

Companies Amendment Bill (No 2)

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Regulatory Reform Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- Agricultural Compounds and Veterinary Medicines Amendment Bill comprising the enacting words, clauses 1 and 2, and Part 1
- Animal Products Amendment Bill comprising Part 2
- this bill comprising Part 3
- Conservation Amendment Bill comprising Part 4
- Films, Videos, and Publications Classification Amendment Bill comprising Part 5 and the Schedule
- Fisheries Amendment Bill comprising Part 6
- Friendly Societies and Credit Unions Amendment Bill comprising Part 7
- Radiocommunications Amendment Bill comprising Part 8
- Registered Architects Amendment Bill comprising Part 9
- Statistics Amendment Bill comprising Part 10
- Takeovers Amendment Bill comprising Part 11
- Unit Trusts Amendment Bill comprising Part 12

- Wine Amendment Bill comprising Part 13
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Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon John Banks

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Companies Amendment Act (No 2) **2012**.

2	Commencement	
	This Act comes into force on the day after the date on which it receives the Royal assent.	
	
40	Principal Act amended	
	This Part amends the Companies Act 1993.	5
41	Stock exchange acquisitions not subject to prior notice to shareholders	
(1)	Section 65(2A) is repealed.	
(2)	Section 65(3) is amended by omitting “or subsection (2A)”.	
42	Interest payable on outstanding payments	10
(1)	Section 112B is amended by repealing subsection (1) and substituting the following subsection:	
“(1)	Interest on any sum that must be paid under section 112 or 112A that is outstanding after the date on which it falls due is payable,—	15
“(a)	in the case of a share price determined under section 112, at the same rate of interest as the prescribed rate under section 87(3) of the Judicature Act 1908; and	
“(b)	in the case of a share price determined under section 112A, on the basis and at the rate that the arbitral tribunal thinks fit having regard to all of the circumstances.”	20
(2)	Section 112B(2) is amended by omitting “subsection (1)” and substituting “ subsection (1)(b) ”.	
43	Termination of deed	25
	Section 239ADC is amended by adding the following subsection as subsection (2):	
“(2)	The deed administrator must give written notice to the Registrar of the fact that a deed has been terminated under subsection (1)(a) or (c).”	30

- 44 Insolvent transaction voidable**
Section 292(4) is amended by omitting “section 32(1)” and substituting “section 32(1) or (5)”.
- 45 Service of other documents on companies**
Section 388 is amended by adding the following subsection as subsection (2):
“(2) Subsection (1) is subject to **section 391(3A) to (3C)**.” 5
- 46 Service of other documents on overseas companies**
Section 390 is amended by adding the following subsection as subsection (2):
“(2) Subsection (1) is subject to **section 391(3A) to (3C)**.” 10
- 47 Service of documents on shareholders and creditors**
Section 391 is amended by inserting the following subsections after subsection (3):
“(3A) Despite subsections (1) to (3), a shareholder or creditor may notify the company—
“(a) that the shareholder or creditor wishes to receive documents by electronic means; and
“(b) of the electronic address to which documents are to be delivered.” 15 20
“(3B) Notification in accordance with **subsection (3A)** may be made in respect of a particular notice, statement, report, set of accounts, or other document, or in respect of all documents to be served.
“(3C) If a shareholder or creditor notifies the company under **subsection (3A)**, the company must send documents by electronic means in accordance with the notification, whether or not the documents are also sent by another method.” 25
- 48 Schedule 1 amended**
(2) Clause 3 of Schedule 1 is repealed and the following clause substituted:
“**3 Methods of holding meetings**
A meeting of shareholders may be held by a quorum of the shareholders— 30

- “(a) being assembled together at the time and place appointed for the meeting; or
 “(b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
 “(c) by a combination of both of the methods described in **paragraphs (a) and (b).**” 5
- (3) Clause 4 of Schedule 1 is amended by adding the following subclause:
 “(4) To avoid doubt, a shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.” 10
- (4) Clause 5(2) of Schedule 1 is amended by inserting “or (c)” after “clause (3)(b)” and by omitting “the shareholders signifying individually their assent or dissent by voice” and substituting “any method permitted by the chairperson of the meeting”. 15
- (5) Clause 6(3) of Schedule 1 is amended by inserting “or, in the case of an electronic notice, sent by” after “signed by”.
- (5A) Clause 6 of Schedule 1 is amended by inserting the following subclause after subclause (3): 20
 “(3A) A shareholder may appoint more than 1 proxy for a particular meeting, provided that more than 1 proxy is not appointed to exercise the rights attached to a particular share held by the shareholder.”
- (6) ~~The heading to clause 7 of Schedule 1 is amended by adding “and electronic votes”.~~ 25
- (7) ~~Clause 7 of Schedule 1 is amended by repealing subclause (1) and substituting the following subclauses:~~
- ~~“(1) Subject to the constitution of the company, a shareholder may exercise the right to vote at a meeting by casting— 30
 “(a) a postal vote; or
 “(b) an electronic vote, which, for the purposes of this clause, must be treated as if it were a postal vote.~~
- ~~“(1A) A vote referred to in **subclause (1)** must be cast in accordance with the provisions of this clause.” 35~~
- (6) Clause 7(1) of Schedule 1 is amended by inserting the following subclause after subclause (1):

“(1A) To avoid doubt, a postal vote may be cast using electronic means permitted by the board.”

(8) Schedule 1 is amended by adding the following clause:

“14 Shareholder participation by electronic means

“(1) For the purposes of this schedule, a shareholder, or the shareholder’s proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if—

“(a) the board approves those means; and

“(b) the shareholder, proxy, or representative complies with any conditions imposed by the board in relation to the use of those means (including, for example, conditions relating to the identity of the shareholder, proxy, or representative and that person’s approval or authentication (including electronic authentication) of the information communicated by electronic means).

“(2) To avoid doubt, participation in a meeting includes participation in any manner specified in this schedule or permitted by the constitution of the company.”

48A Consequential amendments to Companies (Voluntary Administration) Regulations 2007

(1) This section amends the Companies (Voluntary Administration) Regulations 2007.

(2) Clause 16(3) of Schedule 1 is amended by omitting “section 239ADC(c)” and substituting “section 239ADC(1)(c)”. 25

(3) Clause 17(1)(c)(iii)(B) of Schedule 1 is amended by omitting “section 239ADC(c)” and substituting “section 239ADC(1)(c)”. 25

(4) Clause 17(2) of Schedule 1 is amended by omitting “section 239ADC(c)” and substituting “section 239ADC(1)(c)”. 30

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Legislative history

22 August 2012

Divided from Regulatory Reform Bill (Bill 269–2)
by committee of the whole House as Bill 269–3C
