties in relation to accounts

- (1) Subject to subsection (2) of this section, the liquidator of a company must—
- (a) Keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records in the company, to be inspected by—
 - (i) Any liquidation committee appointed under section 314 of this Act, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
 - (ii) If the Court so orders, a creditor or shareholder; and
 - (b) Retain the accounts and records of the liquidation and of the company for not less than 1 year after completion of the liquidation.
- (2) The Registrar may, whether before or after the completion of the liquidation,—
- (a) Authorise the disposal of any accounts and records; and
 - (b) Require any accounts or records to be retained for longer than 1 year after the completion of the liquidation.

Subsection (2)(b) was amended, as from 3 June 1998, by section 11 Companies Amendment Act 1998 (1998 No 31) by inserting the word “any”.

257 Duties in relation to final report and accounts

- (1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must—
- (a) Prepare and send to every creditor whose claim has been admitted and every shareholder—
 - (i) The final report and statement of realisation and distribution in respect of the liquidation; and
 - (ii) A statement that—
 - (A) All known assets have been disclaimed, or realised, or distributed without realisation; and
 - (B) All proceeds of realisation have been distributed; and
 - (C) The company is ready to be removed from the New Zealand register; and

- (iii) A summary of the applicable grounds on which the creditor or shareholder may object to the removal of the company from the New Zealand register under section 321 of this Act:
- (b) Send or deliver copies of the documents referred to in paragraph (a) of this subsection to the Registrar for registration.
- (2) The Court may, on the application of a liquidator,—
 - (a) Exempt the liquidator from compliance with the provisions of subsection (1) of this section; or
 - (b) Modify the application of those provisions in relation to the liquidator,—on such terms and conditions as the Court thinks fit.

258 Duty to have regard to views of creditors and shareholders

- (1) The liquidator must have regard to—
 - (a) The views of the shareholders by whom any special resolution was passed at a meeting held for the purposes of section 241(2)(a) of this Act set out in a resolution passed at that meeting:
 - (b) The views of creditors set out in any resolution passed at a meeting held for the purposes of section 243 of this Act:
 - (c) The views of creditors or shareholders set out in a resolution passed at a meeting called in accordance with subsection (2) of this section:
 - (d) The views of any liquidation committee given in writing to the liquidator.
- (2) For the purposes of subsection (1) of this section, a liquidator—
 - (a) Must summon meetings of shareholders at such times as may be specified by any resolution of shareholders passed at a meeting held for the purposes of section 241(2)(a) of this Act:
 - (b) Must summon meetings of creditors at such times as may be specified by any resolution of creditors passed at a meeting held for the purposes of section 243 of this Act:

- (c) Must summon a meeting of shareholders forthwith when required to do so by notice in writing given by shareholders holding shares on which has been paid up not less than 10 percent of the total amount paid up on all shares issued by the company:
 - (d) Must summon a meeting of creditors forthwith when required to do so by notice in writing given by creditors to whom is owed not less than 10 percent of the total amount owed to all creditors of the company:
 - (e) May, at his or her discretion, summon a meeting of shareholders or creditors of the company.
- (3) A liquidator who calls a meeting of creditors or shareholders must call such a meeting in accordance with Schedule 1 or, if applicable, Schedule 5 to this Act, as the case may be.
- (4) Nothing in this section limits or prevents a liquidator from exercising his or her discretion in carrying out his or her functions and duties under this Act.

Compare: 1955 No 63 s 241

258A Duty to notify suspected offences

- (1) A liquidator of a company who considers that an offence that is material to the liquidation has been committed by the company or any director of the company against this Act or any of the following Acts must report that fact to the Registrar:
 - (a) the Companies Act 1955:
 - (b) the Crimes Act 1961:
 - (c) the Securities Act 1978:
 - (ca)
 - (d) the Financial Reporting Act 1993:
 - (e) the Takeovers Act 1993.
- (2) A report made under subsection (1), and any communications between the liquidator and Registrar relating to that report, are protected by absolute privilege.
- (3) A liquidator who fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 258A was inserted, as from 3 May 2001, by section 12 Companies Act 1993 Amendment Act 2001 (2001 No 18).

259 Documents to state company in liquidation

Every document entered into, made, or issued by a liquidator of a company on behalf of the company must state in a prominent position that the company is in liquidation.

260 Powers of liquidator

- (1) A liquidator has the powers—
 - (a) Necessary to carry out the functions and duties of a liquidator under this Act; and
 - (b) Conferred on a liquidator by this Act.
- (2) Without limiting subsection (1) of this section, a liquidator has the powers set out in Schedule 6 to this Act.

260A Liquidator may assign right to sue under this Act

261 Power to obtain documents and information

- (1) A liquidator may, from time to time, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator such books, records, or documents of the company in that person's possession or under that person's control as the liquidator requires.
- (2) A liquidator may, from time to time, by notice in writing require—
 - (a) A director or former director of the company; or
 - (b) A shareholder of the company; or
 - (c) A person who was involved in the promotion or formation of the company; or
 - (d) A person who is, or has been, an employee of the company; or
 - (e) A receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company; or
 - (f) A person who is acting or who has at any time acted as a solicitor for the company—to do any of the things specified in subsection (3) of this section.
- (3) A person referred to in subsection (2) of this section may be required—

- (a) To attend on the liquidator at such reasonable time or times and at such place as may be specified in the notice:
 - (b) To provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator requests:
 - (c) To be examined on oath or affirmation by the liquidator or by a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company:
 - (d) Assist in the liquidation to the best of the person's ability.
- (3A) Without limiting subsection (3)(a) of this section, a person may be required to attend on the liquidator under that subsection at a meeting of creditors of the company.
- (4) Without limiting subsection (5) of this section, the liquidator may pay to a person referred to in paragraph (d) or paragraph (e) or paragraph (f) of subsection (2) of this section, not being an employee of the company, reasonable travelling and other expenses in complying with a requirement of the liquidator under subsection (3) of this section.
- (5) The Court may, on the application of the liquidator or a person referred to in paragraph (d) or paragraph (e) or paragraph (f) of subsection (2) of this section, not being an employee of the company, order that that person is entitled to receive reasonable remuneration and travelling and other expenses in complying with a requirement of the liquidator under subsection (3) of this section.
- (6) A person referred to in paragraph (d) or paragraph (e) or paragraph (f) of subsection (2) of this section is not entitled to refuse to comply with a requirement of the liquidator under subsection (3) of this section by reason only that—
- (a) An application to the Court to be paid remuneration or travelling and other expenses has not been made or determined; or
 - (b) Remuneration or travelling and other expenses to which that person is entitled have not been paid in advance; or
 - (c) The liquidator has not paid that person travelling or other expenses.

(6A) A person who fails to comply with a notice given under this section commits an offence and is liable on conviction to the penalty set out in section 373(3).

(7) Nothing in this section limits or affects section 260 of this Act.

Subsection (2) was amended, as from 1 July 1994, by section 312(1) Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “, from time to time,”.

Subsection (3A) was inserted, as from 1 July 1994, by section 31(2) Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (6A) was inserted, as from 3 May 2001, by section 13 Companies Act 1993 Amendment Act 2001 (2001 No 18).

262 Documents in possession of receiver

(1) A receiver is not required to deliver to a liquidator under section 261 of this Act any books, records, or documents that the receiver requires for the purpose of exercising any powers or functions as receiver in relation to property of a company in liquidation.

(2) The liquidator may, from time to time, by notice in writing, require the receiver—

(a) To make such books, records, and documents available for inspection by the liquidator at any reasonable time or times; and

(b) To provide the liquidator with copies of such books, records, and documents or extracts from them.

(3) The liquidator may take copies of such books, records, and documents made available for inspection or extracts from them.

(4) The liquidator must pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2) of this section.

263 Restriction on enforcement of lien over documents

(1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over books, records, or documents of the company.

(2) If the lien arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company

under section 312 of this Act to the extent of \$500 or such greater amount as may be prescribed at the commencement of the liquidation.

- (3) Nothing in this section applies to a company that was put into liquidation pursuant to paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act if—
- (a) The board of the company passed a resolution of the kind referred to in section 243(8) of this Act; and
 - (b) Section 244 of this Act does not apply in relation to the company.

264 Delivery of document creating charge over property

- (1) A person is required to deliver a document to a liquidator under section 261 of this Act even though possession of the document creates a charge over property of a company.
- (2) Production of the document to the liquidator does not prejudice the existence or priority of the charge, but the liquidator must make the document available to the person entitled to it for the purpose of dealing with or realising the charge or the secured property.

265 Examination by liquidator

- (1) A liquidator or a barrister or solicitor acting on behalf of the liquidator may administer an oath to, or take the affirmation of, a person required to be examined under section 261 of this Act.
- (2) A person required to be examined under section 261 of this Act is entitled to be represented by a barrister or solicitor.
- (3) A liquidator or a barrister or solicitor acting on behalf of the liquidator who conducts an examination under section 261 of this Act must ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.

266 Powers of Court

- (1) The Court may, on the application of the liquidator, order a person who has failed to comply with a requirement of the liquidator under section 261 of this Act to comply with that requirement.

- (2) The Court may, on the application of the liquidator, order a person to whom section 261 of this Act applies to—
- (a) Attend before the Court and be examined on oath or affirmation by the Court or the liquidator or a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company;
 - (b) Produce any books, records, or documents relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.
- (3) Where a person is examined under subsection (2)(a) of this section,—
- (a) The examination must be recorded in writing; and
 - (b) The person examined must sign the record.
- (4) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under this Part of this Act, section 383 of this Act, section 60A of the Securities Act 1978, section 43F of the Securities Markets Act 1988, or section 44F of the Takeovers Act 1993.

Subsection (4) was amended, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46) by substituting the words “, section 383 of this Act, section 60A of the Securities Act 1978, section 43F of the Securities Markets Act 1988, or section 44F of the Takeovers Act 1993” for the words “or section 383 of this Act”.

267 Self-incrimination

- (1) A person is not excused from answering a question in the course of being examined under section 261 or section 266 of this Act on the ground that the answer may incriminate or tend to incriminate that person.
- (2) The testimony of the person examined is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

268 Power of liquidator to enforce liability of shareholders and former shareholders

- (1) The liquidator may—
- (a) If a shareholder is liable to calls, make calls on the shares held by that shareholder:

- (b) If a shareholder or former shareholder is liable to the company, enforce that liability.
- (2) A call made under subsection (1)(a) of this section must be made in writing.

269 Power to disclaim onerous property

- (1) Subject to section 270 of this Act, a liquidator may disclaim onerous property even though the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) For the purposes of this section, **onerous property**—
 - (a) Means—
 - (i) An unprofitable contract; or
 - (ii) Property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act; but
 - (iii)
 - (b) does not include—
 - (i) a netting agreement to which sections 310A to 310O apply; or
 - (ii) any contract of the company that constitutes a transaction under a netting agreement; or
 - (iii) a payment instruction or a settlement under the rules of a payment system that is declared to be a designated payment system under Part 5C of the Reserve Bank of New Zealand Act 1989.
- (3) A disclaimer under this section—
 - (a) Brings to an end on and from the date of the disclaimer the rights, interests, and liabilities of the company in relation to the property disclaimed:
 - (b) Does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.
- (4) A liquidator who disclaims onerous property must, within 10 working days of the disclaimer, give notice in writing of the disclaimer to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

- (5) A person suffering loss or damage as a result of a disclaimer under this section may—
- (a) Claim as a creditor of the company for the amount of the loss or damage, taking account of the effect of an order made by the Court under paragraph (b) of this subsection:
 - (b) Apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (6) The Court may make an order under subsection (5)(b) of this section if it is satisfied that it is just that the property should be vested in the applicant.

Compare: 1955 No 63 s 312

Subsection (2) was substituted, as from 26 April 1999, by section 7 Companies Amendment Act 1999 (1999 No 19).

Subsection (2)(b) was substituted, as from 21 August 2003, by section 48(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

270 Liquidator may be required to elect whether to disclaim onerous property

If a person whose rights would be affected by the disclaimer of onerous property gives a liquidator notice in writing requiring the liquidator to elect, before the close of such date as is stated in the notice, not being a date that is less than 20 working days after the date on which the notice is received by the liquidator, whether to disclaim the onerous property, the liquidator is not entitled to disclaim the onerous property unless he or she does so before the close of that date.

271 Pooling of assets of related companies

- (1) On the application of the liquidator, or a creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that—
- (a) A company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation:
 - (b) Where 2 or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were one company to the extent

that the Court so orders and subject to such terms and conditions as the Court may impose.

- (2) The Court may make such other order or give such directions to facilitate giving effect to an order under subsection (1) of this section as it thinks fit.

Compare: 1955 No 63 ss 315A, 315B; 1980 No 43 s 30

271A Notice that application filed must be given to administrators and creditors

272 Guidelines for orders

- (1) In deciding whether it is just and equitable to make an order under section 271(1)(a) of this Act, the Court must have regard to the following matters:
- (a) The extent to which the related company took part in the management of the company in liquidation:
 - (b) The conduct of the related company towards the creditors of the company in liquidation:
 - (c) The extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company:
 - (d) Such other matters as the Court thinks fit.
- (2) In deciding whether it is just and equitable to make an order under section 271(1)(b) of this Act, the Court must have regard to the following matters:
- (a) The extent to which any of the companies took part in the management of any of the other companies:
 - (b) The conduct of any of the companies towards the creditors of any of the other companies:
 - (c) The extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies:
 - (d) The extent to which the businesses of the companies have been combined:
 - (e) Such other matters as the Court thinks fit.
- (3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under section 271 of this Act.

Compare: 1955 No 63 s 315C; 1980 No 43 s 30

273 Certain conduct prohibited

- (1) If a company is in liquidation, or an application has been made to the Court for an order that a company be put into liquidation, as the case may be, no person may—
- (a) Leave New Zealand with the intention of—
 - (i) Avoiding payment of money due to the company; or
 - (ii) Avoiding examination in relation to the affairs of the company; or
 - (iii) Avoiding compliance with an order of the Court or some other obligation under this Part of this Act in relation to the affairs of the company; or
 - (b) Conceal or remove property of the company with the intention of preventing or delaying the liquidator taking custody or control of it; or
 - (c) Destroy, conceal, or remove records or other documents of the company.
- (2) A person who contravenes subsection (1) of this section commits an offence and is liable on conviction to the penalty set out in section 373(3) of this Act.

274 Duty to identify and deliver property

- (1) A present or former director or employee of a company in liquidation must,—
- (a) Forthwith after the company is put into liquidation, give the liquidator details of property of the company in his or her possession or under his or her control; and
 - (b) On being required to do so by the liquidator, forthwith or within such time as may be specified by the liquidator, deliver the property to the liquidator or such other person as the liquidator may direct, or dispose of the property in such manner as the liquidator may direct.
- (2) A person who fails to comply with subsection (1) of this section commits an offence and is liable on conviction to the penalty set out in section 373(3) of this Act.

275 Refusal to supply essential services prohibited

- (1) For the purposes of this section, an **essential service** means—
- (a) The retail supply of gas:

- (b) The retail supply of electricity:
 - (c) The supply of water:
 - (d) Telecommunications services.
- (2) For the purposes of this section, **telecommunications services** means the conveyance from one device to another by a line, radio frequency, or other medium, of a sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether or not for the information of a person using the device.
- (3) Notwithstanding the provisions of any other Act or any contract, a supplier of an essential service must not—
- (a) Refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges due for the service in relation to a period before the commencement of the liquidation; or
 - (b) Make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation; or
 - (c) Make it a condition of the supply of the service to a company in liquidation that the liquidator personally guarantees payment of the charges that would be incurred for the supply of the service.
- (4) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of paragraph (a) of clause 1 of Schedule 7 to this Act.

276 Remuneration of liquidators

- (1) Subject to section 284(1)(e) of this Act, every liquidator, not being an Official Assignee, appointed under paragraph (a) or paragraph (b) of subsection (2) of section 241 of this Act is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as liquidator.
- (2) Unless the Court otherwise orders, every Official Assignee who is appointed a liquidator under paragraph (a) of subsection (2) of section 241 of this Act and every liquidator appointed under paragraph (c) of that subsection shall charge remuneration either—

- (a) Of an amount equal to the amount fixed under section 277 of this Act; or
- (b) At, or in accordance with, such rate or rates as may be prescribed under that section.

Subsection (1) was amended, as from 1 July 1994, by section 32 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “subsection (2)” for the expression “subsection (1)”.

277 Rates of remuneration

- (1) The Governor-General may from time to time, by Order in Council, for the purposes of section 276 of this Act, make regulations fixing an amount or prescribing a rate or rates in respect of the remuneration of liquidators to which that section applies.
- (2) Without limiting subsection (1) of this section, such regulations may—
 - (a) Prescribe an hourly or other rate or rates of remuneration and different rates may be prescribed in respect of work undertaken in the liquidation by different classes of persons:
 - (b) Prescribe a rate or rates by reference to the net value of the assets realised by the liquidator, together with such other amounts as may be specified:
 - (c) Prescribe a rate or rates in respect of the exercise of a particular function or power:
 - (d) Prescribe a rate or rates by reference to such other criteria as may be specified.

278 Expenses and remuneration payable out of assets of company

The expenses and remuneration of the liquidator are payable out of the assets of the company.

279 Liquidator ceases to hold office on completion of liquidation

- (1) A liquidator ceases to hold office on the completion of the liquidation in accordance with section 249 of this Act.
- (2) Subsection (1) of this section does not limit section 284 or section 286 of this Act.

*Qualifications and supervision of liquidators***280 Qualifications of liquidators**

- (1) Unless the Court orders otherwise, none of the following persons may be appointed or act as a liquidator of a company:
- (a) A person less than 18 years old:
 - (b) A creditor of the company in liquidation:
 - (c) A person who has, within the 2 years immediately preceding the commencement of the liquidation, been a shareholder, director, auditor, or receiver of the company or of a related company:
 - (ca)
 - (cb)
 - (d) An undischarged bankrupt:
 - (e) A person who is, or is deemed to be, subject to a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (f) A person in respect of whom an order has been made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988:
 - (g) A person in respect of whom an order has been made under section 286(5) of this Act:
 - (h) A person in respect of whom an order has been made under section 37(6) of the Receiverships Act 1993:
 - (ha) A person who would, but for the repeal of section 188A or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act:
 - (i) A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 199K or section 199L of the Companies Act 1955 or who would be so prohibited but for the repeal of that Act:
 - (j) A person who is prohibited from being an officer or promoter of, or being concerned or taking part in the management of, a company under section 199N of the Companies Act 1955 or who would be so prohibited but for the repeal of that Act:

- (k) A person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 382 or section 383 or section 385 of this Act:
 - (ka) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:
 - (l) A person who is prohibited under section 111(1)(c) of the Insolvency Act 1967 from acting as a director or taking part directly or indirectly in the management of any company or class of company.
 - (m)
- (1A)
- (2) A body corporate must not be appointed or act as a liquidator.
 - (3) A person who contravenes subsection (1) or subsection (2) of this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.
 - (4)

Subsection (1)(ha) was inserted, as from 1 July 1994, by section 33 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (1)(ka) was inserted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

281 Validity of acts of liquidators

The acts of a person as a liquidator are valid even though that person is not qualified to act as a liquidator.

282 Consent to appointment

The appointment of a person, other than an Official Assignee, as liquidator is of no effect unless that person has consented in writing to the appointment.

283 Vacancies in office of liquidator

- (1) The office of liquidator becomes vacant if the person holding office resigns, dies, or becomes disqualified under section 280 of this Act.

- (2) A person, other than an Official Assignee, may resign from the office of liquidator by appointing another such person as his or her successor and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration.
- (3) With the approval of the Official Assignee for New Zealand, an Official Assignee may resign from the office of liquidator by appointing another Official Assignee as his or her successor.
- (4) The Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who could be appointed as liquidator under paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of subsection (2) of section 241 of this Act to be the liquidator of the company.
- (5) If, for any reason other than resignation, a vacancy occurs in the office of liquidator, written notice of the vacancy must forthwith be sent or delivered to the Official Assignee for New Zealand by the person vacating office or, if that person is unable to act, by his or her personal representative.
- (6) If, as the result of the vacation of office by a liquidator, other than an Official Assignee, no person is acting as liquidator, the Official Assignee for New Zealand may appoint a person to act as liquidator until a successor is appointed under this section.
- (7) If a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under subsection (6) of this section, as the case may be, the Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, or the Official Assignee for New Zealand, appoint any person who could be appointed as liquidator under paragraph (a) or paragraph (b) or paragraph (c), as the case may be, of subsection (2) of section 241 of this Act to be the liquidator of the company.
- (8) A liquidator appointed under subsection (7) of this section must, within 10 working days of being appointed or being notified of his or her appointment, deliver a notice of his or her appointment to the Registrar for registration.

- (9) A person vacating the office of liquidator must, where practicable, provide such information and give such assistance to that person's successor as he or she reasonably requires in taking over the duties of liquidator.

284 Court supervision of liquidation

- (1) On the application of the liquidator, a liquidation committee, or, with the leave of the Court, a creditor, shareholder, other entitled person, or director of a company in liquidation, the Court may—
- (a) Give directions in relation to any matter arising in connection with the liquidation:
 - (b) Confirm, reverse, or modify an act or decision of the liquidator:
 - (c) Order an audit of the accounts of the liquidation:
 - (d) Order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with such information concerning the conduct of the liquidation as the auditor requests:
 - (e) In respect of any period, review or fix the remuneration of the liquidator at a level which is reasonable in the circumstances:
 - (f) To the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount:
 - (g) Declare whether or not the liquidator was validly appointed or validly assumed custody or control of property:
 - (h) Make an order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.
- (2) The powers given by subsection (1) of this section are in addition to any other powers a Court may exercise in its jurisdiction relating to liquidators under this Part of this Act, and may be exercised in relation to a matter occurring either before or after the commencement of the liquidation, or the removal of the company from the New Zealand register, and whether or

not the liquidator has ceased to act as liquidator when the application or the order is made.

- (3) Subject to subsection (4) of this section, a liquidator who has—
- (a) Obtained a direction of a Court with respect to a matter connected with the exercise of the powers or functions of liquidator; and
 - (b) Acted in accordance with the direction—
- is entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction.
- (4) A Court may, on the application of any person, order that, by reason of the circumstances in which a direction was obtained under subsection (1) of this section, the liquidator does not have the protection given by subsection (3) of this section.

285 Meaning of failure to comply

In section 286 of this Act unless the context otherwise requires, **failure to comply** means a failure of a liquidator to comply with a relevant duty arising—

- (a) Under this or any other Act or rule of law or Rules of Court; or
 - (b) Under any order or direction of a Court other than an order to comply made under that section;—
- and **comply**, **compliance**, and **failed to comply** have corresponding meanings.

286 Orders to enforce liquidator's duties

- (1) An application for an order under this section may be made by—
- (a) A liquidator;
 - (b) A person seeking appointment as a liquidator;
 - (c) A liquidation committee;
 - (d) A creditor, shareholder, other entitled person, or a director of the company in liquidation;
 - (e) A receiver appointed in relation to property of the company in liquidation;
 - (f) If the liquidator is a chartered accountant, the President of the Institute of Chartered Accountants of New Zealand:

- (g) If the liquidator is a barrister and solicitor or a solicitor, the President of the New Zealand Law Society:
 - (h) An Official Assignee.
- (2) No application may be made to a Court by a person other than a liquidator in relation to a failure to comply unless notice of the failure to comply has been served on the liquidator not less than 5 working days before the date of the application and, as at the date of the application, there is a continuing failure to comply.
- (3) If the Court is satisfied that there is, or has been, a failure to comply, the Court may—
 - (a) Relieve the liquidator of the duty to comply wholly or in part; or
 - (b) Without prejudice to any other remedy which may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.
- (4) A Court may, in relation to a person who fails to comply with an order made under subsection (3) of this section, or is or becomes disqualified under section 280 of this Act to become or remain a liquidator,—
 - (a) Remove the liquidator from office; or
 - (b) Order that the person may be appointed and act, or may continue to act, as liquidator, notwithstanding the provisions of section 280 of this Act.
- (5) If it is shown to the satisfaction of a Court that a person is unfit to act as liquidator by reason of—
 - (a) Persistent failures to comply; or
 - (b) The seriousness of a failure to comply,—the Court must make, in relation to that person, a prohibition order for a period not exceeding 5 years.
- (6) A person to whom a prohibition order applies must not—
 - (a) Act as a liquidator in a current or other liquidation; or
 - (b) Act as a receiver in a current or other receivership.
- (7) Evidence that, on 2 or more occasions within the preceding 5 years,—
 - (a) A Court has made an order to comply under this section in respect of the same person; or

- (b) An application for an order to comply under this section has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing,—
is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this section.
- (8) In making an order under this section a Court may, if it thinks fit,—
 - (a) Make an order extending the time for compliance; or
 - (b) Impose a term or condition; or
 - (c) Make an ancillary order.
- (9) A copy of every order made under subsection (5) of this section must, within 10 working days of the order being made, be delivered by the applicant to the Official Assignee for New Zealand who must keep it on a file indexed by reference to the name of the liquidator concerned.

Subsection (1)(f) was amended, as from 1 October 1996, by section 23 Institute of Chartered Accountants of New Zealand Act 1996 (1996 No 39), by substituting the words “Institute of Chartered Accountants of New Zealand” for the words “New Zealand Society of Accountants”.

Company unable to pay its debts

287 Meaning of inability to pay debts

Unless the contrary is proved, and subject to section 288 of this Act, a company is presumed to be unable to pay its debts if—

- (a) The company has failed to comply with a statutory demand; or
- (b) Execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (c) A person entitled to a charge over all or substantially all of the property of the company has appointed a receiver under the instrument creating the charge; or
- (d) A compromise between a company and its creditors has been put to a vote in accordance with Part 14 of this Act but has not been approved.

288 Evidence and other matters

- (1) On an application to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand is not admissible as evidence that a company is unable to pay its debts unless the application is made within 30 working days after the last date for compliance with the demand.
- (2) Section 287 of this Act does not prevent proof by other means that a company is unable to pay its debts.
- (3) Information or records acquired under section 178 of this Act or, if the Court so orders, under section 179 of this Act, may be received as evidence that a company is unable to pay its debts.
- (4) In determining whether a company is unable to pay its debts, its contingent or prospective liabilities may be taken into account.
- (5) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts may be made by a contingent or prospective creditor only with the leave of the Court; and the Court may give such leave, with or without conditions, only if it is satisfied that a *prima facie* case has been made out that the company is unable to pay its debts.

289 Statutory demand

- (1) A statutory demand is a demand by a creditor in respect of a debt owing by a company made in accordance with this section.
- (2) A statutory demand must—
 - (a) Be in respect of a debt that is due and is not less than the prescribed amount; and
 - (b) Be in writing; and
 - (c) Be served on the company; and
 - (d) Require the company to pay the debt, or enter into a compromise under Part 14 of this Act, or otherwise compound with the creditor, or give a charge over its property to secure payment of the debt, to the reasonable satisfaction of the creditor, within 15 working days

of the date of service, or such longer period as the Court may order.

290 Court may set aside statutory demand

- (1) The Court may, on the application of the company, set aside a statutory demand.
- (2) The application must be—
 - (a) Made within 10 working days of the date of service of the demand; and
 - (b) Served on the creditor within 10 working days of the date of service of the demand.
- (3) No extension of time may be given for making or serving an application to have a statutory demand set aside, but, at the hearing of the application, the Court may extend the time for compliance with the statutory demand.
- (4) The Court may grant an application to set aside a statutory demand if it is satisfied that—
 - (a) There is a substantial dispute whether or not the debt is owing or is due; or
 - (b) The company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off, or cross-demand is less than the prescribed amount; or
 - (c) The demand ought to be set aside on other grounds.
- (5) A demand must not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.
- (6) In subsection (5) of this section, **defect** includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the demand.
- (7) An order under this section may be made subject to conditions.

291 Additional powers of Court on application to set aside statutory demand

- (1) If, on the hearing of an application under section 290 of this Act, the Court is satisfied that there is a debt due by the company to the creditor that is not the subject of a substantial dis-

pute, or is not subject to a counterclaim, set-off, or cross-demand, the Court may—

- (a) Order the company to pay the debt within a specified period and that, in default of payment, the creditor may make an application to put the company into liquidation; or
- (b) Dismiss the application and forthwith make an order under section 241(4) of this Act putting the company into liquidation,—

on the ground that the company is unable to pay its debts.

- (2) For the purposes of the hearing of an application to put the company into liquidation pursuant to an order made under subsection (1)(a) of this section, the company is presumed to be unable to pay its debts if it failed to pay the debt within the specified period.

Voidable transactions

292 Transactions having preferential effect

- (1) In this section, **transaction**, in relation to a company, means—
 - (a) A conveyance or transfer of property by the company:
 - (b) The giving of a security or charge over the property of the company:
 - (c) The incurring of an obligation by the company:
 - (d) The acceptance by the company of execution under a judicial proceeding:
 - (e) The payment of money by the company, including the payment of money under a judgment or order of a court.
- (2) A transaction by a company is voidable on the application of the liquidator if the transaction—
 - (a) Was made—
 - (i) At a time when the company was unable to pay its due debts; and
 - (ii) Within the specified period; and
 - (b) Enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation—

unless the transaction took place in the ordinary course of business.

- (3) Unless the contrary is proved, for the purposes of subsection (2) of this section, a transaction that took place within the restricted period is presumed to have been made—

- (a) At a time when the company was unable to pay its debts; and
- (b) Otherwise than in the ordinary course of business.

- (4) For the purposes of this section, in determining whether a transaction took place in the ordinary course of business, no account is to be taken of any intent or purpose on the part of a company—

- (a) To enable another person to receive more towards satisfaction of a debt than the person would otherwise receive or be likely to receive in the liquidation; or
- (b) To reduce or cancel the liability, whether in whole or in part, of another person in respect of a debt incurred by the company; or
- (c) To contribute towards the satisfaction of the liability, whether in whole or in part, of another person in respect of a debt incurred by the company—

unless that other person knew that that was the intent or purpose of the company.

(4A)

(4B)

- (5) For the purposes of subsection (2)(a)(ii) of this section, **specified period** means—

- (a) The period of 2 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (b) In the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order was made; and
- (c) If—

- (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—
the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.
- (6) For the purposes of subsection (3) of this section, **restricted period** means—
 - (a) The period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
 - (c) If—
 - (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—
the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Compare: 1955 No 63 s 309; 1980 No 43 s 24(1); 1982 No 152 s 18

Subsection (5)(a) was substituted, as from 26 April 1999, by section 8(1) Companies Amendment Act 1999 (1999 No 19).

Subsection (5)(b) was amended, as from 3 June 1998, by section 12(1) Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (5)(b) was further amended, as from 26 April 1999, by section 8(2)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (5)(c) was inserted, as from 3 June 1998, by section 12(1) Companies Amendment Act 1998 (1998 No 31).

Subsection (5)(c) was further amended, as from 26 April 1999, by section 8(2)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

Subsection (6)(a) was substituted, as from 26 April 1999, by section 8(3) Companies Amendment Act 1999 (1999 No 19).

Subsection (6)(b) was amended, as from 3 June 1998, by section 12(2) Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (6)(b) was amended, as from 26 April 1999, by section 8(4)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (6)(c) was inserted, as from 3 June 1998, by section 12(2) Companies Amendment Act 1998 (1998 No 31).

Subsection (6)(c) was amended, as from 26 April 1999, by section 8(4)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

293 Voidable charges

- (1) A charge over any property or undertaking of a company is voidable on the application of the liquidator if the charge was given within the specified period, unless—
 - (a) The charge secures money actually advanced or paid, or the actual price or value of property sold or supplied to the company, or any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after, the giving of the charge; or
 - (b) Immediately after the charge was given, the company was able to pay its due debts; or
 - (c) The charge is in substitution for a charge given before the specified period.
- (1A)
- (2) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its due debts immediately after giving the charge.
- (3) Subsection (1)(c) of this section does not apply to the extent that—
 - (a) The amount secured by the substituted charge exceeds the amount secured by the existing charge; or

- (b) The value of the property subject to the substituted charge at the date of the substitution exceeds the value of the property subject to the existing charge at that date.
- (4) Nothing in subsection (1) of this section applies to a charge given by a company that secures the unpaid purchase price of property, whether or not the charge is given over that property, if the instrument creating the charge is executed not later than 30 days after the sale of the property or, in the case of the sale of an estate or interest in land, not later than 30 days after the final settlement of the sale.
- (5) For the purposes of subsection (1)(a) and subsection (4) of this section, where any charge was given by the company within the period specified in subsection (1) of this section, all payments received by the grantee of the charge after it was given shall be deemed to have been appropriated so far as may be necessary—
 - (a) Towards repayment of money actually advanced or paid by the grantee to the company on or after the giving of the charge; or
 - (b) Towards payment of the actual price or value of property sold by the grantee to the company on or after the giving of the charge; or
 - (c) Towards payment of any other liability of the company to the grantee in respect of any other valuable consideration given in good faith on or after the giving of the charge.
- (6) For the purposes of subsection (1) of this section, **specified period** means—
 - (a) The period of a year before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that was put into liquidation by the Court, the period of a year before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and

- (c) If—
 - (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—
the period of a year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.
- (7) For the purposes of subsection (2) of this section, **restricted period** means—
 - (a) The period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and.
 - (c) If—
 - (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—
the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Subsection (6)(a) was substituted, as from 26 April 1999, by section 8(1) Companies Amendment Act 1999 (1999 No 19).

Subsection (6)(b) was amended, as from 3 June 1998, by section 13(1) Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (6)(b) was further amended, as from 26 April 1999, by section 8(2)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (6)(c) was inserted, as from 3 June 1998, by section 13(1) Companies Amendment Act 1998 (1998 No 31).

Subsection (6)(c) was further amended, as from 26 April 1999, by section 8(2)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

Subsection (7)(a) was substituted, as from 26 April 1999, by section 8(3) Companies Amendment Act 1999 (1999 No 19).

Subsection (7)(b) was amended, as from 3 June 1998, by section 13(2) Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (7)(b) was further amended, as from 26 April 1999, by section 8(4)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (7)(c) was inserted, as from 3 June 1998, by section 13(2) Companies Amendment Act 1998 (1998 No 31).

Subsection (7)(c) was further amended, as from 26 April 1999, by section 8(3)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

294 Procedure for setting aside voidable transactions and charges

- (1) A liquidator who wishes to have a transaction that is voidable under section 292 of this Act or a charge that is voidable under section 293 of this Act set aside must—
 - (a) File in the Court a notice to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover, and also the effect of subsections (2), (3), and (4) of this section; and
 - (b) Serve a copy of the notice on the other party to the transaction or the grantee of the charge and on every other person from whom the liquidator wishes to recover.
- (2) A person—
 - (a) Who would be affected by the setting aside of the transaction or charge specified in the notice; and
 - (b) Who considers that the transaction or charge is not voidable—may apply to the Court for an order that the transaction or charge not be set aside.

- (3) Unless a person on whom the notice was served has applied to the Court under subsection (2) of this section, the transaction or charge is set aside on the twentieth working day after the date of service of the notice.
- (4) If one or more persons have applied to the Court under subsection (2) of this section, the transaction or charge is set aside on the day on which the last application is finally determined, unless the Court orders otherwise.

295 Other orders

If a transaction or charge is set aside under section 294 of this Act, the Court may make one or more of the following orders:

- (a) An order requiring a person to pay to the liquidator, in respect of benefits received by that person as a result of the transaction or charge, such sums as fairly represent those benefits:
- (b) An order requiring property transferred as part of the transaction to be restored to the company:
- (c) An order requiring property to be vested in the company if it represents in a person's hands the application, either of the proceeds of sale of property, or of money, so transferred:
- (d) An order releasing, in whole or in part, a charge given by the company:
- (e) An order requiring security to be given for the discharge of an order made under this section:
- (f) An order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this section is entitled to claim as a creditor in the liquidation.

296 Additional provisions relating to setting aside transactions and charges

- (1) The setting aside of a transaction or an order made under section 295 of this Act does not affect the title or interest of a person in property which that person has acquired—
 - (a) From a person other than the company; and
 - (b) For valuable consideration; and

- (c) Without knowledge of the circumstances under which the property was acquired from the company.
- (2) The setting aside of a charge or an order made under section 295 of this Act does not affect the title or interest of a person in property which that person has acquired—
 - (a) As the result of the exercise of a power of sale by the grantee of the charge; and
 - (b) For valuable consideration; and
 - (c) Without knowledge of the circumstances relating to the giving of the charge.
- (3) Recovery by the liquidator of property or its equivalent value, whether under section 295 of this Act or any other section of this Act, or under any other enactment, or in equity or otherwise, may be denied wholly or in part if—
 - (a) The person from whom recovery is sought received the property in good faith and has altered his or her position in the reasonably held belief that the transfer to that person was validly made and would not be set aside; and
 - (b) In the opinion of the Court, it is inequitable to order recovery or recovery in full.
- (4) Nothing in the Land Transfer Act 1952 restricts the operation of this section or sections 292 to 295 of this Act.

Recovery in other cases

297 Transactions at undervalue

- (1) Where—
 - (a) A transaction was entered into by a company within the specified period; and
 - (b) The value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and
 - (c) When the transaction was entered into, the company—
 - (i) Was unable to pay its due debts; or
 - (ii) Was engaged, or about to engage, in business for which its financial resources were unreasonably small; or

- (iii) Incurred an obligation knowing that the company would not be able to perform the obligation when required to do so; and
 - (d) When the transaction was entered into, the other party to the transaction knew or ought to have known of the matter referred to in subparagraph (i) or subparagraph (ii) or subparagraph (iii), as the case may be, of paragraph (c) of this subsection,—
the liquidator may recover from any other party to the transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company.
- (2) Where—
 - (a) A transaction was entered into by a company within the specified period; and
 - (b) The value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and
 - (c) The company became unable to pay its due debts as a result of the transaction; and
 - (d) When the transaction was entered into, the other party to the transaction knew or ought to have known that the company would become unable to pay its due debts as a result of the transaction,—
the liquidator may recover from any other party to the transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company.
- (3) For the purposes of this section,—
 - (a) **Transaction** includes the giving of a guarantee by a company:
 - (b) **Specified period** means—
 - (i) The period of a year before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (ii) In the case of a company that was put into liquidation by the Court, the period of a year before the

making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and

(iii) If—

(A) An application was made to the Court to put a company into liquidation; and

(B) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—

the period of a year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Subsection (3)(b)(i) was substituted, as from 26 April 1999, by section 10(1) Companies Amendment Act 1999 (1999 No 19).

Subsection (3)(b)(ii) was amended, as from 3 June 1998, by section 14 Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (3)(b)(ii) was further amended, as from 26 April 1999, by section 10(2)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (3)(b)(iii) was inserted, as from 3 June 1998, by section 14 Companies Amendment Act 1998 (1998 No 31).

Subsection (3)(b)(iii) was further amended, as from 26 April 1999, by section 10(2)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

298 Transactions for inadequate or excessive consideration with directors and certain other persons

(1) Where, within the specified period, a company has acquired a business or property from, or the services of,—

(a) A person who was, at the time of the acquisition, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or

(b) A person, or a relative of a person, who, at the time of the acquisition, had control of the company; or

- (c) Another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (d) Another company that was, at the time of the acquisition, a related company,—

the liquidator may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value of the business, property, or services at the time of the acquisition.
- (2) Where, within the specified period, a company has disposed of a business or property, or provided services, or issued shares, to—
 - (a) A person who was, at the time of the disposition, provision, or issue, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (b) A person, or a relative of a person, who, at the time of the disposition, provision, or issue, had control of the company; or
 - (c) Another company that was, at the time of the disposition, provision, or issue, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
 - (d) Another company that, at the time of the disposition, provision, or issue, was a related company,—

the liquidator may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the business, property, or services, or the value of the shares, at the time of the disposition, provision, or issue exceeded the value of any consideration received by the company.
- (3) For the purposes of this section,—
 - (a) The value of a business or property includes the value of any goodwill attaching to the business or property;
 - (b) The provisions of section 7 of this Act apply with such modifications as may be necessary to determine control of a company.

- (4) For the purposes of subsections (1) and (2) of this section, **specified period** means—
- (a) The period of 3 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that was put into liquidation by the Court, the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
 - (c) If—
 - (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Compare: 1955 No 63 s 311C; 1980 No 43 s 28

Subsection (4)(a) was substituted, as from 26 April 1999, by section 11(1) Companies Amendment Act 1999 (1999 No 19).

Subsection (4)(b) was amended, as from 3 June 1998, by section 15 Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (4)(b) was further amended, as from 26 April 1999, by section 11(2)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (4)(c) was inserted, as from 3 June 1998, by section 15 Companies Amendment Act 1998 (1998 No 31).

Subsection (4)(c) was amended, as from 26 April 1999, by section 11(2)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

299 Court may set aside certain securities and charges

- (1) Subject to subsection (2) of this section, if a company that is in liquidation is unable to meet all its debts, the Court, on the application of the liquidator, may order that a security or

charge, or part of it, created by the company over any of its property or undertaking in favour of—

- (a) A person who was, at the time the security or charge was created, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (b) A person, or a relative of a person, who, at the time when the security or charge was created, had control of the company; or
- (c) Another company that was, when the security or charge was created, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) Another company, that at the time when the security or charge was created, was a related company,—

shall, so far as any security on the property or undertaking is conferred, be set aside as against the liquidator of the company, if the Court considers that, having regard to the circumstances in which the security or charge was created, the conduct of the person, relative, company, or related company, as the case may be, in relation to the affairs of the company, and any other relevant circumstances, it is just and equitable to make the order.

- (2) Subsection (1) of this section does not apply to a security or charge that has been transferred by the person in whose favour it was originally created and has been purchased by another person (whether or not from the first-mentioned person) if,—
 - (a) At the time of the purchase, the purchaser was not a person specified in any of paragraphs (a) to (d) of that subsection; and
 - (b) The purchase was made in good faith and for valuable consideration.
- (3) The Court may make such other orders as it thinks proper for the purpose of giving effect to an order under this section.
- (4) Nothing in the Land Transfer Act 1952 restricts the operation of this section.

- (5) The provisions of section 7 of this Act apply with such modifications as may be necessary to determine control of a company.

Compare: 1955 No 63 s 311B; 1980 No 43 s 27

300 Liability if proper accounting records not kept

- (1) Subject to subsection (2) of this section, if—
- (a) A company that is in liquidation and is unable to pay all its debts has failed to comply with—
 - (i) Section 194 of this Act (which relates to the keeping of accounting records); or
 - (ii) Section 10 of the Financial Reporting Act 1993 (which relates to the preparation of financial statements); and
 - (b) The Court considers that—
 - (i) The failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial uncertainty as to the assets and liabilities of the company, or has substantially impeded the orderly liquidation; or
 - (ii) For any other reason it is proper to make a declaration under this section,—
- the Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any one or more of the directors and former directors of the company is, or are, personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company as the Court may direct.
- (2) The Court must not make a declaration under subsection (1) of this section in relation to a person if the Court considers that the person—
- (a) Took all reasonable steps to secure compliance by the company with the applicable provision referred to in paragraph (a) of that subsection; or
 - (b) Had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

- (3) The Court may give any direction it thinks fit for the purpose of giving effect to the declaration.
- (4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence.
- (5) An order under this section is deemed to be a final judgment within the meaning of section 19(d) of the Insolvency Act 1967.

Compare: 1955 No 63 s 319; 1980 No 43 s 31

301 Power of Court to require persons to repay money or return property

- (1) If, in the course of the liquidation of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, or receiver of the company, has misapplied, or retained, or become liable or accountable for, money or property of the company, or been guilty of negligence, default, or breach of duty or trust in relation to the company, the Court may, on the application of the liquidator or a creditor or shareholder,—
 - (a) Inquire into the conduct of the promoter, director, manager, liquidator, or receiver; and
 - (b) Order that person—
 - (i) To repay or restore the money or property or any part of it with interest at a rate the Court thinks just; or
 - (ii) To contribute such sum to the assets of the company by way of compensation as the Court thinks just; or
 - (c) Where the application is made by a creditor, order that person to pay or transfer the money or property or any part of it with interest at a rate the Court thinks just to the creditor.
- (2) This section has effect even though the conduct may constitute an offence.
- (3) An order for payment of money under this section is deemed to be a final judgment within the meaning of section 19(d) of the Insolvency Act 1967.

(4)

Compare: 1955 No 63 s 321; 1980 No 43 s 33

Creditors' claims

302 Application of bankruptcy rules to liquidation of insolvent companies

- (1) Subject to this Part of this Act, the rules in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt apply in the liquidation of a company that is unable to pay its debts to—
 - (a) The rights of secured and unsecured creditors:
 - (b) Claims by creditors:
 - (c) The valuation of annuities and future and contingent liabilities—and all persons who in any such case would be entitled to make claims and receive payment in whole or in part are so entitled in the liquidation.
- (2) In applying in a liquidation the rules in force under the law of bankruptcy, a claim made under section 304 of this Act and admitted by a liquidator is to be treated as if it were a debt proved in accordance with the requirements of the Insolvency Act 1967.

303 Admissible claims

- (1) Subject to subsection (2) of this section, a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages, may be admitted as a claim against a company in liquidation.
- (2) Fines, monetary penalties, and costs to which section 308 of this Act applies are not claims that may be admitted against a company in liquidation.

Section 303 was substituted, as from 1 July 1994, by section 34 Companies Act 1993 Amendment Act 1994 (1994 No 6).

304 Claims by unsecured creditors

- (1) A claim by an unsecured creditor against a company in liquidation must be made in the prescribed form and must—
 - (a) Contain full particulars of the claim; and

- (b) Identify any documents that evidence or substantiate the claim.
- (2) The liquidator may require the production of a document referred to in subsection (1)(b) of this section.
- (3) The liquidator must, as soon as practicable, either admit or reject a claim in whole or in part, and if the liquidator subsequently considers that a claim has been wrongly admitted or rejected in whole or in part, may revoke or amend that decision.
- (4) If a liquidator rejects a claim, whether in whole or in part, he or she must forthwith give notice in writing of the rejection to the creditor.
- (5) The costs of making a claim under subsection (1) of this section or producing a document under subsection (2) of this section must be met by the creditor making the claim.
- (6) Every person who—
 - (a) Makes, or authorises the making of, a claim under this section that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) Omits, or authorises the omission, from a claim under this section of any matter knowing that the omission makes the claim false or misleading in a material particular—commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.

305 Rights and duties of secured creditors

- (1) A secured creditor may—
 - (a) Realise property subject to a charge, if entitled to do so; or
 - (b) Value the property subject to the charge and claim in the liquidation as an unsecured creditor for the balance due, if any; or
 - (c) Surrender the charge to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole debt.
- (2) A secured creditor may exercise the power referred to in paragraph (a) of subsection (1) of this section whether or not the

- secured creditor has exercised the power referred to in paragraph (b) of that subsection.
- (3) A secured creditor who realises property subject to a charge—
- (a) May, unless the liquidator has accepted a valuation and claim by the secured creditor under subsection (6) of this section, claim as an unsecured creditor for any balance due after deducting the net amount realised;
 - (b) Must account to the liquidator for any surplus remaining from the net amount realised after satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction, and after making any proper payments to the holder of any other charge over the property subject to the charge.
- (4) If a secured creditor values the security and claims as an unsecured creditor for the balance due, if any, the valuation and any claim must be made in the prescribed form and—
- (a) Contain full particulars of the valuation and any claim; and
 - (b) Contain full particulars of the charge including the date on which it was given; and
 - (c) Identify any documents that substantiate the claim and the charge.
- (5) The liquidator may require production of any document referred to in subsection (4)(c) of this section.
- (6) Where a claim is made by a secured creditor under subsection (4) of this section, the liquidator must—
- (a) Accept the valuation and claim; or
 - (b) Reject the valuation and claim in whole or in part, but—
 - (i) Where a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within 10 working days of receiving notice of the rejection; and
 - (ii) The liquidator may, if he or she subsequently considers that a valuation and claim was wrongly rejected in whole or in part, revoke or amend that decision.
- (7) Where the liquidator—
- (a) Accepts a valuation and claim under subsection (6)(a) of this section; or

- (b) Accepts a revised valuation and claim under subsection (6)(b)(i) of this section; or
 - (c) Accepts a valuation and claim on revoking or amending a decision to reject a claim under subsection (6)(b)(ii) of this section,—

the liquidator may, unless the secured creditor has realised the property, at any time, redeem the security on payment of the assessed value.
- (8) The liquidator may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to—
 - (a) Elect which of the powers referred to in subsection (1) of this section the creditor wishes to exercise; and
 - (b) If the creditor elects to exercise the power referred to in paragraph (b) or paragraph (c) of that subsection, exercise the power within that period.
- (9) A secured creditor on whom notice has been served under subsection (8) of this section who fails to comply with the notice, is to be taken as having surrendered the charge to the liquidator under subsection (1)(c) of this section for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.
- (10) A secured creditor who has surrendered a charge under subsection (1)(c) of this section or who is taken as having surrendered a charge under subsection (9) of this section may, with the leave of the Court or the liquidator and subject to such terms and conditions as the Court or the liquidator thinks fit, at any time before the liquidator has realised the property charged,—
 - (a) Withdraw the surrender and rely on the charge; or
 - (b) Submit a new claim under this section.
- (11) Every person who—
 - (a) Makes, or authorises the making of, a claim under subsection (4) of this section that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) Omits, or authorises the omission, from a claim under that subsection of any matter knowing that the omission makes the claim false or misleading in a material particular—

commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.

Subsection (4) was substituted, as from 1 July 1994, by section 35 Companies Act 1993 Amendment Act 1994 (1994 No 6).

306 Ascertainment of amount of claim

- (1) The amount of a claim must be ascertained as at the date and time of commencement of the liquidation.
- (2) The amount of a claim based on a debt or liability denominated in a currency other than New Zealand currency must be converted into New Zealand currency at the rate of exchange on the date of commencement of the liquidation, or, if there is more than one rate of exchange on that date, at the average of those rates.

Subsection (1) was amended, as from 26 April 1999, by section 12 Companies Amendment Act 1999 (1999 No 19) by inserting, after the word “date”, the words “and time”.

307 Claim not of an ascertained amount

- (1) If a claim is subject to a contingency, or is for damages, or, if for some other reason, the amount of the claim is not certain, the liquidator may—
 - (a) Make an estimate of the amount of the claim; or
 - (b) Refer the matter to the Court for a decision on the amount of the claim.
- (2) On the application of the liquidator, or of a claimant who is aggrieved by an estimate made by the liquidator, the Court shall determine the amount of the claim as it sees fit.

308 Fines and penalties

Nothing in this Part of this Act limits or affects the recovery of—

- (a) A fine imposed on a company, whether before or after the commencement of the liquidation of the company, for the commission of an offence; or
- (b) A monetary penalty payable to the Crown imposed on a company by a court, whether before or after the commencement of the liquidation of the company, for the breach of any enactment; or

- (c) Costs ordered to be paid by the company in relation to proceedings for the offence or breach.

309 Claims relating to debts payable after commencement of liquidation

- (1) A claim in respect of a debt that, but for the liquidation, would not be payable until a date that is 6 months, or later than 6 months, after the date of commencement of the liquidation is to be treated, for the purposes of this Part of this Act, as a claim for the present value of the debt.
- (2) For the purposes of subsection (1) of this section, the present value of a debt is to be determined by deducting from the amount of the debt interest at the prescribed rate (within the meaning of section 87(3) of the Judicature Act 1908) for the period from the date on which the company is put into liquidation to the date when the debt is due.

Subsection (1) was amended, as from 26 April 1999, by section 13 Companies Amendment Act 1999 (1999 No 19) by inserting, before the word “commencement”, the words “date of”.

310 Mutual credit and set-off

- (1) Where there have been mutual credits, mutual debts, or other mutual dealings between a company and a person who seeks or, but for the operation of this section, would seek to have a claim admitted in the liquidation of the company,—
 - (a) An account must be taken of what is due from the one party to the other in respect of those credits, debts, or dealings; and
 - (b) An amount due from one party must be set off against an amount due from the other party; and
 - (c) Only the balance of the account may be claimed in the liquidation, or is payable to the company, as the case may be.
- (2) A person, other than a related person, is not entitled under this section to claim the benefit of a set-off arising from—
 - (a) A transaction made within the specified period, being a transaction by which the person gave credit to the company or the company gave credit to the person; or

- (b) The assignment within the specified period to that person of a debt owed by the company to another person—unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the company was unable to pay its debts as they became due.
- (3) A related person is not entitled under this section to claim the benefit of a set-off arising from—
 - (a) A transaction made within the restricted period, being a transaction by which the related person gave credit to the company or the company gave credit to the related person; or
 - (b) The assignment within the restricted period to that person of a debt owed by the company to another person—unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the company was unable to pay its debts as they became due.
- (4) This section does not apply to an amount paid or payable by a shareholder—
 - (a) As the consideration, or part of the consideration, for the issue of a share; or
 - (b) In satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of directors or by the liquidator.
- (5) In this section, **related person** means a related company and includes a director of the company in liquidation.
- (6) For the purposes of subsection (2) of this section, **specified period** means—
 - (a) The period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
 - (c) If—

- (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—
the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.
- (7) For the purposes of subsection (3) of this section, **restricted period** means—
 - (a) The period of 2 years before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
 - (b) In the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
 - (c) If—
 - (i) An application was made to the Court to put a company into liquidation; and
 - (ii) After the making of the application to the Court a liquidator was appointed under paragraph (a) or paragraph (b) of section 241(2),—
the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Subsection (6)(a) was substituted, as from 26 April 1999, by section 14(1) Companies Amendment Act 1999 (1999 No 19).

Subsection (6)(b) was amended, as from 3 June 1998, by section 16(1) Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (6)(b) was further amended, as from 26 April 1999, by section 14(2)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (6)(c) was inserted, as from 3 June 1998, by section 16(1) Companies Amendment Act 1998 (1998 No 31).

Subsection (6)(c) was amended, as from 26 April 1999, by section 14(2)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

Subsection (7)(a) was substituted, as from 26 April 1999, by section 14(3) Companies Amendment Act 1999 (1999 No 19).

Subsection (7)(b) was amended, as from 3 June 1998, by section 16(2) Companies Amendment Act 1998 (1998 No 31) by inserting the word “; and”.

Subsection (7)(b) was further amended, as from 26 April 1999, by section 14(4)(a) Companies Amendment Act 1999 (1999 No 19) by inserting the words “, and at the time at which,”.

Subsection (7)(c) was inserted, as from 3 June 1998, by section 16(2) Companies Amendment Act 1998 (1998 No 31).

Subsection (7)(c) was amended, as from 26 April 1999, by section 14(4)(b) Companies Amendment Act 1999 (1999 No 19) by inserting the words “and at the time”.

310A Definitions relating to set-off under netting agreement

In this Act, unless the context otherwise requires,—

Bank means the Reserve Bank of New Zealand

Bilateral netting agreement means an agreement that provides, in respect of transactions between 2 persons to which the agreement applies,—

- (a) That on the occurrence of an event specified in the agreement, all or any of those transactions must (or may, at the option of a party) be terminated and—
 - (i) An account taken of all money due between the parties in respect of the terminated transactions; and
 - (ii) All obligations in respect of that money satisfied by payment of the net amount due from or on behalf of the party having a net debit to or on behalf of the party having a net credit; or
- (b) That each transaction is to be debited or credited to an account with the effect that the rights and obligations of each party that existed in respect of the relevant account prior to the transaction are extinguished and replaced by rights and obligations in respect of the net debit due on the relevant account after taking into account that transaction; or

- (c) That amounts payable by each party to the other party are to be paid or satisfied by payment of the net amount of those obligations by the party having a net debit to the party having a net credit;—

but does not include any bilateral netting agreement that is part of a multilateral netting agreement

Clearing house means a person that provides clearing or settlement services in respect of financial transactions between parties to a multilateral netting agreement

Multilateral netting agreement means an agreement that provides for the settlement, between more than 2 persons, of payment obligations arising under transactions that are subject to the agreement, and that provides, in respect of transactions to which it relates, that debits and credits arising between the parties are to be brought into account so that amounts payable by or to each party are satisfied by—

- (a) Payment by or on behalf of each party having a net debit to or on behalf of a clearing house (whether as agent or as principal) or a party having a net credit; and
- (b) Receipt by or on behalf of each party having a net credit from or on behalf of a clearing house (whether as agent or as principal) or a party having a net debit:

Netted balance means any amount calculated under a netting agreement as the net debit payable by or on behalf of a party to the agreement to or on behalf of another party to the agreement in respect of all or any transactions to which the netting agreement applies

Netting agreement means a bilateral netting agreement or a recognised multilateral netting agreement

Recognised clearing house means a clearing house declared under section 310K to be a recognised clearing house

Recognised multilateral netting agreement means a multilateral netting agreement that is contained in, or is subject to, the rules of a recognised clearing house.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310B Application of set-off under netting agreement

- (1) Despite anything in section 313, sections 310A to 310O apply—
 - (a) To a netting agreement—
 - (i) Made in or evidenced by writing; and
 - (ii) In which the application of sections 310A to 310O has not been expressly excluded; and
 - (iii) Whether made before or after the commencement of this section; and
 - (b) To all obligations under a netting agreement (whether those obligations are payable in New Zealand currency or in some other currency).
- (2) Sections 310A to 310O apply despite—
 - (a) Any disposal of rights under a transaction that is subject to a netting agreement in contravention of a prohibition in the netting agreement; or
 - (b) The creation of a charge or other interest in respect of the rights referred to in paragraph (a) in contravention of a prohibition in the netting agreement.
- (3) Nothing in sections 310A to 310O applies to an amount paid or payable by a shareholder—
 - (a) As the consideration, or part of the consideration, for the issue of a share; or
 - (b) In satisfaction of a call in respect of an outstanding liability of the shareholder made by the board of directors or by the liquidator.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310C Calculation of netted balance

If a company that is a party to a netting agreement is in liquidation,—

- (a) Any netted balance payable by or to the company must be calculated in accordance with the netting agreement; and
- (b) That netted balance constitutes the amount that may be claimed in the liquidation or is payable to the company, as the case may be, in respect of the transactions that are included in the calculation.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310D Mutuality required for transactions under bilateral netting agreements

Sections 310A to 310O apply to transactions that are subject to a bilateral netting agreement only if those transactions constitute mutual credits, mutual debts, or other mutual dealings.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310E When mutuality required for transactions under recognised multilateral netting agreements

- (1) Sections 310A to 310O apply to transactions that are subject to a recognised multilateral netting agreement, whether or not those transactions constitute mutual credits, mutual debts, or other mutual dealings.
- (2) Despite subsection (1), sections 310A to 310O do not apply to transactions that are subject to a recognised multilateral netting agreement if—
 - (a) Those transactions do not constitute mutual credits, mutual debts, or other mutual dealings; and
 - (b) A party to any of those transactions is acting as a trustee for another person; and
 - (c) The party acting as trustee is not authorised by the terms of the trust of which the party is a trustee to enter into the transaction.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310F Application of set-off under section 310 to transactions subject to netting agreements

- (1) Section 310 does not apply to transactions that are subject to a netting agreement to which sections 310A to 310O apply.
- (2) However, a netted balance is to be treated as an amount to which section 310(1) applies if the company that is in liquidation and the other party to the netting agreement also have mutual credits, mutual debts, or other mutual dealings between them that are not subject to the netting agreement.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310G Transactions under netting agreement and effect on certain sections

- (1) Nothing in sections 310A to 310O prevents the operation of section 56 or section 292 or section 297 or section 298 in respect of a transaction that is subject to a netting agreement.
- (2) However, nothing in section 292(3) applies to a transaction that is subject to a netting agreement.
- (3) For the purposes of sections 292 and 297, the term **transaction**, in relation to a company, does not include a netting agreement entered into by the company, except to the extent that the effect of entering into the netting agreement is to reduce any amount that was owing by or to the company at the time the company entered into the agreement.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310H Rights under netting agreement not affected by commencement of liquidation

Nothing in section 248(1) affects, in respect of a company in liquidation, the exercise of any of the following rights under a netting agreement:

- (a) 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 liquidator) occurring not later than the commencement of the liquidation; or
- (b) 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.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310I Set-off under netting agreement not affected by notice under section 294

The filing of a notice under section 294 in respect of any transaction that is subject to a netting agreement does not affect the operation of section 310C in respect of the transaction, and that section continues to apply to the transaction until the transaction is set aside under subsection (3) or subsection (4) of section 294.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310J Court may set aside bilateral netting agreement between company and related person

- (1) The Court may order, on the application of a liquidator, that a bilateral netting agreement entered into by a company be set aside as against the liquidator of the company if—
 - (a) The netting agreement is between the company and a person who was a related person at the time that the netting agreement was entered into; and
 - (b) The netting agreement was entered into within the restricted period; and
 - (c) The related person does not prove that, at the time the netting agreement was entered into, the related person did not have reason to suspect that the company was unable to pay its debts as they became due.
- (2) The Court may make any other orders it thinks proper for the purpose of giving effect to an order under subsection (1).
- (3) In this section, unless the context otherwise requires,—

Related person, in relation to the company in liquidation, means—

- (a) A director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (b) A person, or a relative of a person, who has control of the company; or
- (c) Another company that is controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) A related company.

Restricted period has the same meaning as in section 310(7).

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310K Certain persons may be declared to be recognised clearing houses

- (1) The Bank may, by notice in the *Gazette*, declare any person that provides or proposes to provide clearing or settlement services to be a recognised clearing house for the purposes of sections 310A to 310O.
- (2) The Bank may, by notice in the *Gazette*, vary or revoke any declaration made under subsection (1).

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310L Matters that Bank must or may have regard to when making, varying, or revoking declaration under section 310K

- (1) In determining whether a declaration should be made, varied, or revoked under section 310K, the Bank must have regard to the extent to which the application of sections 310A to 310O to any multilateral netting agreement that is subject to the rules of that clearing house would assist in promoting the soundness or efficiency of the financial system.
- (2) In determining whether a declaration should be made, varied, or revoked under section 310K, the Bank may have regard to any of the following matters:
 - (a) The type of transactions that may be effected through the clearing house; and
 - (b) Any laws or regulatory requirements relating to the operation of that clearing house and compliance with those laws or regulatory requirements; and
 - (c) Any other matters that the Bank may, in any particular case, consider appropriate.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310M Bank may impose conditions in declaration under section 310K

- (1) The Bank may, in any declaration made or varied under section 310K, impose conditions relating to any of the matters referred to in section 310L.
- (2) If a recognised clearing house fails to comply with any conditions referred to in subsection (1), the Bank may revoke the declaration made under section 310K that relates to the clearing house.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310N Bank to notify recognised clearing house about Bank's intention to revoke or vary declaration under section 310K

The Bank must not revoke or vary a declaration made under section 310K unless—

- (a) The recognised clearing house to which the notice applies has been given not less than 7 days' notice in writing of the Bank's intention to do so; and
- (b) The clearing house has a reasonable opportunity to make submissions to the Bank; and
- (c) The Bank considers those submissions.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

310O Transactions under recognised multilateral netting agreement not affected by variation or revocation of declaration under section 310K

The variation or revocation of a declaration under section 310K does not affect the application of sections 310A to 310O to any transaction—

- (a) That is or was subject to a recognised multilateral netting agreement; and
- (b) That was entered into before the variation or revocation of the declaration.

Sections 310A to 310O were inserted, as from 26 April 1999, by section 15 Companies Amendment Act 1999 (1999 No 19).

311 Interest on claims

- (1) The amount of a claim may include interest up to the date of commencement of the liquidation—
 - (a) At such rate as may be specified or contained in any contract that makes provision for the payment of interest on that amount; or
 - (b) In the case of a judgment debt, at such rate as is payable on the judgment debt.
- (2) If any surplus assets remain after the payment of all admitted claims, interest shall be paid at the prescribed rate on those claims from the date of commencement of the liquidation to the date on which each claim is paid, and if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.
- (3) If any surplus assets remain after the payment of interest in accordance with subsection (2) of this section, interest shall be paid on all admitted claims referred to in subsection (1) of this section from the date of commencement of the liquidation to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in paragraph (a) or paragraph (b) of that subsection, as the case may be, and, if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment shall abate rateably among all claims.
- (4) For the purposes of this section, **prescribed rate** means the prescribed rate within the meaning of section 87(3) of the Judicature Act 1908.

Subsection (1) was amended, as from 26 April 1999, by section 16 Companies Amendment Act 1999 (1999 No 19) by inserting the words “date of”.

Subsection (3) was amended, as from 1 July 1994, by section 36 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “a rate equal to the excess between the prescribed rate and”.

Subsection (3) was further amended, as from 26 April 1999, by section 16 Companies Amendment Act 1999 (1999 No 19) by inserting the words “date of”.

312 Preferential claims

- (1) The liquidator must pay out of the assets of the company the expenses, fees, and claims set out in Schedule 7 to this Act to the extent and in the order of priority specified in that Schedule

and that Schedule applies to the payment of those expenses, fees, and claims according to its tenor.

- (2) Without limiting clause 9(b) of Schedule 7 to this Act, the term **assets** in subsection (1) of this section does not include assets subject to a charge unless the charge is surrendered or taken to be surrendered or redeemed under section 305 of this Act.

313 Claims of other creditors and distribution of surplus assets

- (1) After paying preferential claims in accordance with section 312 of this Act, the liquidator must apply the assets of the company in satisfaction of all other claims.
- (2) The claims referred to in subsection (1) of this section rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment shall abate rateably among all claims.
- (3) Where, before the commencement of a liquidation, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.
- (4) Subject to section 311 of this Act, after paying the claims referred to in subsection (1) of this section, the liquidator must distribute the company's surplus assets—
 - (a) In accordance with the provisions contained in the company's constitution; or
 - (b) If the company's constitution does not contain provisions for the distribution of surplus assets or, if the company does not have a constitution, in accordance with this Act.

Liquidation committees

314 Meetings of creditors or shareholders

- (1) At any time in the course of the liquidation, the liquidator shall, at the request in writing of any creditor or shareholder or on the liquidator's own motion, call a meeting of creditors or shareholders—

- (a) To vote on a proposal that a liquidation committee be appointed to act with the liquidator; and
 - (b) If it is so decided, to choose the members of the committee.
- (2) A liquidator may decline a request by a creditor or shareholder to call a meeting on the ground that—
 - (a) The request is frivolous or vexatious; or
 - (b) The request was not made in good faith; or
 - (c) Except where a creditor or shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company's assets.
- (3) The decision of a liquidator to decline the request may be reviewed by the Court on the application of any creditor or shareholder, as the case may be.
- (4) Subject to subsections (2) and (3) of this section, a liquidator who receives a request to call a meeting of creditors or of shareholders must forthwith call such a meeting in accordance with Schedule 1 or, if applicable, Schedule 5 to this Act as the case may be.
- (5) The members of a liquidation committee chosen by a meeting of creditors or of shareholders take office forthwith, but if there is a difference between the decisions of meetings of creditors and meetings of shareholders on—
 - (a) The question of appointing a liquidation committee; or
 - (b) The membership of a liquidation committee—the liquidator must refer the matter to the Court which may make such decision as it thinks fit.
- (6) The sole shareholder of a company may present to the liquidator a view on any matter which could have been decided at a meeting of shareholders under this section, and that view must, for all purposes, be treated as though it were a decision taken at a meeting of shareholders.

Subsection (2)(c) was substituted, as from 1 July 1994, by section 37 Companies Act 1993 Amendment Act 1994 (1994 No 6).

315 Liquidation committees

- (1) A liquidation committee must consist of not less than 3 persons who are—
 - (a) Creditors or shareholders; or

- (b) Persons holding general powers of attorney from creditors or shareholders; or
 - (c) Authorised directors or representatives of companies which are creditors or shareholders of the company in liquidation.
- (2) A liquidation committee has the power to—
 - (a) Call for reports from the liquidator on the progress of the liquidation:
 - (b) Call a meeting of creditors or of shareholders:
 - (c) Apply to the Court under section 284 and section 286 of this Act:
 - (d) Assist the liquidator as appropriate in the conduct of the liquidation.
- (3) The provisions set out in Schedule 8 to this Act govern proceedings at meetings of liquidation committees.
- (4) A meeting of creditors called under subsection (2)(b) of this section shall be held in accordance with Schedule 5 to this Act.
- (5) Where, by reason of vacancies in a liquidation committee, the committee is unable to act, the liquidator must call attention to the situation in the next six-monthly report required to be prepared and sent under section 255(2)(d) of this Act.

Liquidation surplus account

316 Establishment of Liquidation Surplus Account

- (1) Money representing unclaimed assets of a company standing to the credit of a liquidator shall, after completion of the liquidation, be paid to Public Trust.
- (2) At the expiration of a period of 12 months after the date on which the money is paid, Public Trust must, after deduction of any amount required to meet the claim of any person which is established within that period, pay the balance into an account entitled the “Liquidation Surplus Account” for distribution in accordance with this section.
- (3) Money held in the Liquidation Surplus Account may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds. Interest on any investment must be distributed in accordance with this section.
- (4) Money held in the Liquidation Surplus Account may be—

- (a) Paid or distributed to any person entitled to payment or distribution in the liquidation of a company any money representing the surplus assets of which has been credited to the Account; or
 - (b) Paid, subject to such conditions as the Official Assignee for New Zealand may impose, in meeting the claims of the creditors of a company in the liquidation of which the Official Assignee or any other person is the liquidator, for payment of the costs of proceedings in the liquidation after the commencement of the liquidation, legal or other expert advice, or the costs of any expert witness, where the Official Assignee for New Zealand is satisfied that it is fair and reasonable for those costs to be met out of the Account.
- (5) Payments from the Liquidation Surplus Account shall be made by Public Trust at the direction of the Official Assignee for New Zealand.
 - (6) In making a payment under this section, Public Trust is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.
 - (7) Nothing in the Unclaimed Money Act 1971 applies in relation to money to which this section applies.

Compare: 1955 No 63 s 330A; 1989 No 101 s 12

Subsection (1) was amended, as from 3 June 1998, by section 17 Companies Amendment Act 1998 (1998 No 31) by substituting the words “a liquidator” for the words “the Official Assignee”.

Subsections (1), (2), (5), and (6) were amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the words “Public Trust” for the words “the Public Trustee”. See clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Transitional provisions

Section 316A and the preceding heading were inserted, as from 1 July 1994, by section 38 Companies Act 1993 Amendment Act 1994 (1994 No 6).

This heading was substituted, as from 30 June 1997, by section 17 Companies Act 1993 Amendment Act 1997 (1997 No 27).

316A Transitional provision in relation to voidable transactions

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

Section 316A and the preceding heading were inserted, as from 1 July 1994, by section 38 Companies Act 1993 Amendment Act 1994 (1994 No 6).

316B Transitional provision in relation to Liquidation Surplus Account under section 290 of Companies Act 1955

On the repeal of the Companies Act 1955 by section 2 of the Companies Act Repeal Act 1993,—

- (a) All money standing to the credit of the Liquidation Surplus Account established under section 290 of the Companies Act 1955 and representing unclaimed assets of an existing company is deemed to be money held in the Liquidation Surplus Account established under section 316 of this Act, and that section applies as if the money represented unclaimed assets of a company registered under this Act; and
- (b) Section 316 of this Act applies to all money to which section 290 of the Companies Act 1955 would have applied if the Companies Act 1955 had been in force, and section 316 of this Act applies as if the money represented unclaimed assets of a company registered under this Act.

Section 316B was inserted, as from 30 June 1997, by section 18 Companies Act 1993 Amendment Act 1997 (1997 No 27).

Part 17**Removal from the New Zealand register****317 Removal from register**

A company is removed from the New Zealand register when a notice signed by the Registrar stating that the company is

removed from the New Zealand register is registered under this Act.

318 Grounds for removal from register

- (1) Subject to this section, the Registrar must remove a company from the New Zealand register if—
- (a) The company is an amalgamating company, other than an amalgamated company, on the day on which the Registrar issues a certificate of amalgamation under section 224 of this Act; or
 - (b) The Registrar is satisfied that—
 - (i) The company has ceased to carry on business; and
 - (ii) There is no other reason for the company to continue in existence; or
 - (c) The company has been put into liquidation, and—
 - (i) No liquidator is acting; or
 - (ii) The documents referred to in section 257(1)(a) of this Act have not been sent or delivered to the Registrar within 6 months after the liquidation of the company is completed; or
 - (d) There is sent or delivered to the Registrar a request in the prescribed form made by—
 - (i) A shareholder authorised to make the request by a special resolution of shareholders entitled to vote and voting on the question; or
 - (ii) The board of directors or any other person, if the constitution of the company so requires or permits—
that the company be removed from the New Zealand register on either of the grounds specified in subsection (2) of this section; or
 - (e) A liquidator sends or delivers to the Registrar—
 - (i) The documents referred to in section 257(1)(a); and
 - (ii) A copy of the notice referred to in section 320(4); or.

- (f) the company has failed to pay the fee prescribed by regulations for the application for registration of the company under section 12.
- (2) A request that a company be removed from the New Zealand register under subsection (1)(d) of this section may be made on the grounds—
 - (a) That the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with its constitution and this Act; or
 - (b) That the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of this Act for an order putting the company into liquidation.
- (3) A request that a company be removed from the New Zealand register under subsection (1)(d) of this section must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being removed from the New Zealand register.
- (3A) The Registrar must remove a company from the New Zealand register under subsection (1)(f) if—
 - (a) the Registrar has complied with section 319; and
 - (b) the fee prescribed by regulations for the application for registration of the company under section 12 has not been paid in full to the Registrar within 20 working days after the date of the notice given under section 319.
- (4) The Registrar must remove a company from the New Zealand register under subsection (1)(b) of this section only if—
 - (a) The Registrar has complied with section 319 of this Act; and
 - (b) The company has not satisfied the Registrar that it is carrying on business or that reason exists for the company to continue in existence; and
 - (c) The Registrar—
 - (i) Is satisfied that no person has objected to the removal under section 321 of this Act; or
 - (ii) If an objection to the removal has been received, has complied with section 322 of this Act.

- (5) The Registrar must remove a company from the New Zealand register under paragraphs (c), (d), or (e) of subsection (1) of this section only if—
- (a) The Registrar is satisfied that notice has been given in accordance with section 320 of this Act; and
 - (b) The Registrar—
 - (i) Is satisfied that no person has objected to the removal under section 321 of this Act; or
 - (ii) If an objection to the removal has been received, has complied with section 322 of this Act.

Subsection (1)(d)(i) was substituted, as from 1 July 1994, by section 39 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (1)(e) was substituted, as from 3 June 1998, by section 18 Companies Amendment Act 1998 (1998 No 31).

Subsection (1)(e) was amended, as from 15 April 2004, by section 15(1) Building Societies Amendment Act 2004 (2004 No 24) by inserting the expression “; or”.

Subsection (1)(f) was inserted, as from 15 April 2004, by section 15(1) Building Societies Amendment Act 2004 (2004 No 24).

Subsection (3A) was inserted, as from 15 April 2004, by section 15(2) Building Societies Amendment Act 2004 (2004 No 24).

319 Notice of intention to remove where company has ceased to carry on business or application fee not paid

- (1) Before a company can be removed from the New Zealand register under section 318(1)(b) or (f) of this Act, the Registrar must—
- (a) Give notice to the company in accordance with subsection (2) of this section; and
 - (b) give notice of the matters set out in subsection (3) to any person who is entitled to a security interest in respect of which a financing statement has been registered under the Personal Property Securities Act 1999; and
 - (c) Give public notice of the matters set out in subsection (3) of this section.
- (2) The notice to be given under subsection (1)(a) of this section must—
- (a) State the section under, and the grounds on which, it is intended to remove the company from the New Zealand register; and

- (ab) if section 318(1)(f) applies, state that, unless the fee prescribed by regulations for the application for registration of the company under section 12 is paid in full to the Registrar within 20 working days after the date of the notice, the company will be removed from the New Zealand register; and
- (b) if section 318(1)(b) applies, state that, unless—
 - (i) By the date specified in the notice, which shall not be less than 20 working days after the date of the notice, the company satisfies the Registrar by notice in writing that it is still carrying on business or there is other reason for it to continue in existence; or
 - (ii) The Registrar does not, in accordance with section 322 of this Act, proceed to remove the company from the register,—
the company will be removed from the New Zealand register.
- (3) The notice to be given under paragraph (b) and paragraph (c) of subsection (1) of this section must specify—
 - (a) The name of the company; and
 - (b) The section under, and the grounds on which, it is intended to remove the company from the New Zealand register; and
 - (c) if section 318(1)(b) applies, the date by which an objection to the removal under section 321 of this Act must be delivered to the Registrar, which shall not be less than 20 working days after the date of the notice.

The heading to section 319 was amended, as from 15 April 2004, by section 16(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “or application fee not paid”.

Subsection (1) was amended, as from 15 April 2004, by section 16(2) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the expression “or (f)” after the expression “section 318(1)(b)”.

Subsection (1)(b) was substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). See Part 12 of that Act for transitional provisions. See clause 2 Personal Property Securities Act Commencement Order 2002 (SR 2002/60).

Subsection (2)(ab) was inserted, as from 15 April 2004, by section 16(3) Companies Amendment Act (No 2) 2004 (2004 No 24).

Subsection (2)(b) was amended, as from 15 April 2004, by section 16(4) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “if section 318(1)(b) applies,” before the words “state that,”.

Subsection (3)(a) was amended, as from 30 June 1997, by section 19 Companies Act 1993 Amendment Act 1997 (1997 No 27) by omitting the words “and its registered office”.

Subsection (3)(c) was amended, as from 15 April 2004, by section 16(5) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the words “if section 318(1)(b) applies,” before the words “the date by which”.

320 Notice of intention to remove in other cases

- (1) If a company is to be removed from the register under section 318(1)(c) or (d) of this Act, the Registrar must give public notice of the matters set out in subsection (4) of this section.
- (2) If a company is to be removed from the register under section 318(1)(e), the liquidator must give public notice of the matters set out in subsection (4).
- (3) If a company is to be removed from the register under section 318(1)(c) of this Act, the Registrar, or, if it is to be removed from the register under section 318(1)(d) of this Act, the applicant, as the case may be, must also give notice of the matters set out in subsection (4) of this section to—
 - (a) The company; and
 - (b) A person who is entitled to a security interest in respect of which a financing statement has been registered under the Personal Property Securities Act 1999.
- (4) The notice to be given under this section must specify—
 - (a) The name of the company; and
 - (b) The section under, and the grounds on which, it is intended to remove the company from the New Zealand register; and
 - (c) The date by which an objection to the removal under section 321 of this Act must be delivered to the Registrar, which shall be not less than 20 working days after the date of the notice.

Subsection (1) was amended, as from 15 April 2004, by section 17(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by inserting the expression “or (d)” after the expression “section 318(1)(c)”.

Subsection (2) was substituted, as from 15 April 2004, by section 17(2) Companies Amendment Act (No 2) 2004 (2004 No 24).

Subsection (3)(b) was substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). See Part 12 of that Act for transitional provisions. See clause 2 Personal Property Securities Act Commencement Order 2002 (SR 2002/60).

Subsection (4)(a) was amended, as from 30 June 1997, by section 20 Companies Act 1993 Amendment Act 1997 (1997 No 27) by omitting the words “and its registered office”.

321 Objection to removal from register

- (1) Where a notice is given of an intention to remove a company from the New Zealand register, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any one or more of the following grounds:
 - (a) That the company is still carrying on business or there is other reason for it to continue in existence; or
 - (b) That the company is a party to legal proceedings; or
 - (c) That the company is in receivership, or liquidation, or both; or
 - (d) That the person is a creditor, or a shareholder, or a person who has an undischarged claim against the company; or
 - (e) That the person believes that there exists, and intends to pursue, a right of action on behalf of the company under Part 9 of this Act; or
 - (f) That, for any other reason, it would not be just and equitable to remove the company from the New Zealand register.
- (2) For the purposes of subsection (1)(d) of this section,—
 - (a) A claim by a creditor against a company is not an undischarged claim if—
 - (i) The claim has been paid in full; or
 - (ii) The claim has been paid in part under a compromise entered into under Part 14 of this Act or by being otherwise compounded to the reasonable satisfaction of the creditor; or
 - (iii) The claim has been paid in full or in part by a receiver or a liquidator in the course of a completed receivership or liquidation; or

- (iv) A receiver or a liquidator has notified the creditor that the assets of the company are not sufficient to enable any payment to be made to the creditor; and
- (b) A claim by a shareholder or any other person against a company is not an undischarged claim if—
 - (i) Payment has been made to the shareholder or that person in accordance with a right under the company's constitution or this Act to receive or share in the company's surplus assets; or
 - (ii) A receiver or liquidator has notified the shareholder or that person that the company has no surplus assets.
- (3) An objection to the removal of a company from the New Zealand register cannot be made under this section if the ground for removal is that specified in section 318(1)(f).

Subsection (3) was inserted, as from 15 April 2004, by section 18 Companies Amendment Act (No 2) 2004 (2004 No 24).

322 Duties of Registrar if objection received

- (1) If an objection to the removal of a company from the New Zealand register is made on a ground specified in section 321(1)(a), (b), or (c) of this Act, the Registrar must not proceed with the removal unless the Registrar is satisfied that—
 - (a) The objection has been withdrawn; or
 - (b) Any facts on which the objection is based are not, or are no longer, correct; or
 - (c) The objection is frivolous or vexatious.
- (2) If an objection to the removal of a company from the New Zealand register is made on a ground specified in section 321(1)(d), (e), or (f) of this Act, the Registrar must give notice to the person objecting that, unless notice of an application to the Court by that person for an order—
 - (a) Under section 241(2)(c) of this Act, that the company be put into liquidation; or
 - (b) Under section 323 of this Act, that, on any ground specified in section 321 of this Act, the company not be removed from the New Zealand register—

is served on the Registrar not later than 20 working days after the date of the notice, the Registrar intends to proceed with the removal.

- (3) If—
- (a) Notice of such an application to the Court is not served on the Registrar; or
 - (b) The application is withdrawn; or
 - (c) On the hearing of such an application, the Court refuses to grant either an order putting the company into liquidation or an order that the company not be removed from the New Zealand register,—
- the Registrar must proceed with the removal.
- (4) Every person who makes such an application must give the Registrar notice in writing of the decision of the Court within 5 working days of the decision being given.
- (5) The Registrar must send—
- (a) A copy of an objection under section 321 of this Act; and
 - (b) A copy of a notice given by or served on the Registrar under this section; and
 - (c) If the company is removed from the New Zealand register, notice of the removal—
- to a person who sent or delivered to the Registrar a request that the company be removed from the New Zealand register under section 318(1)(d) of this Act or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 318(1)(e) of this Act.

323 Powers of Court

- (1) A person who gives a notice objecting to the removal of a company from the New Zealand register on a ground specified in section 321(1)(d), (e), or (f) of this Act may apply to the Court for an order that the company not be removed from the register on any ground set out in that subsection.
- (2) On an application for an order under subsection (1) of this section, the Court may, if it is satisfied that the company should not be removed from the register on any of those grounds, make an order that the company is not to be removed from the register.

324 Property of company removed from register

- (1) Property that, immediately before the removal of a company from the New Zealand register, had not been distributed or disclaimed, vests in the Crown with effect from the removal of the company from the register.
- (2) For the purposes of this section, property of the former company includes leasehold property and all other rights vested in or held on trust for the former company, but does not include property held by the former company on trust for any other person.
- (3) The Secretary to the Treasury must, forthwith on becoming aware of the vesting of the property, give public notice of the vesting, setting out the name of the former company and particulars of the property.
- (4) Where property is vested in the Crown under this section, a person who would have been entitled to receive all or part of the property, or payment from the proceeds of its realisation, if it had been in the hands of the company immediately before the removal of the company from the New Zealand register, or any other person claiming through that person, may apply to the Court for an order—
 - (a) Vesting all or part of the property in that person; or
 - (b) For payment to that person by the Crown of compensation of an amount not greater than the value of the property.
- (5) On an application made under subsection (4) of this section, the Court may—
 - (a) Decide any question concerning the value of the property, the entitlement of any applicant to the property or to compensation, and the apportionment of the property or compensation among 2 or more applicants; or
 - (b) Order that the hearing of 2 or more applications be consolidated; or
 - (c) Order that an application be treated as an application on behalf of all persons, or all members of a class of persons, with an interest in the property; or
 - (d) Make an ancillary order.

- (6) Compensation ordered to be paid under subsection (4) of this section shall be paid out of the Crown Bank Account without further appropriation than this section.

325 Disclaimer of property by the Crown

- (1) The Secretary to the Treasury may, by notice in writing, disclaim the Crown's title to property vesting in the Crown under section 324 of this Act if the property is onerous property within the meaning of section 269 of this Act.
- (2) The Secretary must forthwith give public notice of the disclaimer.
- (3) Property that is disclaimed under this section shall be deemed not to have vested in the Crown under section 324 of this Act.
- (4) Subsections (3), (5), and (6) of section 269 of this Act apply to any property that is disclaimed under this section as if the property had been disclaimed under that section immediately before the company was removed from the New Zealand register.
- (5) Subject to any order of the Court, the Secretary to the Treasury is not entitled to disclaim property unless—
 - (a) The property is disclaimed within 12 months after the vesting of the property in the Crown first comes to the notice of the Secretary; or
 - (b) If any person gives notice in writing to the Secretary requiring the Secretary to elect, before the close of such date as is stated in the notice, not being a date that is less than 60 working days after the date on which the notice is received by the Secretary, whether to disclaim the property, the property is disclaimed before the close of that date,—whichever occurs first.
- (6) A statement in a notice disclaiming property under this section that the vesting of the property in the Crown first came to the notice of the Secretary to the Treasury on a specified date shall, in the absence of proof to the contrary, be evidence of the fact stated.

Compare: 1955 No 63 s 338

Subsection (5)(b) was amended, as from 1 July 1994, by section 40 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “60” for the expression “20”.

326 Liability of directors, shareholders, and others to continue

The removal of a company from the New Zealand register does not affect the liability of any former director or shareholder of the company or any other person in respect of any act or omission that took place before the company was removed from the register and that liability continues and may be enforced as if the company had not been removed from the register.

327 Liquidation of company removed from New Zealand register

[Repealed]

Section 327: repealed, on 20 September 2007, by section 4 of the Companies Amendment Act 2007 (2007 No 48).

328 Registrar may restore company to New Zealand register

- (1) Subject to this section, the Registrar must, on the application of a person referred to in subsection (2) of this section, and may, on his or her own motion, restore a company that has been removed from the New Zealand register to the register if he or she is satisfied that, at the time the company was removed from the register,—
 - (a) The company was still carrying on business or other reason existed for the company to continue in existence; or
 - (b) The company was a party to legal proceedings; or
 - (c) The company was in receivership, or liquidation, or both.
- (2) Any person who, at the time the company was removed from the New Zealand register, was—
 - (a) A shareholder or director of the company; or
 - (b) A creditor of the company; or
 - (c) A liquidator, or a receiver of the property, of the company—may make an application under subsection (1) of this section.

- (3) Before the Registrar restores a company to the New Zealand register under this section,—
- (a) In the case of a company that was removed from the New Zealand register under paragraph (b) or paragraph (c) of section 318(1), the Registrar must give public notice setting out—
- (i) The name of the company; and
 - (ii) The name and address of the applicant; and
 - (iii) The section under, and the grounds on which, the application is made or the Registrar proposes to act, as the case may be; and
 - (iv) The date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice:
- (b) In the case of a company that was removed from the New Zealand register under paragraph (d) or paragraph (e) of section 318(1), the person who made the application under subsection (1) must give public notice setting out—
- (i) The name of the company; and
 - (ii) The person's name and address; and
 - (iii) The section under, and the grounds on which, the application is made; and
 - (iv) The date by which an objection to restoring the company to the register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.
- (4) The Registrar must not restore a company to the New Zealand register if the Registrar receives an objection to the restoration within the period stated in the notice.
- (5) Before the Registrar restores a company to the New Zealand register under this section, the Registrar may require any of the provisions of this Act or any regulations made under this Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.
- (6) The Court may, on the application of the Registrar or the applicant, give such directions or make such orders as may be necessary or desirable for the purpose of placing a company

that is restored to the New Zealand register under this section and any other persons as nearly as possible in the same position as if the company had not been removed from the register.

- (7) Nothing in this section limits or affects section 329 of this Act.

Subsection (3) was substituted, as from 30 June 1997, by section 21 Companies Act 1993 Amendment Act 1997 (1997 No 27).

329 Court may restore company to New Zealand register

- (1) The Court may, on the application of a person referred to in subsection (2) of this section, order that a company that has been removed from the New Zealand register be restored to the register if it is satisfied that,—

- (a) At the time the company was removed from the register,—

- (i) The company was still carrying on business or other reason existed for the company to continue in existence; or
- (ii) The company was a party to legal proceedings; or
- (iii) The company was in receivership, or liquidation, or both; or
- (iv) The applicant was a creditor, or a shareholder, or a person who had an undischarged claim against the company; or
- (v) The applicant believed that a right of action existed, or intended to pursue a right of action, on behalf of the company under Part 9 of this Act; or

- (b) For any other reason it is just and equitable to restore the company to the New Zealand register.

- (2) The following persons may make an application under subsection (1) of this section:

- (a) Any person who, at the time the company was removed from the New Zealand register,—

- (i) Was a shareholder or director of the company; or
- (ii) Was a creditor of the company; or
- (iii) Was a party to any legal proceedings against the company; or

- (iv) Had an undischarged claim against the company;
or
 - (v) Was the liquidator, or a receiver of the property
of, the company:
- (b) The Registrar:
- (c) With the leave of the Court, any other person.
- (3) Before the Court makes an order restoring a company to the New Zealand register under this section, it may require any provisions of this Act or any regulations made under this Act, being provisions with which the company had failed to comply before it was removed from the register, to be complied with.
- (4) The Court may give such directions or make such orders as may be necessary or desirable for the purpose of placing the company and any other persons as nearly as possible in the same position as if the company had not been removed from the New Zealand register.

330 Restoration to register

- (1) A company is restored to the New Zealand register when a notice signed by the Registrar stating that the company is restored to the New Zealand register is registered under this Act.
- (2) A company that is restored to the New Zealand register shall be deemed to have continued in existence as if it had not been removed from the register.

331 Vesting of property in company on restoration to register

- (1) Subject to this section, property of a company that is, at the time the company is restored to the New Zealand register, vested in the Crown pursuant to section 324 of this Act, shall, on the restoration of the company to the New Zealand register, vest in the company as if the company had not been removed from the register.
- (2) Nothing in subsection (1) of this section applies to any property vested in the Crown pursuant to section 324 of this Act if the Court has made an order for the payment of compensation to any person pursuant to section 324(4)(b) of this Act in respect of that property.

- (3) Nothing in subsection (1) of this section applies to land or any estate or interest in land that has vested in the Crown pursuant to section 324 of this Act if transmission to the Crown of the land or that estate or interest in land has been registered under the Land Transfer Act 1952.
- (4) Where transmission to the Crown of land or any estate or interest in land that has vested in the Crown pursuant to section 324 of this Act has been registered under the Land Transfer Act 1952, the Court may, on the application of the company, make an order—
 - (a) For the transfer of the land or the estate or interest to the company; or
 - (b) For the payment by the Crown to the company of compensation—
 - (i) Of an amount not greater than the value of the land or the estate or interest as at the date of registration of the transmission; or
 - (ii) If the land or the estate or interest has been sold or contracted to be sold, of an amount equal to the net amount received or receivable from the sale.
- (5) On an application under subsection (4) of this section, the Court may decide any question concerning the value of the land or the estate or interest.
- (6) Compensation ordered to be paid under subsection (4) of this section shall be paid out of the Crown Bank Account without further appropriation than this section.

Compare: 1955 No 63 s 337

Part 18

Overseas companies

332 Meaning of carrying on business

For the purposes of this Part of this Act,—

- (a) A reference to an overseas company carrying on business in New Zealand includes a reference to the overseas company—
 - (i) Establishing or using a share transfer office or a share registration office in New Zealand; or

- (ii) Administering, managing, or dealing with property in New Zealand as an agent, or personal representative, or trustee, and whether through its employees or an agent or in any other manner:
- (b) An overseas company does not carry on business in New Zealand merely because in New Zealand it—
 - (i) Is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute; or
 - (ii) Holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or
 - (iii) Maintains a bank account; or
 - (iv) Effects a sale of property through an independent contractor; or
 - (v) Solicits or procures an order that becomes a binding contract only if the order is accepted outside New Zealand; or
 - (vi) Creates evidence of a debt or creates a charge on property; or
 - (vii) Secures or collects any of its debts or enforces its rights in relation to securities relating to those debts; or
 - (viii) Conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or
 - (ix) Invests its funds or holds property.

Compare: Corporations Act 1989 (Aust) s 21(2), (3)

332A Registrar may approve use of different form

- (1) The Registrar may, on the application of any person, approve the use, by the overseas company or companies that the Registrar may specify, of a form for the purposes of this Part that is different from that prescribed.
- (2) The Registrar may at any time revoke, in whole or in part, any approval given under subsection (1).
- (3) An application, notice, or other document given to the Registrar by an overseas company must be treated as having been

given in the prescribed form if the Registrar has approved the use of the form by the overseas company under this section.

Section 332A was inserted, as from 1 September 2007, by section 11 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(2) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

333 Name to be reserved before carrying on business

- (1) An overseas company must not carry on business in New Zealand on or after the commencement of this Act unless the name of the overseas company has been reserved.
- (2) Subsection (1) of this section does not apply to an overseas company that, immediately before the commencement of this Act, is registered under Part 12 of the Companies Act 1955.
- (3) An overseas company registered under this Part of this Act that carries on business in New Zealand must not change its name unless the name has first been reserved.
- (4) The provisions of sections 20, 21, and 22 of this Act apply subject to any necessary modifications to the reservation of the name of an overseas company, including reservation on a change of name, in the same way as they apply to the registration of companies under this Act and to the change of names of companies registered under this Act.
- (5) If an overseas company contravenes this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Compare: 1955 No 63 s 396A; 1983 No 53 s 23

334 Overseas companies to register under this Act

- (1) An overseas company that, on or after the commencement of this Act, commences to carry on business in New Zealand must apply for registration under this Part of this Act in accordance with section 336 of this Act within 10 working days of commencing to carry on business.
- (2) An overseas company that, immediately before the commencement of this Act, was carrying on business in New

Zealand and, on the commencement of this Act, continues to carry on business in New Zealand, must apply for registration under this Part of this Act in accordance with section 336 of this Act within 10 working days of the commencement of this Act.

- (3) An overseas company registered under Part 12 of the Companies Act 1955 immediately before the date of commencement of this Act is, on and from that date, deemed to be registered under this Part of this Act instead of under Part 12 of the Companies Act 1955.
- (4) An overseas company that is deemed to be registered under this Part of this Act must, within 20 working days of the commencement of this Act, deliver to the Registrar for registration, a notice in the prescribed form stating the full address of the principal place of business in New Zealand of the overseas company.
- (5) An overseas company that changes its name must send or deliver to the Registrar a notice in the prescribed form of the change of name accompanied by the notice reserving the name within 10 working days of the change of name.
- (6) If an overseas company fails to comply with this section,—
 - (a) The overseas company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the overseas company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

335 Validity of transactions not affected

A failure by an overseas company to comply with section 333 or section 334 of this Act does not affect the validity or enforceability of any transaction entered into by the overseas company.

336 Application for registration

- (1) An application for registration of an overseas company under this Part of this Act must be delivered to the Registrar and must—

- (a) Be in the prescribed form; and
 - (b) Be signed by or on behalf of the overseas company.
- (2) Without limiting subsection (1) of this section, the application must—
 - (a) State the name of the overseas company; and
 - (b) State the full names and residential addresses of the directors of the overseas company at the date of the application; and
 - (c) State the full address of the place of business in New Zealand of the overseas company or, if the overseas company has more than 1 place of business in New Zealand, the full address of the principal place of business in New Zealand of the overseas company; and
 - (d) Have attached evidence of incorporation of the overseas company and a copy of the instrument constituting or defining the constitution of the company, and, if not in English, a translation of such documents certified in accordance with regulations made under this Act; and
 - (e) Have attached the notice of name approval; and
 - (f) State the full name and address of one or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the overseas company.

Compare: 1955 No 63 s 397

337 Registration of overseas company

- (1) Where the Registrar receives a properly completed application for registration under this Part of this Act of an overseas company, the Registrar must forthwith register the application on the overseas register.
- (2) Where an overseas company is deemed to be registered under this Part of this Act by virtue of section 334(3) of this Act, the Registrar must, forthwith after the commencement of this Act, transfer the registration of the overseas company to the overseas register.
- (3) Where the Registrar receives a notice of a change of name of an overseas company in accordance with section 334(5) of this Act, the Registrar must register the change of name on the overseas register.

338 Use of name by overseas company

- (1) Every overseas company that carries on business in New Zealand must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in—
- (a) Written communications sent by, or on behalf of, the company; and
 - (b) Documents issued or signed by, or on behalf of, the company that evidence or create a legal obligation of the company.
- (2) For the purposes of subsection (1) of this section, a generally recognised abbreviation of a word or words may be used in the name of an overseas company if it is not misleading to do so.

Subsection (1)(a) was amended, as from 1 July 1994, by section 41 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the words “Written communications” for the word “Communications”.

339 Alteration of constitution

- (1) An overseas company that carries on business in New Zealand must ensure that, within 20 working days of the change or alteration, notice in the prescribed form is given to the Registrar of—
- (a) An alteration to the instrument constituting or defining the constitution of the overseas company; or
 - (b) A change in the directors or in the names or residential addresses of the directors of the overseas company; or
 - (c) A change in the address of the place of business or principal place of business of the overseas company; or
 - (d) A change in any person or the address of any person authorised to accept service in New Zealand of documents on behalf of the overseas company.
- (2) If an overseas company fails to comply with subsection (1) of this section,—
- (a) The overseas company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and
 - (b) Every director of the overseas company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

Subsection (1) was substituted, as from 1 July 1994, by section 42 Companies Act 1993 Amendment Act 1994 (1994 No 6).

339A Rectification or correction of name or address of person authorised to accept service

- (1) This section applies if the name or address of a person resident or incorporated in New Zealand who is authorised to accept service in New Zealand of documents on behalf of an overseas company is rectified or corrected under section 360A or section 360B.
- (2) The rectification or correction takes effect at the time that the rectification or correction is made to the overseas register.

Section 339A was inserted, as from 15 April 2004, by section 19 Companies Amendment Act (No 2) 2004 (2004 No 24).

340 Annual return of overseas company

- (1) Every overseas company that carries on business in New Zealand must ensure that the Registrar receives each year, during the month allocated to the overseas company for the purposes of this section, an annual return in the prescribed form confirming that the information on the overseas register in respect of the overseas company referred to in the return is correct at the date of the return.
- (2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar.
- (3) On registration of an overseas company under this Part of this Act, the Registrar must allocate a month to the company for the purposes of this section.
- (4) The Registrar may, by written notice to an overseas company, alter the month allocated to the company under subsection (3) of this section.
- (5) Notwithstanding subsection (1) of this section, an overseas company, not being an overseas company that is deemed to be registered under this Part of this Act, need not make an annual return in the calendar year of its registration under this Part of this Act.
- (6) If an overseas company fails to comply with subsection (1) or subsection (2) of this section,—
 - (a) The company commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act; and

- (b) Every director of the overseas company commits an offence and is liable on conviction to the penalty set out in section 374(2) of this Act.

341 Overseas company ceasing to carry on business in New Zealand

- (1) An overseas company registered under this Part of this Act that intends to cease to carry on business in New Zealand must—
 - (a) Give public notice of that intention; and
 - (b) Not earlier than 3 months after giving notice in accordance with paragraph (a) of this subsection, give notice to the Registrar in the prescribed form stating the date on which it will cease to carry on business in New Zealand.
- (2) The Registrar must remove an overseas company from the overseas register as soon as practicable after—
 - (a) The date specified in the notice given in accordance with subsection (1)(b) of this section; or
 - (b) Receipt of a notice given by a liquidator in accordance with the provisions of Schedule 9 to this Act.

Compare: 1955 No 63 s 405

Subsection (2) was substituted, as from 1 July 1994, by section 43 Companies Act 1993 Amendment Act 1994 (1994 No 6).

342 Liquidation of assets in New Zealand

- (1) An application may be made to the Court for the liquidation of the assets in New Zealand of an overseas company in accordance with Part 16 of this Act, subject to the modifications and exclusions set out in Schedule 9 to this Act.
- (2) An application may be made under subsection (1) of this section whether or not the overseas company—
 - (a) Is registered under this Part of this Act; or
 - (b) Has given public notice of an intention to cease to carry on business in New Zealand in accordance with section 341(1)(a) of this Act; or
 - (c) Has given notice to the Registrar of the date on which it will cease to carry on business in New Zealand in accordance with section 341(1)(b) of this Act; or

- (d) Has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

343 Attorneys of overseas companies

- (1) Part 12 of the Property Law Act 1952 applies, with the necessary modifications, in relation to a power of attorney executed by an overseas company registered under this Part of this Act to the same extent as if the company were a person and as if the commencement of the liquidation of the company was the death of a person within the meaning of Part 12 of that Act.
- (2) A declaration endorsed on or annexed to an instrument appointing, or appearing to appoint, an attorney of an overseas company, made or appearing to be made by one of the directors before a person authorised by section 11 of the Oaths and Declarations Act 1957 to take a declaration for use in New Zealand, in the country concerned, to the effect that—
 - (a) The company is incorporated under the name stated in the instrument in accordance with the law of the country in which it is so incorporated, the name of which is stated in the declaration; and
 - (b) The instrument has been executed, and the powers appearing to be conferred on the attorney are authorised to be conferred under the constitution of the company, or under the Act or instrument under which the company is incorporated, or by any other instrument constituting or defining the constitution of the company; and
 - (c) The person making the declaration is a director of the company—is conclusive evidence of those facts.

343A Overseas company not required to provide information, notice, or document in certain circumstances

An overseas company is not required to give information, notice of information, or a copy of a document to the Registrar under this Part if—

- (a) the overseas company is incorporated in a prescribed country, State, or territory outside New Zealand; and

- (b) the information or a copy of the document has been given to, or is held by, a body or person in that country, State, or territory whose functions correspond to those of the Registrar; and
- (c) the information or document is of a class that is prescribed for the purposes of this section.

Section 343A was inserted, as from 1 September 2007, by section 12 Companies Amendment Act (No 2) 2006 (2006 No 62). See clause 2(2) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Part 19

Transfer of registration

Registration of overseas companies as companies under this Act

344 Overseas companies may be registered as companies under this Act

Subject to this Part of this Act, an overseas company may be registered as a company under this Act.

345 Application for registration

- (1) An application by an overseas company to register as a company under this Act must be in the prescribed form and must be accompanied by—
 - (a) A certified copy of its certificate of incorporation or other similar document that evidences its incorporation; and
 - (b) A certified copy of the documents defining its constitution; and
 - (c) Evidence acceptable to the Registrar that the company is not prevented from being registered as a company under this Act by either section 346 or section 347 of this Act; and
 - (d) The documents and information that are required to register a company under Part 2 of this Act; and
 - (e) Any other documents and information the Registrar may require.

- (2) The Registrar may direct that a document that has been delivered to the Registrar or registered under Part 18 of this Act need not accompany the application.

346 Overseas companies must be authorised to register

An overseas company must not be registered as a company under this Act unless—

- (a) The company is authorised to transfer its incorporation under the law of the country in which it is incorporated; and
- (b) The company has complied with the requirements of that law in relation to the transfer of its incorporation; and
- (c) If that law does not require its shareholders, or a specified proportion of them, to consent to the transfer of its incorporation, the transfer has been consented to by not less than 75 percent of its shareholders entitled to vote and voting in person or by proxy at a meeting of which not less than 21 days notice is given specifying the intention to transfer the company's incorporation.

Compare: Corporations Act 1989 (Aust) s 135

347 Overseas companies that cannot be registered

- (1) An overseas company must not be registered as a company under this Act if—
- (a) The company is in liquidation; or
 - (b) A receiver or manager has been appointed, whether by a court or not, in relation to the property of the company; or
 - (c) The company has entered into a compromise or arrangement with a creditor that is in force; or
 - (d) An application has been made to a court, whether in New Zealand or in another country,—
 - (i) To put the company into liquidation or wind it up; or
 - (ii) For the approval of a compromise or arrangement between the company and a creditor—and has not been dealt with.

- (2) An overseas company must not be registered as a company under this Act unless the overseas company would, immediately after becoming registered under this Act, satisfy the solvency test.

Compare: Corporations Act 1989 (Aust) s 134

348 Registration

- (1) As soon as the Registrar receives a properly completed application for registration of an overseas company as a company under this Act, the Registrar must—
- (a) Enter on the New Zealand register the particulars of the company required under section 360 of this Act; and
 - (b) Issue a certificate of registration in the prescribed form.
- (2) A certificate of registration of a company issued under this section is conclusive evidence that—
- (a) All the requirements of this Act as to registration have been complied with; and
 - (b) On and from the date of registration stated in the certificate, the company is registered under this Act.

349 Effect of registration

- (1) The registration of an overseas company under this Act does not—
- (a) Create a new legal entity; or
 - (b) Prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or
 - (c) Affect the property, rights or obligations of the company; or
 - (d) Affect proceedings by or against the company.
- (2) Proceedings that could have been commenced or continued by or against the overseas company before registration under this Act may be commenced or continued by or against the company after registration.

Transfer of registration of companies to other jurisdictions

350 Companies may transfer incorporation

Subject to this Part of this Act, a company may be removed from the New Zealand register in connection with becoming incorporated under the law in force in, or in any part of, another country.

351 Application to transfer incorporation

1An application by a company for removal from the New Zealand register in connection with becoming incorporated under the law in force in, or in any part of, another country must be in the prescribed form and must be accompanied by—

- (a) Evidence acceptable to the Registrar that sections 352 and 353 of this Act have been complied with; and
- (b) Evidence acceptable to the Registrar that the removal of the company from the New Zealand register is not prevented by section 354 of this Act; and
- (c) Written notice from the Commissioner of Inland Revenue that the Commissioner has no objection to the company being removed from the New Zealand register; and
- (d) Evidence acceptable to the Registrar that the company is incorporated under that law; and
- (e) Any other documents or information the Registrar may require.

352 Approval of shareholders

A company must not apply to be removed from the New Zealand register under section 351 of this Act unless the making of the application has been approved by special resolution.

353 Company to give public notice

A company must not apply to be removed from the New Zealand register under section 351 of this Act unless—

- (a) The company gives public notice—

- (i) Stating that it intends, after the date specified in the notice, which must not be less than 20 working days after the date of the notice, to apply under section 351 of this Act for the company to be removed from the New Zealand register in connection with the company becoming incorporated under the law in force in, or in any part of, another country; and
 - (ii) Specifying the country or part of the country under the law of which it is proposed that the company will become incorporated; and
- (b) The application is made after that date.

354 Companies that cannot transfer incorporation

- (1) A company must not be removed from the New Zealand register under section 355 of this Act if—
 - (a) The company is in liquidation or an application has been made to the Court under section 241 of this Act to put the company into liquidation; or
 - (b) A receiver or manager has been appointed, whether by a court or not, in relation to the property of the company; or
 - (c) The company has entered into a compromise with creditors or a class of creditors under Part 14 of this Act or a compromise has been proposed under that Part of this Act in relation to the company; or
 - (d) A compromise has been approved by the Court under Part 15 of this Act in relation to the company or an application has been made to the Court to approve a compromise under that Part of this Act.
- (2) A company must not be removed from the New Zealand register under section 355 of this Act unless the company would, immediately before it is removed from the register, satisfy the solvency test.

355 Removal from register

- (1) As soon as the Registrar receives a properly completed application under section 351 of this Act to remove a company from

the New Zealand register, the Registrar must remove the company from the register.

- (2) A company is removed from the New Zealand register when a notice signed by the Registrar stating that the company is removed from the New Zealand register is registered under this Act.

356 Effect of removal from register

- (1) The removal of a company from the New Zealand register under section 355 of this Act does not—
- (a) Prejudice or affect the identity of the body corporate that was constituted under this Act or its continuity as a legal person; or
 - (b) Affect the property, rights, or obligations of that body corporate; or
 - (c) Affect proceedings by or against that body corporate.
- (2) Proceedings that could have been commenced or continued by or against a company before the company was removed from the New Zealand register under section 355 of this Act may be commenced or continued by or against the body corporate that continues in existence after the removal of the company from the register.

Part 20
Registrar of companies

357 Registrar and Deputy Registrars of Companies

- (1) There must be—
- (a) A Registrar of Companies; and
 - (b) As many Deputy Registrars of Companies as may be necessary for the purposes of this Act,—
- each of whom must be appointed under the State Sector Act 1988.
- (2) Subject to the control of the Registrar a Deputy Registrar has and may exercise the powers, duties and functions of the Registrar under this Act.
- (3) The fact that a Deputy Registrar exercises those powers, duties, or functions is conclusive evidence of the authority to do so.

- (4) The person holding office as Registrar of Companies under the Companies Act 1955 and every person holding office as a Deputy Registrar of Companies under that Act, immediately before the commencement of this Act, shall be deemed to have been appointed as Registrar of Companies or as a Deputy Registrar of Companies, as the case may be, in accordance with this section.

358 District and Assistant Registrars of Companies

- (1) As many District Registrars of Companies and Assistant Registrars of Companies as may be necessary for the purposes of this Act must be appointed under the State Sector Act 1988.
- (2) Subject to the control of the Registrar and of a Deputy Registrar, a District Registrar has and may exercise the powers, duties, and functions of the Registrar.
- (3) Subject to the control of the Registrar, a Deputy Registrar, and a District Registrar, an Assistant Registrar has and may exercise all the powers, duties, and functions of the Registrar.
- (4) The fact that a District Registrar or an Assistant Registrar exercises those powers, duties, or functions is conclusive evidence of the authority to do so.
- (5) Every person holding office as a District Registrar of Companies or an Assistant Registrar of Companies under the Companies Act 1955, immediately before the commencement of this Act, shall be deemed to have been appointed as a District Registrar of Companies or an Assistant Registrar of Companies, as the case may be, in accordance with this section.

359 Responsible District Registrar

Where, pursuant to this Act or any regulations under this Act, any action is required to be taken by, or anything is required to be done to, the Registrar, in relation to a company or an overseas company, that action shall be taken by, or that thing shall be done to, the District Registrar in whose office the records relating to that company or overseas company are kept or an Assistant Registrar in that office.

360 Registers

- (1) The Registrar must ensure that—
 - (a) A register of companies registered under Part 2 of this Act or reregistered under this Act in accordance with the Companies Reregistration Act 1993, as the case may be; and
 - (b) A register of overseas companies registered or deemed to be registered under Part 18 of this Act,—
is kept in New Zealand.
- (2) The New Zealand register may be divided into different parts which may be kept in such places in New Zealand as the Registrar determines from time to time.
- (3) The overseas register must be kept at such place in New Zealand as the Registrar determines from time to time.
- (4) The New Zealand register and the overseas register may be kept in such manner as the Registrar thinks fit including, either wholly or partly, by means of a device or facility—
 - (a) That records or stores information electronically or by other means; and
 - (b) That permits the information so recorded or stored to be readily inspected or reproduced in usable form.

360A Rectification or correction of New Zealand register and overseas register

- (1) The Registrar may,—
 - (a) on the application of any person, rectify the New Zealand register or the overseas register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the New Zealand register or the overseas register; or
 - (b) if it appears to the Registrar that any particulars have been incorrectly entered in the New Zealand register or the overseas register due to a clerical error by the Registrar, correct those particulars.
- (2) Before the Registrar rectifies the New Zealand register or the overseas register under subsection (1)(a), the Registrar must—
 - (a) give written notice to the company or overseas company that an application has been made to rectify the New Zealand register or the overseas register in relation to

- that company or overseas company (including details of that application); and
- (b) give public notice setting out—
 - (i) the name of the applicant; and
 - (ii) the name of the company or overseas company; and
 - (iii) the reasons for and details of the changes sought to be made to the New Zealand register or the overseas register; and
 - (iv) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 20 working days after the date of the notice.
 - (3) Any person may deliver to the Registrar, not later than the date specified in accordance with subsection (2)(b)(iv), a written objection to a proposed rectification of the New Zealand register or the overseas register, and the Registrar must give a copy of the objection to the applicant.
 - (4) The Registrar must not rectify the New Zealand register or the overseas register if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that the objection has been withdrawn.

Sections 360A and 360B were inserted, as from 15 April 2004, by section 20 Companies Amendment Act (No 2) 2004 (2004 No 24).

360B Powers of Court

- (1) If an objection to a proposed rectification is received by the Registrar under section 360A(3), the applicant for the rectification of the New Zealand register or the overseas register may apply to the Court for an order for rectification.
- (2) If an application for an order is made under subsection (1),—
 - (a) the applicant must, as soon as practicable, serve notice of the application on the Registrar; and
 - (b) the Registrar may appear and be heard in relation to the application.
- (3) On an application for an order under subsection (1), the Court may, if it is satisfied that any information has been wrongly entered in, or omitted from, the New Zealand register or the

overseas register, make an order that the New Zealand register or the overseas register be rectified.

Sections 360A and 360B were inserted, as from 15 April 2004, by section 20 Companies Amendment Act (No 2) 2004 (2004 No 24).

361 Registrar may direct transfer

- (1) Subject to this section, the Registrar may direct the transfer of part of the New Zealand register and of any record relating to a company from one place in New Zealand to another place in New Zealand.
- (2) Except where the company has requested the transfer, the Registrar must not direct the transfer of any part of the New Zealand register or of any record relating to a particular company unless written notice of the proposed transfer is given to the company.
- (3) The Registrar must give notice in the *Gazette* of any transfer under subsection (1) of this section as soon as practicable after the transfer is made.
- (4) Nothing in subsections (2) and (3) of this section applies to the transfer of part of the New Zealand register or of any record relating to a particular company from one place in New Zealand to another place in New Zealand if—
 - (a) The New Zealand register is kept by means of a device or facility referred to in section 360(4) of this Act; and
 - (b) The transfer is of the whole of the register kept in that place.
- (5) All the records relating to a particular company must be kept in the same place.

Compare: 1955 No 63 s 7

362 Registration of documents

- (1) On receipt of a document for registration under this Act, the Registrar must,—
 - (a) Subject to subsection (2) of this section, register the document in the New Zealand register or the overseas register, as the case may be; and
 - (b) In the case of a document that is not an annual return, give written advice of the registration to the person from whom the document was received.

- (2) If a document received by the Registrar for registration under this Act—
- (a) Is not in the prescribed form, if any; or
 - (b) Does not comply with this Act or regulations made under this Act; or
 - (c) Is not printed or typewritten; or
 - (d) Where the New Zealand register or the overseas register is kept wholly or partly by means of a device or facility referred to in section 360(4) of this Act, is not in a form that enables particulars to be entered directly by electronic or other means in the device or facility; or
 - (e) Has not been properly completed; or
 - (f) Contains material that is not clearly legible,—
- the Registrar may refuse to register the document, and in that event, must request either—
- (g) That the document be appropriately amended or completed and submitted for registration again; or
 - (h) That a fresh document be submitted in its place.
- (3) For the purposes of this Act, a document is registered when—
- (a) The document itself is constituted part of the New Zealand register or the overseas register; or
 - (b) Particulars of the document are entered in any device or facility referred to in section 360(4) of this Act.
- (4) Neither registration, nor refusal of registration, of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

Subsection (1)(b) was amended, as from 30 June 1997, by section 22 Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the words “In the case of a document that is not an annual return, give” for the word “Give”.

363 Inspection and evidence of registers

- (1) A person may, on payment of any fees that are prescribed, inspect—
- (a) Any document that constitutes part of the New Zealand register or the overseas register:
 - (b) Particulars of any registered document that have been entered on any device or facility referred to in section 360(4) of this Act:

- (c) Any registered document particulars of which have been entered in any such device or facility—
during the hours when the office of the District Registrar is open to the public for the transaction of business on a working day.
- (2) A person may, on payment of any fees that are prescribed, require the Registrar to give or certify—
 - (a) A certificate of incorporation of a company; or
 - (b) A certificate of reregistration of a company under this Act in accordance with the Companies Reregistration Act 1993; or
 - (c) A copy of, or extract from, a document that constitutes part of the New Zealand register or the overseas register; or
 - (d) Particulars of any registered document that have been entered in any device or facility referred to in section 360(4) of this Act; or
 - (e) A copy of, or extract from, a registered document particulars of which have been entered in any such device or facility.
- (3) A process to compel the production of—
 - (a) A registered document kept by the Registrar; or
 - (b) Evidence of the entry of particulars of a registered document in any device or facility referred to in section 360(4) of this Act—
must not issue from the Court without the leave of the Court and, if it does, it must have a statement attached to it that it is issued with the leave of the Court.
- (4) A copy of, or extract from, a registered document—
 - (a) That constitutes part of the New Zealand register or the overseas register; or
 - (b) Particulars of which have been entered in any device or facility referred to in section 360(4) of this Act—
certified to be a true copy or extract by the Registrar is admissible in evidence in legal proceedings to the same extent as the original document.
- (5) An extract certified by the Registrar as containing particulars of a registered document that have been entered in any device or facility referred to in section 360(4) of this Act is, in the

absence of proof to the contrary, conclusive evidence of the entry of those particulars.

Compare: 1955 No 63 s 9

364 Notice by Registrar

- (1) A notice that the Registrar is required by this Act to give to a natural person, must be given in writing and in a manner that the Registrar considers appropriate in the circumstances.
- (2) Without limiting subsection (1) of this section, the Registrar may give notice in writing to a natural person by—
 - (a) Having it delivered to that person; or
 - (b) Posting it, or delivering it by courier, to that person at his or her last known address, or delivering it to a document exchange which that person is using at the time; or
 - (c) Sending it by facsimile machine to a telephone number used by that person for transmission of documents by facsimile; or
 - (d) Having it published in a newspaper or other publication in circulation in the area where that person lives or is believed to live.
- (3) Section 392 of this Act shall apply, with such modifications as may be necessary, in respect of the giving of notices by the Registrar.
- (4) A document that—
 - (a) Appears to be a copy of a notice given by the Registrar; and
 - (b) Is certified by the Registrar, or by a person authorised by the Registrar, as having been derived from a device or facility that records or stores information electronically or by other means—is admissible in legal proceedings as a copy of the notice.

365 Registrar's powers of inspection

- (1) The Registrar or a person authorised by the Registrar may,—
 - (a) For the purpose of—
 - (i) Ascertaining whether a company or a director of a company is complying, or has complied, with this Act or the Financial Reporting Act 1993; or

- (ii) Ascertaining whether the Registrar should exercise any of his or her rights or powers under this Act or the Financial Reporting Act 1993; or
 - (iii) Detecting offences against this Act or the Financial Reporting Act 1993; and
- (b) If, in the Registrar's opinion, it is in the public interest to do so,—
do any of the following:
 - (c) Require a person, including a person carrying on the business of banking, to produce for inspection relevant documents within that person's possession or control; or
 - (d) Inspect and take copies of relevant documents; or
 - (e) Take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or
 - (f) Retain relevant documents for a period which is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.
- (2) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (3) The Registrar or a person authorised by the Registrar must consult with the Reserve Bank of New Zealand before exercising any of the powers conferred by subsection (1) of this section if the purpose of exercising the power relates to a company that is a registered bank (within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989).
- (4) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by subsection (1) of this section.
- (5) Any person who—
 - (a) Fails to comply with a requirement under subsection (1)(c) of this section; or
 - (b) Acts in contravention of subsection (4) of this section—commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.
- (6) In this section,—

Company includes an overseas company

Relevant document, in relation to a company, means a document that contains information relating to—

- (a) The company; or
- (b) Money or other property that is, or has been, managed, supervised, controlled or held in trust by or for the company.

Compare: 1955 No 63 s 9A; 1983 No 53 s 3

Subsection (2) was amended, as from 1 April 1995, by section YB 1 Income Tax Act 1994 (1994 No 164) by substituting the words “Tax Administration Act 1994” for the words “Inland Revenue Department Act 1974”.

Subsection (5)(b) was amended, as from 1 July 1994, by section 44 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “(4)” for the expression “(3)”.

366 Disclosure of information and reports

- (1) A person authorised by the Registrar for the purpose of section 365 of this Act who has—
 - (a) Obtained a document or information in the course of making an inspection under that section; or
 - (b) Prepared a report in relation to an inspection under that section—

must, if directed to do so by the Registrar, give the document, information, or report to—
 - (c) 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; or
 - (d) The chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; or
 - (e) Any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
 - (f) A liquidator for the purposes of the liquidation of a company; or
 - (g) Any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.

- (2) A person authorised by the Registrar for the purposes of section 365 of this Act who has—
- (a) Obtained a document or information in the course of making an inspection under that section; or
 - (b) Prepared a report in relation to an inspection under that section—
- must give the document, information, or report to the Registrar, a Deputy Registrar, a District Registrar, or an Assistant Registrar when directed to do so by any person holding any of those offices.
- (3) A person authorised by the Registrar for the purposes of section 365 of this Act who has—
- (a) Obtained a document or information in the course of making an inspection under that section; or
 - (b) Prepared a report in relation to an inspection under that section—
- must not disclose that document, information, or report except—
- (c) In accordance with subsection (1) or subsection (2) of this section; or
 - (d) Subject to the approval of the Registrar, with the consent of the person to whom it relates; or
 - (e) Subject to the approval of the Registrar, for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
 - (f) To the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or
 - (g) Subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a company or the assets of an overseas company; or
 - (h) In the course of criminal proceedings; or
 - (i) Subject to the approval of the Registrar, for the purpose of detecting offences against any Act.
- (4) A person who fails to comply with this section commits an offence and is liable on conviction to the penalty set out in section 373(2) of this Act.

Subsection (1)(c) and (d) were substituted, as from 1 October 1995, by section 10(3) Department of Justice (Restructuring) Act 1995 (1995 No 39).

367 Application of Official Information Act 1982 and Privacy Act 1993

- (1) This section applies to—
- (a) 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; and
 - (b) The chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; and
 - (c) The Registrar; and
 - (d) A Deputy Registrar; and
 - (e) A District Registrar; and
 - (f) An Assistant Registrar.
- (2) Notwithstanding the Official Information Act 1982 or the Privacy Act 1993, a person to whom this section applies may refuse to disclose a document, information, or report in his or her possession obtained in making, or acquired as a result of, an inspection under section 365 of this Act, until the purpose for which the inspection is carried out has been satisfied.
- (3) Notwithstanding the Official Information Act 1982, where a person requests disclosure of whether an inspection under section 365 of this Act is being, or is proposed to be, or has been carried out, as the case may be, no person to whom this section applies is required to disclose that information under the Official Information Act 1982 unless—
- (a) The disclosure of that information would not be likely to prejudice the commercial position of any person; and
 - (b) There is no other good reason for withholding that information under that Act.

Compare: 1955 No 63 s 9AA; 1988 No 236 s 2

Subsection (1) was substituted, as from 1 October 1995, by section 10(3) Department of Justice (Restructuring) Act 1995 (1995 No 39).

368 Appeals from decisions under section 367

- (1) A person who is aggrieved by a refusal to disclose a document, information, or report under section 367 of this Act may appeal to the Court within 15 working days after being notified of that refusal, or within such further time as the Court may allow.

- (2) On hearing the appeal, the Court may confirm the refusal, or give such directions, or make such determination in the matter as the Court thinks fit.

Compare: 1955 No 63 s 9BA

369 Inspector's report admissible in liquidation proceedings

Notwithstanding any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 365 of this Act is admissible in evidence at the hearing of an application to the Court to appoint a liquidator.

370 Appeals from Registrar's decisions

- (1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the Court within 15 working days after the date of notification of the act or decision, or within such further time as the Court may allow.
- (2) On hearing the appeal, the Court may approve the Registrar's act or decision or may give such directions or make such determination in the matter as the Court thinks fit.

Compare: 1955 No 63 s 9B(1), (2); 1973 No 13 s 5

371 Exercise of powers under section 365 not affected by appeal

- (1) Subject to subsection (2) of this section, but notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 365 of this Act, until a decision on the appeal or application is given,—
- (a) The Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and
- (b) No person is excused from fulfilling an obligation under that section by reason of that appeal or application.
- (2) If the appeal or application is allowed or granted, as the case may be,—
- (a) The Registrar must ensure that, forthwith after the decision of the Court is given, any copy of a document taken

or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and

- (b) No information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the Court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

Compare: 1955 No 63 s 9B(4); 1973 No 13 s 5; 1977 No 94 s 3

372 Fees

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing—
 - (a) Fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act;
 - (b) Amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by this Act;
 - (c) Fees or other amounts payable to the Registrar in respect of any other matter under this Act.
- (2) The Registrar may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.
- (3) Any Order in Council made under subsection (1) of this section may authorise the Registrar to waive, in whole or in part and on such conditions as may be prescribed, payment of any amount referred to in paragraph (b) of that subsection.
- (3A) If the Registrar declines to reserve a name or revokes the reservation of a name under section 22 of this Act, the Registrar may remit the fee payable in respect of a subsequent application on behalf of the company to reserve a name.
- (3B) If the Registrar, under section 24(1) of this Act, requires a company to change its name, no fee is payable in respect of an application for the reservation of a name or an application to change the name of the company.
- (4) Any fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Crown.

Compare: 1955 No 63 s 8; 1973 No 13 s 3; 1975 No 137 s 4

Subsections (3A) and (3B) were inserted, as from 1 July 1994, by section 45 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Part 21

Offences and penalties

373 Penalty for failure to comply with Act

- (1) A person convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$5,000:
 - (1) Section 25(5)(a) (which relates to the use of a company name):
 - (2) Section 47(7) (which relates to the consideration for which shares are issued):
 - (3) Section 49(5) (which relates to the consideration for which convertible securities, options, and shares are issued):
 - (4) Section 52(5) (which relates to distributions to shareholders):
 - (5) Section 60(7) (which relates to offers to shareholders to acquire shares):
 - (6) Section 61(9) (which relates to the procedure for making a certain type of offer to shareholders):
 - (7) Section 61(10)(a) (which relates to the procedure for making a certain type of offer to shareholders):
 - (8) Section 63(9) (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):
 - (9) Section 65(3)(a) (which relates to stock exchange acquisitions of a company's own shares without prior notice to shareholders):
 - (10) Section 69(6) (which relates to the redemption of shares at the option of a company):
 - (11) Section 70(4) (which relates to the requirement for a company to satisfy the solvency test on the redemption of shares):
 - (12) Section 71(8) (which relates to special redemptions of shares):
 - (13) Section 71(9)(a) (which relates to special redemptions of shares):

- (14) Section 76(7) (which relates to offers of financial assistance to acquire shares):
 - (15) Section 77(4) (which relates to the requirement to satisfy the solvency test):
 - (16) Section 78(8) (which relates to offers of financial assistance in certain cases):
 - (17) Section 78(9)(a) (which relates to offers of financial assistance in certain cases):
 - (18) Section 80(2)(a) (which relates to the provision of financial assistance not exceeding 5 percent of shareholders' funds):
 - (19) Section 83(5)(a) (which relates to statements of shareholders' rights):
 - (20) Section 84(6)(a) (which relates to the transfer of shares):
 - (21) Section 85(2)(a) (which relates to the transfer of shares under an approved system):
 - (22) Section 95(7)(a) (which relates to share certificates):
 - (23) Section 108(6) (which relates to the requirement to satisfy the solvency test):
 - (24) Section 122(7)(a) (which relates to resolutions in lieu of meetings):
 - (25) Section 218(2)(a) (which relates to the obligation to provide copies of documents):
 - (26) Section 221(6) (which relates to approval of an amalgamation proposal):
 - (27) Section 222(6) (which relates to short form amalgamations):
 - (27A)
 - (27B)
 - (28) Section 243(10) (which relates to the duty of a liquidator to summon meetings of creditors).
- (2) A person convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$10,000:
- (a) Section 34(3) (which relates to an alteration to the constitution of a company by the Court):
 - (b) Section 87(4)(a) (which relates to the obligation to keep a share register):
 - (c) Section 88(5)(a) (which relates to the place where the share register must be kept):

- (d) Section 90(2) (which relates to the duties of directors in relation to the share register):
- (e) Section 140(4) (which relates to the disclosure of directors' interests):
- (f) Section 179(8) (which relates to disclosure and use of information obtained in the course of an investigation):
- (g) Section 189(5)(a) (which relates to company records):
- (h) Section 195(3)(a) (which relates to the place where accounting records must be kept):
- (i) Section 196(7)(a) (which relates to the appointment of an auditor):
- (j) Section 206(4) (which relates to access to information by auditors):
- (k) Section 215(2)(a) (which relates to public inspection of company records):
- (l) Section 216(2)(a) (which relates to inspection of company records by shareholders):
- (m) Section 250(7) (which relates to the termination of the liquidation of a company):
- (ma) section 258A(2) (which relates to the duty of liquidators to notify suspected offences):
- (n) Section 280(3) (which relates to the qualifications of liquidators):
- (o) Section 333(5)(a) (which relates to name reservation by overseas companies):
- (p) Section 334(6)(a) (which relates to the registration of overseas companies):
- (q) Section 339(2)(a) (which relates to changes in the constitution of an overseas company):
- (r) Section 340(6)(a) (which relates to the filing of annual returns by overseas companies):
- (s) Section 365(5) (which relates to the Registrar's powers of inspection):
- (t) Section 366(4) (which relates to the disclosure of information and reports obtained during an investigation):
- (u) Section 381 (which relates to improper use of the word **Limited**).

- (3) A person convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years:
- (a) section 261(6A) (which relates to the power of liquidators to obtain documents and information):
 - (b) section 273(2) (which relates to certain prohibited conduct):
 - (c) 274(2) section (which relates to the duty to identify and deliver property).
- (4) A person convicted of an offence against any of the following sections of this Act is liable to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000:
- (a) Section 304(6) (which relates to false claims by unsecured creditors in liquidations):
 - (b) Section 305(11) (which relates to false claims by secured creditors in liquidations):
 - (c) Section 377 (which relates to false statements):
 - (d) Section 378 (which relates to the fraudulent use or destruction of property):
 - (e) Section 379 (which relates to falsifying records):
 - (f) Section 380 (which relates to carrying on business fraudulently):
 - (g) Section 382(4) (which relates to persons prohibited from managing companies):
 - (h) Section 383(5) (which relates to acting as a director of a company while prohibited by the Court):
 - (i) Section 385(9) (which relates to acting as a director of a company or taking part in the management of a company while prohibited by the Registrar).
 - (j)

Subsection (1)(2) was amended, as from 1 July 1994, by section 46 Companies Act 1993 Amendment Act 1994 (1994 No 6) by substituting the expression “section 47(7)” for the expression “section 40(7)”.

Subsection (2)(ma) was inserted, as from 3 May 2001, by section 14(1) Companies Act 1993 Amendment Act 2001 (2001 No 18).

Subsection (3)(a) and (b) was substituted, and subsection (3)(c) was inserted, as from 3 May 2001, by section 14(2) Companies Act 1993 Amendment Act 2001 (2001 No 18).

374 Penalties that may be imposed on directors in cases of failure by board or company to comply with Act

- (1) A director of a company who is convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$5,000:
- (a) Section 25(5)(b) (which relates to the use of a company name):
 - (b) Section 61(10)(b) (which relates to the procedure for making a certain type of offer to shareholders):
 - (c) Section 63(10) (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):
 - (d) Section 65(3)(b) (which relates to stock exchange acquisitions of a company's own shares without prior notice to shareholders):
 - (e) Section 71(9)(b) (which relates to special redemptions of shares):
 - (f) Section 78(9)(b) (which relates to offers of financial assistance in certain cases):
 - (g) Section 80(2)(b) (which relates to the provision of financial assistance not exceeding 5 percent of shareholders' funds):
 - (h) Section 83(5)(b) (which relates to statements of shareholders' rights):
 - (i) Section 84(6)(b) (which relates to the transfer of shares):
 - (j) Section 85(2)(b) (which relates to the transfer of shares under an approved system):
 - (k) Section 95(7)(b) (which relates to share certificates):
 - (l) Section 107(8) (which relates to unanimous assent to certain types of action):
 - (m) Section 122(7)(b) (which relates to resolutions in lieu of meetings):
 - (n) Section 188(6) (which relates to a requirement to change a company's registered office):
 - (o) Section 218(2)(b) (which relates to the obligation to provide copies of documents).

- (2) A director of a company who is convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$10,000:
- (1)
- (2) Section 32(4) (which relates to the adoption and alteration of a constitution):
 - (3) Section 33(6) (which relates to a new form of constitution):
 - (4) Section 43(2) (which relates to the obligation of the board to deliver a notice of the issue of shares):
 - (5) Section 44(5) (which relates to the issue of shares with the approval of shareholders):
 - (6) Section 47(9) (which relates to the consideration for which shares are issued):
 - (7) Section 49(6) (which relates to the consideration for which convertible securities, options, and shares are issued):
 - (8) Section 58(4) (which relates to the acquisition by a company of its own shares):
 - (9) Section 87(4)(b) (which relates to the obligation to keep a share register):
 - (10) Section 88(5)(b) (which relates to the place where the share register must be kept):
 - (11) Section 159(3) (which relates to the obligation to give notice of a change of directors):
 - (12) Section 176(4) (which relates to alterations to the constitution of a company by the Court):
 - (13) Section 189(5)(b) (which relates to company records):
 - (14) Section 190(3) (which relates to the form in which company records are kept):
 - (15) Section 194(4) (which relates to the keeping of accounting records):
 - (16) Section 195(3)(b) (which relates to the place where accounting records must be kept):
 - (16A) section 196(3B) (which relates to the notification of the resignation of an auditor):
 - (17) Section 196(7)(b) (which relates to the appointment of an auditor):

- (18) Section 206(3) (which relates to access to information by auditors):
- (19) Section 207(2) (which relates to the attendance of auditors at meetings of shareholders):
- (20) Section 208(2) (which relates to the duty to prepare an annual report):
- (21) section 209(7) (which relates to the obligation to make the annual report available to shareholders):
- (22) section 209A(5) (which relates to the obligation to send copies of annual reports or concise annual reports to shareholders on request):
- (22A) section 209B(3) (which relates to making annual reports and concise annual reports available by electronic means):
- (23) Section 214(10) (which relates to the obligation to file an annual return):
- (24) Section 215(2)(b) (which relates to public inspection of company records):
- (25) Section 216(2)(b) (which relates to inspection of company records by shareholders):
- (26) Section 236(5) (which relates to the approval of arrangements, amalgamations, and compromises by the Court):
- (27) Section 237(3) (which relates to the power of the Court to make additional orders in connection with the approval of an arrangement or amalgamation or compromise):
- (28) Section 333(5)(b) (which relates to name reservation by overseas companies):
- (29) Section 334(6)(b) (which relates to the registration of overseas companies):
- (30) Section 339(2)(b) (which relates to changes in the constitution of an overseas company):
- (31) Section 340(6)(b) (which relates to the filing of annual returns by overseas companies).

Subsection (2)(1) was repealed, as from 1 July 1994, by section 47 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Subsection (2)(16A) was inserted, as from 15 April 2004, by section 21(1) Companies Amendment Act (No 2) 2004 (2004 No 24).

Subsection (2)(21) was substituted, as from 18 June 2007, by section 13 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Subsection (2)(22) was amended, as from 15 April 2004, by section 21(2) Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting “210(7)” for “210(2)”.

Subsection (2)(22) was substituted, as from 18 June 2007, by section 13 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Subsection (2)(22A) was inserted, as from 18 June 2007, by section 13 Companies Amendment Act (No 2) 2006 (2006 No 62). *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

375 Proceedings for offences

- (1) The offences specified in—
 - (a) Subsections (1), (2), and (3) of section 373 of this Act; and
 - (b) Section 374 of this Act—are triable summarily.
- (2) The offences specified in subsection (4) of section 373 of this Act are triable on indictment.
- (3) Notwithstanding anything to the contrary in the Summary Proceedings Act 1957, any information for an offence referred to in subsection (1) of this section may be laid at any time within 3 years after the date of the offence.
- (4) Nothing in sections 377 to 380 of this Act affects the liability of any person under any other Act, but no person shall be convicted of an offence against any of those sections and a provision of any other Act in respect of the same conduct.

376 Defences

- (1) It is a defence to a director charged with an offence in relation to a duty imposed on the board of a company if the director proves that—
 - (a) The board took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
 - (b) He or she took all reasonable and proper steps to ensure that the board complied with the requirements of this Act; or

- (c) In the circumstances he or she could not reasonably have been expected to take steps to ensure that the board complied with the requirements of this Act.
- (2) It is a defence to a director charged with an offence in relation to a duty imposed on the company if the director proves that—
 - (a) The company took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
 - (b) He or she took all reasonable steps to ensure that the company complied with the requirements of this Act; or
 - (c) In the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of this Act.

377 False statements

- (1) Every person who, with respect to a document required by or for the purposes of this Act,—
 - (a) Makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) Omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular—commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.
- (2) Every director or employee of a company who makes or furnishes, or authorises or permits the making or furnishing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to—
 - (a) A director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or
 - (b) A liquidator, liquidation committee, or receiver or manager of property of the company; or
 - (c) If the company is a subsidiary, a director, employee, or auditor of its holding company; or
 - (d) A stock exchange or an officer of a stock exchange,—

knowing it to be false or misleading, commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.

- (3) For the purposes of this section, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

Compare: 1955 No 63 s 461; 1980 No 43 s 47

378 Fraudulent use or destruction of property

Every director, employee, or shareholder of a company who—

- (a) Fraudulently takes or applies property of the company for his or her own use or benefit, or for a use or purpose other than the use or purpose of the company; or
- (b) Fraudulently conceals or destroys property of the company—

commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.

Compare: 1955 No 63 s 461A; 1980 No 43 s 47

379 Falsification of records

- (1) Every director, employee, or shareholder of a company who, with intent to defraud or deceive a person,—

- (a) Destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or
- (b) Makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company—

commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.

- (2) Every person who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act,—

- (a) Records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or
 - (b) With intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies matter recorded or stored in the device, or fails or omits to record or store any matter in the device—
- commits an offence, and is liable on conviction to the penalties set out in section 373(4) of this Act.

Compare: 1955 No 63 s 461C; 1980 No 43 s 47

380 Carrying on business fraudulently

- (1) Every person who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose commits an offence and is liable on conviction to the penalties set out in section 373(4) of this Act.
- (2) Every director of a company who,—
 - (a) By false pretences or other fraud induces a person to give credit to the company; or
 - (b) With intent to defraud creditors of the company,—
 - (i) Gives, transfers, or causes a charge to be given on, property of the company to any person; or
 - (ii) Causes property to be given or transferred to any person; or
 - (iii) Caused or was a party to execution being levied against property of the company—

commits an offence and is liable on conviction to the penalties set out in section 373(4) of this Act.

(3)

Compare: 1955 No 63 s 461D; 1980 No 43 s 47

381 Improper use of “Limited”

Any person who, not being incorporated with limited liability, whether alone or with other persons, carries on business under a name or title of which “Limited” or a contraction or imitation of that word is the last word, commits an offence and is liable

on conviction to the penalty set out in section 373(2) of this Act.

Compare: 1955 No 63 s 462

382 Persons prohibited from managing companies

(1) Where—

- (a) A person has been convicted on indictment of any offence in connection with the promotion, formation, or management of a company; or
- (b) A person has been convicted of an offence under any of sections 377 to 380 of this Act or of any crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- (c) A judgment has been obtained in an action under Part 1 of the Securities Markets Act 1988 against a person as an insider (within the meaning of that Part of that Act),—

that person shall not, during the period of 5 years after the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company, unless that person first obtains the leave of the Court which may be given on such terms and conditions as the Court thinks fit.

- (2) A person intending to apply for the leave of the Court under this section shall give to the Registrar not less than 10 days' notice of that person's intention to apply.
- (3) The Registrar, and such other persons as the Court thinks fit, may attend and be heard at the hearing of any application under this section.
- (4) A person who acts in contravention of this section, or of any order made under this section, commits an offence and is liable on conviction to the penalty set out in section 373(4) of this Act.
- (5) In this section, the term **company** includes an overseas company that carries on business in New Zealand.

Subsection (1)(c) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the word "Markets" for the word "Amendment".

383 Court may disqualify directors

(1) Where—

- (a) A person has been convicted on indictment of an offence in connection with the promotion, formation, or management of a company, or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- (b) A person has committed an offence for which the person is liable (whether convicted or not) under this Part of this Act; or
- (c) A person has, while a director of a company and whether convicted or not,—
 - (i) persistently failed to comply with this Act or the Companies Act 1955, the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or the takeovers code in force under that Act or, if the company has failed to so comply, persistently failed to take reasonable steps to obtain compliance with those Acts or the code; or
 - (ii) Been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or
 - (iii) Acted in a reckless or incompetent manner in the performance of his or her duties as director; or
- (ca) a person has been prohibited in a country, State, or territory outside New Zealand from carrying on activities that the Court is satisfied are substantially similar to being a director or promoter of or being concerned or taking part in the management of a body corporate; or
- (d) A judgment has been obtained in an action under Part 1 of the Securities Markets Amendment Act 1988 against a person as an insider (within the meaning of that Part of that Act); or
- (e) A person has become of unsound mind,—
the Court may make an order that the person must not, without the leave of the Court, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in

the management of, a company for such period not exceeding 10 years as may be specified in the order.

- (2) A person intending to apply for an order under this section must give not less than 10 days' notice of that intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and give evidence or call witnesses.
- (3) An application for an order under this section may be made by the Registrar, the Official Assignee, or by the liquidator of the company, or by a person who is, or has been, a shareholder or creditor of the company; and on the hearing of—
 - (a) An application for an order under this section by the Registrar or the Official Assignee or the liquidator; or
 - (b) An application for leave under this section by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator,—the Registrar, Official Assignee, or liquidator must appear and call the attention of the Court to any matters which seem to him or her to be relevant, and may give evidence or call witnesses.
- (4) An order may be made under this section even though the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.
- (4A) If conduct by a person constitutes grounds for making an order under any 1 or more of this section, section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 60A of the Securities Act 1978, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct.
- (5) The Registrar of the Court must, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar must give notice in the *Gazette* of the name of the person against whom the order is made.
- (6) Every person who acts in contravention of an order under this section commits an offence and is liable on conviction to the penalties set out in section 373(4) of this Act.

(7) In this section, **company** includes an overseas company.

Compare: 1955 No 63 s 189; 1988 No 236 s 4

Subsection (1)(c)(i) was substituted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

Subsection (1)(ca) was inserted, as from 22 November 2006, by section 14 Companies Amendment Act (No 2) 2006 (2006 No 62).

Subsection (1)(d) was amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the word “Markets” for the word “Amendment”.

Subsection (4A) was inserted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

384 Liability for contravening sections 382 and 383

A person who acts as a director of a company in contravention of section 382 of this Act or an order made under section 383 of this Act is personally liable to—

- (a) A liquidator of the company for every unpaid debt incurred by the company; and
 - (b) A creditor of the company for a debt to that creditor incurred by the company—
- while that person was so acting.

385 Registrar may prohibit persons from managing companies

(1) This section applies in relation to a company—

- (a) That has been put into liquidation because of its inability to pay its debts as and when they became due;
- (b) That has ceased to carry on business because of its inability to pay its debts as and when they became due;
- (c) In respect of which execution is returned unsatisfied in whole or in part;
- (d) In respect of the property of which a receiver, or a receiver and manager, has been appointed by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated;
- (e) In respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or a statutory manager, or as a manager, or to exercise control, under or pursuant to any enactment, whether or not the appointment has been terminated:

- (f) That has entered into a compromise or arrangement with its creditors.
 - (g)
- (2) This section also applies in relation to a company the liquidation of which has been completed whether or not the company has been removed from the New Zealand register.
- (3) The Registrar may, by notice in writing given to a person, prohibit that person from being a director or promoter of a company, or being concerned in, or taking part, whether directly or indirectly, in the management of, a company during such period not exceeding 5 years after the date of the notice as is specified in the notice. Every notice shall be published in the *Gazette*.
- (4) The power conferred by subsection (3) of this section may be exercised in relation to—
 - (a) Any person who the Registrar is satisfied was, within a period of 5 years before a notice was given to that person under subsection (5) of this section (whether that period commenced before or after the commencement of this section), a director of, or concerned in, or a person who took part in, the management of, a company in relation to which this section applies if the Registrar is also satisfied that the manner in which the affairs of it were managed was wholly or partly responsible for the company being a company in relation to which this section applies; or
 - (b) Any person who the Registrar is satisfied was, within a period of 5 years before a notice was given to that person under subsection (5) of this section (whether that period commenced before or after the commencement of this section), a director of, or concerned in, or a person who took part in, the management of, 2 or more companies to which this section applies, unless that person satisfies the Registrar—
 - (i) That the manner in which the affairs of all, or all but one, of those companies were managed was not wholly or partly responsible for them being companies in relation to which this section applies; or

- (ii) That it would not be just or equitable for the power to be exercised.
- (5) The Registrar must not exercise the power conferred by subsection (3) unless—
 - (a) not less than 10 working days' notice of the fact that the Registrar intends to consider the exercise of it is given to the person; and
 - (b) the Registrar considers any representations made by the person.
- (6) No person to whom a notice under subsection (3) of this section applies shall be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.
- (7) Where a person to whom the Registrar has issued a notice under subsection (3) of this section appeals against the issue of the notice under this Act or otherwise seeks judicial review of the notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.
- (8) The Registrar may, by notice in writing to a person to whom a notice under subsection (3) of this section has been given,—
 - (a) Revoke that notice; or
 - (b) Exempt that person from the notice in relation to a specified company or companies.Every such notice shall be published in the *Gazette*.
- (9) Every person to whom a notice under subsection (3) of this section is given who fails to comply with the notice commits an offence and is liable on conviction to the penalties set out in section 373(4) of this Act.
- (10) In this section, **company** includes an overseas company that carries on business in New Zealand.

Compare: 1955 No 63 s 189A; 1988 No 236 s 5

Subsection (5) was substituted, as from 3 May 2001, by section 15 Companies Act 1993 Amendment Act 2001 (2001 No 18).

386 Liability for contravening section 385

A person who acts in contravention of a notice under section 385 of this Act is personally liable to—

- (a) A liquidator of the company for every unpaid debt incurred by the company; and

- (b) A creditor of the company for a debt to that creditor incurred by the company—
while that person was so acting.

386A Director of failed company must not be director, etc, of phoenix company with same or substantially similar name

386B Definitions for purpose of phoenix company provisions

386C Liability for debts of phoenix company

386D Exception for person named in successor company notice

386E Exception for temporary period while application for exemption is made

386F Exception in relation to non-dormant phoenix company known by pre-liquidation name of failed company for at least 12 months before liquidation

Part 22
Miscellaneous

387 Service of documents on companies in legal proceedings

- (1) A document, including a writ, summons, notice, or order, in any legal proceedings may be served on a company as follows:
 - (a) By delivery to a person named as a director of the company on the New Zealand register; or
 - (b) By delivery to an employee of the company at the company's head office or principal place of business; or
 - (c) By leaving it at the company's registered office or address for service; or
 - (d) By serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
 - (e) In accordance with an agreement made with the company; or

- (f) By serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service.
- (2) The methods of service specified in subsection (1) of this section are the only methods by which a document in legal proceedings may be served on a company in New Zealand.

Subsection (1)(e) was amended, as from 3 June 1998, by section 19 Companies Amendment Act 1998 (1998 No 31) by inserting the expression “; or”.

Subsection (1)(f) was inserted, as from 3 June 1998, by section 19 Companies Amendment Act 1998 (1998 No 31).

388 Service of other documents on companies

A document, other than a document in any legal proceedings, may be served on a company as follows:

- (a) By any of the methods set out in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (e) of subsection (1) of section 387 of this Act; or
- (b) By posting it to the company’s registered office or address for service or delivering it to a box at a document exchange which the company is using at the time; or
- (c) By sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company’s registered office or address for service or its head office or principal place of business.

389 Service of documents on overseas companies in legal proceedings

- (1) A document, including a writ, summons, notice, or order, in any legal proceedings may be served on an overseas company in New Zealand as follows:
 - (a) By delivery to a person named in the overseas register as a director of the overseas company and who is resident in New Zealand; or
 - (b) By delivery to a person named in the overseas register as being authorised to accept service in New Zealand of documents on behalf of the overseas company; or

- (c) By delivery to an employee of the overseas company at the overseas company's place of business in New Zealand or, if the overseas company has more than 1 place of business in New Zealand, at the overseas company's principal place of business in New Zealand; or
 - (d) By serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or
 - (e) In accordance with an agreement made with the overseas company.
- (2) The methods of service specified in subsection (1) of this section are the only methods by which a document in legal proceedings may be served on an overseas company in New Zealand.

390 Service of other documents on overseas companies

A document, other than a document in any legal proceedings, may be served on an overseas company as follows:

- (a) By any of the methods set out in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (e) of subsection (1) of section 389 of this Act; or
- (b) By posting it to the address of the overseas company's principal place of business in New Zealand or delivering it to a box at a document exchange which the overseas company is then using at the time; or
- (c) By sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in New Zealand of the overseas company.

391 Service of documents on shareholders and creditors

- (1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may be—
- (a) Delivered to that person; or
 - (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or

- (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.
- (2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 388 or section 390, as the case may be, of this Act.
- (3) A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be—
 - (a) Delivered to a person who is a principal officer of the body corporate; or
 - (b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
 - (c) Delivered in such manner as the Court directs; or
 - (d) Delivered in accordance with an agreement made with the body corporate; or
 - (e) Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or
 - (f) Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.
- (4) Where a liquidator sends documents—
 - (a) To the last known address of a shareholder or creditor who is a natural person; or
 - (b) To the address for service of a shareholder or creditor that is a company—and the documents are returned unclaimed 3 consecutive times, the liquidator need not send further documents to the shareholder or creditor until the shareholder or creditor gives notice to the company of its new address.

392 Additional provisions relating to service

- (1) Subject to subsection (2) of this section, for the purposes of sections 387 to 391 of this Act,—

- (a) If a document is to be served by delivery to a natural person, service must be made—
 - (i) By handing the document to the person; or
 - (ii) If the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person:
 - (b) A document posted or delivered to a document exchange is deemed to be received 5 working days, or any shorter period as the Court may determine in a particular case, after it is posted or delivered:
 - (c) A document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent:
 - (d) In proving service of a document by post or by delivery to a document exchange, it is sufficient to prove that—
 - (i) The document was properly addressed; and
 - (ii) All postal or delivery charges were paid; and
 - (iii) The document was posted or was delivered to the document exchange:
 - (e) In proving service of a document by facsimile machine, it is sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned.
- (2) A document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

393 Privileged communications

- (1) Subject to subsection (2) of this section, nothing in this Act requires a legal practitioner to disclose a privileged communication.
- (2) Nothing in subsection (1) of this section applies to a communication made to or by a person referred to in section 261(2)(f) of this Act while acting or having acted as a solicitor for a company to which that section applies and which that person is required to disclose under section 261(3) of this Act.
- (3) For the purposes of this section, a communication is a privileged communication only if—

- (a) It is a confidential communication, whether oral or written, passing between—
 - (i) A legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or
 - (ii) A legal practitioner in his or her professional capacity and his or her client,—whether made directly or indirectly through an agent; and
 - (b) It is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and
 - (c) It is not made or brought into existence for the purpose of committing or furthering the commission of an illegal or wrongful act.
- (4) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 2 of the Law Practitioners Act 1982.
- (5) The Court may, on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.
- (6) For the purposes of this section, the term **legal practitioner** means a barrister or solicitor of the High Court, and references to a legal practitioner include a firm in which he or she is a partner or is held out to be a partner.

Compare: 1990 No 51 s 24

394 Directors' certificates

A requirement imposed by any provision of this Act that directors of a company must sign a certificate is complied with if the directors who are required to sign the certificate—

- (a) Sign the same certificate; or
- (b) Sign separate certificates in the same terms.

395 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) Prescribing forms for the purposes of this Act; and those regulations may require—
 - (i) The inclusion in, or attachment to, forms of specified information or documents:
 - (ii) Forms to be signed by specified persons:
 - (b) Prescribing requirements, not inconsistent with this Act, with which documents delivered for registration must comply:
 - (c) Regulating, in a manner not inconsistent with this Act, the conduct of liquidations:
 - (ca) prescribing countries, States, or territories outside New Zealand for the purposes of section 151(2)(eb):
 - (cb) prescribing requirements for the preparation of concise annual reports:
 - (cc) prescribing countries, States, or territories outside New Zealand for the purposes of section 343A:
 - (cd) prescribing classes of information or documents for the purposes of section 343A:
 - (d) Providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.
- (2) Different forms for the purposes of this Act may be prescribed for different classes of persons.

Subsection (1)(ca) to (cd) was inserted, as from 22 November 2006, by section 15(1) Companies Amendment Act (No 2) 2006 (2006 No 62).

Subsection (2) was inserted, as from 22 November 2006, by section 15(2) Companies Amendment Act (No 2) 2006 (2006 No 62).

396 Summary Proceedings Act 1957 amended

Part 2 of Schedule 1 to the Summary Proceedings Act 1957 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

- The Companies Act 1993
- 304(6) Claims by unsecured creditors
 - 305(11) Rights and duties of secured creditors
 - 377 False statements
 - 378 Fraudulent use or destruction of property
 - 379 Falsification of records
 - 380 Carrying on business fraudulently
 - 382(4) Persons prohibited from managing companies
 - 383(6) Court may disqualify directors
 - 385(9) Registrar may prohibit persons from managing companies.

397 Securities Transfer Act 1991 amended

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

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

Section 397 was substituted, as from 1 July 1994, by section 48 Companies Act 1993 Amendment Act 1994 (1994 No 6).

Schedule 1

Section 124

Proceedings at meetings of shareholders

1 Chairperson

- (1) If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of shareholders, he or she must chair the meeting.

- (2) If no chairperson of the board has been elected or if, at any meeting of shareholders, the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairperson of the meeting.
- (3) Subclauses (1) and (2) of this clause are subject to the constitution of the company.

2 Notice of meetings

- (1) Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and an auditor of the company not less than 10 working days before the meeting.
- (2) The notice must state—
 - (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (b) The text of any special resolution to be submitted to the meeting.
- (3) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- (3A) Subject to the constitution of the company, the accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.
- (4) Subject to the constitution of the company, if a meeting of shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Clause 2(3A) was inserted, as from 1 July 1994, by section 49 Companies Act 1993 Amendment Act 1994 (1994 No 6).

3 Methods of holding meetings

A meeting of shareholders may be held either—

- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) Subject to the constitution of the company, by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

4 Quorum

- (1) Subject to subclause (3) of this clause, no business may be transacted at a meeting of shareholders if a quorum is not present.
- (2) Subject to the constitution of the company, a quorum for a meeting of shareholders is present if shareholders or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.
- (3) If a quorum is not present within 30 minutes after the time appointed for the meeting,—
 - (a) In the case of a meeting called under section 121(b) of this Act, the meeting is dissolved:
 - (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and, subject to the constitution of the company, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

5 Voting

- (1) In the case of a meeting of shareholders held under clause 3(a) of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - (a) Voting by voice; or
 - (b) Voting by show of hands.

- (2) In the case of a meeting of shareholders held under clause 3(b) of this Schedule, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- (3) A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with subclause (4) of this clause.
- (4) At a meeting of shareholders a poll may be demanded by—
 - (a) Not less than 5 shareholders having the right to vote at the meeting; or
 - (b) A shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote at the meeting; or
 - (c) By a shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all shares that confer that right; or
 - (d) The chairperson of the meeting.
- (5) A poll may be demanded either before or after the vote is taken on a resolution.
- (6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.
- (7) Subject to the constitution of the company, the chairperson of a shareholders' meeting is not entitled to a casting vote.
- (8) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of a company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

Clause 5(4)(c) was amended, as from 3 June 1998, by section 20(1) Companies Amendment Act 1998 (1998 No 31) by inserting the expression “; or”.

Clause 5(4)(d) was inserted, as from 3 June 1998, by section 20(2) Companies Amendment Act 1998 (1998 No 31).

6 Proxies

- (1) A shareholder may exercise the right to vote either by being present in person or by proxy.
- (2) A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- (3) A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.
- (4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- (5) The constitution of a company may provide that a proxy is not effective unless it is produced by a specified time before the start of a meeting if the time specified is not earlier than 48 hours before the start of the meeting.

Clause 6(3) was amended, as from 3 June 1998, by section 20(2) Companies Amendment Act 1998 (1998 No 31) by omitting the words “not exceeding 12 months”.

7 Postal votes

- (1) Subject to the constitution of the company, a shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.
- (2) The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.
- (3) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- (4) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- (5) It is the duty of a person authorised to receive and count postal votes at a meeting—

- (a) To collect together all postal votes received by him or her or by the company; and
 - (b) In relation to each resolution to be voted on at the meeting, to count—
 - (i) The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - (ii) The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
 - (c) To sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this subclause and which sets out the results of the counts required by paragraph (b) of this subclause; and
 - (d) To ensure that the certificate required by paragraph (c) of this subclause is presented to the chairperson of the meeting.
- (6) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must—
- (a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
 - (b) On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- (7) The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- (8) The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

8 Minutes

- (1) The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- (2) Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

9 Shareholder proposals

- (1) A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
- (2) If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (3) If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (4) If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (5) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- (6) The board is not required to include in or with the notice given by the board—
 - (a) any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or

- (b) any part of a proposal or resolution prepared by a share-holder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
- (7) Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

Subclause (4) was amended, as from 15 April 2004, by section 22(1) Companies Amendment Act (No 2) 2004 (2004 No 24) by substituting the words “the board must” for the words “the board may”.

Subclause (6) was substituted, as from 15 April 2004, by section 22(2) Companies Amendment Act (No 2) 2004 (2004 No 24).

10 Corporations may act by representatives

A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

11 Votes of joint holders

Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

12 Loss of voting right if calls unpaid

Subject to the constitution of a company, if a sum due to a company in respect of a share has not been paid, that share may not be voted at a shareholder’s meeting other than a meeting of an interest group.

13 Other proceedings

Except as provided in this Schedule, and subject to the constitution of the company, a meeting of shareholders may regulate its own procedure.

Schedule 2

Section 130

**Sections of this Act that confer powers on
directors that cannot be delegated**

- (a) Section 23(1)(c) (which relates to the change of company names):
- (b) Section 42 (which relates to the issue of shares):
- (c) Section 44 (which relates to shareholder approval to the issue of shares):
- (d) Section 47 (which relates to the consideration for the issue of shares):
- (da) section 49 (which relates to the consideration for the issue of options and convertible securities):
- (e) Section 52 (which relates to distributions):
- (f) Section 54 (which relates to the issue of shares in lieu of dividends):
- (g) Section 55 (which relates to shareholder discounts):
- (h) Section 60 (which relates to offers to acquire shares):
- (i) Section 61 (which relates to special offers to acquire shares):
- (j) Section 63 (which relates to stock exchange acquisitions subject to prior notice to shareholders):
- (k) Section 65 (which relates to stock exchange acquisitions not subject to prior notice to shareholders):
- (l) Section 69 (which relates to the redemption of shares at the option of a company):
- (m) Section 71 (which relates to special redemptions of shares):
- (n) Section 76 (which relates to the provision of financial assistance):
- (o) Section 78 (which relates to special financial assistance):
- (p) Section 80 (which relates to financial assistance not exceeding 5 percent of shareholders' funds):
- (q) Section 84(4) (which relates to the transfer of shares):
- (r) Section 187 (which relates to a change of registered office):
- (s) Section 193 (which relates to a change of address for service):
- (t) Section 221 (which relates to the manner of approving an amalgamation proposal):
- (u) Section 222 (which relates to short form amalgamations).

Paragraph (da) was inserted, as from 15 April 2004, by section 23 Companies Amendment Act (No 2) 2004 (2004 No 24).

Schedule 3

Proceedings of the board of a company

Section 160

1 Chairperson

- (1) The directors may elect one of their number as chairperson of the board.
- (2) The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.
- (3) If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

2 Notice of meeting

- (1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with this clause.
- (2) Not less than 2 days' notice of a meeting of the board must be sent to every director who is in New Zealand, and the notice must include the date, time, and place of the meeting and the matters to be discussed.
- (3) An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

3 Methods of holding meetings

A meeting of the board may be held either—

- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

- (b) By means of audio, or audio and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

4 Quorum

- (1) A quorum for a meeting of the board is a majority of the directors.
- (2) No business may be transacted at a meeting of directors if a quorum is not present.

5 Voting

- (1) Every director has one vote.
- (2) The chairperson does not have a casting vote.
- (3) A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
- (4) A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of, a resolution of the board unless he or she expressly dissents from or votes against the resolution at the meeting.

6 Minutes

The board must ensure that minutes are kept of all proceedings at meetings of the board.

7 Unanimous resolution

- (1) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.
- (2) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- (3) A copy of any such resolution must be entered in the minute book of board proceedings.

8 Other proceedings

Except as provided in this Schedule, the board may regulate its own procedure.

Schedule 4
Information to be contained in annual
return

Section 214

- (a) The address of the registered office of the company:
- (b) The address for service of the company:
- (c) The postal address of the company:
- (d) If the share register is divided into 2 or more registers kept in different places, the place in which each register is kept:
- (e) If any records are not kept at the company's registered office under section 189(1) of this Act, details of those records and of the place or places where they are kept:
- (f) The following information relating to the shares in the company:
 - (i) The number of shares issued and, if there is more than one class of shares, the number of shares in each class:
 - (ii) The value of the consideration for each share issued:
 - (iii) Where the full consideration was not payable or required to be provided in respect of the issue of the share, the value of that part of the consideration paid or provided in respect of the issue of the share:
 - (iv) The amount called up on each share:
 - (v) The total amount of calls received:
 - (vi) The total amount of calls unpaid:
 - (vii) The total number of shares forfeited and not sold or otherwise disposed of:
 - (viii) The total number of shares purchased or otherwise acquired by the company:
 - (ix) The total number of shares redeemed by the company:
- (g) The full names and residential addresses of the directors of the company:
- (h) If the company is a party to a listing agreement with a registered exchange (within the meaning of section 2(1) of the

Securities Markets Act 1988), the names and addresses of, and the number of shares held by,—

- (i) The persons holding the 10 largest numbers of shares; or
 - (ii) If there is more than one class of shares, the persons holding the 10 largest numbers of shares in each class:
- (i) If the company is not a party to a listing agreement with a registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988), the following information relating to past and present shareholders of the company:
- (i) The names and addresses of all the shareholders of the company:
 - (ii) The names and addresses of all persons who ceased to be shareholders of the company—
 - (A) Since the date of the last annual return; or
 - (B) In the case of the first annual return of a company registered under this Act, since the date of registration; or
 - (C) In the case of the first annual return of a company reregistered under this Act in accordance with the Companies Reregistration Act 1993 that was not required to file an annual return under the Companies Act 1955, since the date of incorporation under that Act; or
 - (D) In the case of the first annual return of a company reregistered under this Act in accordance with the Companies Reregistration Act 1993 that was required to file an annual return under the Companies Act 1955, since the date of that return:
 - (iii) The number of shares held by each shareholder:
 - (iv) The shares transferred by existing shareholders or past shareholders (including the dates of registration of the transfers)—
 - (A) Since the last annual return; or
 - (B) In the case of the first annual return of a company registered under this Act, since the date of registration; or
 - (C) In the case of the first annual return of a company reregistered under this Act in accordance with the

- Companies Reregistration Act 1993 that was not required to file an annual return under the Companies Act 1955, since the date of incorporation under that Act; or
- (D) In the case of the first annual return of a company reregistered under this Act in accordance with the Companies Reregistration Act 1993 that was required to file an annual return under the Companies Act 1955, since the date of that return:
- (j) A statement whether, at any time,—
- (i) Since the last annual return; or
 - (ii) In the case of the first annual return of a company registered under this Act, since the date of registration; or
 - (iii) In the case of the first annual return of a company reregistered under this Act in accordance with the Companies Reregistration Act 1993 that was not required to file an annual return under the Companies Act 1955, since the date of incorporation under that Act; or
 - (iv) In the case of the first annual return of a company reregistered under this Act in accordance with the Companies Reregistration Act 1993 that was required to file an annual return under the Companies Act 1955, since the date of that return,—
- section 18 or section 19 of the Financial Reporting Act 1993 applied to the company or the company was a specified company within the meaning of section 2 of the Takeovers Act 1993:
- (k) In the case of a company which has passed a resolution under section 196(2) of this Act that no auditor be appointed, the text and date of the resolution:
- (l) The date of the last annual meeting of the company held under this Act or, if the company avoided the need for an annual meeting by doing everything required to be done at that meeting by passing a resolution under section 122 of this Act, the date on which the resolution was passed:
- (m) In the case of a company reregistered under this Act in accordance with the Companies Reregistration Act 1993 that has not been required to hold an annual meeting under this Act,—

- (i) The date of the last annual general meeting held under the Companies Act 1955; or
- (ii) If the company avoided the need for an annual general meeting by doing everything required to be done at that meeting by entry in its minute book under section 362(2) of the Companies Act 1955, the date on which the last thing required to be done at that meeting was done under section 362(2) of the Companies Act 1955.

NOTES:

The information required by paragraph (f)(i) of this Schedule must show separately the number of shares issued for cash and the number of shares issued as fully or partly paid up for a consideration other than cash.

The information required under paragraph (i) of this Schedule need relate only to persons who have become shareholders or who have ceased to be shareholders since the date of an annual return filed under this Act for 1 of the 2 preceding years if that annual return contained the information required by that paragraph.

For the purpose of paragraph (j) of this Schedule, a statement whether or not a company was at any material time a specified company within the meaning of section 2 of the Takeovers Act 1993 does not have to be included in the annual return unless a takeovers code is in force under the Takeovers Act 1993.

Clauses (h) and (i) were amended, as from 1 December 2002, by section 30 Securities Markets Amendment Act 2002 (2002 No 44) by substituting the words “registered exchange (within the meaning of section 2(1) of the Securities Markets Act 1988)” for the words “stock exchange registered under the Sharebrokers Act 1908”.

The notes were amended, as from 1 December 2002, by section 38 Takeovers Amendment Act 2002 (2002 No 45) by substituting the words “is in force under the Takeovers Act 1993” for the words “has been approved by Order in Council under section 28 of the Takeovers Act 1993 and is in force”.

Schedule 5Sections 229(2), 230(1),
243(5), 314(4), 315(4)**Proceedings at meetings of creditors****1 Methods of holding meetings**

A meeting of creditors may be held—

- (a) By assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting; or
- (b) By means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting; or
- (c) By conducting a postal ballot in accordance with clause 7 of this Schedule of those creditors entitled to take part.

2 Notice of meeting**(1) Written notice of—**

- (a) The time and place of every meeting to be held under clause 1(a) of this Schedule; or
- (b) The time and method of communication for every meeting to be held under clause 1(b) of this Schedule; or
- (c) The time and address for the return of voting papers for every meeting to be held under clause 1(a) or (b) or (c) of this Schedule—

must be sent to every creditor entitled to attend the meeting, and to any liquidator not less than 5 working days before the meeting.

(2) The notice must—

- (a) State the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and
- (b) Set out the text of any resolution to be submitted to the meeting; and
- (c) Include a voting paper in respect of each such resolution and voting and mailing instructions; and
- (d) State that if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—

- (i) The creditor's postal vote is invalid in respect of that different resolution; but
 - (ii) The creditor may vote, in respect of that different resolution, either by being present in person or by proxy.
- (3) An irregularity in or a failure to receive a notice of meeting of creditors does not invalidate anything done by a meeting of creditors if—
 - (a) The irregularity or failure is not material; or
 - (b) All the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or
 - (c) All such creditors agree to waive the irregularity or failure.
- (4) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.
- (5) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.
- (6) If a meeting of creditors under clause 1(a) or (b) of this Schedule is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Clause 2(2)(c) was amended, as from 3 June 1998, by section 21(1) Companies Amendment Act 1998 (1998 No 31) by inserting the expression “; and”.

Clause 2(2)(d) was inserted, as from 3 June 1998, by section 21(1) Companies Amendment Act 1998 (1998 No 31).

3 Chairperson

- (1) If a liquidator has been appointed and is present, or if the liquidator has appointed a nominee and the nominee is present, he or she must act as chairperson of a meeting held in accordance with clause 1(a) or (b) of this Schedule.
- (2) At any meeting of creditors, not being a meeting held for the purposes of section 230, where neither the liquidator nor any nominee of the liquidator is present, the creditors participating must choose 1 of their number to act as chairperson of the meeting.
- (2A) At any meeting of creditors held for the purposes of section 230 where there is no liquidator or neither the liquidator nor

any nominee of the liquidator is present, the proponent of the compromise or the proponent's nominee must act as chairperson of the meeting; but if neither the proponent nor any nominee of the proponent is present, the creditors participating must choose 1 of their number to act as chairperson of the meeting.

- (3) The person convening a meeting under clause 1(c) of this Schedule must do everything necessary that would otherwise be done by the person chairing a meeting.

Subclause (2) was substituted, and subclause (2A) was inserted, as from 3 June 1998, by section 21(1) Companies Amendment Act 1998 (1998 No 31).

4 Quorum

- (1) A quorum for a meeting of creditors is present if—
- (a) Three creditors who are entitled to vote or their proxies are present or have cast postal votes; or
 - (b) If the number of creditors entitled to vote does not exceed 3, the creditors who are entitled to vote or their proxies are present or have cast postal votes.
- (2) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairperson may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

5 Voting

- (1) At any meeting of creditors or a class of creditors, not being a meeting held for the purposes of section 230 of this Act, a resolution is adopted if a majority in number and value of the creditors or the class of creditors voting in person or by proxy vote or by postal vote in favour of the resolution.
- (2) At any meeting of creditors or a class of creditors held for the purposes of section 230 of this Act, a resolution is adopted if a majority in number representing 75 percent in value of the creditors or class of creditors voting in person or by proxy vote or by postal vote in favour of the resolution.
- (3) A creditor chairing the meeting does not have a casting vote.

Subclauses (1) and (2) were amended, as from 30 June 1997, by section 23(1) Companies Act 1993 Amendment Act 1997 (1997 No 27) by inserting the words “or by postal vote”.

6 Proxies

- (1) A creditor may exercise the right to vote either by being present in person or by proxy.
- (2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors as if the proxy were the creditor.
- (3) A proxy must be appointed by notice in writing signed by the creditor and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- (4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the liquidator or, if no liquidator is acting, to the person by whom the notice convening the meeting was given, not less than 2 working days before the start of the meeting.

Subclause (4) was amended, as from 30 June 1997, by section 23(2) Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the words “not less than 2 working days” for the words “not later than 48 hours”.

7 Postal votes

- (1) A creditor entitled to vote at a meeting of creditors held in accordance with clause 1(a) or (b) or (c) of this Schedule may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.
- (1A) If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—
 - (a) The creditor’s postal vote is invalid in respect of that different resolution; but
 - (b) The creditor may vote, in respect of that different resolution, either by being present in person or by proxy.
- (2) The notice of meeting must state the name of the person authorised to receive and count postal votes in relation to that meeting.
- (3) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being

so authorised in the notice of the meeting, every director, or if the company is in liquidation, the liquidator, is deemed to be so authorised.

- (4) A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under clause 1(c) of this Schedule, not later than the date named for the return of the voting paper.
- (5) It is the duty of a person authorised to receive and count postal votes in relation to a meeting—
 - (a) To collect together all postal votes received by him or her; and
 - (b) In relation to each resolution to be voted on,—
 - (i) To count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (ii) To count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (c) To sign a certificate—
 - (i) That he or she has carried out the duties set out in paragraphs (a) and (b) of this subclause; and
 - (ii) Stating the results of the counts and determinations required by paragraph (b) of this subclause; and
 - (d) To ensure that the certificate required by paragraph (c) of this subclause is presented to the person chairing or convening the meeting.
- (6) If a vote is taken at a meeting held under clause 1(a) or (b) of this Schedule on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.

- (7) A certificate given under subclause (5) of this clause in relation to the postal votes cast in respect of a meeting of creditors must be annexed to the minutes of the meeting.

Subclause 7(1A) was inserted, as from 3 June 1998, by section 21(3) Companies Amendment Act 1998 (1998 No 31).

Subclause (4) was amended, as from 30 June 1997, by section 23(3) Companies Act 1993 Amendment Act 1997 (1997 No 27) by substituting the words “not less than 2 working days” for the words “not later than 24 hours”.

8 Minutes

- (1) The person chairing a meeting of creditors, or in the case of a meeting held under clause 1(c) of this Schedule, the person convening the meeting, must ensure that minutes are kept of all proceedings.
- (2) Minutes which have been signed correct by the person chairing or convening the meeting are prima facie evidence of the proceedings.

9 Corporations may act by representatives

A body corporate which is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

10 Other proceedings

Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

11 Effect of irregularity or defect

- (1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by a meeting of creditors, unless the Court orders otherwise.
- (2) The Court may, on the application of the liquidator or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

Clause 11 was inserted, as from 3 June 1998, by section 21(4) Companies Amendment Act 1998 (1998 No 31).

Schedule 6

Powers of liquidators

Section 260(2)

A liquidator of a company has power to—

- (a) Commence, continue, discontinue, and defend legal proceedings:
- (b) The extent necessary for the liquidation carry on the business of the company:
- (c) Appoint a solicitor:
- (d) Pay any class of creditors in full:
- (e) Make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not:
- (f) Compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts, and claims, present or future, actual or contingent, or ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the liquidation of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge:
- (g) Sell or otherwise dispose of the property of the company:
- (h) Act in the name and on behalf of the company and enter into deeds, contracts, and arrangements in the name and on behalf of the company:
- (i) Prove, rank, and claim in the bankruptcy or insolvency of a shareholder for any balance against that person's estate, and to receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors:
- (j) Draw, accept, make, and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business:
- (k) Borrow money on the security of the company's assets:
- (l) Take out, in his or her name as liquidator, letters of administration to a deceased shareholder, and to do in that name any other act necessary for obtaining payment of money due from

a shareholder or his or her estate which cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator:

- (m) Call a meeting of creditors or shareholders for—
 - (i) The purpose of informing creditors or shareholders of progress in the liquidation:
 - (ii) The purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation:
 - (iii) Such other purpose connected with the liquidation as the liquidator thinks fit:
- (n) Appoint an agent to do anything which the liquidator is unable to do:
- (o) change the registered office or address for service of the company.

Paragraph (o) was inserted, as from 15 April 2004, by section 24 Companies Amendment Act (No 2) 2004 (2004 No 24).

Schedule 7

Sections 234, 255(5), 312

Preferential claims

1

The liquidator must first pay, in the order of priority in which they are listed,—

- (a) The fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator:
- (b) The reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs of a person appearing on the application whose costs are allowed by the Court:
- (c) The actual out-of-pocket expenses necessarily incurred by a liquidation committee.

2

After paying the claims referred to in clause 1 of this Schedule, the liquidator must next pay the following claims:

- (a) Subject to clause 6 of this Schedule, all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the 4 months preceding the commencement of the liquidation:
- (b) Subject to clause 6 of this Schedule, holiday pay becoming payable to an employee (or where the employee has died, to any other person in the employee's right) on the termination of the employment before or by reason of the commencement of the liquidation:
- (ba) subject to clause 6, any compensation for redundancy owed to an employee that accrues before or by reason of the commencement of the liquidation:
- (bb) subject to clause 6, any reimbursement or payment provided for, or ordered by, the Employment Relations Authority, the Employment Court, or the Court of Appeal under section 123(b) or section 128 of the Employment Relations Act 2000, to the extent that the reimbursement or payment does not relate to any matter set out in section 123(c) of the Employment Relations Act 2000, in respect of wages or other money or remuneration lost during the 4 months before the commencement of the liquidation:
- (c) Amounts due in respect of any compensation or liability for compensation under the Workers' Compensation Act 1956 accrued before the commencement of the liquidation:
- (d) Subject to clause 6 of this Schedule, amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee:
- (e) Subject to clause 6 of this Schedule, amounts payable to the Commissioner of Inland Revenue in accordance with section 163(1) of the Child Support Act 1991:
- (ea) all amounts payable to the Commissioner of Inland Revenue in accordance with section 167(2) of the Tax Administration Act 1994 as applied by section 67 of the KiwiSaver Act 2006:

- (f) Amounts that are preferential claims under section 263(2) of this Act:
- (g) Any amount that, under section 23 of the Apprenticeship Act 1983, as deemed to form part of any apprenticeship contract by virtue of section 16 of the Industry Training Act 1992, the Employment Relations Authority may order to be paid to an apprentice who is deprived of employment by reason of the commencement of the liquidation:
- (h) All sums that the Motor Vehicle Dealers Institute Incorporated is entitled to recover from a defaulting licensee company under section 42 of the Motor Vehicle Dealers Act 1975 in the event of the company being put into liquidation:
 - (i)
- (j) All sums which by any other enactment are required to be paid in accordance with the priority established by this clause.

Clause 2(ba) and 2(bb) was inserted, as from 29 May 2004, by section 4(1) Companies Amendment Act 2004 (2004 No 10).

Clause 2(ea) was inserted, as from 1 December 2006, by section 231 KiwiSaver Act 2006 (2006 No 40). *See* section 232 of that Act as to the transitional provision requiring all KiwiSaver contributions to be paid to the Commissioner in the first 3 months. *See* clause 2(2) KiwiSaver Act Commencement Order 2006 (SR 2006/357).

Clause 2(g) was amended, as from 2 October 2000 by section 240 Employment Relations Act 2000, by substituting the words “Employment Relations Authority” for the words “Employment Tribunal”.

Clause 2(i) was amended, as from 26 April 1999, by section 17 Companies Amendment Act 1999 (1999 No 19) by inserting, after the word “date”, the words “and time”.

Clause 2(i) was substituted, as from 1 April 2004, by section 15 Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Clause 2(i) was repealed, as from 29 May 2004, by section 4(2) Companies Amendment Act 2004 (2004 No 10).

3

After paying the claims referred to in clause 2 of this Schedule, the liquidator must next pay all sums—

- (a) Paid by a buyer to a seller on account of the purchase price of goods; or
- (b) To which a buyer is or becomes entitled to receive from a seller under section 9 of the Layby Sales Act 1971—

and for which the buyer is a creditor in the liquidation of the company under section 11 of the Layby Sales Act 1971.

4

After paying the claims referred to in clause 3 of this Schedule, the liquidator must next pay the amount of any costs referred to in section 234(c) of this Act.

5

After paying the sums referred to in clause 4 of this Schedule, the liquidator must next pay the amount of—

- (a) Tax payable by the company in the manner required by Part 3 of the Goods and Services Tax Act 1985;
- (b) Tax deductions made by the company under the PAYE rules of the Income Tax Act 2004;
- (c) Non-resident withholding tax deducted by a company under the NRWT rules of the Income Tax Act 2004;
- (d) Every resident withholding tax deduction made by a company under the RWT rules of the Income Tax Act 2004;
- (e) Duty payable within the meaning of section 2(1) of the Customs and Excise Act 1996—

to the extent that the amount is for the time being unpaid to the Commissioner of Inland Revenue or to the Collector of Customs, as the case may require.

Clause 5(b) to (d) were substituted, as from 1 April 1995, by section YB 1 Income Tax Act 1994 (1994 No 164).

Clause 5(e) was substituted, as from 30 March 1995, by section 3(3) Customs Amendment Act 1995 (1995 No 7).

Clause 5(e) was substituted, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27).

Clause 5 was amended, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35) by substituting the words “Income Tax Act 2004” for the words “Income Tax Act 1994” in all places in which it appears.

6

The total sum to which priority is to be given under any, or all, of paragraphs (a), (b), (ba), (bb), (d), and (e) of clause 2 must not, in the case of any one employee, exceed \$15,000 or such greater amount as is prescribed under clause 6A at the commencement of the liquidation.

Clause 6 was amended, as from 29 May 2004, by section 4(3)(a) Companies Amendment Act 2004 (2004 No 10) by substituting the words “any, or all, of

paragraphs (a), (b), (ba), (bb), (d), and (e) of clause 2” for the words “clause 2(a), (b), (d), or (e) of this Schedule”.

Clause 6 was amended, as from 29 May 2004, by section 4(3)(b) Companies Amendment Act 2004 (2004 No 10) by substituting the expression “\$15,000” for the expression “\$6,000”.

Clause 6 was amended, as from 29 May 2004, by section 4(3)(c) Companies Amendment Act 2004 (2004 No 10) by inserting the words “under clause 6A” after the word “prescribed”.

6A

The sum stated in clause 6 must be adjusted as follows:

- (a) subject to paragraph (d), an adjustment must be made, by the Governor-General by Order in Council, after the 3-year period starting on 1 July 2003 and ending on 30 June 2006 and after every 3-year period following that (an **adjustment period**):
- (b) subject to paragraph (d), the Order in Council must be made within 3 months of the end of an adjustment period:
- (c) each adjustment must reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Quarterly Employment Survey published by Statistics New Zealand (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period:
- (d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, no adjustment may be made for that adjustment period:
- (e) if, in accordance with paragraph (d), no adjustment is made, the next adjustment made for any succeeding adjustment period must reflect any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the relevant adjustment period for which the adjustment is to be made:
- (f) all adjustments are cumulative and must be rounded to the nearest \$20:

- (g) any correction to a Quarterly Employment Survey upon which an adjustment is based must be disregarded until the adjustment that takes effect in the following adjustment period which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this clause.

Clause 6A was inserted, as from 29 May 2004, by section 4(4) Companies Amendment Act 2004 (2004 No 10).

7

Where a payment has been made—

- (a) To an employee of a company on account of wages or salary; or
- (b) To any such employee or, where the employee has died, to any other person in the employee's right, on account of holiday pay—

out of money advanced by some person for that purpose, the person by whom the money was advanced has, in a liquidation, the same right of priority in respect of the money so advanced as the employee, or other person receiving the payment in right of the employee, would have if the payment had not been made.

8

Clause 8 was repealed, as from 29 May 2004, by section 4(5) Companies Amendment Act 2004 (2004 No 10).

9

The claims listed in each of clauses 2, 3, 4, and 5—

- (a) rank equally among themselves and, subject to any maximum payment level specified in any Act or regulations, must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them,—
 - (i) have priority over the claims of any person under a security interest to the extent that the security interest—

- (A) is over all or any part of the company's accounts receivable and inventory or all or any part of either of them; and
 - (B) is not a purchase money security interest; and
 - (C) does not arise 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
- (ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).

For the purposes of this clause, the terms **account receivable**, **inventory**, **new value**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999

Clause 9 was substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See* Part 12 of that Act for transitional provisions. *See* clause 2 Personal Property Securities Act Commencement Order 2002 (SR 2002/60).

Paragraph (a) was amended, as from 29 May 2004, by section 4(6) Companies Amendment Act 2004 (2004 No 10) by inserting the words “, subject to any maximum payment level specified in any Act or regulations,” after the words “themselves and”.

9A

Clause 9, as in force immediately before the commencement of the Personal Property Securities Act 1999, continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.

Clause 9A was inserted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See* Part 12 of that Act for transitional provisions. *See* clause 2 Personal Property Securities Act Commencement Order 2002 (SR 2002/60).

10

To the extent that the claims to which clause 9 of this Schedule applies are paid out of assets referred to in paragraph (b) of

that clause, the amount so paid is an unsecured debt due by the company to the secured party.

11

If a landlord or other person has distrained on goods or effects of the company within the month preceding the commencement of the liquidation, the claims to which priority is given by this Schedule are a first charge on the goods or effects so distrained on, or the proceeds from their sale, but where any money is paid to a claimant under any such charge, the landlord or other person has the same rights of priority as that claimant.

12

For the purposes of this Schedule,—

- (a) Remuneration in respect of a period of holiday or of absence from work through sickness or other good cause is to be treated as wages in respect of services rendered to the company during that period:
- (ab) **employee** means any person of any age employed by an employer to do any work for hire or reward under a contract of service (including a homeworker as defined in section 5 of the Employment Relations Act 2000); but does not include a person who is, or was at any time during the 12 months before the commencement of the liquidation, a director of the company in liquidation, or a nominee or relative of, or a trustee for, a director of the company:
- (b) The expression **holiday pay**, in relation to a person, means all sums payable to that person by the company under Subpart 1 of Part 2 of the Holidays Act 2003, and includes all sums which by or under any other enactment or any award, agreement, or contract of service are payable to that person by the company as holiday pay.

Paragraph (ab) was inserted, as from 29 May 2004, by section 4(7) Companies Amendment Act 2004 (2004 No 10).

Paragraph (b) was amended, as from 1 April 2004, by section 91(2) Holidays Act 2003 (2003 No 129) by substituting the words “Subpart 1 of Part 2 of the Holidays Act 2003” for the words “sections 11 to 23 of the Holidays Act 1981”.

13

This schedule, as in force on the date of commencement of a liquidation, continues to apply to that liquidation regardless of any amendment to this schedule that comes into force after the date of commencement of the liquidation.

Clause 13 was inserted, as from 29 May 2004, by section 4(8) Companies Amendment Act 2004 (2004 No 10).

Schedule 8

Section 315(3)

**Proceedings at meetings of liquidation
committees**

1 Frequency of meetings

The committee must meet at such times as it from time to time appoints, and the liquidator or a member of the committee may also call a meeting of the committee as and when necessary.

2 Majorities

The committee may act by a majority of its members present at a meeting, but may not act unless a majority of the committee are present.

3 Resignation

A member of the committee may resign by notice in writing signed by him or her and delivered to the liquidator.

4 Office becoming vacant

If a member of the committee becomes bankrupt, or compounds or arranges with his or her creditors, or is absent from 3 consecutive meetings of the committee without the leave of those members who together with that member represent the creditors or shareholders, as the case may be, the office of that member becomes vacant.

5 Removal of a member

A member of the committee may be removed by a resolution carried at a meeting of creditors if the member represents cred-

itors, or of shareholders if the member represents shareholders, of which 5 working days' notice has been given, stating the object of the meeting.

6 Vacancy filled

A vacancy in the committee may be filled by the appointment by the committee of—

- (a) The same or another creditor or shareholder, as the case may be; or
- (b) A person holding a general power of attorney from, or being an authorised director or representative of, a company which is a creditor or shareholder, as the case may be.

Clause (6)(b) was amended, as from 1 July 1994, by section 50 Companies Act 1993 Amendment Act 1994 (1994 No 6) by inserting the words “or representative”.

7 Committee with vacancy may act

The continuing members of the committee, if not less than 2, may act even though a vacancy exists in the committee.

Schedule 9

Sections 341(2), 342(1)

**Liquidation of assets of overseas
companies**

1 Modified application of Part 16 of this Act

Part 16 of this Act applies to the liquidation of the assets in New Zealand of an overseas company, with the following modifications and exclusions:

- (a) References to assets are to be taken as references to assets in New Zealand:
- (b) References to a company are to be taken as references to an overseas company:
- (c) References to removal from the New Zealand register are to be taken as references to ceasing to carry on business in New Zealand:
- (d) The following provisions of that Part do not apply to such a liquidation:

- (i) Section 248(1)(d), (e), (f), and (g):
- (ii) Section 268:
- (e) Section 248(1)(b) does not affect the tenure of directors of an overseas company, but the overseas company and its directors cease to have any powers, functions, or duties in relation to the company's assets in New Zealand, other than those required or permitted to be exercised by Part 16 of this Act:
- (f) Section 257 applies to such a liquidation, but instead of making the statement required by subsection (1)(a)(ii)(C) of that section, the liquidator must state that the company has ceased to carry on business in New Zealand and is ready to be removed from the overseas register.

2 Rights of action not affected

Nothing in this Act excludes the right of a creditor of an overseas company in relation to the assets of which a liquidator has been appointed—

- (a) To bring proceedings outside New Zealand against the overseas company in relation to a debt not claimed in the liquidation or the balance of a debt remaining unpaid after the completion of a liquidation; or
 - (b) To bring an action in New Zealand in relation to the balance of a debt remaining unpaid after the completion of a liquidation.
-

Contents

- 1 General
 - 2 About this eprint
 - 3 List of amendments incorporated in this eprint (most recent first)
-

Notes**1 General**

This is an eprint of the Companies Act 1993. It incorporates all the amendments to the Companies Act 1993 as at 1 October 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Taxation (KiwiSaver and Company Tax Rate Amendments) Act 2007 (2007 No 19): section 70

Taxation (Savings Investment and Miscellaneous Provisions) Act 2006 (2006 No 81): section 219

Companies Amendment Act 2007 (2007 No 48)
