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1997, No. 26

An Act to amend the Companies Act 1955

[30 June 1997]

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

1. Short Title—This Act may be cited as the Companies Act 1955 Amendment Act 1997, and is part of the Companies Act 1955 ("the principal Act").

Amendments to Principal Act

2. Interpretation—Section 2 (1) of the principal Act is amended by adding the following definition:

"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.”

3. Method of contracting—Section 42 of the principal Act is amended by repealing subsection (1A) (as inserted by section 4 of the Companies Act 1955 Amendment Act (No. 2) 1994), and substituting the following subsection:

“(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.”

4. Duty of directors to act in good faith and in best interests of company—Section 185 (4) of the principal Act is amended by omitting the words “incorporated to carry”, and substituting the words “that is carrying”.

5. Disclosure of interest—Section 194 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(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.”

6. Meaning of “relevant interest”—Section 199A (2) of the principal Act is amended by omitting the words “(whether or not a director of the company) has”, and substituting the words “would, if that person were a director of the company, have”.

7. Short form amalgamation—(1) Section 209D (1) (b) of the principal Act is amended by adding the expression “; and” to the end of subparagraph (iii), and also by adding the following subparagraph:

“(iv) The person or persons named in the resolution will be the director or directors of the amalgamated company.”

(2) Section 209D (2) (b) of the principal Act is amended by adding the expression “; and” to the end of subparagraph (iii), and also by adding the following subparagraph:

“(iv) The person or persons named in the resolution will be the director or directors of the amalgamated company.”

(3) Section 209D (5) of the principal Act is amended by omitting the words “conditions set out in subsection (1) or subsection (2) are”, and substituting the words “condition set out in subsection (1) (b) (iii) or subsection (2) (b) (iii) is”.

8. Notice of intention to remove where company has ceased to carry on business—Section 294 (3) (a) of the principal Act is amended by omitting the words “and its registered office”.

9. Notice of intention to remove in other cases—Section 295 (4) (a) of the principal Act is amended by omitting the words “and its registered office”.

10. Registrar may restore company to New Zealand register—Section 303 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) Before the Registrar restores a company to the register under this section,—

“(a) In the case of a company that was removed from the register under paragraph (b) or paragraph (c) of section 293 (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 28 days after the date of the notice:

“(b) In the case of a company that was removed from the register under paragraph (d) or paragraph (e) of section 293 (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 28 days after the date of the notice.”

11. Schedule 8A amended—(1) Clause 2 (1) of Schedule 8A of the principal Act is amended by omitting the expression “7 days”, and substituting the expression “5 working days”.

(2) Clause 5 of Schedule 8A of the principal Act is amended by inserting in subclause (1), and also in subclause (2), after the words “proxy vote”, the words “or by postal vote”.

(3) Clause 6 (4) of Schedule 8A of the principal Act is amended by omitting the words “not later than 48 hours”, and substituting the words “not less than 2 working days”.

(4) Clause 7 (4) of Schedule 8A of the principal Act is amended by omitting the words “not later than 24 hours”, and substituting the words “not less than 2 working days”.

Amendments to Companies Amendment Act 1993

12. Amendments to section 42 of Companies Amendment Act 1993—(1) Section 42 of the Companies Amendment Act 1993 is amended by inserting, after subsection (3), the following subsection:

“(3A) Despite section 335A (8) of the principal Act (as continued in force and amended by subsection (3)), an application under that subsection for an order revoking the dissolution of the company may, with the leave of the Court, be made after the expiry of the period of 2 years referred to in that subsection.”

(2) Section 42 of the Companies Amendment Act 1993 is amended by inserting, after subsection (4), the following subsection:

“(4A) Despite section 336 (7) of the principal Act (as continued in force and amended by subsection (4)), an application under that subsection for an order restoring the name of a company to the register may, with the leave of the Court, be made after the expiry of the period of 2 years referred to in that subsection.”