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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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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 1 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

annual meeting means a meeting required to be held by section 120

annual report—

(a) means a report prepared under section 208; and

(b) does not include a concise annual report

applicable auditing and assurance standard has the same meaning as in section 5 of the Financial Reporting Act 2013

applicable financial reporting standard has the same meaning as in section 5 of the Financial Reporting Act 2013

association, in Parts 15 and 16 and in Schedule 11, includes—

(a) a body corporate (other than a company, an overseas company, or a body corporate that may be put into liquidation under or in accordance with the Act under which it is incorporated or registered); and

(b) a partnership; and

(c) an unincorporated body of persons

balance date, in relation to a company or an overseas company, has the same meaning as in section 41 of the Financial Reporting Act 2013

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

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; 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

code company has the meaning set out in section 2(1) of the Takeovers Act 1993

company means—

(a) a company registered under Part 2:

(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

constitution means a document referred to in section 29

control interest has the meaning set out in sections 365B to 365E

court means the High Court of New Zealand

designated settlement system has the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989

director has the meaning set out in section 126

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

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 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

enforcement country means a country, State, or territory outside New Zealand prescribed for the purposes of section 10(d)

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

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 markets participant has the same meaning as in section 4 of the Financial Markets Authority Act 2011

financial product has the same meaning as in section 7 of the Financial Markets Conduct Act 2013

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

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

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

group financial statements has the same meaning as in section 7 of the Financial Reporting Act 2013

holding company has the meaning set out in section 5

insolvency practitioner has the same meaning as in section 5(1) of the Insolvency Practitioners Regulation Act 2019

interest group has the meaning set out in section 116

interested, in relation to a director, has the meaning set out in section 139

interests register means the register kept under section 189(1)(c)

licensed insolvency practitioner has the same meaning as in section 5(1) of the Insolvency Practitioners Regulation Act 2019

licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

licensed market has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

limited partnership has the meaning set out in section 6 of the Limited Partnerships Act 2008

listed issuer has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

major transaction has the meaning set out in section 129(2)

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

ordinary resolution has the meaning set out in section 105(2)

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

overseas limited partnership has the meaning set out in section 4 of the Limited Partnerships Act 2008

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

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

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

prohibition order means an order made under section 239ADV(1) or 286(5) or under section 37(6) of the Receiverships Act 1993 that prohibits a person from acting as an insolvency practitioner

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 has the same meaning as in section 2(1) of the Receiverships Act 1993

records means the documents required to be kept by a company under section 189(1)

redeemable has the meaning set out in section 68

registered office has the meaning set out in section 186

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

related company has the meaning set out in subsection (3)

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

relevant interest has the meaning set out in section 146

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

share has the meaning set out in section 35

share register means the share register required to be kept under section 87

shareholder has the meaning set out in section 96

solvency test has the meaning set out in section 4

special meeting means a meeting called in accordance with section 121

special resolution means a resolution approved by a majority of 75% 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, in relation to a person (**A**), includes a person with whom A has a de facto relationship (whether that person is of the same or a different sex) and a civil union partner

stock exchange means—

(a) a licensed market; or

(b) a financial product market that is authorised to operate in an overseas jurisdiction in accordance with the laws of that jurisdiction

subsidiary has the meaning set out in section 5

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

ultimate holding company, in relation to a company, means a body corporate that—

(a) is a holding company of the company; and

(b) is itself not a subsidiary of any body corporate

ultimate holding company information has the meaning set out in section 94A

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

(ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 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, are 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 are 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) *[Repealed]*

(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.

(6) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

(7) If an example and a provision to which it relates are inconsistent, the provision prevails.

Section 2(1) **annual report**: inserted, on 18 June 2007, by section 4(3) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 2(1) **applicable auditing and assurance standard**: inserted, on 1 April 2014, by section 24(6) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **applicable financial reporting standard**: inserted, on 1 April 2014, by section 24(6) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **association**: inserted, on 1 March 2017, by section 4 of the Companies Amendment Act 2016 (2016 No 57).

Section 2(1) **balance date**: replaced, on 1 April 2014, by section 24(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **code company**: inserted, on 3 July 2014, by section 27 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **concise annual report**: inserted, on 18 June 2007, by section 4(3) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 2(1) **control interest**: inserted, on 1 May 2015, by section 36 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **designated settlement system**: inserted, on 24 November 2009, by section 16 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 2(1) **enforcement country**: inserted, on 1 May 2015, by section 8 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **exempt company**: repealed, on 1 April 2014, by section 24(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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

Section 2(1) **financial product**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **financial statements**: replaced, on 1 April 2014, by section 24(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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

Section 2(1) **generally accepted accounting practice**: inserted, on 1 April 2014, by section 24(6) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **group financial statements**: replaced, on 1 April 2014, by section 24(4) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **group of companies**: repealed, on 1 April 2014, by section 24(5) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(1) **insolvency practitioner**: inserted, on 1 September 2020, by section 4 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 2(1) **licensed insolvency practitioner**: inserted, on 1 September 2020, by section 4 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 2(1) **licensed insurer**: inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 2(1) **licensed market**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **limited partnership**: inserted, on 1 May 2015, by section 8 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **listed issuer**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **overseas limited partnership**: inserted, on 1 May 2015, by section 8 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **prohibition order**: inserted, on 1 September 2020, by section 4 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 2(1) **receiver**: inserted, on 1 November 2007, by section 4(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 2(1) **relative** paragraph (a): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **relative** paragraph (b): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **relative** paragraph (ba): inserted, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 2(1) **securities**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **spouse**: replaced, on 1 November 2007, by section 4(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 2(1) **stock exchange**: inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 2(1) **ultimate holding company**: inserted, on 1 May 2015, by section 8 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **ultimate holding company information**: inserted, on 1 May 2015, by section 8 of the Companies Amendment Act 2014 (2014 No 46).

Section 2(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 2(3)(b): amended, on 15 April 2004, by section 3 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 2(4): repealed, on 5 December 2013, by section 4 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(6): inserted, on 1 April 2014, by section 24(7) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 2(7): inserted, on 1 April 2014, by section 24(7) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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.

(3) However, subsections (1) and (2) do not apply to the public notice required to be given—

(a) by the Registrar under sections 319(1)(c), 320(1), 328(3)(a), 341(4)(b), and 360A(2)(b); and

(b) by the Secretary to the Treasury under section 324(3).

(4) The public notice required to be given by the Registrar under the provisions referred to in subsection (3)(a) must be given by publishing the notice in at least 1 issue of the *Gazette*.

(5) The Registrar must ensure that a copy of the notice referred to in subsection (4) is available on an Internet site maintained by or on behalf of the Registrar, at all reasonable times, for a period of not less than 20 working days.

(6) The public notice required to be given by the Secretary to the Treasury under the provision referred to in subsection (3)(b) must be given by publishing the notice in at least 1 issue of the *Gazette*.

(7) The Secretary to the Treasury must ensure that a copy of the notice referred to in subsection (6) is available on an Internet site maintained by or on behalf of the Treasury, at all reasonable times, for a period of not less than 20 working days.

Section 3(3): replaced, on 24 October 2019, by section 23(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 3(4): inserted, on 7 July 2010, by section 4 of the Companies Amendment Act (No 2) 2010 (2010 No 53).

Section 3(4): amended, on 24 October 2019, by section 23(2) of the Statutes Amendment Act 2019 (2019 No 56).

Section 3(5): inserted, on 7 July 2010, by section 4 of the Companies Amendment Act (No 2) 2010 (2010 No 53).

Section 3(6): inserted, on 24 October 2019, by section 23(3) of the Statutes Amendment Act 2019 (2019 No 56).

Section 3(7): inserted, on 24 October 2019, by section 23(3) of the Statutes Amendment Act 2019 (2019 No 56).

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), 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 are prepared under this Act or any other enactment (if any); and

(ia) the accounting records of the company; 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, 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) the most recent financial statements of each amalgamating company that are prepared under this Act or any other enactment (if any); and

(ia) the accounting records of the amalgamating company; 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.

Section 4(2)(a)(i): replaced, on 1 April 2014, by section 25(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4(2)(a)(ia): inserted, on 1 April 2014, by section 25(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4(3)(a)(i): replaced, on 1 April 2014, by section 25(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4(3)(a)(ia): inserted, on 1 April 2014, by section 25(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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, the expression **company** includes a body corporate.

Compare: Corporations Act 1989 s 46 (Aust)

6 Extended meaning of subsidiary

[Repealed]

Section 6: repealed, on 5 December 2013, by section 5 of the Companies Amendment Act 2013 (2013 No 111).

7 Control defined

For the purposes of section 5, 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 s 47 (Aust)

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), 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)) 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 s 48 (Aust)

8A Transitional, savings, and related provisions

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

Section 8A: inserted, on 31 March 2017, by section 14 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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) 1 or more shares; and

(c) 1 or more shareholders, having limited or unlimited liability for the obligations of the company; and

(d) 1 or more directors, of whom at least 1 must—

(i) live in New Zealand; or

(ii) live in an enforcement country and be a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to this Act.

Section 10(d): replaced, on 1 May 2015, by section 9 of the Companies Amendment Act 2014 (2014 No 46).

Section 10(d)(ii): replaced, on 30 May 2017, by section 15 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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 1 applicant as the company's constitution.

(2) Without limiting subsection (1), the application must state—

(a) the full name and address of each applicant; and

(b) in relation to every director of the proposed company,—

(i) his or her full name and date and place of birth; and

(ii) his or her residential address; and

(iii) *[Repealed]*

(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

(ca) the proposed company's ultimate holding company information; and

(d) the registered office of the proposed company; and

(e) the address for service of the proposed company.

(3) If no directors of the proposed company live in New Zealand, the application must, in relation to at least 1 director who lives in an enforcement country,—

(a) confirm that the director is a director of a body corporate that is incorporated in that enforcement country under a law that is equivalent to this Act; and

(b) include the prescribed information in respect of that body corporate.

Section 12(2)(b): replaced, on 1 May 2015, by section 10(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 12(2)(b)(iii): repealed, on 30 May 2017, by section 16(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 12(2)(ca): inserted, on 1 May 2015, by section 10(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 12(3): inserted, on 30 May 2017, by section 16(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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 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), 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 company 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) does not limit—

(a) section 164 (which relates to injunctions to restrain conduct by a company that would contravene its constitution); or

(b) section 165 (which relates to derivative actions by directors and shareholders); or

(c) section 169 (which relates to actions by shareholders of a company against the directors); or

(d) section 170 (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—

(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.

(2) Subsection (1) 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 "Tāpui (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

(c) that is identical or almost identical to a name that the Registrar has already reserved under this Act 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.

Section 22(2)(b): amended, on 5 December 2013, by section 6(1) of the Companies Amendment Act 2013 (2013 No 111).

Section 22(2)(c): amended, on 5 December 2013, by section 6(2) of the Companies Amendment Act 2013 (2013 No 111).

Section 22(3)(b): amended, on 1 July 1994, by section 2 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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); 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.

(3) If the Registrar registers a new name under subsection (2), the Registrar must issue a certificate of incorporation for the company recording the new name of the company, and section 23(4) 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) and of section 180 (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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

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, 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; or

(d) a document described in section 33; or

(e) a document described in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) as altered by the company under section 32 or varied by the court under section 34.

Section 29(c): amended, on 1 July 1994, by section 3 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

30 Contents of constitution

Subject to section 16(2), 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 (which relates to an alteration of shareholders' rights) and section 174 (which relates to the right of a shareholder to apply to the court for relief in cases of prejudice), but subject to section 57 (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), every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 374(2).

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, 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, together with all amendments to it.

(3) Within 20 working days of receipt by a company of a notice under subsection (2), 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.

(5) As soon as the Registrar receives a document certified in accordance with subsection (4), the Registrar must register the document.

(6) If the board of a company fails to comply with subsection (3) or subsection (4), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

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), 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) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Part 6
Shares and debentures

Part 6 heading: amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

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), a share in a company confers on the holder—

(a) the right to 1 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:

(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, the rights specified in subsection (1) 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.

Section 36(2): amended, on 3 May 2001, by section 3 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 36(2): amended, on 30 June 1997, by section 2 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 36(2): amended, on 1 July 1994, by section 4 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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), shares in a company may—

(a) be redeemable within the meaning of section 68; 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.

Section 37(2)(a): replaced, on 1 July 1994, by section 5 of the 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) 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.

(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 financial products or otherwise, is an illegal contract for the purposes of subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 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: replaced, on 3 May 2001, by section 4 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 40: amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 40: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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): amended, on 1 July 1994, by section 6 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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), 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), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Section 43(1): amended, on 30 June 1997, by section 3 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

44 Shareholder approval for issue of shares

(1) Notwithstanding section 42, 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), 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 (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), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

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) 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 financial products of the company.

Section 46: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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: inserted, on 30 June 1997, by section 4 of the 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, 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) 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), 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) 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) 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(8) Nothing in this section applies to the issue of shares in a company on—

(a) the conversion of any convertible financial products; 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), every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 374(2).

Section 47(8)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

48 Exceptions to section 47

Section 47 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 financial products

(1) Before the board of a company issues any financial products 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 financial products 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 financial products 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) must sign a certificate—

(a) stating the consideration for, and the terms of, the issue of the convertible financial products 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), 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 financial products 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) 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

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

Section 49 heading: amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(1)(c): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(2)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 49(2)(d): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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 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,—

(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), does not include dividends payable in the future.

(5) Every director who fails to comply with subsection (2) commits an offence and is liable on conviction to the penalty set out in section 373(1).

53 Dividends

(1) A dividend is a distribution other than a distribution to which section 59 or section 76 applies.

(2) The board of a company must not authorise a differential dividend unless—

(a) 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 multi-rate PIE, as a result of section HM 48 of the Income Tax Act 2007; or

(b) the company's constitution provides for differential dividends as permitted by subsection (2A) and the dividend is authorised in accordance with the constitution.

(2A) The constitution of a company may provide for differential dividends in respect of the shares in a class of shares, which may be determined on any differential basis, but only if the differential basis is based on objective criteria and not on the exercise of a discretion by, or an opinion of, the board of the company.

Example

Company Z is an agricultural company whose class A shareholders are all current or former growers and suppliers to the company. The company's constitution could confer on holders of class A shares a right to differential dividends based on whether or not they are currently growing and supplying produce to the company.

The company's constitution could not provide for dividends based on a discretionary criterion, such as whether a shareholder had adequately upheld the reputation of the company.

(3) Notwithstanding subsection (2), 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.

(4) In this section, **differential dividend** means 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.

Section 53(2): replaced, on 17 November 2019, by section 4(1) of the Companies (Clarification of Dividend Rules in Companies) Amendment Act 2019 (2019 No 68).

Section 53(2)(a): amended (with effect on 17 November 2019), on 30 March 2021, by section 194 of the Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 (2021 No 8).

Section 53(2A): inserted, on 17 November 2019, by section 4(1) of the Companies (Clarification of Dividend Rules in Companies) Amendment Act 2019 (2019 No 68).

Section 53(4): inserted, on 17 November 2019, by section 4(2) of the Companies (Clarification of Dividend Rules in Companies) Amendment Act 2019 (2019 No 68).

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 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) 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), 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 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, 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, 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), 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), 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, 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, as if it were a distribution; and

(b) for the purposes of subsections (2) and (3) of section 53, as if it were a dividend.

(2) If a company has altered its constitution, or acquired shares, or redeemed shares under section 69, 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 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) 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 112C, 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 112C 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), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Section 58(1): amended, on 17 September 2008, by section 4 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Section 58(2): amended, on 17 September 2008, by section 4 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Section 58(2): amended, on 1 July 1994, by section 7 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

59 Acquisition of company's own shares

(1) Subject to section 52, 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.

(3) Nothing in this section or in sections 60 to 67 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 (which relate to the right of a shareholder to require a company to purchase shares).

Section 59(3)(b): replaced, on 1 July 1994, by section 8 of the 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 1 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.

(2) Where an offer is made in accordance with subsection (1)(a),—

(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) 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) must sign a certificate as to the matters set out in that subsection, and may combine it with the certificate required by section 52 and any certificate required under section 61.

(6) The board of a company must not make an offer under subsection (1) if, after the passing of a resolution under subsection (3) 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

61 Special offers to acquire shares

(1) The board may make an offer under section 60(1)(b)(ii) 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) 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) 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), the company must send to each shareholder a disclosure document that complies with section 62.

(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 listed issuer; and

(b) the offer is to acquire fewer of the quoted shares of the company than the minimum holding of those shares in the company determined by the operator of the relevant licensed market.

(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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(10) If a company fails to comply with subsection (5),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 61(7): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

62 Disclosure document

For the purposes of section 61, 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, 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 1 or more stock exchanges to all shareholders to acquire shares only if it has previously resolved—

(a) to acquire, by means of offers on 1 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) must sign a certificate as to the matters set out in that subsection and may combine it with the certificate required by section 52.

(3A) Offers may be made under subsection (1) 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) 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) 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), the company must send to each shareholder a disclosure document that complies with section 64.

(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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(10) If a company fails to comply with subsection (6),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 63(1): amended, on 1 July 1994, by section 10(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 63(1)(a): amended, on 1 July 1994, by section 10(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 63(3A): inserted, on 1 July 1994, by section 10(2) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 63(4): amended, on 1 July 1994, by section 10(3) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 63(5): amended, on 1 July 1994, by section 10(4) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 63(10): replaced, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

64 Disclosure document

(1) For the purposes of section 63, 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); 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), 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) 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% 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) *[Repealed]*

(2B) Acquisitions may be made under subsection (1) 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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 65(2): replaced, on 1 July 1994, by section 11(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 65(2A): repealed, on 31 August 2012, by section 4(1) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Section 65(2B): inserted, on 1 July 1994, by section 11(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 65(3): amended, on 31 August 2012, by section 4(2) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

66 Cancellation of shares repurchased

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

(2) Shares are acquired for the purposes of subsection (1) 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.

Section 66(1): replaced, on 1 July 1994, by section 2 of the Companies Act 1993 Amendment Act (No 2) 1994 (1994 No 82).

Section 66(1): amended, on 17 September 2008, by section 5 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

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.

(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.

(3) Until the company has fully performed a contract referred to in subsection (1), 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

Heading: inserted, on 1 July 1994, by section 3 of the Companies Act 1993 Amendment Act (No 2) 1994 (1994 No 82).

67A Company may hold its own shares

(1) Shares acquired by a company pursuant to section 59 or sections 112 to 112C shall not be deemed to be cancelled under section 66(1) 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% of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under section 66(1).

(2) Shares acquired by a company pursuant to section 59 or sections 112 to 112C 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) 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.

Section 67A: inserted, on 1 July 1994, by section 3 of the Companies Act 1993 Amendment Act (No 2) 1994 (1994 No 82).

Section 67A(1): amended, on 17 September 2008, by section 6 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Section 67A(2): amended, on 17 September 2008, by section 6 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

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 shall not be exercised by or against a company while it holds the share.

(2) Without limiting subsection (1), while a company holds a share in itself pursuant to section 67A, 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.

Section 67B: inserted, on 1 July 1994, by section 3 of the Companies Act 1993 Amendment Act (No 2) 1994 (1994 No 82).

67C Reissue of shares company holds in itself

(1) Subject to subsection (2), section 47 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.

(2) Section 47(2) 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 376 of the Financial Markets Conduct Act 2013.

(3) Subject to subsection (1), 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 must not grant an option to acquire a share it holds in itself or enter into any obligations to transfer such a share if—

(a) the company has received notice in writing of a takeover offer made under the Takeovers Code in force under the Takeovers Act 1993; or

(b) in the case of shares that are quoted on a stock exchange, the stock exchange makes a public release that a takeover offer for more than 20% of the quoted shares is to be made.

Section 67C: inserted, on 1 July 1994, by section 3 of the Companies Act 1993 Amendment Act (No 2) 1994 (1994 No 82).

Section 67C(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 67C(4): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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: replaced, on 3 June 1998, by section 2 of the 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 1 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.

(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 directors' conclusions.

(4) The directors who vote in favour of a resolution required by subsection (2) must sign a certificate as to the matters set out in that subsection and may com-

bine it with the certificate required by section 70 and any certificate required by section 71.

(5) A company must not exercise an option to redeem shares under subsection (1) 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

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.

(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) 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, 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(5) The provisions of section 56 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) 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) 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) if, after the passing of a resolution under subsection (1) 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), the company must send to each shareholder a disclosure document that complies with section 72.

(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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(9) If a company fails to comply with subsection (5),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

72 Disclosure document

For the purposes of section 71, 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, 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 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.

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; but

(b) is deemed to be a distribution for the purposes of subsections (1) and (5) of section 56.

Section 74(1)(c): amended, on 15 April 2004, by section 4 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

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; but

(b) is deemed to be a distribution for the purposes of subsections (1) and (5) of section 56.

Section 75(1)(c): amended, on 30 June 1997, by section 5 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

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); and—

(a) all shareholders have consented in writing to the giving of the assistance; or

(b) the procedure set out in section 78 is followed; or

(c) the financial assistance is given in accordance with section 80.

(2) A company may give financial assistance under subsection (1) 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) 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 and any certificate required under section 78.

(5) A company must not give financial assistance under subsection (1) if, after the passing of a resolution under subsection (2) 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

77 Company must satisfy solvency test

(1) A company must not give any financial assistance under section 76 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) 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(5) The provisions of section 56 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) in the form of loans; and

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 107(1)(e).

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

Section 77(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 77(6): replaced, on 1 July 1994, by section 12 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 77(6) **assets**: amended, on 15 April 2004, by section 5(a) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 77(6) **liabilities**: amended, on 15 April 2004, by section 5(b) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 77(7): inserted, on 1 July 1994, by section 12 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

78 Special financial assistance

(1) Financial assistance may be given under section 76(1)(b) 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) 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) if, after the passing of a resolution under subsection (1) 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), the company must send to each shareholder a disclosure document that complies with section 79.

(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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

(9) If a company fails to comply with subsection (5),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

79 Disclosure document

For the purposes of section 78, 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), 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% of shareholders' funds

(1) Financial assistance may be given under section 76(1)(c), 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% of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the relevant statements or records, 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 a notice containing the particulars set out in subsection (1B) to—

(i) the licensed market operator of each licensed market on which the shares of the company are quoted; or

(ii) each shareholder of the company, if the shares of the company are not quoted on any licensed market.

(1A) In subsection (1), **relevant statements or records** means—

(a) financial statements of the company prepared for the most recently completed accounting period in accordance with generally accepted accounting practice; or

(b) if those financial statements have not been prepared, the accounting records of the company.

(1B) The particulars referred to in subsection (1)(b) are as follows:

(a) the class and number of shares in respect of which the financial assistance has been provided:

(b) the consideration paid or payable for the shares in respect of which the financial assistance has been provided:

(c) 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:

(d) the nature and, if quantifiable, the amount of the financial assistance.

(1C) The licensed market operator must ensure that the notice under subsection (1)(b)(i) is notified in accordance with its arrangements for notifying disclosures made to it (*see* section 314 of the Financial Markets Conduct Act 2013).

(2) If a company fails to comply with subsection (1)(b),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 80(1)(a): amended, on 1 April 2014, by section 26(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 80(1)(b): replaced, on 30 May 2017, by section 17(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 80(1A): inserted, on 1 April 2014, by section 26(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 80(1B): inserted, on 30 May 2017, by section 17(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 80(1C): inserted, on 30 May 2017, by section 17(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

81 Enforceability of transactions

(1) Failure to comply with section 76 or section 78 or section 79 or section 80 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), 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), 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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalties set out in section 374(1).

Section 83(2)(d): replaced, on 30 June 1997, by section 6 of the 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).

(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), 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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

85 Transfer of shares under approved system

(1) Where shares in a company are transferred under a system of transfer approved under section 376 of the Financial Markets Conduct Act 2013, 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 376 of the Financial Markets Conduct Act 2013 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.

(1A) If shares in a company are transferred in accordance with the rules of a designated settlement system, the company may refuse to complete or delay the registration of the transfer of the shares if—

(a) the board of the company resolves, within 30 working days of the date on which the settlement was effected, 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) this Act or the constitution of the company expressly permits the board to refuse or delay registration for the reasons stated.

(2) Subject to subsections (1) and (1A), 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 effected in accordance with the rules of a designated settlement system, or under a system approved under section 376 of the Financial Markets Conduct Act 2013,—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 85(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 85(1)(c): replaced, on 3 May 2001, by section 5 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 85(1)(c)(ii): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 85(1A): inserted, on 24 November 2009, by section 17(1) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 85(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 85(2): amended, on 24 November 2009, by section 17(2)(a) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 85(2): amended, on 24 November 2009, by section 17(2)(b) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and

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

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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and

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

89 Share register as evidence of legal title

(1) Subject to section 91, 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.

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

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, 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, 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, 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, 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.

Ultimate holding company

Heading: inserted, on 1 May 2015, by section 11 of the Companies Amendment Act 2014 (2014 No 46).

94A Meaning of ultimate holding company information

For the purposes of this Act, **ultimate holding company information** means information about whether a company has an ultimate holding company and, if the company does, the following information:

(a) the name of the ultimate holding company:

(b) the ultimate holding company's country of registration:

(c) the ultimate holding company's registration number or code (if any):

(d) the registered office of the ultimate holding company:

(e) any other prescribed information.

Section 94A: inserted, on 1 May 2015, by section 11 of the Companies Amendment Act 2014 (2014 No 46).

94B Notice of ultimate holding company changes

(1) The board of a company must ensure that notice (in the form and manner required by the Registrar) of any changes in the company's ultimate holding company information is delivered to the Registrar for registration.

(2) A notice under subsection (1) must—

(a) specify the date of the change; and

(b) include the new ultimate holding company information; and

(c) be delivered to the Registrar within 20 working days of the date of the change.

(3) If a 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).

Section 94B: inserted, on 1 May 2015, by section 11 of the Companies Amendment Act 2014 (2014 No 46).

Share certificates

95 Share certificates

(1) Subject to subsection (2), 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 subsections (1) or (5) applies in relation to a company the shares in which can be transferred in accordance with the rules of a designated settlement system, or under a system approved under section 376 of the Financial Markets Conduct Act 2013, 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) 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), 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, 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), 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 100 of the Financial Markets Conduct Act 2013.

(7) If a company fails to comply with subsection (1) or subsection (4),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 95(2): replaced, on 24 November 2009, by section 18 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 95(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 95(6A): inserted, on 1 July 1994, by section 13 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 95(6A): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Debentures

Heading: inserted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

95A Perpetual debentures

(1) A term that is expressed in a debenture or in a deed securing a debenture, issued or executed by a company, is not invalid by reason only that it provides that the debenture is—

(a) irredeemable; or

(b) redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

(2) This section applies despite anything to the contrary in section 97 of the Property Law Act 2007 or in any rule of law or equity.

Compare: 1952 No 51 s 151B

Section 95A: inserted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

95B Power to reissue redeemed debentures in certain cases

(1) A company that has redeemed debentures previously issued by it may—

(a) reissue the debentures; or

(b) issue other debentures in their place.

(2) Subsection (1) applies—

(a) whether the debentures were redeemed before, on, or after 1 January 2008:

(b) unless—

(i) the company's constitution or a contract entered into by the company contains a provision (whether express or implied) to the contrary; or

(ii) the company has, by passing a resolution or by some other act, indicated its intention that the debentures are cancelled.

(3) On a reissue of redeemed debentures or of other debentures in their place, the debentures are to be treated as having, and as always having had, the same priority as the redeemed debentures.

(4) Debentures of a company deposited to secure advances from time to time (whether on current account or otherwise) are not to be treated as redeemed because the company's account ceases to be in debit while the debentures are deposited.

(5) Subsection (4) applies whether the debentures were deposited before, on, or after 1 January 2008.

(6) The reissue of a debenture or the issue of another debenture in its place under this section (whether before, on, or after 1 January 2008)—

(a) is to be treated as the issue of a new debenture for the purposes of stamp duty payable (if any); but

(b) is not to be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued.

Compare: 1952 No 51 s 151C

Section 95B: inserted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

95C Specific performance of contracts to subscribe for debentures

(1) A court may order the specific performance of a contract with a company to take up and pay for any debentures of the company.

(2) The court must not refuse to order the specific performance of a contract of that kind on the ground that the contract is one to lend money.

Compare: 1952 No 51 s 151D

Section 95C: inserted, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

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 1 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 that arises by reason of section 126(2):

(d) any liability to repay a distribution received by the shareholder to the extent that the distribution is recoverable under section 56:

(e) any liability under section 100.

(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) for any debt or liability of the company contracted after ceasing to be a shareholder.

(3) Subsections (1) and (2) 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) 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 inclu-

ded a reference to a person who was a member of the company before reregistration.

(6) For the purposes of subsection (1), **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.

Section 98(6)(a): replaced, on 26 April 1999, by section 2(1) of the Companies Amendment Act 1999 (1999 No 19).

Section 98(6)(b): amended, on 26 April 1999, by section 2(2)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 98(6)(b): amended, on 3 June 1998, by section 3 of the Companies Amendment Act 1998 (1998 No 31).

Section 98(6)(c): inserted, on 3 June 1998, by section 3 of the Companies Amendment Act 1998 (1998 No 31).

Section 98(6)(c): amended, on 26 April 1999, by section 2(2)(b) of the Companies Amendment Act 1999 (1999 No 19).

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).

(2) A person is liable under subsection (1) 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) is reduced by an amount received by that person as a distribution under section 57 and recovered from that person by the company.

(4) The amount received by a person as a distribution under section 57 is reduced by any amount recovered from that person pursuant to subsection (1).

(5) For the purposes of this section,—

(a) the term **company** includes an amalgamating company which amalgamated with 1 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 2006.

Section 103(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

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; or

(b) by a resolution in lieu of a meeting pursuant to section 122.

(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; or

(b) by a resolution in lieu of a meeting pursuant to section 122.

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:

(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) can be rescinded only by a special resolution.

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

107 Unanimous assent to certain types of action

(1) Notwithstanding section 52 but subject to section 108, if all entitled persons have agreed or concur,—

(a) a dividend may be authorised otherwise than in accordance with section 53:

(b) a discount scheme may be approved otherwise than in accordance with section 55:

(c) shares in a company may be acquired otherwise than in accordance with sections 59 to 65:

(d) shares in a company may be redeemed otherwise than in accordance with sections 69 to 72:

(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:

(f) any of the matters referred to in section 161(1) 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.

(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 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) 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), 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), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 107(1)(c): amended, on 3 May 2001, by section 7 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

108 Company to satisfy solvency test

(1) A power referred to in subsection (1) of section 107 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) 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 apply in relation to the exercise of a power referred to in subsection (1) of section 107, with such modifications as may be necessary.

(5) In applying the solvency test for the purposes of section 107(1)(e),—

(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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

Section 108(5)(a): amended, on 15 April 2004, by section 6(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 108(5)(b): amended, on 15 April 2004, by section 6(2) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 108(5A): inserted, on 30 June 1997, by section 7 of the 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) is not binding on the board.

Section 109(2): amended, on 15 April 2004, by section 7(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 109(2A): inserted, on 15 April 2004, by section 7(2) of the 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 1 or more of the powers set out in—

(i) section 106(1)(a), and the proposed alteration imposes or removes a restriction on the activities of the company; or

(ii) section 106(1)(b) or (c); and

(b) the shareholders resolved, pursuant to section 106, 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, the shareholder did not sign the resolution,—

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

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 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, 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), 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; or

(d) arrange, before taking the action concerned, for the resolution to be rescinded in accordance with section 106 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 Price for shares to be purchased by company determined

(1) Within 5 working days of giving notice under section 111(2)(e) that the board agrees to the purchase of shares by the company, the board must give to the holder of the shares written notice of—

(a) the price it offers to pay for those shares; and

(b) how—

(i) the matters in subsection (2) were calculated; or

(ii) the price was calculated under subsection (3) and why calculating the price using the methodology set out in paragraphs (a) to (c) of subsection (2) would be clearly unfair.

(2) That price must be a fair and reasonable price (as at the close of business on the day before the date on which the resolution was passed) for the shares held by the shareholder, calculated as follows:

(a) first, the fair and reasonable value of the total shares in each class to which the shares belong must be calculated (the **class value**):

(b) secondly, each class value must be adjusted to exclude any fluctuation (whether positive or negative) in the class value that has occurred (whether before or after the resolution was passed) that was due to, or in expectation of, the event proposed or authorised by the resolution:

(c) thirdly, a portion of each adjusted class value must be allocated to the shareholder in proportion to the number of shares he, she, or it holds in the relevant class.

(3) However, a different methodology from that set out in paragraphs (a) to (c) of subsection (2) may be used to calculate the fair and reasonable price for the shares if using the methodology set out in those paragraphs would be clearly unfair to the shareholder or the company.

(4) The shareholder may object to the price offered by the board for the shares by giving written notice to the company no later than 10 working days after the date on which the board gave written notice to the shareholder under subsection (1).

(5) If the company does not receive an objection to the price in accordance with subsection (4), the company must purchase all the shares at the nominated price no later than 10 working days after—

(a) the date on which the board's offer under subsection (1) is accepted; or

(b) if the board has not received an acceptance, the date that is 10 working days after the date on which the board gave written notice to the shareholder under subsection (1).

(6) The time periods in subsection (5) do not apply if there is a written agreement between the board and the shareholder that specifically sets a different date for purchase of the shares.

(7) In this section, **resolution** means the resolution referred to in section 110 or 118 that, due to it having been passed, entitles the shareholder to require the company to purchase the shareholder's shares in accordance with section 111.

Section 112: replaced, on 17 September 2008, by section 7 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

112A Price for shares referred to arbitration if shareholder objects to price

(1) If a company receives an objection to the price offered for shares in accordance with section 112(4),—

(a) the following issues must be submitted to arbitration:

(i) the fair and reasonable price for the shares, on the basis set out in section 112(2) and (3); and

(ii) the remedies available to the holder of the shares or the company in respect of any price for the shares that differs from that determined by the board under section 112; and

(b) the company must, within 5 working days of receiving the objection, pay to the shareholder a provisional price in respect of each share equal to the price offered by the board under section 112(1).

(2) If the price determined for the shares—

(a) exceeds the provisional price paid, the arbitral tribunal must order the company to pay the balance owing to the shareholder:

(b) is less than the provisional price paid, the arbitral tribunal must order the shareholder to pay the excess to the company.

(3) Except in exceptional circumstances, an arbitral tribunal must award interest on any balance owing or excess to be paid under subsection (2).

(4) If a balance is owing to the shareholder, an arbitral tribunal may award to the shareholder, in addition to or instead of an award of interest, damages for loss attributable to the shortfall in the initial payment.

(5) Any sum that must be paid in accordance with this section must be paid no later than 10 days after the date of the arbitral tribunal's determination, unless the arbitral tribunal specifically orders otherwise.

(6) A submission to arbitration under this section is an arbitration agreement for the purposes of the Arbitration Act 1996, and the provisions of that Act apply accordingly.

(7) Clause 6 of Schedule 2 of the Arbitration Act 1996 may not be excluded from the arbitration agreement, and the term **costs and expenses of an arbitration** in that clause includes, where a balance is owing to the shareholder,—

(a) the reasonable legal costs of the shareholder on a solicitor-and-client basis; and

(b) the reasonable costs of expert witnesses.

Section 112A: inserted, on 17 September 2008, by section 7 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

112B Interest payable on outstanding payments

(1) If a sum that must be paid under section 112 or 112A (the **initial amount**) is outstanding after it falls due under that section,—

(a) in the case of a share price determined under section 112, interest is payable from the date on which the initial amount falls due until the date of payment of the initial amount (and for this purpose the interest must be calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016):

(b) in the case of a share price determined under section 112A, interest is payable on the basis and at the rate that the arbitral tribunal thinks fit having regard to all of the circumstances.

(2) The sum on which interest is payable under subsection (1)(b) includes any interest or damages for loss awarded under section 112A.

Section 112B: inserted, on 17 September 2008, by section 7 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Section 112B(1): replaced, on 1 January 2018, by section 29 of the Interest on Money Claims Act 2016 (2016 No 51).

Section 112B(2): amended, on 31 August 2012, by section 5(2) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

112C Timing of transfer of shares

(1) On the day on which a board gives notice under section 111(2)(e) that the board agrees to the purchase of shares by the company,—

(a) the legal title to those shares passes to the company; and

(b) the rights of the shareholder in relation to those shares end.

(2) However, for the purposes of sections 112 and 112A, **shareholder** and **holder of the shares** means the person who held the legal title to the shares immediately before the board gave notice under section 111(2)(e) that the board agrees to the purchase of those shares by the company.

(3) Subsection (2) applies despite subsection (1).

Section 112C: inserted, on 17 September 2008, by section 7 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

113 Purchase of shares by third party

(1) Sections 112 to 112C apply 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) 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.

Section 113(1): amended, on 17 September 2008, by section 8 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

114 Court may grant exemption

(1) A company to which a notice has been given under section 111 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) on either of the grounds set out in paragraph (a) or paragraph (b) of subsection (1) 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).

115 Court may grant exemption if company insolvent

(1) If—

(a) a notice is given to a company under section 111; 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),—

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), 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),—

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).

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), who comprise the holders of 1 or more classes of shares in the company.

(2) For the purposes of this Act and the definition of the term interest group,—

(a) 1 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), 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:

(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), 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 or under the constitution of the company.

Section 117(3)(b): amended, on 1 July 1994, by section 14 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

118 Shareholder may require company to purchase shares

Where—

(a) an interest group has, under section 117, 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, 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.

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.

Meetings of shareholders

120 Annual meeting of shareholders

(1) The board of a company must call an annual meeting of shareholders to be held—

(a) not later than 6 months after the balance date of the company; and

(b) not later than 15 months after the previous annual meeting.

(2) However, a company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months after its registration.

(3) *[Repealed]*

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

(5) However, it is not necessary for the board of a company to call, or for a company to hold, an annual meeting of shareholders under this section if—

(a) there is nothing required to be done at that meeting; and

(b) the board has resolved that it is in the interests of the company to rely on this subsection (having regard to whether there is any particular issue that the shareholders should be given an opportunity to discuss, comment on, or ask questions about); and

(c) the constitution of the company does not require the meeting to be called or held.

(6) Subsections (1) to (4) are subject to subsection (5).

Section 120: replaced, on 2 September 1996, by section 3(1) of the Companies Act 1993 Amendment Act 1996 (1996 No 115).

Section 120(1): replaced, on 1 April 2014, by section 27 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 120(2): replaced, on 1 April 2014, by section 27 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 120(3): repealed, on 1 April 2014, by section 27 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 120(5): inserted, on 30 May 2017, by section 18 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 120(6): inserted, on 30 May 2017, by section 18 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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% 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) 75%; 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)—

is made in accordance with this Act or the constitution of the company.

(3) For the purposes of subsection (2)(b), the shareholders are,—

(a) in the case of a resolution under section 207I or 207J, the shareholders who together hold not less than 95% of the votes entitled to be cast on the resolution:

(b) in any other case, the shareholders referred to in subsection (1).

(3A) Any resolution in writing under this section may consist of 1 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 1 or more of the shareholders specified in subsection (3).

(4) It is not necessary for the board of a company to call, or for a company to hold, an annual meeting of shareholders under section 120 if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subsections (2) and (3).

(4A) Section 120(5) does not limit subsection (4).

(5) Within 5 working days of a resolution being passed under this section, the company must send to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed,—

(a) a copy of the resolution; and

(b) if the resolution was a special resolution required by section 106(1)(a) or (b), a statement setting out the rights of shareholders under section 110.

(6) A resolution may be signed under subsection (1) or subsection (2) without any prior notice being given to shareholders.

(7) If a company fails to comply with subsection (5),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1):

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Section 122(1): replaced, on 30 June 1997, by section 8(1) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 122(3)(a): replaced, on 1 April 2014, by section 28 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 122(3A): inserted, on 30 June 1997, by section 8(2) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 122(3A): amended, on 3 May 2001, by section 8 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 122(4): replaced, on 30 May 2017, by section 19 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 122(4A): inserted, on 30 May 2017, by section 19 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 122(5): replaced, on 17 September 2008, by section 9 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

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 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; 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) 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) that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

Section 125(1)(c): replaced, on 30 June 1997, by section 9(1) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 125(1)(e): replaced, on 30 June 1997, by section 9(2) of the 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, 291A to 293, 298, 299, 301, 318(1)(bb), 383, 385, 385AA, 386A to 386F, and clause 3(4)(b) of Schedule 7,—

(i) a person in accordance with whose directions or instructions a person referred to in paragraph (a) 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, 291A to 293, 298, 299, 301, 318(1)(bb), 383, 385, 385AA, 386A to 386F, and clause 3(4)(b) 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 3(4)(b) of Schedule 7, a person in accordance with whose directions or instructions a person referred to in paragraphs (a) to (c) 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.

(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.

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

Section 126(1)(b): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 126(1)(b): amended, on 1 May 2015, by section 37(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 126(1)(b): amended, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 126(1)(b): amended, on 1 November 2007, by section 36(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 126(1)(b): amended, on 29 May 2004, by section 3(1) of the Companies Amendment Act 2004 (2004 No 10).

Section 126(1)(b): amended, on 3 May 2001, by section 9 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 126(1)(c): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 126(1)(c): amended, on 1 May 2015, by section 37(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 126(1)(c): amended, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 126(1)(c): amended, on 1 November 2007, by section 36(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 126(1)(c): amended, on 29 May 2004, by section 3(2) of the Companies Amendment Act 2004 (2004 No 10).

Section 126(1)(c): amended, on 3 May 2001, by section 9 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 126(1)(d): amended, on 1 November 2007, by section 36(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 126(1)(d): amended, on 29 May 2004, by section 3(3) of the Companies Amendment Act 2004 (2004 No 10).

Section 126(1A): inserted, on 1 July 1994, by section 16 of the 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 1 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) 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.

(2A) Nothing in paragraph (b) or paragraph (c) of the definition of the term major transaction in subsection (2) 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.

Section 129(2) **major transaction**: replaced, on 1 July 1994, by section 17(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 129(2) **major transaction** paragraph (c): amended, on 15 April 2004, by section 8(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 129(2A): inserted, on 1 July 1994, by section 17(2) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 129(2A): amended, on 3 May 2001, by section 10 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 129(2A): amended, on 30 June 1997, by section 10 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 129(2B): inserted, on 15 April 2004, by section 8(2) of the 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 1 or more of its powers other than its powers under any of the sections of this Act set out in Schedule 2.

(2) A board that delegates a power under subsection (1) 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.

Section 131(4): amended, on 30 June 1997, by section 11 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

132 Exercise of powers in relation to employees

(1) Nothing in section 131 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),—

company includes a subsidiary of a company

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.

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), 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) 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.

138A Offence for serious breach of director's duty to act in good faith and in best interests of company

(1) A director of a company commits an offence if the director exercises powers or performs duties as a director of the company—

(a) in bad faith towards the company and believing that the conduct is not in the best interests of the company; and

(b) knowing that the conduct will cause serious loss to the company.

(2) However, a director does not commit an offence under subsection (1) if the power or duty in question is exercised or performed under any of section 131(2) to (4) or is a power exercised under section 132.

(3) A person who commits an offence under this section is liable on conviction to the penalties set out in section 373(4).

Section 138A: inserted, on 3 July 2014, by section 4 of the Companies Amendment Act 2014 (2014 No 46).

138B Safe harbour for directors relating to effects of COVID-19

(1) The provisions of Schedule 12 have effect according to their terms.

(2) This section and Schedule 12 are repealed on the close of 31 May 2022.

Section 138B: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Transactions involving self-interest

139 Meaning of interested

(1) Subject to subsection (2), 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.

Section 139(1)(d): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

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 1 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), 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) 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) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Compare: 1955 No 63 s 199

Section 140(1A): inserted, on 30 June 1997, by section 12 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 140(2): amended, on 3 May 2001, by section 11 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

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), 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 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) acquired the property from the company.

143 Application of sections 140 and 141 in certain cases

Nothing in section 140 and section 141 applies in relation to—

(a) remuneration or any other benefit given to a director in accordance with section 161; or

(b) an indemnity given or insurance provided in accordance with section 162.

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); or

(d) in complying with section 140.

(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, 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) 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% 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% or more of the shares of that person; or

(d) a director of the company has the power to acquire or dispose of 20% 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% 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), 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) 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.

Section 146(2): amended, on 30 June 1997, by section 13 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

147 Relevant interests to be disregarded in certain cases

(1) For the purposes of section 148, 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 is authorised to undertake trading activities on a licensed market and 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 carrying out those trading activities; 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 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), 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.

Section 147(1)(b): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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) 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) 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 financial products issued by the company or a related company, the director may acquire or dispose of those shares or financial products 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 financial products; 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 financial products.

(2) For the purposes of subsection (1), the fair value of shares or financial products is to be determined on the basis of all information known to the director or publicly available at the time.

(3) Subsection (1) does not apply in relation to a share or financial product 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 financial products in contravention of subsection (1)(a), the director is liable to the person from whom the shares or financial products were acquired for the amount by which the fair value of the shares or financial products exceeds the amount paid by the director.

(5) Where a director disposes of shares or financial products in contravention of subsection (1)(b), the director is liable to the person to whom the shares or financial products were disposed of for the amount by which the consideration received by the director exceeds the fair value of the shares or financial products.

(6) Nothing in this section applies to financial products that are quoted on a licensed market.

Section 149(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(1)(a): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(1)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(4): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(5): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 149(6): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Appointment and removal of directors

150 Number of directors

A company must have 1 or more directors (*see* section 10(d)).

Section 150: amended, on 1 May 2015, by section 12 of the Companies Amendment Act 2014 (2014 No 46).

151 Qualifications of directors

(1) A natural person who is not disqualified by subsection (2) 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:

(baa) a person who is prohibited from being a director of a company under section 299(1)(b) of the Insolvency Act 2006:

(bab) a person who is prohibited from directly or indirectly being concerned, or taking part, in the management of a company under section 299(1)(c) of the Insolvency Act 2006:

(ba) *[Repealed]*

(c) *[Repealed]*

(d) *[Repealed]*

(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, 383, 385, or 385AA:

(eaa) a person who is prohibited from being a general partner or promoter of, or being concerned or taking part in the management of, a limited partnership under section 103A, 103B, 103D, or 103E of the Limited Partnerships Act 2008:

(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 Financial Markets Conduct Act 2013 or the Takeovers Act 1993:

(eab) in the case of a company that is an employer, a person who is prohibited from being an officer of an employer under sections 142M and 142N(1)(b) of the Employment Relations Act 2000:

(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:

(ec) 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 general partner of an overseas limited partnership:

(ii) being a promoter of an overseas limited partnership:

(iii) being concerned or taking part in the management of an overseas limited partnership:

(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.

Section 151(2)(baa): inserted, on 13 January 2020, by section 6 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 151(2)(bab): inserted, on 13 January 2020, by section 6 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 151(2)(ba): repealed, on 5 December 2013, by section 7 of the Companies Amendment Act 2013 (2013 No 111).

Section 151(2)(c): repealed, on 5 December 2013, by section 7 of the Companies Amendment Act 2013 (2013 No 111).

Section 151(2)(d): repealed, on 5 December 2013, by section 7 of the Companies Amendment Act 2013 (2013 No 111).

Section 151(2)(e): amended, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 151(2)(eaa): inserted, on 1 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 151(2)(ea): inserted, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 151(2)(ea): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 151(2)(eab): inserted, on 1 April 2016, by section 39 of the Employment Relations Amendment Act 2016 (2016 No 9).

Section 151(2)(eb): inserted, on 18 June 2007, by section 5(1) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 151(2)(ec): inserted, on 1 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

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: amended, on 1 July 1994, by section 19 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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 1 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 1 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) is void even though the moving of it was not objected to at the time.

(3) Subsection (2) does not limit the operation of section 158.

(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).

(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); 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; 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) must—

(a) specify the date of the change; and

(b) include, in relation to every person who is a director of the company from the date of the notice, the information required by section 12(2)(b)(i) to (iii); 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; 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).

Section 159(2)(b): replaced, on 1 May 2015, by section 13 of the Companies Amendment Act 2014 (2014 No 46).

Miscellaneous provisions relating to directors

160 Proceedings of board

Subject to the constitution of a company, the provisions set out in Schedule 3 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),—

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) 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) 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) applies and either—

(a) the provisions of subsections (1) and (4) have not been complied with; or

(b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (4),—

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) applies and either—

(a) the provisions of subsections (1) and (4) have not been complied with; or

(b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (4),—

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 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) 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) have not been complied with; or

(b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (6),—

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.

Section 162(5)(c): replaced, on 3 June 1998, by section 5 of the Companies Amendment Act 1998 (1998 No 31).

Part 9
Enforcement

163 Interpretation

In this Part, 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 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), 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), make, as an interim order, any order that it is empowered to make under that subsection.

Section 164(1): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Derivative actions

165 Derivative actions

(1) Subject to subsection (3), 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), 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), 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 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, 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, 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, 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) 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), the duties of directors set out in—

(a) section 90 (which relates to the duty to supervise the share register); and

(b) section 140 (which relates to the duty to disclose interests); and

(c) section 148 (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 (which relates to the duty of directors to act in good faith and in the best interests of the company); and

(e) section 133 (which relates to the duty to exercise powers for a proper purpose); and

(f) section 135 (which relates to reckless trading); and

(g) section 136 (which relates to the duty not to agree to a company incurring certain obligations); and

(h) section 137 (which relates to a director's duty of care); and

(i) section 145 (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, 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 and, on making the order, the court may grant such other consequential relief as it thinks fit.

Section 170: amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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, 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 and, on making the order, the court may grant such other consequential relief as it thinks fit.

Section 172: amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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) 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:

(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% 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.

176 Alteration to constitution

(1) Notwithstanding anything in this Act, but subject to the order, where the court makes an order under section 174 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 has the same effect as if it had been made by the shareholders of the company pursuant to section 32 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 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), every director of the company commits an offence and is liable, on conviction, to the penalty set out in section 374(2).

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) 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), 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,—

make an order requiring the company to supply the information.

(8) Where the court makes an order under subsection (7), 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) 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) 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) 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).

(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) commits an offence, and is liable on conviction to the penalty set out in section 373(2).

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) 2 or more directors of the company; or

(ii) if there is only 1 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) 1 or more attorneys appointed by the company in accordance with section 181:

(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) 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.

Section 180(1A): replaced, on 30 June 1997, by section 14 of the 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), 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) Sections 19 to 21 of the Property Law Act 2007 apply, with all 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 kept for the purposes of this Act of the company was an event revoking the power of attorney within the meaning of those sections.

Section 181(3): replaced, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Pre-incorporation contracts

182 Pre-incorporation contracts may be ratified

(1) In this section and in sections 183 to 185, 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.

(5) Despite subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, if a pre-incorporation contract has not been ratified by a company, or validated by the court under section 184, 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

Section 182(5): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

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) 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), the liability of a person under subsection (1) (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).

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 Court

(1) The District Court has jurisdiction to exercise any power conferred by sections 182 to 185 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 $350,000; or

(c) the parties agree, in accordance with section 81 of the District Court Act 2016, that the District Court has jurisdiction to determine the proceedings.

(2) For the purposes of sections 86 to 88 of the District Court Act 2016, an application made to the District Court under any of sections 182 to 185 is deemed to be a proceeding.

Section 185A: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Registered office

186 Registered office

(1) A company must always have a registered office in New Zealand.

(2) Subject to section 187, 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 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)

Section 186(3)(b): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

187 Change of registered office

(1) Subject to the company's constitution and to subsection (3), 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:

(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).

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

Company records

189 Company records

(1) Subject to subsection (3) and to section 88 and section 195, 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:

(h) copies of all financial statements and group financial statements required to be completed by this Act or any other enactment for the last 7 completed accounting periods of the company:

(i) the accounting records required by section 194 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) 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) may be kept at a place in New Zealand, notice of which is given to the Registrar in accordance with subsection (4).

(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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2):

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

Section 189(1)(b): amended, on 1 July 1994, by section 22(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 189(1)(d): amended, on 1 July 1994, by section 22(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 189(1)(e): amended, on 1 July 1994, by section 22(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 189(1)(g): amended, on 1 July 1994, by section 22(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 189(1)(h): replaced, on 1 April 2014, by section 29 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 189(1)(i): amended, on 1 July 1994, by section 22(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 189(2): amended, on 1 July 1994, by section 22(2) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 189(3): amended, on 1 July 1994, by section 22(3) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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), every director commits an offence and is liable on conviction to the penalty set out in section 374(2).

Compare: 1955 No 63 s 459(2); 1980 No 43 s 7(4)

191 Inspection of records by directors

(1) Subject to subsection (2), 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 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.

Section 192(4)(b): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

193 Change of address for service

(1) Subject to the company's constitution and to subsection (3), 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: inserted, on 15 April 2004, by section 9 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Part 11
Accounting records and financial reporting

Part 11: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 1—Accounting records

Subpart 1 heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

194 Accounting records must be kept

(1) The board of a company must ensure that there are kept at all times accounting records that—

(a) correctly record the transactions of the company; and

(b) will enable the company to ensure that the financial statements or group financial statements of the company comply with generally accepted accounting practice (if the company is required to prepare such statements under this Act or any other enactment); and

(c) will enable the financial statements or group financial statements of the company to be readily and properly audited (if those statements are required to be audited).

(1A) For the purpose of subsection (1), the transactions of the company include any transaction that constitutes an act of the type described in section 105C(3) of the Crimes Act 1961.

(2) The board of a company must establish and maintain a satisfactory system of control of its accounting records.

(3) The accounting records must be kept—

(a) in written form 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(3).

Section 194: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 194(1A): inserted, on 7 November 2015, by section 4 of the Companies Amendment Act 2015 (2015 No 97).

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 satisfy the following requirements are sent to, and kept at, a place in New Zealand:

(i) the accounts and returns must enable the preparation of the company's financial statements or group financial statements required by this Act or any other enactment; and

(ii) the accounts and returns must enable the preparation of any other document required by this Act; and

(b) notice of the place where the accounting records and the accounts and returns required under paragraph (a) are kept must be given to the Registrar.

(3) If a company fails to comply with subsection (2),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2):

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

Section 195: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 2—Financial reporting

Subpart 2 heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

196 Overview

(1) This subpart imposes financial reporting requirements on—

(a) every large company; and

(b) every large overseas company that carries on business in New Zealand; and

(c) every other company with 10 or more shareholders (unless the shareholders of the company opt out of compliance); and

(d) every other company with fewer than 10 shareholders if shareholders of the company holding at least 5% of the voting shares require the company to comply.

(2) This section is only a guide to the general scheme and effect of this subpart.

Section 196: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

197 Non-application of subpart if alternative financial reporting duties under financial markets legislation

This subpart does not apply to a company or an overseas company in relation to an accounting period if financial statements of the company or overseas company, or group financial statements of the group that comprises the com-

pany or overseas company and its subsidiaries, are required to be prepared for that period under subpart 3 of Part 7 of the Financial Markets Conduct Act 2013 or section 55 of the Financial Reporting Act 2013.

Section 197: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

198 Interpretation

In this subpart,—

group means a group comprising a company or an overseas company and its subsidiaries

large company means a company that is large under section 45 of the Financial Reporting Act 2013

large overseas company means a body corporate incorporated outside New Zealand that—

(a) carries on business in New Zealand within the meaning of section 332; and

(b) is large under section 45 of the Financial Reporting Act 2013

public entity has the same meaning as in section 5 of the Public Audit Act 2001

qualified auditor has the same meaning as in section 35 of the Financial Reporting Act 2013

subsidiary—

(a) means a subsidiary within the meaning of sections 5 to 8; and

(b) includes, except in section 207D, any entity that is classified as a subsidiary in any applicable financial reporting standard

voting share, in relation to a company, means a share in the company that confers a currently exercisable right to cast a vote at meetings of shareholders of the company, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

(a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the share is in arrears or some other default exists:

(b) on a proposal that affects rights attached to the share:

(c) during the liquidation of the company:

(d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company.

Section 198: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

199 Determining number of shareholders

(1) For the purposes of this subpart and section 208, the number of shareholders that a company has, in relation to an accounting period, is the number of shareholders that hold voting shares as at the close of the first day of the period.

(2) Joint holders of a parcel of shares must be counted as a single shareholder.

Example

ABC Limited has an accounting period of 1 April 2014 to 31 March 2015. ABC Limited is not large (*see* section 45 of the Financial Reporting Act 2013).

At the close of 1 April 2014, 16 shareholders hold ordinary voting shares. (The company also has 12 shareholders who hold non-voting preference shares, but non-voting shares are not relevant to the calculation under this section).

Two of those shareholders hold their parcel of ordinary voting shares jointly. These shareholders are counted as a single shareholder.

For the purposes of this subpart and section 208, ABC Limited has 15 shareholders in relation to the 1 April 2014 to 31 March 2015 period. This means that it must prepare financial statements, have those statements audited, and prepare an annual report unless it opts out of compliance under section 207I.

Section 199: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Preparation of financial statements

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

200 Application of preparation provisions

(1) Sections 201 and 202 apply to—

(a) every large company; and

(b) every company that is a public entity; and

(c) every large overseas company; and

(d) every other company with 10 or more shareholders unless the company has opted out of compliance with the provision in accordance with section 207I; and

(e) every other company with fewer than 10 shareholders if the company has opted into compliance with the provision in accordance with section 207K.

(2) However, section 201 does not apply to a company or an overseas company in relation to a balance date if the company or overseas company has, on that date, 1 or more subsidiaries (*see* section 202).

(3) Further, section 201 does not apply to a company or an overseas company (**A**) in relation to a balance date if,—

(a) on the balance date, A has no subsidiaries but is a subsidiary of a body corporate (**B**) that is—

(i) incorporated in New Zealand; or

(ii) registered or deemed to be registered under Part 18; and

(b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed in relation to the balance date under this Act or any other enactment; and

(c) A has not opted into compliance with section 201 as referred to in subsection (1)(e).

Section 200: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 200(3): inserted, on 30 May 2017, by section 20 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

201 Financial statements must be prepared

Every company or overseas company to which this section applies (**A**) must ensure that, within 5 months after the balance date of A, financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to A and that balance date; and

(b) dated and signed on behalf of A by 2 directors of A, or, if A has only 1 director, by that director.

Compare: 1993 No 106 ss 10(1), 11(1)

Section 201: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

202 Group financial statements must be prepared

(1) Every company or overseas company to which this section applies (**A**) that has, on the balance date of A, 1 or more subsidiaries must ensure that, within 5 months after that balance date, group financial statements that comply with generally accepted accounting practice are—

(a) completed in relation to that group and that balance date; and

(b) dated and signed on behalf of A by 2 directors of A, or, if A has only 1 director, by that director.

(2) Group financial statements are not required under subsection (1) in relation to a balance date if,—

(a) on the balance date, A is a subsidiary of a body corporate (**B**) that is—

(i) incorporated in New Zealand; or

(ii) registered or deemed to be registered under Part 18; and

(b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed in relation to that balance date under this Act or any other enactment; and

(c) A has not opted into compliance with this section as referred to in section 200(1)(e).

Compare: 1993 No 106 ss 13(1), 14(1)

Section 202: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 202(2): replaced, on 30 May 2017, by section 21 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

203 Recognition of financial reporting requirements of overseas countries

(1) Subsection (2) applies if the Registrar notifies an overseas company (**A**) that the Registrar is satisfied that—

(a) the financial statements of A comply with the requirements of the law in force in the country where A is incorporated or constituted; and

(b) those requirements are—

(i) substantially the same as those of this Act; or

(ii) sufficiently equivalent, in relation to the quality of financial reporting they achieve, to the requirements of this Act.

(2) The financial statements must be treated as complying with generally accepted accounting practice.

(3) Subsection (4) applies if the Registrar notifies an overseas company (**A**) that the Registrar is satisfied that—

(a) the group financial statements of the group that comprises A and its subsidiaries comply with the law in force in the country where A is incorporated or constituted; and

(b) those requirements are—

(i) substantially the same as those of this Act; or

(ii) sufficiently equivalent, in relation to the quality of financial reporting they achieve, to the requirements of this Act.

(4) The group financial statements must be treated as complying with generally accepted accounting practice.

Compare: 1993 No 106 ss 11(3), 14(5)

Section 203: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 203(1): amended, on 30 May 2017, by section 22 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 203(3): amended, on 30 May 2017, by section 22 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

204 Financial statements for overseas company must include financial statements for large New Zealand business

(1) If an overseas company is required to prepare financial statements under section 201 and its New Zealand business is large, the financial statements that are

prepared must include, in addition to the financial statements of the overseas company, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand.

(2) If an overseas company is required to prepare group financial statements under section 202 and the group's New Zealand business is large, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group's New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand.

(3) In this section, the New Zealand business or the group's New Zealand business is **large** in respect of an accounting period if at least 1 of the following paragraphs applies (calculated as if that business were an entity):

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the business exceed $22 million:

(b) in each of the 2 preceding accounting periods, the total revenue of the business exceeds $11 million.

(4) A financial reporting standard (or a part of a standard) issued by the External Reporting Board that is expressed as applying for the purposes of subsection (3) must be applied in determining whether that provision applies.

(5) If an overseas company has been granted an exemption under section 207L from a requirement to prepare financial statements under section 201 or group financial statements under section 202, subsection (1) or (2) (as the case may be) still applies (except that the financial statements for the New Zealand business are not in addition to the financial statements of the overseas company or its group).

Compare: 1993 No 106 ss 8(2), 9(2)

Section 204: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 204(3)(a): amended, on 1 January 2022, by regulation 9(1) of the Financial Reporting (Inflation Adjustments) Regulations 2021 (LI 2021/307).

Section 204(3)(b): amended, on 1 January 2022, by regulation 9(2) of the Financial Reporting (Inflation Adjustments) Regulations 2021 (LI 2021/307).

205 Balance date of subsidiaries

(1) The board of a company or an overseas company that is required to comply with section 202 must ensure that, unless in the board's opinion there are good reasons against it, the balance date of each subsidiary of the company is the same as the balance date of the company.

(2) If the balance date of a subsidiary of a company or an overseas company referred to in subsection (1) is not the same as that of the company, the balance date of the subsidiary for the purposes of any particular group financial statements must be a date that precedes the balance date of the company.

Compare: 1993 No 106 s 7(7), (11)

Section 205: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Audit of financial statements

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

206 Application of audit requirement

(1) Section 207 applies to—

(a) every large company unless subsection (2) applies; and

(b) every company that is a public entity; and

(c) every large overseas company unless subsection (3) applies; and

(d) every company with 10 or more shareholders unless the company has opted out of compliance with that section in accordance with section 207I; and

(e) every company with fewer than 10 shareholders if the company has opted into compliance with the section in accordance with section 207K.

(2) Subsection (1)(a) does not apply to a large company (**A**) if A has opted out of compliance with section 207 in accordance with section 207J.

(3) Subsection (1)(c) does not apply to a large overseas company (**B**) in relation to a balance date if—

(a) financial statements or group financial statements are prepared in respect of B under section 201 or 202 in relation to the balance date; and

(b) section 204 does not apply to B in relation to the balance date; and

(c) under the law in force in the country where B is incorporated or constituted,—

(i) qualifying financial statements are required to be prepared in respect of B in relation to the balance date; but

(ii) the qualifying financial statements so prepared are not required to be audited.

(4) In subsection (3)(c), **qualifying financial statements** means financial statements that are equivalent, or substantially equivalent, to the financial statements or group financial statements referred to in subsection (3)(a).

Section 206: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 206(1)(c): replaced, on 30 May 2017, by section 23(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 206(2): replaced, on 30 May 2017, by section 23(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 206(3): inserted, on 30 May 2017, by section 23(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 206(4): inserted, on 30 May 2017, by section 23(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

207 Financial statements must be audited

(1) Every company or overseas company to which this section applies (**A**) must ensure that the financial statements or group financial statements prepared in respect of A under section 201, 202, or 204 (if any) are audited by a qualified auditor.

(2) *See* sections 37 to 39 of the Financial Reporting Act 2013 (which provide for the appointment of a partnership and access to information in relation to a company or an overseas company).

Section 207: replaced, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207A Audit must be carried out in accordance with auditing and assurance standards

(1) An auditor must, in carrying out an audit for the purposes of section 207, comply with all applicable auditing and assurance standards.

(2) Subsection (3) applies if the Registrar notifies a large overseas company (**A**) that the Registrar is satisfied that standards relating to auditing or assurance that are in force in the country where A is incorporated or constituted (the **overseas standards**) are—

(a) substantially the same as the applicable auditing and assurance standards referred to in subsection (1); or

(b) sufficiently equivalent, in relation to the quality of auditing they achieve, to the applicable auditing and assurance standards referred to in subsection (1).

(3) The auditor of A's financial statements or group financial statements may, in carrying out the audit of those statements and in preparing the auditor's report, comply with the overseas standards instead of the applicable auditing and assurance standards.

(4) This section does not apply to a company that is a public entity.

Section 207A: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207B Auditor must report to shareholders

(1) The auditor of a company must make a report to the shareholders on the financial statements or group financial statements audited by the auditor.

(2) The auditor's report must comply with the requirements of all applicable auditing and assurance standards.

(3) Subsection (2) is subject to section 207A(3).

Section 207B: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207C Auditor's report must be sent to Registrar and External Reporting Board if requirements have not been complied with

If the auditor's report indicates that the requirements of this Act have not been complied with, the auditor must, within 7 working days after signing the report, send a copy of the report and a copy of the financial statements or group financial statements to which it relates to the Registrar and the External Reporting Board.

Compare: 1993 No 106 s 16(2)

Section 207C: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Registration of financial statements of overseas companies and other companies with significant overseas ownership

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207D Application of registration provisions

(1) Section 207E applies to each of the following:

(a) every large overseas company:

(b) every large company in which shares that in aggregate carry the right to exercise or control the exercise of 25% or more of the voting power at a meeting of the company are held by—

(i) a subsidiary of a body corporate incorporated outside New Zealand; or

(ii) a body corporate incorporated outside New Zealand; or

(iii) a person not ordinarily resident in New Zealand.

(2) However, section 207E does not apply to a company or an overseas company (**A**) if the following requirements are satisfied:

(a) A is a subsidiary of a body corporate (**B**) that is—

(i) incorporated in New Zealand; or

(ii) registered or deemed to be registered under Part 18; and

(b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed and signed within the time specified in section 202; and

(c) a copy of the group financial statements referred to in paragraph (b) and a copy of the auditor's report on those statements are delivered for registration under this Act or for lodgement under another Act.

(3) For the purposes of subsection (1), 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, and has been living for the immediately preceding 12 months, is in New Zealand, whether or not that person has on occasions been away from New Zealand during that 12-month period.

Compare: 1993 No 106 s 19(1), (2)

Section 207D: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 207D(2)(a): replaced, on 30 May 2017, by section 24 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

207E Financial statements must be registered

(1) A company or an overseas company to which this section applies must ensure that, within 5 months after the balance date of the company or overseas company, copies of its financial statements or group financial statements completed in relation to that balance date under section 201, 202, or 204 (if any) together with a copy of the auditor's report on those statements (if any) are delivered to the Registrar for registration.

(2) The company or overseas company must, when the financial statements or group financial statements are registered, pay to the Registrar the prescribed registration fee (if any).

(3) Any person may, on payment of the prescribed fee (if any), inspect the copies of the financial statements, group financial statements, and auditor's report on those statements delivered to the Registrar under this section.

Compare: 1993 No 106 s 19(3)

Section 207E: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 207E(1): amended, on 30 May 2017, by section 25 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Shareholders may request copy of financial statements prepared for tax purposes

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207F Shareholders may request copy of financial statements prepared for tax purposes

(1) This section applies if—

(a) neither financial statements in relation to a company nor group financial statements in relation to a company's group are prepared under this Act or Part 7 of the Financial Markets Conduct Act 2013; but

(b) financial statements in relation to the company, or group financial statements in relation to its group, are prepared under, or for the purposes of, any of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994).

(2) A shareholder of the company may at any time make a written request to the company for a copy of the financial statements or group financial statements (or both) referred to in subsection (1)(b).

(3) The company must, within 10 working days of receiving a request under subsection (2), provide, free of charge, a copy of the financial statements or group financial statements (or both) to the shareholder together with a copy of the auditor's report on those statements (if any).

Section 207F: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Financial reporting offences

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207G Financial reporting offences

(1) This section applies if—

(a) a company or an overseas company is required to comply with section 201 and financial statements of the company or overseas company—

(i) are not completed and signed within the time specified in that section; or

(ii) fail to comply with an applicable financial reporting standard; or

(b) a company or an overseas company is required to comply with section 202 and group financial statements of a group comprising the company or overseas company and its subsidiaries—

(i) are not completed and signed within the time specified in that section; or

(ii) fail to comply with an applicable financial reporting standard; or

(c) an overseas company is required to comply with section 204 and the financial statements or group financial statements referred to in that section—

(i) are not completed and signed within 5 months after the balance date of the overseas company; or

(ii) fail to comply with an applicable financial reporting standard; or

(d) a company or an overseas company fails to comply with section 207 (which relates to auditing); or

(e) a company or an overseas company fails to comply with section 207E (which relates to registration of financial statements); or

(f) a company fails to comply with section 207F (which relates to the supply of copies of financial statements prepared for tax purposes).

(2) The company or overseas company commits an offence and is liable on conviction to a fine not exceeding $50,000.

(3) Every director of the company or overseas company commits an offence and is liable on conviction to the penalty set out in section 374(3).

(4) *See* section 376(2) (which provides defences to directors in respect of an offence under this section).

Compare: 1993 No 106 ss 36, 38, 39

Section 207G: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Provisions relating to opting out and opting in

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207H Period during which company may opt in or opt out

In sections 207I to 207K, the **opting period**, in relation to the accounting period referred to in section 207I(3), 207J(3), or 207K(2), is the period from the start of the accounting period until the close of the earliest of the following dates:

(a) the date that is 6 months after the start of the accounting period:

(b) the date of the annual meeting to be held in the accounting period:

(c) in the case of an accounting period that is shorter than 6 months (as a result of the date of the registration of the company or a change of the balance date of the company), the balance date of the period.

Section 207H: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207I Companies with 10 or more shareholders may opt out

(1) This section applies to a company with 10 or more shareholders.

(2) However, this section does not apply—

(a) if the constitution of the company expressly provides that this section does not apply; or

(b) if the company is a large company or a public entity.

(3) The shareholders of the company may, at a meeting of shareholders held within the opting period, opt out of compliance with 1 or more of the following provisions in relation to the accounting period by way of a resolution approved by not less than 95% of the votes of those shareholders entitled to vote and voting on the question:

(a) sections 201 and 202 (preparation of financial statements and group financial statements):

(b) section 207 (audit requirement):

(c) section 208 (obligation to prepare annual report).

(4) If the shareholders opt out of compliance with a provision in relation to an accounting period under this section, the provision does not apply to the company in relation to that period.

Example

ABC Limited has an accounting period of 1 April 2014 to 31 March 2015.

ABC Limited is not a large company in relation to that period (*see* section 45 of the Financial Reporting Act 2013).

Under section 199, it has 15 shareholders.

The opting period ends no later than the close of the date of the annual meeting to be held in that period. At the annual meeting, a resolution to opt out of the preparation provisions (sections 201 and 202) is passed by a 95% majority. Accordingly, ABC Limited does not have to prepare financial statements for that period (section 207, which relates to auditing, also does not apply because financial statements are not required to be prepared).

Section 207I: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207J Large companies may opt out of audit requirement

(1) This section applies to a large company.

(2) However, this section does not apply if—

(a) the constitution of the company expressly provides that this section does not apply; or

(b) the company is a public entity; or

(c) the company is required to register financial statements under section 207E.

(3) The shareholders of the company may, at a meeting of shareholders held within the opting period, opt out of compliance with section 207 in relation to the accounting period by way of a resolution approved by not less than 95% of the votes of those shareholders entitled to vote and voting on the question.

(4) If the shareholders opt out of compliance with section 207 in relation to an accounting period under this section, that section does not apply to the company in relation to that period.

Section 207J: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207K Companies with fewer than 10 shareholders may opt in

(1) This section applies to a company (other than a large company) with fewer than 10 shareholders.

(2) A shareholder of the company who holds, or shareholders of the company who together hold, not less than 5% of the voting shares may, by written notice given to the company within the opting period but not later than 5 working

days before the end of that period, require the company to comply with 1 or more of the following provisions in relation to the accounting period:

(a) section 201 or 202 (preparation of financial statements or group financial statements):

(b) section 207 (audit requirement):

(c) section 208 (obligation to prepare annual report).

(3) If a notice is given under subsection (2) in relation to a provision and an accounting period, the provision applies to the company in relation to that period.

Section 207K: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Registrar may grant exemptions to overseas companies

Heading: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207L Registrar may grant exemptions to overseas companies

(1) The Registrar may exempt any large overseas company, or any class of large overseas companies, from compliance with any provision of sections 201, 202, 207, and 207E.

(2) The Registrar must not grant an exemption under this section unless he or she is satisfied that—

(a) compliance with the relevant provision would require the overseas company to comply with requirements that are unduly onerous or burdensome; and

(b) financial reporting requirements must be complied with in relation to the overseas company under the law in force in the country where the overseas company is incorporated or constituted and that those requirements are satisfactory; and

(c) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.

(3) The exemption may be granted on any terms and conditions that the Registrar thinks fit.

(4) The Registrar may vary or revoke an exemption in the same way as an exemption may be granted under this section.

(5) An exemption under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(6) The Registrar's reasons for granting the exemption (including why it is appropriate) must be published with the exemption.

Compare: 1993 No 106 s 35B(1)–(3), (5)

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must: • publish it in the *Gazette* • comply with subsection (6)	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 207L: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 207L(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 207L(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 207L(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

207M Publication and status of exemptions

[Repealed]

Section 207M: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

207N Consultation

In deciding whether or not to grant, amend, or revoke an exemption under section 207L, the Registrar—

(a) may consult with any persons or organisations that the Registrar thinks fit; but

(b) must consult with the Commissioner of Inland Revenue if the exemption involves any provision of section 201 or 202.

Compare: 1993 No 106 s 35C

Section 207N: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207O Exemption may apply to accounting period before exemption is granted

An exemption under section 207L may, if the Registrar thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before financial statements or group financial statements for that period are required to be delivered for registration under section 207E.

Compare: 1993 No 106 s 35D

Section 207O: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 3—Miscellaneous auditing provisions

Subpart 3: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207P Auditor must be appointed if financial statements must be audited

(1) This section applies to a company in relation to an accounting period if financial statements or group financial statements of the company for that period are required to be audited under this Act, the Financial Markets Conduct Act 2013, or any other enactment.

(2) A company must, at the annual meeting held in the accounting period referred to in subsection (1), appoint a qualified 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 or group financial statements referred to in subsection (1).

(3) However, if a company is a public entity, the Auditor-General is its auditor in accordance with that Act and subsection (2) does not apply.

(4) 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.

Section 207P: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207Q Registrar may appoint auditor

(1) The Registrar may appoint an auditor if,—

(a) at an annual meeting of a company, no auditor is appointed or reappointed as required by section 207P; or

(b) a casual vacancy in the office of auditor is not filled within 1 month of the vacancy occurring and the company is required to comply with section 207P.

(2) 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 this section.

(3) If a company fails to comply with subsection (2),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and

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

Section 207Q: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207R Resignation and casual vacancy

(1) 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.

(2) If a company fails to comply with subsection (1),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and

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

(3) 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.

Section 207R: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 207R(2): replaced, on 11 September 2014, by section 59 of the Companies Amendment Act 2014 (2014 No 46).

207S Auditor's fees and expenses

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

(a) if the auditor is appointed at a meeting of the company, by the company at the meeting or in the manner that 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.

Section 207S: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207T Automatic reappointment

(1) An auditor of a company, other than an auditor appointed under section 207P(4), is automatically reappointed at an annual meeting of the company unless—

(a) the auditor is not a qualified auditor; or

(b) the company passes a resolution at the meeting appointing another person to replace him or her as auditor; or

(c) the company is not required to appoint an auditor at the meeting (*see* section 207P); or

(d) the auditor has given notice to the company that the auditor does not wish to be reappointed.

(2) An auditor is not automatically reappointed if the person who it is proposed will replace the auditor dies, or is or becomes incapable of, or disqualified from, appointment.

Section 207T: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207U Replacement of auditor

(1) A company must not appoint a new auditor in the place of an auditor who is a qualified auditor, 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 the auditor's representative speaking at a shareholders' meeting (whichever the auditor may choose).

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

Section 207U: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207V Auditor not seeking reappointment or resigning

(1) If an auditor gives the board of a company written notice that the auditor does not wish to be reappointed or of the auditor's 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 the auditor's wish not to be reappointed or for the auditor's resignation; or

(b) permit the auditor or the auditor's representative to explain at a shareholders' meeting the reasons for wishing not to be reappointed or for resigning.

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

Section 207V: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207W 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 that relate to a meeting of shareholders; and

(c) may be heard at a meeting of shareholders that the auditor attends on any part of the business of the meeting that concerns the auditor as auditor.

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

Section 207W: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Subpart 4—Infringement offence for failing to register financial statements

Subpart 4: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207X Interpretation in this subpart

In this subpart,—

infringement fee, in relation to an infringement offence, means $7,000

infringement notice means a notice issued under section 207Z

infringement offence means an offence under section 207G(2) or (3) in respect of a failure referred to in section 207G(1)(e) (which relates to failing to register financial statements).

Section 207X: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207Y Infringement offences

(1) If a person is alleged to have committed an infringement offence, that person may—

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided in section 207Z.

(2) Proceedings commenced in the way described in subsection (1)(a) do not require leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

Section 207Y: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207Z Infringement notices

(1) The Registrar may issue an infringement notice to a person if the Registrar believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

(2) The Registrar may revoke an infringement notice before the infringement fee is paid, or before an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

Section 207Z: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207ZA Procedural requirements for infringement notices

(1) An infringement notice may be served on a person—

(a) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or

(b) by sending it, or a copy of it, by post, addressed to the person at the person's last known place of residence or business.

(2) An infringement notice sent under subsection (1)(b) must be treated as having been served on the person on the date it was posted.

(3) An infringement notice must be in the prescribed form and must contain—

(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and

(b) the amount of the infringement fee; and

(c) an address at which the infringement fee may be paid; and

(d) the time within which the infringement fee must be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

(f) a statement that the person served with the notice has a right to request a hearing; and

(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and

(h) any other prescribed matters.

(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—

(a) reminder notices may be prescribed under regulations made under this Act; and

(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.

(5) Reminder notices must contain the prescribed information.

Section 207ZA: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

207ZB Payment of infringement fee

The Registrar must pay all infringement fees received into a Crown Bank Account.

Section 207ZB: inserted, on 1 April 2014, by section 30 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Part 12
Disclosure by companies

Disclosure to shareholders

208 Obligation to prepare annual report

(1) This section applies to—

(a) every large company (within the meaning of section 198); and

(b) every company that is a public entity; and

(c) every company that is required to prepare financial statements or group financial statements under Part 7 of the Financial Markets Conduct Act 2013 or section 55 of the Financial Reporting Act 2013; and

(d) every company with 10 or more shareholders unless the company has opted out of compliance with this section in accordance with section 207I (in relation to the accounting period referred to in subsection (2)); and

(e) every company with fewer than 10 shareholders if the company has opted into compliance with this section in accordance with section 207K (in relation to the accounting period referred to in subsection (2)).

(2) The board of every company to which this section applies 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.

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

(4) However, the board of a large company (within the meaning of section 198) is not required to prepare an annual report on the affairs of the company during an accounting period if—

(a) the company is not required to prepare any financial statements or group financial statements for the accounting period under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment; and

(b) shareholders who together hold at least 95% of the voting shares (within the meaning of section 198) agree that the annual report need not be prepared for the accounting period.

Section 208: replaced, on 1 April 2014, by section 31 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 208(4): inserted, on 30 May 2017, by section 26 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

209 Obligation to make annual report available to shareholders

(1) The board of a company must send to every shareholder of the company—

(a) a copy of the annual report; or

(b) a notice containing the statements specified in subsection (3).

(1AA) The copy of the annual report or the notice referred to in subsection (1)(b) must be sent—

(a) not less than 20 working days before the date fixed for holding the annual meeting of shareholders; or

(b) if, under section 120(5) or 122(4), it is not necessary to hold an annual meeting, within 20 working days after the date on which the annual report is prepared.

(1A) Subsection (1) does not apply if the annual report is not required to be prepared under section 208.

(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) if the board of the company has prepared, in relation to the same accounting period as the annual report, a concise annual report, a statement—

(iaaa) that the board of the company has prepared, in relation to the same accounting period as the annual report, a concise annual report; and

(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 that comply with generally accepted accounting practice and any auditor's report on those financial statements; or

(ii) summary financial statements for the accounting period that comply with generally accepted accounting practice:

(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 that comply with generally accepted accounting practice and any auditor's report on those group financial statements; or

(ii) summary financial statements for the accounting period, prepared in relation to the group comprising the company and its subsidiaries, that comply with generally accepted accounting practice.

(6) *[Repealed]*

(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).

Section 209: replaced, on 18 June 2007, by section 7 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 209(1): amended, on 30 May 2017, by section 27(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209(1AA): inserted, on 30 May 2017, by section 27(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209(1A): inserted, on 1 April 2014, by section 32(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 209(3)(d): amended, on 30 May 2017, by section 27(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209(3)(d): amended, on 30 May 2017, by section 27(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209(3)(d)(iaaa): inserted, on 30 May 2017, by section 27(5) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209(5): replaced, on 1 April 2014, by section 32(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 209(6): repealed, on 1 April 2014, by section 32(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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.

(2A) Subsection (2) does not require a company to send a copy of an annual report on the affairs of the company during a particular accounting period if the board of the company is not required to comply with section 208 in respect of that period.

(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).

Section 209A: inserted, on 18 June 2007, by section 7 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 209A(2A): inserted, on 1 April 2014, by section 33 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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).

Section 209B: inserted, on 18 June 2007, by section 7 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

209C Alternative obligations for FMC reporting entities

(1) This section applies, in respect of a company (**company A**) that is an FMC reporting entity, on and after the date on which FMC regulations impose obligations on any company in relation to when, to whom, or the manner in which it must make its annual report available (including by electronic means).

(2) If company A is an issuer of regulated products within the meaning of the FMC Act that is required to comply with those FMC regulations, sections 209 to 209B do not apply to an annual report to which the FMC regulations apply.

(3) If company A is not an issuer of regulated products within the meaning of the FMC Act that is required to comply with those FMC regulations, the board of the company may elect, in respect of an annual report, to comply with the FMC regulations instead of with sections 209 to 209B (as if company A were an issuer of that type).

(4) If subsection (3) applies,—

(a) if the board complies with the FMC regulations, there is no liability for breach of sections 209 to 209B; and

(b) if the board fails to comply with the FMC regulations, every director is liable for a breach of sections 209 to 209B (except to the extent that the board complies with those sections), but is not liable under the FMC Act.

(5) In this section,—

annual report—

(a) means a report prepared under section 208; and

(b) includes a concise annual report (if any)

FMC Act means the Financial Markets Conduct Act 2013

FMC regulations means regulations made under section 543(1)(e) and (ea) of the FMC Act that impose obligations on any FMC reporting entities in relation to when, to whom, or the manner in which an entity must make its annual report available under either or both of sections 96 and 97 of the FMC Act (including by electronic means)

FMC reporting entity has the same meaning as in section 451 of the FMC Act.

(6) Regulations may be made under section 543(1)(e) and (ea) of the FMC Act for the purpose of this section.

Section 209C: inserted, on 17 December 2016, by section 24 of the Statutes Amendment Act 2016 (2016 No 104).

Section 209C(1): amended, on 30 May 2017, by section 28(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209C(5) **FMC regulations**: amended, on 30 May 2017, by section 28(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209C(5) **FMC regulations**: amended, on 30 May 2017, by section 28(3) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 209C(6): amended, on 30 May 2017, by section 28(4) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

210 Information for shareholders who elect not to receive annual report

[Repealed]

Section 210: repealed, on 18 June 2007, by section 8 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

211 Contents of annual report

(1) Every annual report for a company must be in writing and be dated and, subject to subsection (3), 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 any financial statements or group financial statements for the accounting period that are required to be prepared under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment (if any); and

(c) if an auditor's report is required under Part 11, Part 7 of the Financial Markets Conduct Act 2013, or any other enactment in relation to the financial statements or group financial statements included in the report, include that auditor's report; and

(d) *[Repealed]*

(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 1 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).

(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 shareholders who together hold at least 95% of the voting shares (within the meaning of section 198) agree that the report need not do so.

(4) *[Repealed]*

Section 211(1): amended, on 1 July 1994, by section 25 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 211(1)(b): replaced, on 1 April 2014, by section 34(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 211(1)(c): replaced, on 1 April 2014, by section 34(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 211(1)(d): repealed, on 3 June 1998, by section 6(1)(a) of the Companies Amendment Act 1998 (1998 No 31).

Section 211(1)(f): amended, on 3 June 1998, by section 6(1)(b) of the Companies Amendment Act 1998 (1998 No 31).

Section 211(1)(h): amended, on 3 June 1998, by section 6(1)(c) of the Companies Amendment Act 1998 (1998 No 31).

Section 211(2): amended, on 3 June 1998, by section 6(2) of the Companies Amendment Act 1998 (1998 No 31).

Section 211(3): replaced, on 3 June 1998, by section 6(3) of the Companies Amendment Act 1998 (1998 No 31).

Section 211(3): amended, on 1 April 2014, by section 34(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 211(4): repealed, on 1 April 2014, by section 34(3) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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

[Repealed]

Section 211A: repealed, on 1 April 2014, by section 35 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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).

(3) Subsection (2)(b) does not apply if the board of the company is not required to comply with section 209(1) in respect of an accounting period.

Section 212: amended, on 18 June 2007, by section 10(1) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 212(2): inserted, on 18 June 2007, by section 10(2) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 212(3): inserted, on 1 April 2014, by section 36 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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), or as near to it as circumstances allow, and containing as much of the information specified in Schedule 4 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 qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 2013) authorised for that purpose.

(4) On registration of a company under Part 2, 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).

(6) Notwithstanding subsection (1),—

(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) must contain all the prescribed information.

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

Compare: 1955 No 63 ss 130, 131, 132; 1975 No 137 s 13; 1982 No 152 ss 8, 9, 10

Section 214(3): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

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: inserted, on 3 June 1998, by section 7 of the 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 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:

(ca) the company's ultimate holding company information:

(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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and

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

Section 215(1)(ca): inserted, on 1 May 2015, by section 14 of the Companies Amendment Act 2014 (2014 No 46).

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 sec-

tion 217 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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and

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

Section 216(1)(b): amended, on 15 April 2004, by section 14 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

217 Manner of inspection

(1) Documents which may be inspected under section 215 or section 216 must be available for inspection at the place at which the company's records are kept between the hours of 9 am and 5 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 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),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).

Part 13
Amalgamations

219 Amalgamations

(1) Except as provided in subsection (2), 2 or more companies may amalgamate, and continue as 1 company, which may be one of the amalgamating companies, or may be a new company.

(2) A code company may not amalgamate under sections 220 and 221.

Section 219(1): amended, on 3 July 2014, by section 28(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 219(2): inserted, on 3 July 2014, by section 28(2) of the Companies Amendment Act 2014 (2014 No 46).

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) in relation to every director of the amalgamated company, his or her full name and the information required by section 12(2)(b)(ii) and (iii):

(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:

(ea) the ultimate holding company information of each of the amalgamating companies and of the amalgamated company:

(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):

(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.

Section 220(1)(c): replaced, on 1 May 2015, by section 15(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 220(1)(ea): inserted, on 1 May 2015, by section 15(2) of the Companies Amendment Act 2014 (2014 No 46).

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) 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:

(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; 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

222 Short form amalgamation

(1) A company and 1 or more other companies that is or that are directly or indirectly wholly owned by it may amalgamate and continue as 1 company (being the company first referred to) without complying with section 220 and section 221 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 1 company without complying with section 220 or section 221 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 1 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), 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) commits an offence and is liable on conviction to the penalty set out in section 373(1).

Section 222(1)(b)(iii): amended, on 30 June 1997, by section 16(1) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 222(1)(b)(iv): inserted, on 30 June 1997, by section 16(1) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 222(2): amended, on 3 June 1998, by section 8 of the Companies Amendment Act 1998 (1998 No 31).

Section 222(2)(b)(iii): amended, on 30 June 1997, by section 16(2) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 222(2)(b)(iv): inserted, on 30 June 1997, by section 16(2) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 222(5): amended, on 30 June 1997, by section 16(3) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

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); and

(ba) the date and place of birth of every director of the amalgamated company; 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

(da) if an amalgamating company is a licensed insurer, a copy of the written approval of the Reserve Bank of New Zealand given under section 44 of the Insurance (Prudential Supervision) Act 2010; 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.

Section 223(ba): inserted, on 1 May 2015, by section 16 of the Companies Amendment Act 2014 (2014 No 46).

Section 223(da): inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

224 Certificate of amalgamation

(1) Forthwith after receipt of the documents required under section 223, 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.

Section 224(1)(a): amended, on 1 July 1994, by section 26(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 224(1)(b)(ii): replaced, on 1 July 1994, by section 26(2) of the 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, the Registrar-General of Land, Registrar of Deeds, or other person charged with the keeping of any books or registers is not 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—

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), where any financial product issued by any person or any rights or interests in property of any person become, by virtue of this Part, 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 financial product or any such rights or interests have, by virtue of this Part, 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 financial product or as the person entitled to such rights or interests, as the case may be.

(4) *[Repealed]*

(5) Except as provided in this section, nothing in this Part derogates from the provisions of the Land Transfer Act 2017.

Section 225A: inserted, on 1 July 1994, by section 27 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 225A(1): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 225A(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 225A(4): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 225A(5): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

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) on such conditions as the court thinks fit.

Part 14
Compromises with creditors

227 Interpretation

In this Part, unless the context otherwise requires,—

company includes an overseas company registered under Part 18

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 that a debt is owing to that person by the company; and

(b) a secured creditor

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

Section 227 **company**: inserted, on 1 November 2007, by section 5 of the Companies Amendment Act 2006 (2006 No 56).

Section 227 **creditor**: replaced, on 1 July 1994, by section 28 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

228 Compromise proposal

(1) Any of the following persons may propose a compromise under this Part 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—

(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), 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 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; 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).

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, 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 is binding on the company and on—

(a) all creditors; or

(b) if there is more than 1 class of creditors, on all creditors of that class—

to whom notice of the proposal was given under section 229.

(3) If a resolution proposing a compromise, including any amendment, is put to the vote of more than 1 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 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 which, for that purpose, shall apply with such modifications as may be necessary as if any proposed variation were a proposed compromise.

(1A) A variation made as referred to in subsection (1)(a) must be notified to the Registrar and can have no effect before that happens.

(2) The provisions of this Part shall apply to any compromise that is varied in accordance with this section.

Section 231(1A): inserted, on 30 May 2017, by section 29 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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, 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) 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 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) 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, 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 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.

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

235 Interpretation

In this Part, 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:

(b) an overseas company that is registered on the overseas register:

(c) an association:

(d) any other body corporate to which this Part applies under any enactment.

creditor includes—

(a) a person who, in a liquidation, would be entitled to claim in accordance with section 303 that a debt is owing to that person by the company; and

(b) a secured creditor

shareholder includes, in relation to an association, members of the association or persons that the court determines as being justly entitled to surplus assets of the association after the satisfaction of the claims of all of the creditors.

Section 235 **company** paragraph (c): amended, on 1 March 2017, by section 5(1) of the Companies Amendment Act 2016 (2016 No 57).

Section 235 **company** paragraph (d): inserted, on 1 March 2017, by section 5(2) of the Companies Amendment Act 2016 (2016 No 57).

Section 235 **creditor**: replaced, on 1 July 1994, by section 29 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 235 **shareholder**: inserted, on 1 March 2017, by section 5(3) of the Companies Amendment Act 2016 (2016 No 57).

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), 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 1 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.

(2A) If the arrangement or amalgamation or compromise involves a transfer or amalgamation that requires the written approval of the Reserve Bank of New Zealand under section 44 of the Insurance (Prudential Supervision) Act 2010, the court may not make an order under this section unless that approval has been given.

(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), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Section 236(2A): inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

236A Arrangement or amalgamation involving code company

(1) If a proposed arrangement or amalgamation affects the voting rights of a code company, the applicant for an order under section 236(1) must, at the same time as filing the application, notify the Takeovers Panel of the application.

(2) The court may not make an order under section 236(1) that affects the voting rights of a code company unless—

(a) the code company's shareholders approve the arrangement or amalgamation in accordance with subsection (4); and

(b) either of the following applies:

(i) the court is satisfied that the shareholders of the code company will not be adversely affected by the use of section 236(1) rather than the takeovers code to effect the change involving the code company; or

(ii) the applicant has filed a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to an order being made under section 236(1).

(3) The court need not approve a proposed arrangement or amalgamation merely because the Takeovers Panel has no objection to an order being made under section 236(1).

(4) For the purposes of subsection (2)(a), the code company's shareholders may only approve the arrangement or amalgamation in the following way:

(a) by a resolution approved by a majority of 75% of the votes of the shareholders in each interest class entitled to vote and voting on the question; and

(b) by a resolution approved by a simple majority of the votes of those shareholders entitled to vote.

(5) For the purposes of this section and section 236B,—

affects the voting rights, in respect of an arrangement or amalgamation, means an arrangement or amalgamation that involves a change in the relative percentage of voting rights held or controlled by 1 or more shareholders

interest class may be determined in accordance with the principles set out in Schedule 10

voting right has the meaning set out in section 2(1) of the Takeovers Act 1993.

Section 236A: inserted, on 3 July 2014, by section 30 of the Companies Amendment Act 2014 (2014 No 46).

236B Takeovers code does not apply where court order under section 236

The takeovers code does not apply where the court has made an order under section 236(1) that affects the voting rights of a code company.

Section 236B: inserted, on 3 July 2014, by section 30 of the Companies Amendment Act 2014 (2014 No 46).

237 Court may make additional orders

(1) Without limiting section 236, 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, financial products, 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), every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

Section 237(1)(b): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

238 Parts 13 and 14 not affected

The court may—

(a) approve an amalgamation under section 236 even though the amalgamation could be effected under Part 13:

(b) approve a compromise under section 236 even though the compromise could be approved under Part 14.

239 Application of section 233

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

Part 15A
Voluntary administration

Part 15A: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 1—Preliminary

Subpart 1: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239A Objects of this Part

The objects of this Part are to provide for the business, property, and affairs of an insolvent company, or a company that may in the future become insolvent, to be administered in a way that—

(a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or

(b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

Compare: Corporations Act 2001 s 435A (Aust)

Section 239A: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239B Interpretation of some key terms

The following are some key terms used in this Part and their meanings:

administrator means the person who is appointed the administrator of the company in administration

deed administrator, who may or may not be the same person as the administrator, is the person who is appointed the administrator of the deed of company arrangement

deed of company arrangement means the deed that is executed by the company and its creditors providing for payments towards the creditors' debts

watershed meeting means the creditors' meeting called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

Section 239B: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239C Interpretation of other terms

In this Part, unless the context otherwise requires,—

company includes an overseas company

convening period has the meaning given to it in section 239AT(2)

creditor includes—

(a) a person who, in a liquidation, would be entitled to claim in accordance with section 303 that a debt is owing to that person by the company; and

(b) a secured creditor

enforcement process, in relation to property, means—

(a) execution against that property; or

(b) any other enforcement process in relation to that property that involves a court or a sheriff

insolvent means, in relation to a company, that the company is unable to pay its debts

sheriff includes a person charged with the execution of a writ or other enforcement process.

Section 239C: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239D When administration begins

The administration of a company begins when an administrator is appointed under this Part.

Compare: Corporations Act 2001 s 435C(1) (Aust)

Section 239D: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239E When administration ends

(1) The administration of a company ends when—

(a) a deed of company arrangement is executed by both the company and the deed administrator; or

(b) the company's creditors resolve that the administration should end; or

(c) the company's creditors appoint a liquidator by a resolution passed at the watershed meeting.

(2) However, the administration of a company may also end in the following instances:

(a) if the court orders that the administration end, for example because the court is satisfied that the company is solvent, the administration ends on the date specified in the order or, if no date is specified, when the order is made; or

(b) if the convening period expires without the watershed meeting having been convened or without an application having been made to extend the convening period, the administration ends at the end of that period; or

(c) if an application has been made to extend the convening period, which has expired after the application was made, the administration ends when the application is refused or otherwise disposed of without the convening period being extended; or

(d) if the watershed meeting ends without a resolution that the company execute a deed of company arrangement, the administration ends at the end of that meeting; or

(e) if the company fails to execute a proposed deed of company arrangement within the time allowed by section 239ACO or 239ACP, the administration ends when that time expires; or

(f) if the court appoints a liquidator or an interim liquidator, the administration ends at the time when the order is made.

Compare: Corporations Act 2001 s 435C(2), (3) (Aust)

Section 239E: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239EA Voluntary administration of licensed insurers

If a company is a licensed insurer, this Part applies in respect of the insurer subject to subpart 3 of Part 4 of the Insurance (Prudential Supervision) Act 2010.

Section 239EA: inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Subpart 2—Appointment of administrator

Subpart 2: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239F Who may be appointed as administrator

(1) A person may be appointed as an administrator of a company if the person—

(a) is a licensed insolvency practitioner who is permitted to act as an administrator of the company under the Insolvency Practitioners Regulation Act 2019; and

(b) is not disqualified under subsection (2).

(2) Unless the court orders otherwise, a person is disqualified from appointment as an administrator of a company if the person would be disqualified from appointment as a liquidator of that company under section 280(2).

(3) For the purpose of subsection (2),—

(a) in section 280,—

(i) a reference to the commencement of the liquidation must be read as if it were a reference to the commencement of the administration:

(ii) a reference to a company must be read as if it were a reference to the company in administration; and

(b) section 280(4)(c) does not apply.

(4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—

(a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and

(b) the person,—

(i) with their consent, is appointed as an administrator; or

(ii) acts as an administrator.

(5) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.

Section 239F: replaced, on 1 September 2020, by section 5 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239G What administrator must do before appointment

(1) A person must not be appointed as the administrator of a company unless the person has—

(a) consented in writing and has not withdrawn the consent at the time of appointment; and

(b) certified in writing that the person—

(i) is a licensed insolvency practitioner; and

(ii) is permitted to act as an administrator of the company under the Insolvency Practitioners Regulation Act 2019; and

(iii) is not disqualified from appointment under section 239F(2).

(2) A person who, with their consent, is appointed as an administrator despite failing to certify the matters set out in subsection (1)(b) commits an offence and is liable on conviction to the penalty set out in section 373(2).

(3) The acts of a person as an administrator are valid even if the person does not meet the requirements of section 239F(1) or fails to certify the matters set out in subsection (1)(b).

Section 239G: replaced, on 1 September 2020, by section 5 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239H Who may appoint administrator

(1) An administrator may be appointed to a company by—

(a) the company (*see* section 239I); or

(b) if the company is in liquidation, the liquidator (*see* section 239J); or

(c) if an interim liquidator has been appointed, the interim liquidator (*see* section 239J); or

(d) a secured creditor holding a charge over the whole, or substantially the whole, of the company's property (*see* section 239K); or

(e) the court (*see* section 239L).

(2) If the company is already in administration, an administrator may be appointed only by—

(a) the court; or

(b) the creditors, as a replacement administrator for an administrator that the creditors have removed; or

(c) the appointor of the first administrator, if that administrator has died, resigned, or become disqualified from appointment under section 239F(2).

(3) The appointment of a replacement administrator by a company must be made by a resolution of the board of the company.

Compare: Corporations Act 2001 s 436D (Aust)

Section 239H: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239H(2)(c): amended, on 1 September 2020, by section 6(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239H(3): inserted, on 1 September 2020, by section 6(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239I Appointment by company

(1) A company may appoint an administrator if the board of the company has resolved that,—

(a) in the opinion of the directors voting for the resolution, the company is insolvent or may become insolvent; and

(b) an administrator of the company should be appointed.

(2) The appointment must be in writing and must state the date of the appointment.

(3) The company must not appoint an administrator if the company is already in liquidation.

(4) If an application has been filed for the appointment of a liquidator of the company by the court under section 241(2)(c), the company may only appoint an administrator if the administrator is appointed within 10 working days after service on the company of the application.

(5) Subsection (4) does not apply once the application has been finally disposed of.

Compare: Corporations Act 2001 s 436A (Aust)

Section 239I: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239J Appointment by liquidator or interim liquidator

(1) The liquidator or interim liquidator of a company may appoint an administrator if he or she thinks that the company is insolvent or is likely to become insolvent.

(2) The appointment must be in writing and must state the date of the appointment.

(3) The liquidator or interim liquidator may appoint himself or herself administrator if he or she first obtains—

(a) the permission of the court; or

(b) in the case of a liquidator but not an interim liquidator, the approval of the company's creditors in the form of a resolution passed at a meeting of the creditors.

(4) A liquidator or interim liquidator must not appoint as administrator a person who is the liquidator's or interim liquidator's business or professional partner, employer, or employee, unless the appointment has been approved by the company's creditors in the form of a resolution passed at a creditors' meeting.

(5) An administrator who is appointed to a company already in liquidation may apply to the court for an order under section 250 terminating the liquidation.

Compare: Corporations Act 2001 s 436B (Aust)

Section 239J: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239K Appointment by secured creditor

(1) A person who holds a charge over the whole, or substantially the whole, of a company's property may appoint an administrator if the charge has become, and is still, enforceable.

(2) The appointment must be in writing and must state the date of the appointment.

(3) A secured creditor must not appoint an administrator if the company is already in liquidation.

Compare: Corporations Act 2001 s 436C (Aust)

Section 239K: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239L Appointment by court

(1) The court may appoint an administrator on the application of a creditor, the liquidator (if the company is in liquidation), the FMA (if the company is a financial markets participant), or the Registrar.

(2) The court may appoint an administrator if—

(a) the court is satisfied that the company is or may become insolvent and that an administration is likely to result in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company; or

(b) it is just and equitable to do so.

(3) In the case of a licensed insurer, the court may appoint an administrator on the application of the Reserve Bank of New Zealand or a person referred to in subsection (1) if—

(a) subsection (2)(a) or (b) apply; or

(b) the insurer is failing to maintain a solvency margin (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).

Section 239L: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239L(1): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 239L(3): inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

239M Appointment must not be revoked

(1) The appointment of an administrator must not be revoked.

(2) This does not apply to removal by the court or by the creditors.

Compare: Corporations Act 2001 s 449A (Aust)

Section 239M: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239N Appointment of 2 or more administrators

(1) Two or more persons may be appointed administrators in any case where this Act provides for the appointment of an administrator.

(2) If 2 or more persons are appointed administrators of a company,—

(a) an administrator's function or power may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order, instrument, or resolution appointing them provides otherwise; and

(b) a reference in this Act to an administrator or the administrator refers to whichever 1 or more of the administrators the case requires.

Compare: Corporations Act 2001 s 451A (Aust)

Section 239N: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239O Remuneration of administrator

(1) The administrator is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as administrator.

(2) The court may, on the application of the administrator, a director or officer of the company, a creditor, or a shareholder, review or fix the administrator's remuneration at a level that is reasonable in the circumstances.

(3) A creditor or shareholder may make an application under subsection (2) only with the leave of the court.

Compare: 1993 No 105 ss 276(1), 284(1)(e)

Section 239O: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 3—Resignation and removal of administrator

Subpart 3: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239P When office of administrator is vacant

The office of administrator is vacant if the administrator—

(a) resigns in accordance with section 239Q; or

(b) dies; or

(c) becomes disqualified from appointment as an administrator (*see* section 239F(2)); or

(d) is removed by the court; or

(e) ceases to be a licensed insolvency practitioner who is permitted to act as an administrator of the company in accordance with the Insolvency Practitioners Regulation Act 2019.

Compare: Corporations Act 2001 s 449C(1) (Aust)

Section 239P: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239P(a): replaced, on 1 September 2020, by section 7(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239P(d): amended, on 1 September 2020, by section 7(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239P(e): inserted, on 1 September 2020, by section 7(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239Q Administrator may resign

(1) The administrator may resign by giving written notice to the company and to his or her appointor.

(2) The administrator must—

(a) give written notice of the resignation to as many of the company's creditors as practicable; and

(b) advertise the resignation in accordance with section 3(1)(a).

Compare: Corporations Act 2001 s 449C(1)(c) (Aust)

Section 239Q: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239Q(2)(b): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239R Removal of administrator

(1) The administrator may be removed—

(a) by the court, on the application of a creditor, the liquidator (if the company is in liquidation), the FMA (if the company is a financial markets participant), or the Registrar; or

(b) by a resolution of creditors passed at the first creditors' meeting; or

(c) by a resolution of creditors at a meeting convened under section 239T(1) to consider whether to remove a replacement administrator.

(2) The creditors may not remove the administrator by a resolution passed at a creditors' meeting unless—

(a) the same resolution also appoints as administrator a person who is permitted to act as an administrator of the company in accordance with section 239F(1); and

(b) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting—

(i) the written consent and certificate required under section 239G; and

(ii) an interests statement that complies with section 239APA.

(3) A person who, with the person's consent, is appointed as a replacement administrator under subsection (2) but who has not tabled an interests statement that

complies with section 239APA commits an offence and is liable on conviction to the penalty set out in section 373(2).

Compare: Corporations Act 2001 ss 436E(4), 449B (Aust)

Section 239R: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239R(1)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 239R(2)(a): amended, on 1 September 2020, by section 8(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239R(2)(b): replaced, on 1 September 2020, by section 8(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239R(3): inserted, on 1 September 2020, by section 8(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239S Appointor may appoint new administrator to fill vacancy

[Repealed]

Section 239S: repealed, on 1 September 2020, by section 9 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239T Creditors must consider appointment of replacement administrator

(1) A replacement administrator, unless appointed by the court or by the creditors under section 239R(1)(b), must convene a meeting of the creditors at which the creditors may vote to remove the replacement administrator and appoint another person in his or her place.

(2) The meeting must be held not more than 5 working days after the date on which the replacement administrator is appointed.

(3) The replacement administrator must convene the meeting by—

(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

(b) advertising the meeting in accordance with section 3(1)(a).

(4) The replacement administrator must take the steps in subsection (3) not less than 2 working days before the meeting.

Compare: Corporations Act 2001 s 449C(4), (5) (Aust)

Section 239T: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239T(3)(b): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239TA Provision of information and assistance to replacement administrator

(1) This section applies if a replacement administrator is appointed.

(2) The previous administrator must, where practicable, provide to the replacement administrator the information that the previous administrator has in their possession or under their control and that the replacement administrator reasonably requires to carry out the functions and duties of administrator.

(3) The information referred to in subsection (2) includes—

(a) the records and other documents of the company:

(b) any information necessary to provide the replacement administrator with control over the property of the company:

(c) any information relating to claims:

(d) accounting records and other documents of the administration.

(4) The previous administrator must, where practicable, provide to the replacement administrator any assistance that the replacement administrator reasonably requires to carry out the functions and duties of administrator.

(5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 239TA: inserted, on 1 September 2020, by section 10 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Subpart 4—Effect of appointment of administrator

Subpart 4: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239U Outline of administrator's role

While a company is in administration, the administrator—

(a) has control of the company's business, property, and affairs; and

(b) may carry on that business and manage that property and those affairs; and

(c) may terminate or dispose of all or part of that business, and may dispose of any of that property; and

(d) may perform any function, and exercise any power, that the company or any of its officers could perform or exercise if the company were not in administration.

Compare: Corporations Act 2001 s 437A(1) (Aust)

Section 239U: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239V Administrator's powers

(1) The administrator has the powers—

(a) to carry out the functions and duties of an administrator under this Act; and

(b) conferred on an administrator under this Act.

(2) An administrator's powers include the powers to—

(a) begin, continue, discontinue, and defend legal proceedings; and

(b) carry on, to the extent necessary for the administration of the company, the business of the company; and

(c) appoint an agent to do anything that the administrator has power to do.

Compare: 1993 No 105 s 260(1)

Section 239V: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239W Administrator is company's agent

The administrator of a company, when performing a function or exercising a power in that capacity, is the company's agent.

Compare: Corporations Act 2001 s 437B (Aust)

Section 239W: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239X Effect on directors

(1) The appointment of an administrator does not remove the directors of the company from office.

(2) However, a director of a company that is in administration must not exercise or perform, or purport to exercise or perform, a function or power as a director of the company except—

(a) with the prior, written approval of the administrator; or

(b) as expressly permitted by this Part.

Compare: Corporations Act 2001 s 437C (Aust)

Section 239X: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239Y Effect on employees

(1) The appointment of an administrator does not automatically terminate an employment agreement to which the company is a party.

(2) The administrator is not personally liable for any obligation of the company under an employment agreement to which the company is a party, unless—

(a) the administrator expressly adopts the agreement in writing; or

(b) subsection (3) applies.

(3) The administrator is personally liable for payment of wages or salary that, during the administration of the company, accrue under a contract of employment with the company that was entered into before the administrator's appointment, unless the administrator has lawfully given notice of the termination of the contract within 14 days of appointment.

(4) The court may, on the administrator's application, extend the period of 14 days in subsection (3) within which notice of termination must be given, and may extend it on the terms and conditions, if any, that the court thinks appropriate.

(5) From the date of the appointment of the administrator, the duty of good faith set out in section 4 of the Employment Relations Act 2000 continues to apply between each employee of the company and his or her employer (who may be

the administrator if the administrator has adopted the employment agreement under subsection (2)).

Section 239Y: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239Z Effect on dealing with company property

(1) A transaction or dealing by a company in administration, or by a person on behalf of the company, that affects the company's property is void unless the transaction or dealing was entered into—

(a) by the administrator, on the company's behalf; or

(b) with the administrator's prior written consent; or

(c) under an order of the court.

(2) The court may validate a transaction or dealing that is void under subsection (1).

(3) Subsection (1) does not apply to a payment made by a registered bank—

(a) out of an account kept by the company with the bank; and

(b) in good faith and in the ordinary course of the bank's banking business; and

(c) on or before the day on which the bank was notified in writing by the administrator that the administration had begun, or before the bank had reason to believe that the company was in administration, whichever was earlier.

(4) A director or officer of the company commits an offence if he or she—

(a) purported, on the company's behalf, to enter into a transaction or dealing that is void under subsection (1); or

(b) was in any other way knowingly concerned in, or party to, the void transaction or dealing, whether—

(i) by act or omission; or

(ii) directly or indirectly.

Compare: Corporations Act 2001 s 437D (Aust)

Section 239Z: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

The court may order a director or officer of a company who is convicted of an offence under section 239Z(4) to compensate any person, including the company, who has suffered loss as a result of the act or omission constituting the offence.

Compare: Corporations Act 2001 s 437E(1) (Aust)

Section 239AA: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AB Effect on transfer of shares

(1) A share in a company in administration must not be transferred and the rights or liabilities of a shareholder of the company must not be altered.

(2) However, the administrator may consent to the transfer of a share in a company in administration if the administrator is satisfied that the transfer is in the best interests of the company's creditors.

(3) Also, despite subsection (1), the court may make an order—

(a) for the transfer of a share in a company in administration, but only after the administrator has been asked to consent to the transfer and has refused or failed to respond in a reasonable time; or

(b) altering the rights and liabilities of a shareholder in a company in administration.

Compare: Corporations Act 2001 s 437F (Aust)

Section 239AB: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AC Effect on liquidation

(1) The appointment of an administrator to a company in liquidation suspends the liquidation, including the powers of the liquidator to act on the company's behalf, but does not remove the liquidator from office.

(2) The liquidator may apply to the court for any orders that may be necessary in relation to the suspension of the liquidation.

(3) In this section, **liquidator** includes a liquidator or interim liquidator appointed before the administration began.

Section 239AC: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AD Effect on receivership

The appointment of an administrator to a company in receivership does not remove the receiver from office.

Section 239AD: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

Subpart 5: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

As soon as practicable after the administration of a company begins, the administrator must—

(a) investigate the company's business, property, affairs, and financial circumstances; and

(b) form an opinion about each of the following matters:

(i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement:

(ii) whether it would be in the creditors' interests for the administration to end:

(iii) whether it would be in the creditors' interests for a liquidator to be appointed.

Compare: Corporations Act 2001 s 438A (Aust)

Section 239AE: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AF Directors' statement of company's position

(1) Within 5 working days after the administration of a company begins, the directors must give to the administrator a statement about the company's business, property, affairs, and financial circumstances.

(2) The administrator may extend the time for compliance with subsection (1).

(3) The administrator must table the directors' statement—

(a) at the first creditors' meeting; or

(b) if the administrator has extended the time for compliance by the directors, at the watershed meeting.

Compare: Corporations Act 2001 s 438B(2) (Aust)

Section 239AF: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AG Administrator's right to documents, etc

Sections 261 and 263 to 267 apply with all necessary modifications as if every reference to liquidator and liquidation was a reference to administrator and administration.

Section 239AG: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AH Administrator may lodge report with Registrar

The administrator may lodge a report with the Registrar specifying any matter that, in his or her opinion, should be brought to the Registrar's notice.

Compare: Corporations Act 2001 s 438D(2) (Aust)

Section 239AH: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AI Administrator must report misconduct

[Repealed]

Section 239AI: repealed, on 1 September 2020, by section 11 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Subpart 6—Creditors' meetings generally

Subpart 6: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AJ Administrator must call creditors' meetings

The administrator must call—

(a) the first creditors' meeting, for the appointment (if any) of a committee of creditors; and

(b) the watershed meeting (*see* section 239AS); and

(c) other creditors' meetings as required (for example, because an administrator has been replaced).

Section 239AJ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AK Conduct of creditors' meetings

(1) The following clauses of Schedule 5 apply to creditors' meetings called under this Part as if references to the liquidator were references to the administrator:

(a) subject to section 239AZ, clause 4; and

(b) clauses 6 to 11.

(2) At any meeting of creditors or class of creditors held under this Part, a resolution is adopted if a majority in number representing 75% in value of the creditors or class of creditors voting in person, or by proxy vote or by postal vote, vote in favour of the resolution.

(3) The administrator or the administrator's nominee must chair a creditors' meeting, and has a casting vote.

(4) For the purposes of voting at a creditors' meeting, the administrator may estimate the amount of a creditor's claim that is for any reason uncertain.

(5) On the application of the administrator, or of a creditor who is aggrieved by an estimate made by the administrator, the court must determine the amount of the claim as it sees fit.

Section 239AK: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AL Joint meetings of creditors of related companies in administration

(1) The administrators of related companies may call meetings of creditors of their respective companies to be held at the same time and place, but only with the consent of all the creditors.

(2) In the case of a joint meeting, a creditor of a company in administration may vote only on a resolution that relates to the administration of the company of which that person is a creditor.

(3) For the purposes of subsection (1), a creditor is taken to have consented to the joint meeting if—

(a) a written notice that complies with subsection (4) accompanies the notice of meeting; and

(b) the creditor has not objected to the joint meeting within the time, and in the manner, specified in the written notice.

(4) The notice must—

(a) be in writing; and

(b) state the administrator's postal, email, and street addresses; and

(c) state the names of the related companies in respect of which the joint meeting is to be held; and

(d) state that the creditor to whom it is sent may object to the joint meeting by sending a written objection to the administrator at the administrator's postal, email, or street address for receipt by the administrator within the time specified in the notice; and

(e) state that, unless the creditor objects in accordance with the notice, the creditor will be taken to have agreed to the joint meeting.

(5) For the purposes of subsection (4)(d), the administrator may in his or her discretion determine the time for receipt of an objection, but must specify a time that is reasonably practicable in the circumstances.

Section 239AL: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AM Related creditor's vote disregarded unless court orders otherwise

(1) The administrator must disregard a related creditor's vote on a resolution at the creditors' meeting unless the court orders otherwise.

(2) A related creditor may apply to the court for an order that its vote be taken into account.

(2A) A related creditor that intends to apply for an order must,—

(a) before a vote is taken on the resolution, give notice in writing to the administrator that the creditor—

(i) is a related creditor; and

(ii) intends to apply to the court for an order that its vote be taken into account; and

(b) within 10 working days of the creditors' meeting, make an application to the court.

(2B) The court may order that a related creditor's vote be taken into account only if satisfied that ordering that the applicant's vote (or the applicants' votes) be taken into account—

(a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and

(b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—

(i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and

(ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and

(iii) any other relevant matter.

(3) In this section and sections 239AMA to 239AMC,—

related creditor means a creditor who is a related entity of the company in administration

related entity means, in relation to the company in administration,—

(a) a promoter; or

(b) a relative or spouse of a promoter; or

(c) a relative of a spouse of a promoter; or

(d) a director or shareholder; or

(e) a relative or spouse of a director or shareholder; or

(f) a relative of a spouse of a director or shareholder; or

(g) a related company; or

(h) a beneficiary under a trust of which the company in administration is or has at any time been a trustee; or

(i) a relative or spouse of that beneficiary; or

(j) a relative of a spouse of that beneficiary; or

(k) a company one of whose directors is also a director of the company in administration; or

(l) a trustee of a trust under which a person (**A**) is a beneficiary, if A is a related entity of the company in administration under this subsection.

Compare: Corporations Act 2001 s 600A (Aust)

Section 239AM: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AM heading: replaced, on 1 September 2020, by section 12(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AM(1): replaced, on 1 September 2020, by section 12(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AM(2): replaced, on 1 September 2020, by section 12(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AM(2A): inserted, on 1 September 2020, by section 12(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AM(2B): inserted, on 1 September 2020, by section 12(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AM(3): amended, on 1 September 2020, by section 12(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AM(3) **promoter**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

239AMA Creditor's vote disregarded if administrator considers creditor is related creditor

(1) If the administrator considers that a creditor that votes on a resolution at a creditors' meeting is a related creditor, and the creditor has not given notice under section 239AM(2A), the administrator must (unless the court orders otherwise)—

(a) disregard the creditor's vote; and

(b) give notice in writing to the creditor stating the reasons for the administrator's view.

(2) The court may, on the application of the creditor, order that the creditor's vote be taken into account if satisfied that the creditor is not a related creditor.

(3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

Section 239AMA: inserted, on 1 September 2020, by section 13 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239AMB Further powers where court orders creditor's vote be taken into account

(1) If the court orders, under section 239AM or 239AMA, that a creditor's vote be taken into account, the court may also—

(a) order that the resolution be set aside or treated as having passed:

(b) order that a new meeting be held to consider and vote on the resolution:

(c) order that the creditor's vote on a resolution to vary or amend the resolution be taken into account:

(d) make any other orders that the court thinks necessary.

(2) Despite any application under section 239AM or 239AMA, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

Section 239AMB: inserted, on 1 September 2020, by section 13 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239AMC Power of court where outcome of voting at creditors' meeting determined by related creditor

(1) This section applies in relation to a resolution at a creditors' meeting if,—

(a) after the meeting, the administrator becomes aware that a creditor that voted on the resolution is a related creditor; and

(b) the administrator is satisfied that,—

(i) in accordance with section 239AM or 239AMA, the related creditor's vote should have been disregarded; and

(ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.

(2) Despite sections 239AM(1) and 239AMA(1), the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under subsection (4).

(3) The administrator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.

(4) The court may, on the application of the administrator or a creditor,—

(a) order that the resolution be set aside or treated as having passed:

(b) order that a new meeting be held to consider and vote on the resolution:

(c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it:

(d) make any other orders that the court thinks necessary.

(5) An administrator who fails to comply with subsection (3) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 239AMC: inserted, on 1 September 2020, by section 13 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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

Subpart 7: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AN Administrator must call first creditors' meeting

(1) The administrator must call the first creditors' meeting to—

(a) decide whether to appoint a creditors' committee and, if so, to appoint its members; and

(b) decide whether to replace the administrator.

(2) The meeting must be held within 8 working days after the date on which the administration began.

Compare: Corporations Act 2001 s 436E(1), (2) (Aust)

Section 239AN: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AO Notice of first and subsequent creditors' meetings

(1) The administrator must call the first and subsequent creditors' meetings by—

(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

(b) advertising the meeting in accordance with section 3(1)(a).

(2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.

Compare: Corporations Act 2001 s 436E(3) (Aust)

Section 239AO: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AO(1)(b): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239AP Administrator must table documents at first creditors' meeting

(1) The administrator must table at the first creditors' meeting—

(a) the written consent and certificate required under section 239G; and

(b) an interests statement that complies with section 239APA; and

(c) a notice stating that administrators are required to be licensed, and that more information about the regulation of insolvency practitioners is available from the Registrar.

(2) A person who fails to comply with subsection (1)(a), (b), or (c) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 239AP: replaced, on 1 September 2020, by section 14 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239APA Requirements for interests statement

(1) This section sets out the requirements for the interests statement referred to in sections 239R(2)(b)(ii), 239AP(1)(b), 239AU(3)(aa), and 239ACZA(1).

(2) The interests statement must disclose—

(a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as the administrator, including anything that would, but for a court order to the contrary, have disqualified the person—

(i) from being appointed as or acting as the administrator (*see* section 239F(2)); or

(ii) from being a licensed insolvency practitioner; and

(b) the nature of any actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and

(c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.

(3) In preparing an interests statement for the purposes of section 239R(2)(b)(ii) or 239AP(1)(b), the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.

(4) In preparing an interests statement for the purposes of section 239AU(3)(aa) or 239ACZA(1), the insolvency practitioner need include only the information required under subsection (2) that relates to circumstances, relationships, or other facts that the insolvency practitioner has become aware of during the period since they last prepared an interests statement.

(5) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

Section 239APA: inserted, on 1 September 2020, by section 14 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239AQ Functions of creditors' committee

(1) The functions of the creditors' committee of a company in administration are—

(a) to consult with the administrator about matters relating to the administration; and

(b) to receive and consider reports by the administrator.

(2) The committee must not give directions to the administrator, but the administrator must report to the committee about matters relating to the administration as and when the committee reasonably requires.

Compare: Corporations Act 2001 s 436F (Aust)

Section 239AQ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AR Membership of creditors' committee

A person may be a member of the creditors' committee only if he or she is—

(a) a creditor of the company; or

(b) the agent of a creditor under a general power of attorney; or

(c) authorised in writing by a creditor to be a member.

Compare: Corporations Act 2001 s 436G (Aust)

Section 239AR: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 8—Watershed meeting

Subpart 8: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AS What watershed meeting is

The watershed meeting is the meeting of creditors called by the administrator to decide the future of the company and, in particular, whether the company and the deed administrator should execute a deed of company arrangement.

Section 239AS: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AT Administrator must convene watershed meeting

(1) The administrator must convene the watershed meeting within the convening period.

(2) The **convening period** is the period of 20 working days after the date on which the administrator is appointed, and includes any period for which it is extended under subsection (3).

(3) The court may, on the administrator's application, extend the convening period.

(4) The application to extend may be made before or after the convening period has expired.

Section 239AT: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AU Notice of watershed meeting

(1) The administrator must convene the watershed meeting by—

(a) giving written notice of the meeting to as many of the company's creditors as reasonably practicable; and

(b) advertising the meeting in accordance with section 3(1)(a).

(2) The administrator must take the steps in subsection (1) not less than 5 working days before the meeting.

(3) The following documents must accompany the notice of the watershed meeting that is sent to the company's creditors:

(aa) an updated interests statement that complies with section 239APA; and

(a) a report by the administrator about—

(i) the company's business, property, affairs, and financial circumstances; and

(ii) any other matter material to the creditors' decisions to be considered at the meeting; and

(b) a statement setting out the administrator's opinion, with reasons for that opinion, about each of the following matters:

(i) whether it would be in the creditors' interests for the company to execute a deed of company arrangement:

(ii) whether it would be in the creditors' interests for the administration to end:

(iii) whether it would be in the creditors' interests for the company to be placed in liquidation; and

(c) if a deed of company arrangement is proposed, a statement setting out the details of the proposed deed.

(4) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates.

Compare: Corporations Act 2001 s 439A(3), (4) (Aust)

Section 239AU: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AU(1)(b): amended, on 1 September 2020, by section 15(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AU(3)(aa): inserted, on 1 September 2020, by section 15(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239AU(4): inserted, on 1 September 2020, by section 15(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239AV When watershed meeting must be held

The watershed meeting must be held within 5 working days after the end of the convening period or extended convening period, as the case may be.

Compare: Corporations Act 2001 s 439A(2) (Aust)

Section 239AV: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AW Directors must attend watershed meeting

(1) The directors of the company must attend the watershed meeting, including any occasion to which the meeting is adjourned, but cannot be required to answer questions at the meeting.

(2) A director need not attend the watershed meeting if—

(a) the director has a valid reason for not attending; or

(b) the administrator or the creditors by resolution have excused the director from attending.

(3) A director attending the watershed meeting must leave for all or part of the remainder of the meeting if required by a resolution of the creditors to do so.

(4) A director who contravenes subsection (1) commits an offence, unless subsection (2) applies, and is liable on conviction to the penalty set out in section 373(1).

Section 239AW: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AX Disclosure of voting arrangements

The administrator and the directors of the company under administration must, before the meeting votes on any resolution, inform the meeting of any voting arrangement of which the administrator or a director, as the case may be, is aware that requires 1 or more creditors to vote in a particular way on any resolution that will or may be voted on by the meeting.

Section 239AX: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) On the application of the administrator, the court may order that, for the limited purposes of this section only, pooled property owners are a separate class.

(2) In this section—

pooled property owners means all the owners or lessors of property that is pooled in a single enterprise forming part of the business of a company in administration

requisite majority means a majority in number representing 75% in value of the pooled property owners voting in person or by proxy vote or by postal vote

resolution means a resolution that the company in administration execute the deed of company arrangement specified in the resolution.

(3) Each pooled property owner is bound by the deed of company arrangement as if that person had voted in favour of the resolution at the watershed meeting if—

(a) the court has ordered that the pooled property owners are a separate class; and

(b) at the watershed meeting the creditors (including the pooled property owners) approved the resolution; and

(c) the requisite majority of the pooled property owners were included in the creditors who voted in favour of the resolution.

(4) It is not necessary that a separate meeting of the pooled property owners be held for the purpose of voting on the resolution.

(5) Subsection (3) applies no matter what sections 239ACS and 239ACT say.

Section 239AY: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AZ Adjournment of watershed meeting

(1) The watershed meeting may be adjourned, but only to a day that is not more than 30 working days after the first day on which the meeting was held.

(2) However, the court may, on the administrator's application, order that the meeting be adjourned for more than 30 working days.

Compare: Corporations Act 2001 s 439B(2) (Aust)

Section 239AZ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABA What creditors may decide at watershed meeting

At the watershed meeting, the creditors may—

(a) resolve that the company execute a deed of company arrangement specified in the resolution (and it does not matter that the deed to be executed differs from any proposed deed of which details were given in the notice of the meeting); or

(b) resolve that the administration should end; or

(c) unless the company is already in liquidation, by resolution appoint a liquidator.

Compare: Corporations Act 2001 s 439C (Aust)

Section 239ABA: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) If, at the watershed meeting, the creditors resolve that the company execute a deed of company arrangement, but the proposed deed is not fully approved at the meeting, then the administrator must take the steps set out in section 239ACP (briefly, the administrator must draft a deed and circulate it to creditors).

(2) The administrator must inform the creditors at the watershed meeting that—

(a) they have the right to inspect and comment on the draft deed; and

(b) the administrator has the ultimate responsibility for drafting the deed and the executed deed may differ from the draft.

Section 239ABB: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 9—Protection of company's property during administration

Subpart 9: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABC Charge unenforceable

Subject to subpart 10, a person must not, during the administration of a company, enforce a charge over the property of the company, except—

(a) with the administrator's written consent; or

(b) with the permission of the court.

Compare: Corporations Act 2001 s 440B (Aust)

Section 239ABC: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

During the administration of a company, the owner or lessor of property that was used or occupied by, or is in the possession of, the company must not take possession of the property or otherwise recover it, except—

(a) with the administrator's written consent; or

(b) with the permission of the court.

Compare: Corporations Act 2001 s 440C (Aust)

Section 239ABD: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABE Proceeding must not be begun or continued

During the administration of a company, a proceeding in a court against the company or in relation to any of its property must not be begun or continued, except—

(a) with the administrator's written consent; or

(b) with the permission of the court and in accordance with the terms that the court imposes.

Compare: Corporations Act 2001 s 440D (Aust)

Section 239ABE: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABF Administrator not liable in damages for refusing consent

An administrator is not liable in damages for a refusal to give an approval or consent for the purposes of this subpart.

Compare: Corporations Act 2001 s 440E (Aust)

Section 239ABF: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABG Enforcement process halted

During the administration of a company, an enforcement process in relation to the company's property must not be begun or continued except with the permission of the court and in accordance with the terms that the court imposes.

Compare: Corporations Act 2001 s 440F (Aust)

Section 239ABG: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) This section applies to a court officer, that is, a sheriff or registrar or other appropriate officer of the court, who receives written notice that a company is in administration.

(2) During the administration, the court officer must not—

(a) take action to sell property of the company under an execution process; or

(b) pay to a person (other than the administrator)—

(i) proceeds of the sale of the company's property (at any time) under an execution process; or

(ii) money of the company seized (at any time) under an execution process; or

(iii) money paid (at any time) to avoid seizure or sale of property of the company under an execution process; or

(c) take action in relation to the attachment of a debt due to the company; or

(d) pay to any person (other than the administrator) money received because of the attachment of a debt due to the company.

(3) The court officer must deliver to the administrator any property of the company that is in the court officer's possession under an execution process (whenever begun).

(4) The court officer must pay to the administrator all proceeds or money of a kind referred to in subsection (2)(b) or (d) that—

(a) are in the court officer's possession; or

(b) have been paid into the court and have not since been paid out.

(5) The costs of the execution or attachment are a first charge over property delivered under subsection (3) or proceeds or money paid under subsection (4).

(6) In order to give effect to a charge under subsection (5) on proceeds or money the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds as the court officer thinks necessary.

(7) The court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or make a payment, that subsection (2) would otherwise prevent.

(8) A person who buys property in good faith under a sale under an execution process obtains a good title to the property as against the company and the administrator, despite anything else in this section.

Compare: Corporations Act 2001 s 440G (Aust)

Section 239ABH: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABI *Lis pendens* taken to exist

(1) This section has effect only for the purposes of a law about the effect of a *lis pendens* on purchasers or mortgagees.

(2) During the administration of a company, an application for the appointment of a liquidator to the company is taken to be pending.

(3) An application that is taken because of subsection (2) to be pending constitutes a *lis pendens*.

Compare: Corporations Act 2001 s 440H (Aust)

Section 239ABI: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) During the administration of a company, except with the court's permission and in accordance with the terms that the court may impose, a guarantee of a liability of the company must not be enforced against—

(a) a director of the company; or

(b) that person's spouse or relative.

(2) In this section, **liability** means a debt, liability, or other obligation.

Compare: Corporations Act 2001 s 440J(1) (Aust)

Section 239ABJ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

Subpart 10: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABK Meaning of terms used in this subpart

In this subpart, unless the context otherwise requires,—

decision period means, in relation to a secured creditor holding a charge over property of a company in administration, the period that—

(a) begins—

(i) if notice of the appointment of the administrator must be given to the secured creditor under section 239ADW(1)(c), on the day when that notice is given; or

(ii) in any other case, on the day when the administration begins; and

(b) ends at the end of the tenth working day after the day when it begins

enforce, in relation to a charge over property of a company in administration, includes—

(a) to appoint a receiver of property of the company under a power contained in an instrument relating to the charge; or

(b) to obtain an order for the appointment of a receiver of that property for the purpose of enforcing the charge; or

(c) to enter into possession, or assume control, of that property for that purpose; or

(d) to appoint a person to enter into possession or assume control (whether as agent for the secured creditor or for the company) for that purpose; or

(e) to exercise, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising

under an instrument relating to the charge, under a written or unwritten law, or otherwise.

Section 239ABK: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABL If secured creditor acts before or during decision period

(1) This section applies if—

(a) the whole, or substantially the whole, of the property of a company in administration is subject to a charge; and

(b) before or during the decision period, the secured creditor enforces the charge in relation to all property of the company subject to the charge, whether or not the charge is enforced in the same way in relation to all that property.

(2) This section also applies if—

(a) a company is in administration; and

(b) the same person is the secured creditor in relation to each of 2 or more charges over the property of the company; and

(c) the property of the company (in this subsection called the **charged property**) subject to the respective charges together constitutes the whole, or substantially the whole, of the company's property; and

(d) before or during the decision period, the secured creditor enforces together the charges in relation to all the charged property—

(i) whether or not the charges are enforced in the same way in relation to all the charged property; and

(ii) whether or not any of the charges is enforced in the same way in relation to all the property of the company subject to that charge; and

(iii) in so far as the charges are enforced in relation to property of the company in a way referred to in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK, whether or not the same person is appointed in respect of all of the last-mentioned property.

(3) Nothing in section 239ABC or in an order under section 239ABO prevents any of the following persons from enforcing the charge:

(a) the secured creditor:

(b) a receiver or person appointed as mentioned in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK as that definition applies in relation to the charge, or any of the charges (even if appointed after the decision period).

(4) Section 239Z does not apply in relation to a transaction or dealing that affects property of the company and is entered into by the secured creditor or a

receiver or person of a kind referred to in subsection (3)(b) in the performance or exercise of a function or power as that secured creditor, receiver, or person, as the case may be.

Compare: Corporations Act 2001 s 441A (Aust)

Section 239ABL: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABM If enforcement of charges begins before administration

(1) This section applies if, before the beginning of the administration of a company, a secured creditor, receiver, or other person, for the purpose of enforcing a charge over the property,—

(a) entered into possession, or assumed control, of the property of the company; or

(b) entered into an agreement to sell the property; or

(c) made arrangements for the property to be offered for sale by public auction; or

(d) publicly invited tenders for the purchase of the property; or

(e) exercised any other power in relation to the property.

(2) Nothing in section 239ABC prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property.

(3) Section 239Z does not apply in relation to a transaction or dealing that affects the property and is entered into, as the case may be,—

(a) in the exercise of a power of the secured creditor as secured creditor; or

(b) in the performance or exercise of a function or power of the receiver or other person.

Compare: Corporations Act 2001 s 441B (Aust)

Section 239ABM: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABMA Enforcement of security interest over collateral for qualifying derivative

(1) Nothing in sections 239ABC, 239ABD, 239ABE, and 239ABG limits or prevents any person referred to in subsection (2) from enforcing a security interest over collateral to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative if—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before enforcement, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the secured creditor; or

(ii) another person (who is not the company that granted the security interest) on behalf of the secured creditor, under the terms of an arrangement evidenced in writing.

(2) The persons are—

(a) the secured creditor:

(b) a receiver or person appointed as mentioned in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK as that definition applies in relation to the security interest, or any of the security interests (even if appointed after the decision period).

(3) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subsection (1) have in that subsection the same meanings as in that section.

(4) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subsection (1)(b), and those modifications include—

(a) treating references to section 122(9A)(b) of that Act as references to subsection (1)(b) of this section; and

(b) treating references to the enforcing counterparty as references to the secured creditor; and

(c) treating references to the grantor as references to the company that granted the security interest.

Section 239ABMA: inserted, on 31 August 2019, by section 10 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

239ABN Charge over perishable property

(1) This section applies if perishable property of a company in administration is subject to a charge.

(2) Nothing in section 239ABC prevents the secured creditor, a receiver, or a person appointed (at any time) as mentioned in paragraph (a), (b), or (d) of the definition of enforce in section 239ABK from enforcing the charge, so far as it is a charge over perishable property.

(3) Section 239Z does not apply in relation to a transaction or dealing that affects perishable property of the company and is entered into, as the case may be,—

(a) in the exercise of a power of the secured creditor as secured creditor; or

(b) in the performance or exercise of a function or power of the receiver or other person.

Compare: Corporations Act 2001 s 441C (Aust)

Section 239ABN: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) This section—

(a) applies if,—

(i) for the purpose of enforcing a charge over property of a company, the secured creditor, a receiver, or other person does an act of a kind referred to in section 239ABM(1); and

(ii) the company is in administration when the secured creditor, receiver, or other person does that act, or an administrator is later appointed to the company:

(b) does not apply in a case where section 239ABL applies.

(2) On an application by the administrator, the court may order the secured creditor, receiver, or other person not to perform specified functions or exercise specified powers, except as permitted by the order.

(3) The court may make an order only if satisfied that what the administrator proposes to do during the administration will adequately protect the secured creditor's interests.

(4) An order—

(a) may be made only, and has effect only, during the administration; and

(b) has effect despite section 239ABM and 239ABN.

Compare: Corporations Act 2001 s 441D (Aust)

Section 239ABO: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABP Giving notice under security agreement

Section 239ABC does not prevent a person from giving a notice under the provisions of a security agreement.

Compare: Corporations Act 2001 s 441E (Aust)

Section 239ABP: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABQ If recovery of property begins before administration

(1) This section applies if, before the beginning of the administration of a company, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it,—

(a) entered into possession of, or assumed control of, property used or occupied by, or in the possession of, the company; or

(b) exercised any other power in relation to the property.

(2) Section 239ABD does not prevent the receiver or other person from performing a function, or exercising a power, in relation to the property.

(3) Section 239Z does not apply in relation to a transaction or dealing that affects the property and is entered into in the performance or exercise of a function or power of the receiver or other person.

Compare: Corporations Act 2001 s 441F (Aust)

Section 239ABQ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABR Recovering perishable property

(1) Nothing in section 239ABD prevents a person from taking possession of, or otherwise recovering, perishable property.

(2) Section 239Z does not apply in relation to a transaction or dealing that affects perishable property and is entered into for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it.

Compare: Corporations Act 2001 s 441G (Aust)

Section 239ABR: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) This section applies if,—

(a) for the purpose of enforcing a right of the owner or lessor of property used or occupied by, or in the possession of, a company to take possession of the property or otherwise recover it, a person—

(i) enters into possession, or assumes control, of the property; or

(ii) exercises any other power in relation to the property; and

(b) the company is in administration when the person does so, or an administrator is later appointed to the company.

(2) On an application by the administrator, the court may order the person not to perform specified functions, or exercise specified powers, in relation to the property, except as permitted by the order.

(3) The court may make an order only if satisfied that what the administrator proposes to do during the administration will adequately protect the interests of the owner or lessor.

(4) An order—

(a) may be made only, and has effect only, during the administration; and

(b) has effect despite sections 239ABQ and 239ABR.

Compare: Corporations Act 2001 s 441H (Aust)

Section 239ABS: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABT Giving notice under agreement about property

Nothing in section 239ABD prevents a person from giving a notice to a company under an agreement relating to property that is used or occupied by, or is in the possession of, the company.

Compare: Corporations Act 2001 s 441J (Aust)

Section 239ABT: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 11—Interface with liquidation

Subpart 11: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABU When liquidator may be appointed to company in administration

A liquidator may be appointed to a company in administration—

(a) by the court, on an application for the appointment of a liquidator under section 241(2)(c); or

(b) by resolution of the creditors at the watershed meeting or at a meeting convened under section 239ADF to consider the termination of the deed of company arrangement.

Section 239ABU: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABV Court may adjourn application for liquidation

The court may adjourn an application under section 241(2)(c) for the appointment of a liquidator of a company in administration if the court is satisfied that it is in the interests of the company's creditors for the company to continue in administration rather than be placed in liquidation.

Compare: Corporations Act 2001 s 440A(2) (Aust)

Section 239ABV: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

The court must not appoint an interim liquidator of a company in administration if the court is satisfied that it is in the interests of the company's creditors for the company to continue in administration rather than have an interim liquidator appointed.

Compare: Corporations Act 2001 s 440A(3) (Aust)

Section 239ABW: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABX Effect of appointment of liquidator

The appointment of a liquidator to a company in administration ends the administration.

Section 239ABX: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ABY Former administrator is default liquidator

(1) In the case of the appointment of a liquidator to a company in administration by the creditors, the former administrator is the liquidator if—

(a) the creditors' resolution does not nominate a person for appointment; or

(b) the person nominated—

(i) is disqualified from acting as a liquidator under section 280(2); or

(ii) has not satisfied the requirements of section 282; or

(iii) is not a licensed insolvency practitioner who is permitted to act as a liquidator of the company in accordance with the Insolvency Practitioners Regulation Act 2019; or

(c) the person nominated is for any other reason unable or unwilling to act as liquidator.

(2) However, the former administrator must appoint another person as the liquidator if the former administrator is disqualified from acting as a liquidator or is not a licensed insolvency practitioner who is permitted to act as a liquidator of the company in accordance with the Insolvency Practitioners Regulation Act 2019.

Section 239ABY: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ABY(1)(b): replaced, on 1 September 2020, by section 16(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ABY(2): inserted, on 1 September 2020, by section 16(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ABYA Provision of information and assistance to liquidator

(1) This section applies if a person was acting as an administrator of a company before the appointment of a liquidator to the company.

(2) The administrator must, where practicable, provide to the liquidator the information that the administrator has in their possession or under their control and that the liquidator reasonably requires to carry out the functions and duties of liquidator.

(3) The information referred to in subsection (2) includes—

(a) the records and other documents of the company:

(b) any information necessary to provide the liquidator with control over the property of the company:

(c) any information relating to claims:

(d) accounting records and other documents of the administration.

(4) The administrator must, where practicable, provide to the liquidator any assistance that the liquidator reasonably requires to carry out the functions and duties of liquidator.

(5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 239ABYA: inserted, on 1 September 2020, by section 17 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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

(1) This section applies when a liquidator is appointed to a company that is in administration or under a deed of company arrangement.

(2) The administrator or, if the company is under a deed of company arrangement, the deed administrator must as soon as practicable lodge the following documents with the Registrar:

(a) a copy of the administrator's report that accompanied the notice to creditors of the watershed meeting; and

(b) a further report updating the administrator's report with any matters of which the administrator or deed administrator is aware that—

(i) are not referred to in the administrator's report, or have changed since that report; and

(ii) affect the financial position of the company.

(3) If there is no administrator or deed administrator acting when the company is placed in liquidation, the director or directors of the company at the date of liquidation must take the steps described in subsection (2) as if they were the administrator or deed administrator.

Section 239ABZ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

A payment made, transaction entered into, or any other act or thing done, in good faith, by or with the consent of the administrator of a company in administration, must not be set aside in a liquidation of the company.

Compare: Corporations Act 2001 s 451C(b) (Aust)

Section 239ACA: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACB Voidable transactions and voidable dispositions

(1) The voidable transaction and voidable disposition provisions do not apply to a transaction or disposition by a company in administration if the transaction or disposition is—

(a) carried out by or with the authority of the administrator or deed administrator; or

(b) specifically authorised by the deed of company arrangement and carried out by the deed administrator.

(2) In this section, **voidable transaction and voidable disposition provisions** means sections 292 to 296D.

Section 239ACB: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ACB heading: amended, on 1 September 2020, by section 18(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ACB(1): amended, on 1 September 2020, by section 18(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ACB(2): replaced, on 1 September 2020, by section 18(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Subpart 12—Deed administrator

Subpart 12: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACC Who is deed administrator

The administrator of the company is the deed administrator, unless the creditors at the watershed meeting by resolution appoint someone else to be the deed administrator.

Compare: Corporations Act 2001 s 444A(2) (Aust)

Section 239ACC: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACD Who may be appointed as deed administrator

(1) A person may be appointed as a deed administrator of a company if the person—

(a) is a licensed insolvency practitioner who is permitted to act as a deed administrator of the company under the Insolvency Practitioners Regulation Act 2019; and

(b) is not disqualified under subsection (2).

(2) Unless the court orders otherwise, a person is disqualified from appointment as a deed administrator of a company if the person would be disqualified from appointment as a liquidator of that company under section 280(2).

(3) For the purpose of subsection (2),—

(a) in section 280,—

(i) a reference to the commencement of the liquidation must be read as if it were a reference to the execution of the deed of company arrangement:

(ii) a reference to a company must be read as if it were a reference to the company under a deed of company arrangement; and

(b) section 280(4)(c) does not apply.

(4) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—

(a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and

(b) the person,—

(i) with their consent, is appointed as a deed administrator; or

(ii) acts as a deed administrator.

(5) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.

Section 239ACD: replaced, on 1 September 2020, by section 19 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACE What deed administrator must do before appointment

(1) A person must not be appointed as a deed administrator of a company unless the person has—

(a) consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed; and

(b) certified in writing that the person—

(i) is a licensed insolvency practitioner; and

(ii) is permitted to act as a deed administrator of the company under the Insolvency Practitioners Regulation Act 2019; and

(iii) is not disqualified from appointment under section 239ACD(2); and

(c) tabled at the watershed meeting (or, if section 239ACP applies, circulated to creditors with the draft deed under that section)—

(i) the written consent and certificate required under paragraphs (a) and (b); and

(ii) an interests statement that complies with section 239ACEA.

(2) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—

(a) the person, with their consent, is appointed as a deed administrator despite failing to certify the matters set out in subsection (1)(b); or

(b) the person fails to comply with subsection (1)(c).

(3) The acts of a person as a deed administrator are valid even if the person does not meet the requirements of section 239ACD(1), fails to certify the matters set out in subsection (1)(b), or fails to comply with subsection (1)(c).

Section 239ACE: replaced, on 1 September 2020, by section 19 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACEA Requirements for interests statement

(1) This section sets out the requirements for the interests statement referred to in section 239ACE(1)(c)(ii).

(2) The interests statement must disclose—

(a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as a deed administrator, including anything that would, but for a court order to the contrary, have disqualified the person—

(i) from being appointed as or acting as a deed administrator (*see* section 239ACD(2)); or

(ii) from being a licensed insolvency practitioner; and

(b) the nature of any actual or perceived conflict of interest created by a circumstance, relationship, or other fact; and

(c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.

(3) In preparing the interests statement, the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.

(4) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

Section 239ACEA: inserted, on 1 September 2020, by section 19 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACF Appointment of deed administrator must not be revoked

Except in the case of removal by the court, the appointment of the deed administrator must not be revoked.

Compare: Corporations Act 2001 s 449A (Aust)

Section 239ACF: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACG Appointment of 2 or more deed administrators

(1) Two or more persons may be appointed deed administrators in any case where this Act provides for the appointment of a deed administrator.

(2) If 2 or more persons are appointed deed administrators jointly,—

(a) a deed administrator's function or power may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the order, instrument, or resolution appointing them provides otherwise; and

(b) a reference in this Act to a deed administrator or the deed administrator refers to whichever 1 or more of the deed administrators the case requires.

Compare: Corporations Act 2001 s 451B (Aust)

Section 239ACG: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACH When office of deed administrator vacant

The office of the deed administrator is vacant if the deed administrator—

(a) resigns in accordance with section 239ACI; or

(ab) dies; or

(b) becomes disqualified from appointment as a deed administrator (*see* section 239ACD(2)); or

(c) is removed by the court; or

(d) ceases to be a licensed insolvency practitioner who is permitted to act as a deed administrator of the company in accordance with the Insolvency Practitioners Regulation Act 2019.

Section 239ACH: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ACH(a): replaced, on 1 September 2020, by section 20(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ACH(ab): inserted, on 1 September 2020, by section 20(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ACH(c): amended, on 1 September 2020, by section 20(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ACH(d): inserted, on 1 September 2020, by section 20(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACI Deed administrator may resign

The deed administrator may resign by giving written notice to the company.

Section 239ACI: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACJ Removal of deed administrator

(1) The court may—

(a) remove the deed administrator, and appoint a person in his or her place; or

(b) appoint a new deed administrator, if the deed of company arrangement has not yet terminated but for some reason no deed administrator is acting.

(2) The court may make an order under subsection (1) on the application of a creditor of the company, a shareholder, the liquidator (if the company is in liquid-

ation), the FMA (if the company is a financial markets participant), or the Registrar.

Section 239ACJ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ACJ(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

239ACJA Provision of information and assistance to replacement deed administrator

(1) This section applies if a replacement deed administrator is appointed.

(2) The previous deed administrator must, where practicable, provide to the replacement deed administrator the information that the previous deed administrator has in their possession or under their control and that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.

(3) The information referred to in subsection (2) includes—

(a) the records and other documents of the company:

(b) any information necessary to provide the replacement deed administrator with control over the property of the company (to the extent permitted by the deed):

(c) any information relating to claims:

(d) accounting records and other documents of the administration of the deed of company arrangement.

(4) The previous deed administrator must, where practicable, provide to the replacement deed administrator any assistance that the replacement deed administrator reasonably requires to carry out the functions and duties of deed administrator.

(5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 239ACJA: inserted, on 1 September 2020, by section 21 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACK Remuneration of deed administrator

(1) The deed administrator is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as deed administrator.

(2) The court may, on the application of the deed administrator, a director or officer of the company, a creditor, or a shareholder, review or fix the deed administrator's remuneration at a level that is reasonable in the circumstances.

(3) A creditor or shareholder may make an application under subsection (2) only with the leave of the court.

Compare: 1993 No 105 ss 276(1), 284(1)(e)

Section 239ACK: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACL Deed administrator may sell shares in company

(1) The deed administrator may sell existing shares in the company—

(a) with the consent of the shareholder in question; or

(b) if the shareholder does not consent, with the permission of the court given on an application of the deed administrator.

(2) The shareholder concerned, a creditor, the FMA (if the company is a financial markets participant), or the Registrar may oppose an application by the administrator for the court's permission.

Section 239ACL: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ACL(2): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Subpart 13—Execution and effect of deed of company arrangement

Subpart 13: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACM When this subpart applies

This subpart applies when the creditors, at the watershed meeting, have resolved that the company execute a deed of company arrangement.

Compare: Corporations Act 2001 s 444A(1) (Aust)

Section 239ACM: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACN Preparation and contents of deed

(1) The deed administrator must prepare a document that sets out the terms of the deed.

(2) The document must also specify the following:

(a) who the deed administrator is:

(b) the property of the company (whether or not it is already owned by the company when it executes the deed) that will be available to pay creditors:

(c) the nature and duration of any moratorium period for which the deed provides:

(d) to what extent the company will be released from its debts:

(e) the conditions (if any) for the deed to come into operation:

(f) the conditions (if any) for the deed to continue in operation:

(g) the circumstances in which the deed terminates:

(h) the order in which the proceeds of realisation of the property referred to in paragraph (b) will be distributed among creditors who are bound by the deed:

(i) the day (which is called the **cut-off day** and which must not be later than the day when the administration began) on or before which creditors' claims must have arisen if they are to be admissible under the deed.

(3) The document is treated as including any prescribed provisions, except those prescribed provisions that the document expressly excludes.

Compare: Corporations Act 2001 s 444A(3)–(5) (Aust)

Section 239ACN: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACO Execution of deed

(1) The deed is a deed of company arrangement when it is executed by both the company in administration and the deed administrator.

(2) The deadline for the execution of the deed by the company and the deed administrator is—

(a) 15 working days after the watershed meeting has approved it; or

(b) the further time that the court allows, if the deed administrator has applied to the court for an extension before the end of the initial period of 15 working days after approval.

(3) The company may not execute the deed unless the board of the company has, by resolution, authorised the deed to be executed by the company or on its behalf.

(4) Subsection (3) has effect despite section 239X, but does not limit the functions and powers of the administrator of the company.

Compare: Corporations Act 2001 s 444B (Aust)

Section 239ACO: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACP Procedure if deed not fully approved at watershed meeting

(1) If, at the watershed meeting, the creditors resolve that the company execute a deed of company arrangement, but the proposed deed is not fully approved at the meeting, then—

(a) the administrator must draft the complete deed and circulate it to the creditors within 10 working days after the meeting (called in this section the **preparation period**); and

(b) the creditors have a period of 3 working days (called in this section the **inspection period**) after the end of the preparation period in which to inspect and comment on the deed; and

(c) the company and the deed administrator must execute the deed within 2 working days (called in this section the **execution period**) after the end of the inspection period.

(2) The court may extend the preparation period by up to 10 working days, on an application by the administrator, but only if the application is made within the original preparation period.

(3) The court may extend the execution period by up to 2 working days, on an application by the administrator, but only if the application is made within the original execution period.

Section 239ACP: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) In this section, **interim period** means the period between a resolution passed at the watershed meeting that the company execute a deed of company arrangement and the sooner of—

(a) execution of the deed by the company and the deed administrator; or

(b) expiry of the period during which the deed may be executed.

(2) In the interim period, in so far as a person would be bound by the deed if it had already been executed, that person—

(a) must not do anything inconsistent with the deed, except with the permission of the court; and

(b) must not take a step that is prohibited under section 239ACU.

Compare: Corporations Act 2001 s 444C (Aust)

Section 239ACQ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACR Company's failure to execute deed

If the creditors at the watershed meeting have passed a resolution that the company execute a deed of company arrangement, and the company fails to do so within the deadline for execution, then, notwithstanding section 239E(2)(e),—

(a) the administrator must apply for the appointment of a liquidator to the company; or

(b) if the company is already in liquidation, the administrator must apply for the liquidation to resume.

Section 239ACR: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACS Who is bound by deed

A deed of company arrangement binds—

(a) the company's creditors, to the extent provided by section 239ACT; and

(b) the company; and

(c) the company's directors, officers, and shareholders; and

(d) the deed administrator.

Compare: Corporations Act 2001 s 444G (Aust)

Section 239ACS: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACT Extent to which deed binds creditors

(1) A deed of company arrangement binds all creditors in respect of claims that arise on or before the cut-off day (*see* section 239ACN(2)(i)) specified in the deed.

(2) This section does not prevent a secured creditor from enforcing or otherwise dealing with the charge, except so far as—

(a) the deed provides otherwise in relation to a secured creditor who at the watershed meeting voted in favour of the resolution as a result of which the company executed the deed; or

(b) the court orders otherwise under section 239ACV(1)(a).

(3) This section does not affect a right that an owner or lessor of property has in relation to that property, except so far as—

(a) the deed provides otherwise in relation to an owner or lessor of property who at the watershed meeting voted in favour of the resolution as a result of which the company executed the deed; or

(b) the court orders otherwise under section 239ACV(1)(b).

Compare: Corporations Act 2001 s 444D (Aust)

Section 239ACT: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) A person who is bound by a deed of company arrangement must not, while the deed is in force,—

(a) apply, or continue with an application, to the court for the appointment of a liquidator of the company:

(b) except with the court's permission, begin or continue a proceeding against the company or in relation to any of its property:

(c) except with the court's permission, begin or continue an enforcement process against the company's property.

(2) In this section, **property** includes property used or occupied by the company, or in its possession.

Compare: Corporations Act 2001 s 444E (Aust)

Section 239ACU: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) The court may, at any time after creditors have resolved at the watershed meeting that a deed of company arrangement be executed, order that, except as permitted by the order,—

(a) a secured creditor must not enforce or otherwise deal with the charge; or

(b) the owner or lessor of property that is used or occupied by the company or is in the company's possession must not take possession of the property or otherwise recover it.

(2) The court may make the order only if—

(a) it is satisfied that achieving the purposes of the deed would be materially adversely affected if the order was not made; and

(b) having regard to the terms of the deed and the order, and any other relevant matter, it is satisfied that the interests of the person affected by the order, that is the creditor, property owner, or lessor, will be adequately protected.

(3) An application for an order under this section may be made only,—

(a) if the deed has not yet been executed, by the administrator; or

(b) if the deed has been executed, by the deed administrator.

(4) The court's order may be made subject to conditions.

Compare: Corporations Act 2001 s 444F (Aust)

Section 239ACV: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACW Effect of deed on company's debts

(1) A deed of company arrangement releases the company from a debt only in so far as—

(a) the deed provides for the release; and

(b) the creditor concerned is bound by the deed.

(2) The release of the company from a debt under subsection (1) does not discharge or otherwise affect the liability of—

(a) a guarantor of the debt; or

(b) a person who has indemnified the creditor concerned against default by the company in relation to the debt.

Compare: Corporations Act 2001 s 444H (Aust)

Section 239ACW: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACX Court may rule on validity of deed

(1) The court may rule on the validity of a deed of company arrangement if there is doubt, on a specific ground, whether a deed of company arrangement—

(a) was entered into in accordance with this Part; or

(b) complies with this Part.

(2) An application under this section may be made by—

(a) the deed administrator; or

(b) a shareholder or creditor of the company; or

(ba) the FMA (if the company is a financial markets participant); or

(c) the Registrar.

(3) On an application under this section,—

(a) the court may declare the deed void or not void:

(b) if the deed is void for contravention of a provision of this Part, the court may validate the deed, or any part of it, provided the court is satisfied that—

(i) the provision was substantially complied with; and

(ii) no injustice will result for anyone bound by the deed if the contravention is disregarded.

(4) The court may, if it declares that a provision of the deed is void, vary the deed, but only if the deed administrator consents.

Compare: Corporations Act 2001 s 445G (Aust)

Section 239ACX: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ACX(2)(ba): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Subpart 14—Administrator's duty to file accounts and summary reports

Subpart 14: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 14 heading: amended, on 1 September 2020, by section 22 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACY Administrator includes deed administrator

In this subpart, unless the context otherwise requires, **administrator** includes a deed administrator.

Section 239ACY: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ACZ Administrator must file accounts

(1) Every administrator must file an account with the Registrar for each of the following periods:

(a) the period of 6 months (or shorter, as the administrator decides) after the day on which the administrator was appointed; and

(b) each subsequent period of 6 months during which the administrator holds office; and

(c) the period between the last period of the kind referred to in paragraph (b) and the day on which the administrator vacates office.

(2) The administrator must file the account within 20 working days after the end of the period in question.

(3) The account must be in the prescribed form and must show,—

(a) for each period, the administrator's receipts and payments; and

(b) for each period except the first, the aggregates of the administrator's receipts and payments since the day on which the administrator was appointed.

(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).

Compare: Corporations Act 2001 s 432(1), (1A)(a), (b) (Aust)

Section 239ACZ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ACZ(4): inserted, on 1 September 2020, by section 23 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACZA Administrator must file updates to interests statement

(1) An administrator must, within 20 working days after the end of each period of 6 months following the date on which the administrator was appointed, prepare and send to every known creditor an updated interests statement that complies with section 239APA.

(2) The updated interests statement may be in the form of a statement to be read in conjunction with previous interests statements and updates.

(3) 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).

Section 239ACZA: inserted, on 1 September 2020, by section 24 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ACZB Administrator must file summary report

(1) This section applies to—

(a) a person who is the administrator at the end of an administration; and

(b) a person who is the deed administrator on the termination of a deed of company arrangement.

(2) As soon as practicable after completing his or her duties in relation to the administration or deed of company arrangement (as the case may be), the per-

son must provide to the Registrar, in the manner specified by the Registrar, a summary report.

(3) The summary report must contain the prescribed information.

(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).

Section 239ACZB: inserted, on 1 September 2020, by section 24 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Subpart 15—Variation and termination of deed

Subpart 15: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADA Creditors may vary deed

The creditors may vary a deed of company arrangement by a resolution passed at a meeting convened under section 239ADF, but the variation must not be materially different from the proposed variation set out in the notice of the meeting.

Compare: Corporations Act 2001 s 445A (Aust)

Section 239ADA: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADB Court may cancel creditors' variation

(1) A creditor of a company in administration may apply to the court for an order cancelling the variation of the deed of company arrangement by the creditors.

(2) On the application, the court may, if it is just and equitable to do so,—

(a) cancel or confirm the variation, wholly or in part, on specified conditions (if any); and

(b) make any other orders that the court thinks appropriate.

Compare: Corporations Act 2001 s 445B (Aust)

Section 239ADB: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADC Termination of deed

(1) A deed of company arrangement may be terminated—

(a) by the court under section 239ADD; or

(b) by a resolution of the creditors under section 239ADE; or

(c) automatically, if the deed specifies circumstances in which the deed will terminate, and those circumstances occur.

(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).

Compare: Corporations Act 2001 s 445C (Aust)

Section 239ADC: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADC(2): inserted, on 31 August 2012, by section 6 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

239ADD Termination by court

(1) The court may terminate a deed of company arrangement on the application of—

(a) the company; or

(b) a creditor; or

(c) the deed administrator; or

(d) any other interested person.

(2) The court may terminate a deed of company arrangement if it is satisfied that—

(a) an information breach has occurred; or

(b) there has been a material contravention of the deed by a person bound by it; or

(c) effect cannot be given to the deed without injustice or undue delay; or

(d) the deed or a provision of it is, an act or omission done or made under the deed was, or an act or omission proposed to be done or made under the deed would be,—

(i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, 1 or more of the creditors; or

(ii) contrary to the interests of the company as a whole; or

(e) the deed should be terminated for some other reason.

(3) The court must not terminate the deed without first taking into account the rights of third parties.

(4) In this section, an **information breach** has occurred if—

(a) false or misleading information about the company's business, property, affairs, or financial circumstances—

(i) was given to the administrator or the creditors; or

(ii) was contained in a report or statement under section 239AU(3) that accompanied a notice of the watershed meeting at which a resolution that the company execute a deed of company arrangement was passed; or

(b) there was an omission from the report or statement referred to in paragraph (a)(ii); and

(c) the information or the omission, as the case may be, can reasonably have been expected to be material to the creditors in deciding whether to vote

in favour of the resolution that the company execute the deed of company arrangement.

Compare: Corporations Act 2001 s 445D (Aust)

Section 239ADD: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADE Termination by creditors

(1) The creditors, by a resolution passed at a meeting convened under section 239ADF, may terminate the deed if there has occurred a material breach of the deed that has not been rectified.

(2) The creditors may also appoint a liquidator if the notice of the meeting sets out a proposed resolution that a liquidator be appointed to the company.

Compare: Corporations Act 2001 s 445E (Aust)

Section 239ADE: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) The deed administrator—

(a) may at any time convene a meeting of the company's creditors to consider a variation to, or the termination of, the deed; and

(b) must convene a meeting if requested to do so in writing by creditors whose claims against the company are not less than 10% in value of the total value of all creditors' claims.

(2) The deed administrator must convene the meeting by—

(a) giving written notice to as many of the company's creditors as reasonably practicable; and

(b) advertising the meeting in accordance with section 3(1)(a).

(3) The administrator must take the steps in subsection (2) not less than 5 working days before the meeting.

(4) The notice given to the creditors must set out any resolution for varying or terminating the deed that is to be considered by the meeting.

(5) The deed administrator must preside at the meeting.

(6) The meeting may be adjourned from time to time.

Compare: Corporations Act 2001 s 445F (Aust)

Section 239ADF: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADF(2)(b): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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

Subpart 16: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

The administrator is not liable for the debts of the company except as provided in this subpart and in section 239Y.

Compare: Corporations Act 2001 s 443C (Aust)

Section 239ADG: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADH Administrator liable for general debts

(1) The administrator is liable for debts that he or she incurs in the performance or exercise, or purported performance or exercise, of any of his or her functions and powers as administrator, for—

(a) the purpose of funding the company; or

(b) any services rendered; or

(c) any goods bought; or

(d) any property hired, leased, or occupied.

(2) Subsection (1) has effect despite any agreement to the contrary, but without prejudice to the administrator's rights against the company or anyone else.

Compare: Corporations Act 2001 s 443A (Aust)

Section 239ADH: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADI Administrator's liability for rent

(1) The administrator is personally liable, to the extent specified in subsection (2), for rent and other payments becoming due by the company under an agreement—

(a) made before the administration began; and

(b) relating to the use, possession, or occupation of property by the company.

(2) The administrator is liable for rent and other payments that accrue in the period—

(a) beginning more than 7 days after the administration begins; and

(b) throughout which—

(i) the company continues to use or occupy, or be in possession of, the property; and

(ii) the administration continues; and

(c) ending on the earliest of the following:

(i) the end of the administration; or

(ii) the administrator ceasing to hold office; or

(iii) the appointment of a receiver of the property; or

(iv) the appointment of an agent by a secured creditor of the property, under the provisions of a charge over the property, to enter into possession or to assume control of the property; or

(v) when a secured creditor takes possession or assumes control of the property under the provisions of a charge over the property.

(3) The administrator is not taken, because of subsection (2),—

(a) to have adopted the agreement; or

(b) to be liable under the agreement except as set out in subsection (2).

(4) This section does not affect the liability of the company for rent and other payments due under the agreement.

Compare: Corporations Act 2001 s 443B(1), (2), (7), (9) (Aust)

Section 239ADI: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) The administrator is not liable under section 239ADI for any period for which a non-use notice is in force.

(2) In this section, **non-use notice** means, in relation to the property to which it refers, a notice that—

(a) is given by the administrator to the owner or the lessor of the property within 7 days after the administration begins; and

(b) specifies the property to which it relates; and

(c) states that the company does not propose to use the property or otherwise exercise any rights in relation to it.

(3) A non-use notice ceases to have effect if—

(a) the administrator revokes it by written notice to the owner or lessor; or

(b) the company exercises, or purports to exercise, a right in relation to the property.

(4) In subsection (3)(b), the company does not exercise, or purport to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company—

(a) also uses the property; or

(b) asserts a right, as against the owner or the lessor, to continue to occupy or be in possession.

(5) A non-use notice does not affect the company's liability for rent and other payments.

Compare: Corporations Act 2001 s 443B(3)–(6) (Aust)

Section 239ADJ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADK Court may exempt administrator from liability for rent

The court may exempt an administrator from liability for rent and other payments under section 239ADI, but the court's order does not affect the company's liability.

Compare: Corporations Act 2001 s 443B(8) (Aust)

Section 239ADK: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADL Administrator's indemnity

The administrator is indemnified out of the company's property for—

(a) a personal liability incurred in the due performance of his or her duties, but not a personal liability incurred in bad faith or negligently; and

(b) the remuneration to which the administrator is entitled under section 239O.

Compare: Corporations Act 2001 s 443D (Aust)

Section 239ADL: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

Subject to section 312, the administrator's right of indemnity under this subpart has priority over—

(a) all the company's unsecured debts; and

(b) debts of the company secured by a charge of the kind described in clause 2(1)(b) of Schedule 7.

Compare: Corporations Act 2001 s 443E (Aust)

Section 239ADM: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADN Lien to secure indemnity

(1) The administrator has a lien on the company's property to secure a right of indemnity under this subpart.

(2) A lien under subsection (1) has priority over a charge to the same extent as the right of indemnity has priority over debts secured by the relevant charge.

Compare: Corporations Act 2001 s 443F (Aust)

Section 239ADN: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 17—Powers of court

Subpart 17: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADO Court's general power

(1) The court may make any order that it thinks appropriate about how this Part is to operate in relation to a particular company.

(2) For example, the court may terminate the administration under subsection (1) if the court is satisfied that the administration should end—

(a) because the company is solvent; or

(b) because the provisions of this Part are being abused; or

(c) for some other reason.

(3) The court's order may be made subject to conditions.

(4) The court may make an order under this section on the application of—

(a) the company or a shareholder of the company; or

(b) a creditor of the company; or

(c) the administrator; or

(d) the deed administrator; or

(da) the FMA (if the company is a financial markets participant); or

(e) the Registrar; or

(f) any other interested person.

Compare: Corporations Act 2001 s 447A (Aust)

Section 239ADO: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADO(4)(da): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

239ADP Orders to protect creditors during administration

(1) On the application of the Registrar or, if the company is a financial markets participant, the FMA, the court may make any order that it thinks necessary to protect the interests of the company's creditors while the company is in administration.

(2) On the application of a creditor of a company, the court may make any order that it thinks necessary to protect the interests of that creditor while the company is in administration.

(3) An order may be made subject to conditions.

Compare: Corporations Act 2001 s 447B (Aust)

Section 239ADP: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADP(1): replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

239ADQ Court may rule on validity of administrator's appointment

(1) If there is doubt, on a specific ground, as to the validity of the appointment of a person as administrator or deed administrator, any of the following persons may apply to the court for a ruling on the validity of the appointment:

(a) the person appointed; or

(b) the company in question; or

(c) any of the company's creditors.

(2) In ruling that the appointment is invalid, the court is not limited to the grounds specified in the application.

Compare: Corporations Act 2001 s 447C (Aust)

Section 239ADQ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADR Administrator may seek directions

(1) The administrator or the deed administrator may apply to the court for directions in relation to the performance or exercise of any of the administrator's functions and powers.

(2) The deed administrator may apply to the court for directions in relation to the operation of, or giving effect to, the deed.

Compare: Corporations Act 2001 s 447D (Aust)

Section 239ADR: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADS Court may supervise administrator or deed administrator

(1) The court may make any order it thinks just if it is satisfied that—

(a) the administrator's or the deed administrator's management of the company's business, property, or affairs is prejudicial to the interests of some or all of the company's creditors or shareholders; or

(b) the administrator's or deed administrator's conduct or proposed conduct has been or is or will be prejudicial to those interests.

(2) An application for an order under this section may be made by—

(a) a creditor or shareholder of the company in question; or

(b) the Registrar.

Compare: Corporations Act 2001 s 447E(1) (Aust)

Section 239ADS: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) The court may order an administrator or deed administrator to remedy his or her default.

(2) Examples of default include the following:

(a) the administrator or deed administrator has failed, as required by this Act or otherwise by law, to make or file any return, account, or other document or to give a notice, and has not remedied the default within 10 working days after service on him or her of a notice by a shareholder or creditor of the company in administration requiring that the default be remedied:

(b) the administrator or deed administrator has failed, after being required at any time by the liquidator of the company to do so,—

(i) to render proper accounts of, and to vouch, his or her receipts and payments as administrator or deed administrator:

(ii) to pay to the liquidator the amount properly payable to the liquidator.

(3) An application for an order under this section may be made by—

(a) a shareholder or creditor of the company, in the case of a default referred to in subsection (2)(a):

(b) the liquidator, in the case of a default referred to in subsection (2)(b):

(c) in any case, by the Registrar.

Section 239ADT: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) The court may make any order it thinks just if it is satisfied that,—

(a) in the case of a company in administration, the office of the administrator is vacant or no administrator is acting; or

(b) in the case of a deed of company arrangement that is still in force, the office of the deed administrator is vacant or no deed administrator is acting.

(2) An application for an order under this section may be made by—

(a) a creditor or shareholder of the company; or

(b) if the company is in liquidation, the liquidator; or

(ba) if the company is a financial markets participant, the FMA; or

(c) the Registrar.

Compare: Corporations Act 2001 s 447E(2) (Aust)

Section 239ADU: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADU(2)(ba): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

239ADUA Meaning of failure to comply

(1) In section 239ADV, **failure to comply** means a person's failure to comply with an enactment, a rule of law, or a court order to the extent that the enactment, rule, or order applies to the person in the person's capacity as an administrator or a deed administrator.

(2) In proceedings under section 239ADV,—

(a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact:

(b) a finding described in paragraph (a) may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

Section 239ADUA: inserted, on 1 September 2020, by section 25 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ADV Prohibition order

(1) The court must make a prohibition order in relation to a person if it is shown to the satisfaction of the court that that person is unfit to act as administrator or deed administrator by reason of persistent failures to comply or the seriousness of a failure to comply.

(2) The period of the order is a matter for the discretion of the court and the court may make a prohibition period for an indefinite period.

(3) A person to whom a prohibition order applies—

(a) must not act (or continue to act) as an insolvency practitioner; and

(b) must be treated as if they are not a licensed insolvency practitioner (*see* section 8 of the Insolvency Practitioners Regulation Act 2019).

(4) The court may make an order under this section in relation to a past or current administrator of a company in administration, or a past or current deed administrator of a company under a deed of company arrangement, on the application of—

(a) the company or a shareholder of the company; or

(b) a creditor of the company; or

(c) the administrator or deed administrator of the company; or

(d) the Registrar; or

(e) any other interested person.

(5) A copy of every order made under subsection (1) must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.

(6) The Registrar must provide a copy of the order to each accredited body (within the meaning of the Insolvency Practitioners Regulation Act 2019) before the

end of the working day after the day on which the Registrar receives a copy of the order.

(7) *[Repealed]*

Section 239ADV: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADV(3): replaced, on 1 September 2020, by section 26(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ADV(4): amended, on 1 September 2020, by section 26(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ADV(5): replaced, on 1 September 2020, by section 26(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ADV(6): replaced, on 1 September 2020, by section 26(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 239ADV(7): repealed, on 1 September 2020, by section 26(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Subpart 18—Notices about steps taken under this Part

Subpart 18: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239ADW Administrator must give notice of appointment

(1) An administrator appointed by the company under section 239I, by the liquidator or interim liquidator under section 239J, by a secured creditor under section 239K, by the court under section 239L, or by the creditors under section 239R(2)(a) must,—

(a) before the end of the next working day after appointment, lodge a notice of the appointment with the Registrar; and

(b) not later than 3 working days after appointment, advertise the appointment in accordance with section 3(1)(b); and

(c) as soon as practicable, and in any event not later than the end of the next working day after appointment, give written notice of the appointment to—

(i) each person who holds a charge over the whole, or substantially the whole, of the company's property; or

(ii) each person who holds 2 or more charges in the property of the company if the property of the company subject to those charges together is the whole, or substantially the whole, of the company's property; and

(d) in the notice referred to in paragraph (c), set out the rights of the creditor to enforce the charge under section 239ABL.

(2) The administrator need not give notice under subsection (1) to the person who appointed him or her.

(3) A notice of appointment must identify who made the appointment and, if the administrator was appointed by the court, who applied to the court for the appointment.

Compare: Corporations Act 2001 s 450A(1), (3), (4) (Aust)

Section 239ADW: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADW(3): inserted, on 1 September 2020, by section 27 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239ADWA Deed administrator must give notice of appointment

(1) This section applies if the creditors at the watershed meeting, by resolution, appoint a person other than the administrator of the company to be the deed administrator.

(2) The deed administrator must,—

(a) before the end of the next working day after appointment, lodge a notice of appointment with the Registrar; and

(b) not later than 5 working days after appointment, advertise the appointment in accordance with section 3(1)(a).

(3) A notice of appointment must state that the appointment was made by the creditors at the watershed meeting.

Section 239ADWA: inserted, on 1 September 2020, by section 28 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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

A secured creditor who appoints an administrator under section 239K must give written notice of the appointment to the company as soon as practicable and in any event before the end of the next working day.

Compare: Corporations Act 2001 s 450A(2) (Aust)

Section 239ADX: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

As soon as practicable after a deed of company arrangement is executed, the deed administrator must—

(a) send to each creditor a written notice of the execution of the deed; and

(b) advertise the execution of the deed in accordance with section 3(1)(a); and

(c) file a copy of the deed with the Registrar.

Compare: Corporations Act 2001 s 450B (Aust)

Section 239ADY: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADY(b): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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

If a company does not meet the deadline under section 239ACO or 239ACP(1)(c) for the execution of a deed of company arrangement, the deed administrator must as soon as practicable—

(a) cause a notice of the failure to execute the deed to be advertised in accordance with section 3(1)(a); and

(b) file a copy of the notice with the Registrar.

Compare: Corporations Act 2001 s 450C (Aust)

Section 239ADZ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239ADZ(a): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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

If the creditors terminate the deed of company arrangement, the deed administrator must as soon as practicable—

(a) send a notice of the termination to each of the creditors; and

(b) advertise the termination in accordance with section 3(1)(a); and

(c) file a copy of the notice with the Registrar.

Compare: Corporations Act 2001 s 450D (Aust)

Section 239AEA: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AEA(b): amended, on 1 September 2020, by section 58 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

239AEB Company must disclose fact of administration

(1) A company must set out, in every document issued or signed by, or on behalf of, the company that evidences or creates a legal obligation of the company, after the company's name where it first appears,—

(a) for as long as the company is in administration, the words "administrator appointed"; and

(b) for as a long as a deed of company arrangement is in force, the words "subject to deed of company arrangement".

(2) The court may, on an application by the company, exempt the company from the requirement in subsection (1)(b).

(3) A company that fails to comply with subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(1).

Compare: Corporations Act 2001 s 450E (Aust)

Section 239AEB: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEC Notice of change of name

(1) A company in administration that changed its name less than 6 months before the appointment of the administrator must, in any document of the company where its name appears, include also its former name.

(2) If a company to which subsection (1) applies is, in the course of the administration, placed in liquidation, the liquidator must, in any document of the company where its name appears, include also its former name.

Section 239AEC: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AED Effect of contravention of this subpart

A contravention of this subpart does not affect the validity of anything done or omitted under this Part, except so far as the court orders otherwise.

Compare: Corporations Act 2001 s 450F (Aust)

Section 239AED: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 19—Miscellaneous

Subpart 19: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEE Effect of things done during administration of company

A payment made, transaction entered into, or any other act or thing done, in good faith, by or with the consent of the administrator of a company in administration is valid and effective for the purposes of this Act.

Compare: Corporations Act 2001 s 451C(a) (Aust)

Section 239AEE: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEF Interruption of time for doing act

If there is a time before which, or a period during which, an act for any purpose may or must be done, and this Act prevents the act from being done in time, then the time or period in question is extended by the period during which this Act prevents the act from being done in time.

Compare: Corporations Act 2001 s 451D (Aust)

Section 239AEF: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 20—Set-off and netting agreements

Subpart 20: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEG Mutual credit and set-off

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 under a deed of company arrangement,—

(a) an account must be taken of what is due from 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 admitted under the deed of company arrangement, or is payable to the company, as the case may be.

Section 239AEG: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEH Application of set-off under netting agreement

(1) Sections 239AEI to 239AEP apply—

(a) to a netting agreement—

(i) made in or evidenced by writing; and

(ii) in which the application of sections 239AEI to 239AEP 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 239AEI to 239AEP 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 239AEI to 239AEP 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 the company or by the administrator.

Section 239AEH: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEI Calculation of netted balance

If a company in administration is a party to a netting agreement,—

(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, in respect of the transactions that are included in the calculation,—

(i) the debt that is owed to the creditor and that may be admitted under the deed of company arrangement; or

(ii) the amount that is payable to the company,—

as the case may be.

Section 239AEI: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEJ Mutuality required for transactions under bilateral netting agreements

(1) Sections 239AEI to 239AEP apply to transactions that are subject to a bilateral netting agreement only if those transactions constitute mutual credits, mutual debts, or other mutual dealings.

(2) Subsection (3) applies for the purpose of determining under this section whether there are mutual credits, mutual debts, or other mutual dealings.

(3) A debt or other liability incurred by a person (**T**) who holds property as a trustee is to be regarded as incurred by T in the same capacity as that in which T holds the property, if T incurs, and is authorised by the terms of the trust to incur, the debt or other liability acting as the trustee.

Section 239AEJ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AEJ(2): inserted, on 31 March 2017, by section 30 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 239AEJ(3): inserted, on 31 March 2017, by section 30 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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

(1) Sections 239AEI to 239AEP 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 239AEI to 239AEP 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.

Section 239AEK: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) Section 239AEG does not apply to transactions that are subject to a netting agreement to which sections 239AEI to 239AEP apply.

(2) However, a netted balance is to be treated as an amount to which section 239AEG applies if the company in administration 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.

Section 239AEL: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEM Transactions under netting agreement and effect on certain sections

(1) Nothing in sections 239AEH to 239AEP prevents the operation of section 56 or, subject to section 239ACB, section 292, 297 or 298 in respect of a transaction that is subject to a netting agreement.

(2) However, nothing in section 292(4A) 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.

Section 239AEM: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AEM(2): amended, on 7 July 2010, by section 5 of the Companies Amendment Act (No 2) 2010 (2010 No 53).

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

Nothing in section 239Z affects, in respect of a company in administration, 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 an administrator) occurring not later than the commencement of the administration; 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.

Section 239AEN: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

A person who is declared a recognised clearing house under section 310K is deemed to be a recognised clearing house for the purposes of sections 239AEI to 239AEP also.

Section 239AEO: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEP 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 239AEI to 239AEP 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.

Section 239AEP: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Subpart 21—Single administration of related companies in administration

Subpart 21: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEQ Interpretation of terms for purposes of this subpart

(1) In this subpart,—

pool means a pool of related companies in a single administration under a single administration order made under section 239AER

pool administrator means the administrator of a pool

pool company means a company in respect of which a single administration order has been made under section 239AER.

(2) For the purposes of the single administration of a pool, in this Part, unless the context indicates otherwise,—

administrator includes a pool administrator

company includes a pool

deed administrator includes the deed administrator of a deed of company administration executed by a pool

deed of company administration includes a deed of company administration executed under section 239AEW.

Section 239AEQ: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) If 2 or more related companies are in administration, the court may, if it is satisfied that it is just and equitable, order that the administration in respect of each company must proceed together as if they were 1 company to the extent that the court orders and subject to the terms and conditions that the court imposes.

(2) An application under subsection (1) may be made by the administrator or a creditor of any of the companies in administration.

(3) Notwithstanding anything in this Part, the court may, on first making the order and otherwise from time to time, make any other order, or give any direction to facilitate giving effect to an order, under subsection (1) as it sees fit.

(4) The fact that creditors of the company in administration relied on the fact that another company was, or is, related to it is not a ground for making an order under this section.

Compare: 1993 No 105 s 271(b)

Section 239AER: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) Unless the court orders otherwise, an applicant for an order under section 239AER must give notice that the application has been filed to—

(a) the administrator of each company in administration; and

(b) each creditor of each company in administration.

(2) The notice must—

(a) identify each company to which the proposed order relates; and

(b) summarise all information known to the applicant that is material to whether the order should be made; and

(c) state that a person to whom the notice must be given may oppose the application by filing a statement of defence in accordance with the High Court Rules 2016.

(3) The notice requirement in this section is in addition to anything required by the High Court Rules 2016 to be done.

Section 239AES: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

Section 239AES(2)(c): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 239AES(3): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

239AET Guidelines for single administration order

In deciding whether it is just and equitable to make an order under section 239AER, the court must have regard to the following criteria:

(a) the extent to which any of the companies took part in the management of any of the other companies in the proposed pool:

(b) the conduct of any of the companies towards the creditors of any of the other companies in the proposed pool:

(c) the extent to which the circumstances that gave rise to any of the companies in the proposed pool being placed in administration are attributable to the actions of any of the other companies:

(d) the extent to which the businesses of the companies in the proposed pool have been combined:

(e) any other matters that the court thinks fit.

Compare: 1993 No 105 s 272(2)

Section 239AET: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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

(1) The court may order that a company in administration that is related to the companies in an existing pool be added to the pool for the purposes of administration.

(2) An application under subsection (1) may be made by—

(a) the administrator or any creditor of the company; or

(b) the administrator or any creditors of the pool.

(3) The court may make the order if it is satisfied that it is just and equitable to do so having regard to any 1 or more of the criteria in section 239AET.

(4) Sections 239AER and 239AES apply with all necessary modifications to an application under this section.

(5) The court must not make the order unless the pool administrator consents.

Section 239AEU: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEV Creditors' meetings in single administration of pool companies

(1) The provisions of this Part in relation to creditors' meetings apply except that, subject to subsection (2), a creditor of a pool company may only vote on a matter related to the pool company of which that person is a creditor.

(2) If separate voting by creditors is impracticable (because, for example, the affairs of the pool companies are intermingled), the court may, on the application of the pool administrator, give directions as to how voting at a creditors' meeting must proceed.

Section 239AEV: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

239AEW Pool companies may execute single deed of company administration

For the purposes of the single administration of a pool, the pool companies may execute a single deed of company arrangement.

Section 239AEW: inserted, on 1 November 2007, by section 6 of the Companies Amendment Act 2006 (2006 No 56).

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 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, 280, and 289; 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 as an unsecured creditor

liquidation committee means a liquidation committee appointed under section 314

liquidator means a person who is appointed as a liquidator of a company (and includes a person who is appointed as an interim liquidator of a company under section 246)

Official Assignee means an Official Assignee or Deputy Assignee appointed under the Insolvency Act 2006

statutory demand has the meaning set out in section 289.

(1A) In this Part, **company** means—

(a) a company within the meaning of section 2:

(b) an overseas company to which this Part applies (*see* section 342):

(c) an association (*see* section 240B):

(d) any other body corporate to which this Part applies under any other enactment.

(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.

Section 240(1) **creditor**: replaced, on 1 July 1994, by section 30 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 240(1) **creditor** paragraph (a): amended, on 1 September 2020, by section 29(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 240(1) **liquidator**: inserted, on 1 September 2020, by section 29(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 240(1) **Official Assignee**: amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 240(1A): inserted, on 1 March 2017, by section 6 of the Companies Amendment Act 2016 (2016 No 57).

240A Liquidation of licensed insurers

If a licensed insurer may be put into liquidation under or in accordance with this Part, this Part applies in respect of the insurer subject to subpart 3 of Part 4 of the Insurance (Prudential Supervision) Act 2010.

Section 240A: inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

240B Liquidation of associations

(1) An association may be put into liquidation under this Part, and this Part applies to an association, subject to the modifications and exclusions set out in Schedule 11.

(2) The Insolvency Practitioners Regulation Act 2019 applies to an association put into liquidation under this Part as if the association were a company.

Section 240B: inserted, on 1 March 2017, by section 7 of the Companies Amendment Act 2016 (2016 No 57).

Section 240B(2): inserted, on 1 September 2020, by section 30 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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—

(i) the company; or

(ii) a director; or

(iii) a shareholder or other entitled person; or

(iv) a creditor (including any contingent or prospective creditor); or

(v) if the company is in administration, the administrator; or

(va) if the company is a financial markets participant, the FMA; or

(vi) the Registrar; or

(vii) if the company is a licensed insurer, the Reserve Bank of New Zealand; or

(viii) in the case of a company that has been removed from the New Zealand register, the Registrar or a person who, immediately before the company was removed from the New Zealand register, was a person described in subparagraph (ii), (iii), (iv), or (vii); or

(d) a resolution of the creditors passed at the watershed meeting held under section 239AT.

(2A) However, the court must not appoint a liquidator under subsection (2)(c)(viii) unless the company is restored to the New Zealand register under section 328 or 329.

(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) 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

(ba) the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information; or

(bb) the company, or 1 or more of its directors or shareholders, has in a persistent or serious way failed to comply with duties relating to the company—

(i) under this Act; or

(ii) under the Financial Reporting Act 1993 while in force, except that this subparagraph does not apply after 5 years have elapsed after this subparagraph came into force; or

(c) the company does not comply with section 10; 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.

Section 241(2): replaced, on 1 November 2007, by section 7 of the Companies Amendment Act 2006 (2006 No 56).

Section 241(2)(c)(va): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

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

Section 241(2)(c)(vii): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 241(2)(c)(viii): inserted, on 25 February 2012, by regulation 4(1) of the Companies Amendment Act 2012 (2012 No 7).

Section 241(2A): inserted, on 25 February 2012, by regulation 4(2) of the Companies Amendment Act 2012 (2012 No 7).

Section 241(4)(ba): inserted, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 241(4)(bb): inserted, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 241(5): replaced, on 26 April 1999, by section 3 of the Companies Amendment Act 1999 (1999 No 19).

241AA Restriction on appointment of liquidator by shareholders or board after application for court appointment served on company

(1) This section applies if an application for the appointment of a liquidator under section 241(2)(c) has been filed and served on the company.

(2) A liquidator may be appointed under section 241(2)(a) or (b) only if—

(a) the liquidator is appointed within 10 working days after the application is served on the company; or

(b) if the application is made under section 241(2)(c)(iv), the creditor who filed the application consents to the appointment under section 241(2)(a) or (b).

(3) This section ceases to apply from the time that the court disposes of the application.

Section 241AA: replaced, on 1 September 2020, by section 31 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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; or

(d) a liquidator is appointed under section 241(2)(d), the creditors must record in the resolution appointing the liquidator the date on which, and the time at which, the resolution was passed.

(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: inserted, on 26 April 1999, by section 4 of the Companies Amendment Act 1999 (1999 No 19).

Section 241A(1)(d): inserted, on 1 November 2007, by section 8 of the Companies Amendment Act 2006 (2006 No 56).

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 and to subsection (8), 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 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 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).

(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—

(a) must be given to every known creditor together with the report, interests statement, and notices referred to in section 255(2)(c); and

(b) if the liquidator receives a notice under section 245(1)(b)(iii), 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, 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, 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.

(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, the person who it is resolved to appoint as liquidator shall, subject to section 282, 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, 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 if section 243A applies to the company.

(9) *[Repealed]*

(10) *[Repealed]*

(11) Except for subsection (5), this section does not apply if the liquidator is appointed under section 241(2)(d).

Section 243(1)(a): amended, on 3 June 1998, by section 9(1)(a) of the Companies Amendment Act 1998 (1998 No 31).

Section 243(1)(b): amended, on 3 June 1998, by section 9(1)(b) of the Companies Amendment Act 1998 (1998 No 31).

Section 243(1A): inserted, on 3 June 1998, by section 9(2) of the Companies Amendment Act 1998 (1998 No 31).

Section 243(2): replaced, on 1 November 2007, by section 16 of the Companies Amendment Act 2006 (2006 No 56).

Section 243(2)(a): amended, on 1 September 2020, by section 32(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 243(4): amended, on 3 June 1998, by section 9(4) of the Companies Amendment Act 1998 (1998 No 31).

Section 243(4A): inserted, on 3 June 1998, by section 9(5) of the Companies Amendment Act 1998 (1998 No 31).

Section 243(8): replaced, on 1 September 2020, by section 32(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 243(9): repealed, on 1 September 2020, by section 32(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 243(10): repealed, on 1 September 2020, by section 32(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 243(11): inserted, on 1 November 2007, by section 9 of the Companies Amendment Act 2006 (2006 No 56).

243A Directors' declaration that debts will be paid within 12 months

(1) This section applies to a company if—

(a) a liquidator is appointed under section 241(2)(a) or (b); and

(b) before the appointment of the liquidator, a copy of a declaration described in this section is made by a majority of the company's directors and delivered to the Registrar for registration.

(2) The declaration must—

(a) be to the effect that the directors have made an inquiry into the affairs of the company and have formed the opinion, on reasonable grounds, that the company will be able to pay its debts in full within a period of not more than 12 months after the appointment of the liquidator; and

(b) be in writing; and

(c) be made within 20 working days before the appointment of the liquidator; and

(d) include a statement of the affairs of the company that contains the prescribed information and shows, as at the latest practicable date before the making of the declaration,—

(i) the property of the company, and the total amount expected to be realised from that property; and

(ii) the liabilities of the company; and

(iii) the estimated expenses of the liquidation.

(3) A director who makes a declaration under this section without having reasonable grounds for their opinion that the company will be able to pay or otherwise provide for its debts within the period stated in the declaration commits an offence and is liable on conviction to the penalty set out in section 373(2).

(4) If, at any time, the liquidator considers, or has reasonable grounds to consider, that the company will not be able to pay or otherwise provide for its debts in full within the period stated in the declaration,—

(a) this section ceases to apply to the company; and

(b) the liquidator must, as soon as practicable, notify the Registrar that this section no longer applies to the company.

(5) A liquidator who fails to comply with subsection (4)(b) commits an offence and is liable on conviction to the penalty set out in section 373(2).

(6) The fact that this section ceases to apply to a company does not limit or affect subsection (3).

Section 243A: inserted, on 1 September 2020, by section 33 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

244 Liquidator to summon meeting of creditors in other cases

(1) Despite section 243(8), the liquidator of a company to which section 243A applies must call a meeting of creditors for the purpose specified in section 243(1)(a) or (b) if—

(a) the liquidator is satisfied that the directors who made the declaration described in section 243A did not have reasonable grounds to believe that the company would be able to pay or otherwise provide for its debts within the period stated in the declaration; or

(b) section 243A ceases to apply to the company.

(2) If, as a consequence of section 243A ceasing to apply, a new liquidator is appointed, the new liquidator must call the meeting of creditors.

(3) The provisions of section 243 apply, with any necessary modifications, in relation to the meeting of creditors.

(4) This section is subject to section 245.

Section 244: replaced, on 1 September 2020, by section 34 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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, 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) must be given to every known creditor together with the report, interests statement, and notices referred to in section 255(2)(c).

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

Section 245(2): replaced, on 1 November 2007, by section 17 of the Companies Amendment Act 2006 (2006 No 56).

Section 245(2): amended, on 1 September 2020, by section 35 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

245A Related creditor's vote at meeting of creditors to be disregarded unless court orders otherwise

(1) The liquidator must disregard a related creditor's vote on a resolution at the meeting of creditors unless the court orders otherwise.

(2) A related creditor may apply to the court for an order that its vote be taken into account.

(2A) A related creditor that intends to apply for an order must,—

(a) before a vote is taken on the resolution, give notice in writing to the liquidator that the creditor—

(i) is a related creditor; and

(ii) intends to apply to the court for an order that its vote be taken into account; and

(b) within 10 working days of the meeting of creditors, make an application to the court.

(2B) The court may make an order that a related creditor's vote be taken into account only if satisfied that ordering that the applicant's vote (or the applicants' votes) be taken into account—

(a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and

(b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors who voted against the resolution or for it, as the case may be, to an extent that is unreasonable having regard to—

(i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and

(ii) the nature of the relationship between the applicant (or the applicants) and the company, or between the related creditors and the company; and

(iii) any other relevant matter.

(3) In this section and sections 245B to 245D,—

related creditor means a creditor who is a related entity of the company in liquidation

related entity means, in relation to the company in liquidation,—

(a) a promoter; or

(b) a relative or spouse of a promoter; or

(c) a relative of a spouse of a promoter; or

(d) a director or shareholder; or

(e) a relative or spouse of a director or shareholder; or

(f) a relative of a spouse of a director or shareholder; or

(g) a related company; or

(h) a beneficiary under a trust of which the company in liquidation is or has at any time been a trustee; or

(i) a relative or spouse of that beneficiary; or

(j) a relative of a spouse of that beneficiary; or

(k) a company one of whose directors is also a director of the company in liquidation; or

(l) a trustee of a trust under which a person (**A**) is a beneficiary, if A is a related entity of the company in liquidation under this subsection.

Compare: Corporations Act 2001 s 600A (Aust)

Section 245A: inserted, on 1 November 2007, by section 18 of the Companies Amendment Act 2006 (2006 No 56).

Section 245A heading: replaced, on 1 September 2020, by section 36(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 245A(1): replaced, on 1 September 2020, by section 36(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 245A(2): replaced, on 1 September 2020, by section 36(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 245A(2A): inserted, on 1 September 2020, by section 36(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 245A(2B): inserted, on 1 September 2020, by section 36(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 245A(3): amended, on 1 September 2020, by section 36(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 245A(3) **promoter**: repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

245B Creditor's vote disregarded if liquidator considers creditor is related creditor

(1) If the liquidator considers that a creditor that votes on a resolution at a meeting of creditors is a related creditor, and the creditor has not given notice under section 245A(2A), the liquidator must (unless the court orders otherwise)—

(a) disregard the creditor's vote; and

(b) give notice in writing to the creditor stating the reasons for the liquidator's view.

(2) The court may, on the application of the creditor, order that the creditor's vote be taken into account if satisfied that the creditor is not a related creditor.

(3) The creditor must make any application under this section to the court within 10 working days of receiving the notice.

Section 245B: inserted, on 1 September 2020, by section 37 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

245C Further powers where court orders creditor's vote be taken into account

(1) If the court orders, under section 245A or 245B, that a creditor's vote be taken into account, the court may also—

(a) order that the resolution be set aside or treated as having passed:

(b) order that a new meeting be held to consider and vote on the resolution:

(c) order that the creditor's vote on a resolution to vary or amend the resolution be taken into account:

(d) make any other orders that the court thinks necessary.

(2) Despite any application under section 245A or 245B, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

Section 245C: inserted, on 1 September 2020, by section 37 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

245D Power of court where outcome of voting at meeting of creditors determined by related creditor

(1) This section applies in relation to a resolution at a meeting of creditors if,—

(a) after the meeting, the liquidator becomes aware that a creditor that voted on the resolution is a related creditor; and

(b) the liquidator is satisfied that,—

(i) in accordance with section 245A or 245B, the related creditor's vote should have been disregarded; and

(ii) the resolution would not have been passed, defeated, or required to be decided by a casting vote (as the case may be) if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.

(2) Despite sections 245A(1) and 245B(1), the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under subsection (4).

(3) The liquidator must, as soon as practicable after becoming aware that this section applies to the resolution, give notice of that fact to every known creditor.

(4) The court may, on the application of the liquidator or a creditor,—

(a) order that the resolution be set aside or treated as having passed:

(b) order that a new meeting be held to consider and vote on the resolution:

(c) order that a specified related creditor or creditors must not vote on the resolution or on a resolution to vary or amend it:

(d) make any other orders that the court thinks necessary.

(5) A liquidator who fails to comply with subsection (3) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 245D: inserted, on 1 September 2020, by section 37 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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), 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.

Section 246(4): inserted, on 26 April 1999, by section 5 of the Companies Amendment Act 1999 (1999 No 19).

Section 246(5): inserted, on 26 April 1999, by section 5 of the Companies Amendment Act 1999 (1999 No 19).

Section 246(6): inserted, on 26 April 1999, by section 5 of the 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) 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:

(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:

(g) the constitution of the company must not be altered.

(2) Subsection (1) does not affect the right of a secured creditor, subject to section 305, to take possession of, and realise or otherwise deal with, property of the company over which that creditor has a charge.

(3) This section is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.

Section 248(3): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

249 Completion of liquidation

The liquidation of a company is completed when the liquidator—

(a) complies with section 257(1)(b); or

(b) delivers to the Registrar for registration—

(i) a copy of any order made by the court under section 257(2)(a); or

(ii) a copy of any order made by the court under section 257(2)(b) 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—

(a) the liquidator; or

(b) if the company has executed a deed of company arrangement, the deed administrator; or

(c) a director or shareholder of the company; or

(d) any other entitled person; or

(e) a creditor of the company; or

(ea) if the company is a financial markets participant, the FMA; or

(f) the Registrar.

(2A) On an application by a deed administrator, the court must have regard to—

(a) any misconduct by the company's officers reported by the deed administrator, the liquidator, or the Registrar; and

(b) the commercial decision of the creditors in accepting the deed of company arrangement; and

(c) whether the deed of company arrangement would leave the company insolvent; and

(d) any other matters that the court thinks fit.

(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), 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), 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) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 250(2): replaced, on 1 November 2007, by section 10 of the Companies Amendment Act 2006 (2006 No 56).

Section 250(2)(ea): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 250(2A): inserted, on 1 November 2007, by section 10 of the Companies Amendment Act 2006 (2006 No 56).

Provisions relating to prior execution process

251 Restriction on rights of creditors to complete execution, distraint, or attachment

(1) Subject to subsection (3), 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) or a resolution under section 241(2)(d) 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) 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

(c) the making of an application to the court under section 241(2)(c) to appoint a liquidator of the company.

(2) Notwithstanding subsection (1),—

(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) 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.

Compare: 1955 No 63 s 314; 1980 No 43 s 29

Section 251(1)(a): amended, on 1 November 2007, by section 11 of the Companies Amendment Act 2006 (2006 No 56).

252 Duties of officer in execution process

(1) Subject to subsection (6), 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) and the liquidator may sell all or some of the property to satisfy that charge.

(3) Subject to subsection (6), 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), 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); 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); or

(iii) the making of an application to the court to appoint a liquidator pursuant to section 241(2)(c); 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) 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, 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)—

in a reasonable and efficient manner.

254 Liquidator not required to act in certain cases

Notwithstanding any other provisions of this Part,—

(a) except where the charge is surrendered or taken to be surrendered or redeemed under section 305, 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); 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.

Section 254(b): amended, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

255 Other duties of liquidator

(1) Without limiting section 253, a liquidator has the other functions and duties specified in this Act.

(2) Without limiting subsection (1), 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, specifying who made the appointment (*see* section 241(2)) and, if the liquidator was appointed by the court, who applied to the court for the 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) before the end of the next working day after 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),—

(i) prepare a list of every known creditor of the company and, if known, each creditor's address for communications (which may be an electronic address); and

(ii) prepare and send to every known creditor, every shareholder, and the Registrar for registration,—

(A) an initial report containing the prescribed information; 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; and

(C) an interests statement that complies with section 255A; and

(D) a notice stating that liquidators of insolvent companies are required to be licensed insolvency practitioners, and that more information about the regulation of insolvency practitioners is available from the Registrar; and

(d) within 20 working days after 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 to the Registrar for registration,—

(i) a report on the liquidation containing the prescribed information; and

(ii) an updated interests statement that complies with section 255A.

(3) For the purposes of subsection (2)(c), **applicable period** means,—

(a) in the case of a liquidator appointed under section 241(2)(a), (b), or (d), 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, 25 working days after the liquidator's appointment; or

(c) in either case, such longer period as the court may allow.

(3A) A person who fails to comply with subsection (2)(c) or (d) commits an offence and is liable on conviction to the penalty set out in section 373(2).

(3B) Subsection (2)(c)(ii)(C) and (D) does not apply to an Official Assignee.

(4) The court may, on the application of a liquidator,—

(a) exempt the liquidator from compliance with subsection (2)(c) or (d); or

(b) modify the application of those provisions in relation to the liquidator,—

on such terms and conditions as the court thinks fit.

(5) *[Repealed]*

(6) *[Repealed]*

Section 255(2)(a)(i): amended, on 1 September 2020, by section 38(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(2)(a)(ii): amended, on 26 April 1999, by section 6(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 255(2)(b): replaced, on 1 September 2020, by section 38(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(2)(c)(i): replaced, on 1 September 2020, by section 38(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(2)(c)(ii)(A): replaced, on 1 September 2020, by section 38(4) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(2)(c)(ii)(C): replaced, on 1 September 2020, by section 38(5) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(2)(c)(ii)(D): inserted, on 1 September 2020, by section 38(5) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(2)(d): replaced, on 1 September 2020, by section 38(6) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(3)(a): amended, on 1 November 2007, by section 12 of the Companies Amendment Act 2006 (2006 No 56).

Section 255(3A): inserted, on 1 September 2020, by section 38(7) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(3B): inserted, on 1 September 2020, by section 38(7) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(4)(a): replaced, on 1 September 2020, by section 38(8) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 255(5): repealed, on 1 November 2007, by section 19(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 255(6): repealed, on 1 November 2007, by section 19(3) of the Companies Amendment Act 2006 (2006 No 56).

255A Requirements for interests statement

(1) This section sets out the requirements for the interests statement referred to in section 255(2)(c)(ii)(C) and (d)(ii).

(2) The interests statement must disclose—

(a) any circumstance, relationship, or other fact that creates, or could reasonably be perceived as creating, a conflict of interest for the insolvency practitioner in relation to the independence of the insolvency practitioner's role as the liquidator, including anything that would, but for a court order to the contrary, have disqualified the person—

(i) from being appointed as or acting as the liquidator (*see* section 280(2)); or

(ii) from being a licensed insolvency practitioner; and

(b) the nature of any actual or perceived conflict of interest created by that circumstance, relationship, or other fact; and

(c) how the insolvency practitioner intends to manage any actual or perceived conflict of interest.

(3) In preparing an interests statement for the purposes of section 255(2)(c)(ii)(C), the insolvency practitioner must make any inquiries that are reasonably necessary for ensuring that the interests statement is complete.

(4) In preparing an interests statement for the purposes of section 255(2)(d)(ii), the insolvency practitioner need include only the information required under subsection (2) that relates to circumstances, relationships, or other facts that the insolvency practitioner has become aware of during the period since they last prepared an interests statement.

(5) The interests statement must be in writing and be dated and signed by the insolvency practitioner.

Section 255A: inserted, on 1 September 2020, by section 39 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

256 Duties in relation to records

(1) The liquidator of a company must—

(a) keep accounting records and other documents of the liquidation and permit those records, and the records and other documents of the company, to be inspected by—

(i) any liquidation committee appointed under section 314, 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) keep the accounting records and other documents of the liquidation, and the records and other documents of the company, for not less than 6 years after completion of the liquidation (or any longer period specified in a notice referred to in subsection (3)).

(2) The Registrar may, before or after the completion of the liquidation, require any records and documents to be retained for longer than 6 years after the completion of the liquidation.

(3) The Registrar must give notice of a requirement under subsection (2) on an Internet site maintained by or on behalf of the Registrar.

(4) A person 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 256: replaced, on 1 September 2020, by section 40 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

256A Duties in relation to company money

(1) A liquidator must deposit the money of a company under his or her administration at a registered bank and in—

(a) a bank account to the credit of the company; or

(b) a general or separate trust account.

(2) However, the liquidator may invest, in financial products issued by a registered bank, in a public security, or in any other financial products as authorised by the court, any amount of the company's money that is—

(a) in the bank account or trust account; and

(b) not required for the time being to meet claims made against the company.

(3) All dividends, interest, and other profits from an investment described in subsection (2) must, as soon as practicable after they are received, be paid into the bank account or trust account.

(4) Money that is deposited in a trust account under subsection (1)(b) must be held by the liquidator on trust for the benefit of the persons legally entitled to that money.

(5) 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(3).

(6) In this section, **public security** has the same meaning as in section 2(1) of the Public Finance Act 1989.

(7) This section does not limit section 260.

Section 256A: inserted, on 1 September 2020, by section 41 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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) a final report containing the prescribed information; 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:

(b) send or deliver copies of the documents referred to in paragraph (a) to the Registrar for registration:

(c) provide to the Registrar, in the manner specified by the Registrar, a summary report that contains the prescribed information.

(2) The court may, on the application of a liquidator,—

(a) exempt the liquidator from compliance with the provisions of subsection (1); or

(b) modify the application of those provisions in relation to the liquidator,—

on such terms and conditions as the court thinks fit.

(3) A person 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 257(1)(a)(i): replaced, on 1 September 2020, by section 42(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 257(1)(c): inserted, on 1 September 2020, by section 42(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 257(3): inserted, on 1 September 2020, by section 42(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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) 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:

(c) the views of creditors or shareholders set out in a resolution passed at a meeting called in accordance with subsection (2):

(d) the views of any liquidation committee given in writing to the liquidator.

(2) For the purposes of subsection (1), 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):

(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:

(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% 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% 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, 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 report suspected offences

[Repealed]

Section 258A: repealed, on 1 September 2020, by section 43 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

258B Registrar may supply report to FMA

[Repealed]

Section 258B: repealed, on 1 September 2020, by section 43 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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), a liquidator has the powers set out in Schedule 6.

260A Liquidator may assign right to sue under this Act

(1) The liquidator may, if the court has first approved it, assign any right to sue that is conferred on the liquidator by this Act.

(2) The application for approval may be—

(a) made by the liquidator or the person to whom it is proposed to assign the right to sue; and

(b) opposed by a person who is a defendant to the liquidator's action, if already begun, or a proposed defendant.

Section 260A: inserted, on 1 November 2007, by section 21 of the Companies Amendment Act 2006 (2006 No 56).

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).

(3) A person referred to in subsection (2) 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) to assist in the liquidation to the best of the person's ability.

(3A) Without limiting subsection (3)(a), 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), the liquidator may pay to a person referred to in paragraph (d) or paragraph (e) or paragraph (f) of subsection (2), not being an employee of the company, reasonable travelling and other expenses in complying with a requirement of the liquidator under subsection (3).

(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), 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).

(6) A person referred to in paragraph (d) or paragraph (e) or paragraph (f) of subsection (2) is not entitled to refuse to comply with a requirement of the liquidator under subsection (3) 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.

Section 261(2): amended, on 1 July 1994, by section 31(1) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 261(3A): inserted, on 1 July 1994, by section 31(2) of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 261(6A): inserted, on 3 May 2001, by section 13 of the 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 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).

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 to the extent of 10% of the total value of the debt, up to a maximum amount of $2,000.

(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 if—

(a) section 243A applies to the company; and

(b) section 244 does not apply in relation to the company.

Section 263(2): amended, on 1 November 2007, by section 13 of the Companies Amendment Act 2006 (2006 No 56).

Section 263(3)(a): replaced, on 1 September 2020, by section 44 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

264 Delivery of document creating charge over property

(1) A person is required to deliver a document to a liquidator under section 261 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.

(2) A person required to be examined under section 261 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 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 to comply with that requirement.

(2) The court may, on the application of the liquidator, order a person to whom section 261 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),—

(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, section 383, subpart 6 of Part 8 of the Financial Markets Conduct Act 2013, or section 44F of the Takeovers Act 1993.

Section 266(4): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 266(4): amended, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

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 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) must be made in writing.

269 Power to disclaim onerous property

(1) Subject to section 270, 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 that may give rise to a liability to pay money or perform an onerous act; or

(iii) a litigation right that, in the opinion of the liquidator, has no reasonable prospect of success or cannot reasonably be funded from the assets of the company; but

(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 settlement instruction or a settlement under the rules of a settlement system that is declared to be a designated settlement system under Part 5C of the Reserve Bank of New Zealand Act 1989.

(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):

(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) if it is satisfied that it is just that the property should be vested in the applicant.

Compare: 1955 No 63 s 312

Section 269(2): replaced, on 26 April 1999, by section 7 of the Companies Amendment Act 1999 (1999 No 19).

Section 269(2)(a)(ii): replaced, on 1 November 2007, by section 22 of the Companies Amendment Act 2006 (2006 No 56).

Section 269(2)(a)(iii): inserted, on 1 November 2007, by section 22 of the Companies Amendment Act 2006 (2006 No 56).

Section 269(2)(b): replaced, on 21 August 2003, by section 48(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 269(2)(b)(iii): amended, on 24 November 2009, by section 19 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

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 1 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) as it thinks fit.

(3) This section is subject to section 139J(4) of the Reserve Bank of New Zealand Act 1989.

Compare: 1955 No 63 ss 315A, 315B; 1980 No 43 s 30

Section 271(3): inserted, on 10 December 2013, by section 12 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

271A Notice that application filed must be given to administrators and creditors

(1) Unless the court orders otherwise, an applicant for an order under section 271(1)(b) must give notice that the application has been filed to the liquidator and each creditor of each related company in liquidation.

(2) An applicant need not give notice to himself or herself.

(3) The notice must—

(a) identify each company to which the proposed order relates; and

(b) summarise all information known to the applicant that is material to whether the order should be made; and

(c) state that a person to whom the notice must be given may oppose the application by filing a statement of defence in accordance with the High Court Rules 2016.

(4) The notice requirement in this section is in addition to anything required to be done by the High Court Rules 2016.

Section 271A: inserted, on 1 November 2007, by section 23 of the Companies Amendment Act 2006 (2006 No 56).

Section 271A(3)(c): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 271A(4): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

272 Guidelines for orders

(1) In deciding whether it is just and equitable to make an order under section 271(1)(a), 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), 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.

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 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) commits an offence and is liable on conviction to the penalty set out in section 373(3).

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) commits an offence and is liable on conviction to the penalty set out in section 373(3).

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 clause 1(1)(a) of Schedule 7.

Section 275(4): amended, on 1 November 2007, by section 37 of the Companies Amendment Act 2006 (2006 No 56).

276 Remuneration of liquidators

(1) Subject to section 284(1)(e), every liquidator, not being an Official Assignee, appointed under paragraph (a) or paragraph (b) of subsection (2) of section 241 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 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; or

(b) at, or in accordance with, such rate or rates as may be prescribed under that section.

Section 276(1): amended, on 1 July 1994, by section 32 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

277 Rates of remuneration

(1) The Governor-General may from time to time, by Order in Council, for the purposes of section 276, 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), 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.

(3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 277(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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.

(2) Subsection (1) does not limit section 284 or section 286.

Appointment and supervision of liquidators

Heading: amended, on 1 September 2020, by section 45 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

280 Who may be appointed as liquidator

(1) A person may be appointed as a liquidator of a company if the person is—

(a) a licensed insolvency practitioner (or, if section 243A applies to the company, a licensed insolvency practitioner or any other person described in section 68(1) of the Insolvency Practitioners Regulation Act 2019); and

(b) permitted to act as a liquidator of the company under the Insolvency Practitioners Regulation Act 2019; and

(c) not disqualified under subsection (2).

(2) Unless the court orders otherwise, the following persons are disqualified from being appointed or acting as a liquidator of a company:

(a) a creditor of the company:

(b) a person who has, within the 2 years immediately before the commencement of the liquidation, been a director, an auditor, or a receiver of the company or of a related company:

(c) a person who has, within the 2 years immediately before the commencement of the liquidation, been a director of a creditor of the company:

(d) a person who has, or who has had, within the 2 years immediately before the commencement of the liquidation,—

(i) a direct interest in a share issued by the company; or

(ii) an interest, direct or indirect, in 5% or more of any class of shares issued by a creditor of the company (but only if the person is aware that they have the interest):

(e) a person who has—

(i) a direct interest in a share issued by a related company of the company; or

(ii) an indirect interest in 5% or more of any class of shares issued by a related company of the company:

(f) if an instrument confers a power to appoint a receiver of any assets of the company, a person who is disqualified by the instrument from acting as the receiver of any assets of the company:

(g) a person who is a relative of a person described in any of paragraphs (a) to (f):

(h) a person who has, or whose firm has, within the 2 years immediately before the commencement of the liquidation,—

(i) provided professional services to the company; or

(ii) had a continuing business relationship with the company, its majority shareholder, or any of its directors, or with any of the company's shareholders that (under its constitution or any other agreement) have a power to appoint or remove a director of the company:

(i) a person to whom a prohibition order applies.

(3) For the purpose of subsection (2)(c), each of the following is a **director of a creditor of a company**:

(a) if the creditor is a company, a person occupying the position of a director of the company, by whatever name called:

(b) if the creditor is a limited partnership, a general partner (within the meaning of the Limited Partnerships Act 2008):

(c) if the creditor is a partnership other than a limited partnership, a partner:

(d) if the creditor is any other body corporate or unincorporated body, a person occupying a position in the body that is comparable with that of a director of a company.

(4) A person is not disqualified under subsection (2)(h)—

(a) if the professional services are provided, or the relationship arises, by reason only of the appointment of the person, or of the person's firm,—

(i) by, or at the instigation of, the company or a creditor or other party that has an actual or potential financial interest in the company; and

(ii) to investigate or to advise on the solvency of the company or to monitor the affairs of the company; or

(b) if all the creditors consent to the appointment of the person; or

(c) if section 243A applies to the company.

(5) If subsection (4)(a) applies, subsection (2)(a) or (c) does not disqualify a person merely because the person is (or was) a creditor, or a director of a creditor, of the company as a consequence of the appointment referred to in subsection (4)(a).

(6) A person commits an offence, and is liable on conviction to the penalty set out in section 373(2), if—

(a) the person knows or ought reasonably to know that they are disqualified under subsection (2); and

(b) the person,—

(i) with their consent, is appointed as a liquidator; or

(ii) acts as a liquidator.

(7) *See also* section 8(2) of the Insolvency Practitioners Regulation Act 2019.

(8) This section does not apply to an Official Assignee.

Section 280: replaced, on 1 September 2020, by section 46 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

281 Validity of acts of liquidators

The acts of a person as a liquidator are valid even though that person does not meet the requirements of section 280(1) or fails to certify the matters set out in section 282(1)(b).

Section 281: amended, on 1 September 2020, by section 47 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

282 What liquidator must do before appointment

(1) A person must not be appointed as a liquidator of a company unless the person has—

(a) consented in writing and has not withdrawn that consent at the time of appointment; and

(b) certified in writing that they—

(i) are a licensed insolvency practitioner (or, if section 243A applies to the company, a licensed insolvency practitioner or any other person described in section 68(1) of the Insolvency Practitioners Regulation Act 2019); and

(ii) are permitted to act as a liquidator of the company under the Insolvency Practitioners Regulation Act 2019; and

(iii) are not disqualified from appointment under section 280(2).

(2) A person who, with their consent, is appointed as a liquidator despite failing to certify the matters set out in subsection (1)(b) commits an offence and is liable on conviction to the penalty set out in section 373(2).

(3) This section does not apply to an Official Assignee.

Section 282: replaced, on 1 September 2020, by section 48 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

283 Vacancies in office of liquidator

(1) The office of liquidator becomes vacant if the liquidator—

(a) resigns; or

(b) dies; or

(c) becomes disqualified under section 280(2); or

(d) ceases to be a licensed insolvency practitioner (unless section 243A applies to the company) or otherwise ceases to be permitted to act as a liquidator of the company in accordance with the Insolvency Practitioners Regulation Act 2019; or

(e) is not a licensed insolvency practitioner and section 243A ceases to apply to the company (*see* section 243A(4)).

(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.

(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.

(3A) A liquidator of a company to which section 243A applies must, unless the liquidator is a licensed insolvency practitioner, resign without delay and appoint a successor if section 243A ceases to apply (*see* section 243A(4)).

(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 is permitted to act as a liquidator of the company in accordance with section 280.

(5) If a vacancy occurs in the office of liquidator, the person vacating office must, as soon as practicable, give written notice of the vacancy to the Registrar.

(6) If, as the result of the vacation of office by a liquidator, no person is acting as liquidator, the Registrar may appoint an Official Assignee or a licensed insolvency practitioner as liquidator.

(7) If a vacancy occurs in the office of the liquidator, or a liquidator has been appointed under subsection (6), 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 appoint any person who is permitted to act as a liquidator of the company in accordance with section 280 to be the liquidator of the company.

(8) A liquidator appointed under subsection (7) must, before the end of the next working day after appointment, deliver a notice of his or her appointment to the Registrar for registration.

(9) A person who fails to comply with subsection (5) or (8) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 283(1): replaced, on 1 September 2020, by section 49(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(2): amended, on 1 September 2020, by section 49(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(3A): inserted, on 1 September 2020, by section 49(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(4): amended, on 1 September 2020, by section 49(4) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(5): replaced, on 1 September 2020, by section 49(5) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(6): replaced, on 1 September 2020, by section 49(5) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(7): amended, on 1 September 2020, by section 49(6) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(8): amended, on 1 September 2020, by section 49(7) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 283(9): replaced, on 1 September 2020, by section 49(8) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

283A Provision of information and assistance to replacement liquidator

(1) This section applies if a replacement liquidator is appointed.

(2) The previous liquidator must, where practicable, provide to the replacement liquidator the information that the previous liquidator has in their possession or under their control and that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.

(3) The information referred to in subsection (2) includes—

(a) the records and other documents of the company:

(b) any information necessary to provide the replacement liquidator with control over the property of the company:

(c) any information relating to claims:

(d) accounting records and other documents of the liquidation.

(4) The previous liquidator must, where practicable, provide to the replacement liquidator any assistance that the replacement liquidator reasonably requires to carry out the functions and duties of a liquidator.

(5) A person who fails to comply with subsection (2) or (4) commits an offence and is liable on conviction to the penalty set out in section 373(2).

Section 283A: inserted, on 1 September 2020, by section 50 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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) are in addition to any other powers a court may exercise in its jurisdiction relating to liquidators under this Part, 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), 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), the liquidator does not have the protection given by subsection (3).

285 Meaning of failure to comply

(1) In section 286, **failure to comply** means a person's failure to comply with an enactment, a rule of law, or a court order to the extent that the enactment, rule, or order applies to the person in the person's capacity as a liquidator.

(2) In proceedings under section 286,—

(a) a finding of any fact made in proceedings before the District Court or High Court for an offence under this Act or any other enactment that there was a failure to comply is prima facie evidence of that fact:

(b) a finding described in paragraph (a) may be proved by production of a document under the seal of the court in which the finding was made.

Compare: 1986 No 121 s 46

Section 285: replaced, on 1 September 2020, by section 51 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

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 qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 2013), a member of the governing body of the association of accountants of which the qualified statutory accountant is a member:

(g) if the liquidator is a barrister and solicitor or a solicitor, the President of the New Zealand Law Society:

(h) an Official Assignee:

(i) the Registrar.

(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) order the liquidator to comply to the extent specified in the order; or

(c) remove the liquidator from office; or

(d) make a prohibition order.

(4) A court may, in relation to a person who is or becomes disqualified under section 280(2) from becoming or remaining a liquidator,—

(a) remove the person from office; or

(b) order that the person may be appointed and act, or may continue to act, as a liquidator, despite section 280(2).

(5) If the court is satisfied that a person is unfit to act as a liquidator by reason of persistent failures to comply or the seriousness of a failure to comply, the court must make a prohibition order.

(5A) The period of a prohibition order under this section is a matter for the discretion of the court, and the court may make a prohibition order permanent.

(5B) However, the court may make a prohibition order permanent, or for a period longer than 10 years, only in the most serious of cases for which an order may be made.

(6) A person to whom a prohibition order applies—

(a) must not act (or continue to act) as an insolvency practitioner; and

(b) must be treated as if they are not a licensed insolvency practitioner (*see* section 8 of the Insolvency Practitioners Regulation Act 2019).

(7) Evidence that, on 2 or more occasions,—

(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 this section must be delivered by the applicant to the Registrar before the end of the working day after the day on which the order was made.

(10) The Registrar must provide a copy of the order to each accredited body (within the meaning of the Insolvency Practitioners Regulation Act 2019) before the end of the working day after the day on which the Registrar receives a copy of the order.

Section 286(1)(f): replaced, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 286(1)(i): inserted, on 1 September 2020, by section 52(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(3): replaced, on 1 September 2020, by section 52(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(4): replaced, on 1 September 2020, by section 52(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(5): replaced, on 1 September 2020, by section 52(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(5A): inserted, on 1 September 2020, by section 52(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(5B): inserted, on 1 September 2020, by section 52(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(6): replaced, on 1 September 2020, by section 52(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(7): amended, on 1 November 2007, by section 26(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 286(9): replaced, on 1 September 2020, by section 52(4) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 286(10): inserted, on 1 September 2020, by section 52(4) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Company unable to pay its debts

287 Meaning of inability to pay debts

Unless the contrary is proved, and subject to section 288, 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 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 does not prevent proof by other means that a company is unable to pay its debts.

(3) Information or records acquired under section 178 or, if the court so orders, under section 179, 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, 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), **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, the court is satisfied that there is a debt due by the company to the creditor that is not the subject of a substantial dispute, 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) 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), the company is presumed to be unable to pay its debts if it failed to pay the debt within the specified period.

Voidable transactions

291A Meaning of related party

(1) For the purposes of this section, a person is **related** to a company if the person—

(a) is a director or senior manager of the company or of a close body corporate of the company; or

(b) is the spouse of a director or senior manager of the company; or

(c) is a grandparent, parent, child, grandchild, brother, sister, nephew, niece, uncle, aunt, or first cousin of a director or of a senior manager of the company, whether or not by a step relationship; or

(d) is the spouse of a person who is related to the company under paragraph (c); or

(e) is a close body corporate of the company; or

(f) is a partner of the company or of a director of the company (under the Partnership Law Act 2019); or

(g) is a close business associate of the company; or

(h) has an interest, direct or indirect, in 5 percent or more of any class of shares of the company; or

(i) has an interest, direct or indirect, in 20 percent or more of any class of shares of a close body corporate of the company; or

(j) is the spouse of a person who is related to the company under any of paragraphs (f) to (i); or

(k) is a child, parent, brother, or sister (whether or not by a step relationship) of a person who is related to the company under any of paragraphs (f) to (i); or

(l) is a trustee of a trust under which the company, or a person related to the company (under paragraphs (a) to (k)), is a beneficiary who—

(i) is presently entitled to a share of the trust estate or of the income of the trust estate; or

(ii) is, individually or together with other beneficiaries, in a position to control the trustee; or

(m) is a trustee of a trust if—

(i) the trust is a family trust within the meaning of section 173M(5) of the Tax Administration Act 1994; and

(ii) a majority of the individuals who are beneficiaries under the trust are related to the company (under paragraphs (a) to (k)); or

(n) is a nominee of a person who is related to the company under any of paragraphs (a) to (m).

(2) In sections 292 and 293, a person is a **related party** of a company in relation to a transaction or charge if the person is related to the company at the time the transaction is made or the charge given.

(3) However, in the case of a transaction referred to in section 292(4B)(a), a person is a **related party** of a company if the person is related to the company at any point during the continuing business relationship.

(4) For the purposes of determining whether, in this section, a person is a **close body corporate** of a company (or whether 2 bodies corporate are **close**), 2 bodies corporate (**A** and **B**) are **close** if—

(a) B is A's holding company or subsidiary; or

(b) more than half of A's issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are close to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; 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 A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or

(e) there is another body corporate to which A and B are both close.

(5) In this section,—

close business associate, in relation to a company, means a person who has a close professional or business relationship with the company, or with a director or senior manager of the company, that allows the person to—

(a) assess the solvency of the company; or

(b) obtain information from the company or any other person involved with the company that will enable the person to assess the solvency of the company

director, in relation to a body corporate that is not a company, has the same meaning as in relation to a company

senior manager has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 291A: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

292 Insolvent transaction voidable

(1) A transaction by a company is voidable by the liquidator if it—

(a) is an insolvent transaction; and

(b) is entered into within the restricted period.

(1A) A transaction by a company is voidable by the liquidator if it—

(a) is an insolvent transaction; and

(b) is entered into with a related party of the company within the related party period.

(2) An **insolvent transaction** is a transaction by a company that—

(a) is entered into at a time when the company is unable to pay its due debts; and

(b) enables another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company's liquidation.

(3) In this section, **transaction** means any of the following steps by the company:

(a) conveying or transferring the company's property:

(b) creating a charge over the company's property:

(c) incurring an obligation:

(d) undergoing an execution process:

(e) paying money (including paying money in accordance with a judgment or an order of a court):

(f) anything done or omitted to be done for the purpose of entering into the transaction or giving effect to it.

(4) In this section, **transaction** includes a transaction by a receiver, except a transaction that discharges, whether in part or in full, a liability for which the receiver is personally liable under section 32(1) or (5) of the Receiverships Act 1993 or otherwise personally liable under a contract entered into by the receiver.

(4A) A transaction that is entered into within the restricted period is presumed, unless the contrary is proved, to be entered into at a time when the company is unable to pay its due debts.

(4B) Where—

(a) a transaction is, for commercial purposes, an integral part of a continuing business relationship (for example, a running account) between a company and a creditor of the company (including a relationship to which other persons are parties); and

(b) in the course of the relationship, the level of the company's net indebtedness to the creditor is increased and reduced from time to time as the result of a series of transactions forming part of the relationship;

then—

(c) subsections (1) and (1A) (as relevant) apply in relation to all the transactions forming part of the relationship as if they together constituted a single transaction; and

(d) the transaction referred to in paragraph (a) may only be taken to be an insolvent transaction voidable by the liquidator if the effect of applying subsection (1) or (1A) in accordance with paragraph (c) is that the single transaction referred to in paragraph (c) is taken to be an insolvent transaction voidable by the liquidator.

(4C) For the purposes of subsections (1), (1A), (4A), and (4B), **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 section 241(2)(a) or (b),—

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.

(5) For the purposes of subsections (1A) and (4B), **related party 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 section 241(2)(a) or (b),—

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) *[Repealed]*

Compare: 1955 No 63 s 309; 1980 No 43 s 24(1); 1982 No 152 s 18

Section 292 heading: replaced, on 1 November 2007, by section 27(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(1): replaced, on 1 November 2007, by section 27(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(1)(b): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(1A): inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(2): replaced, on 1 November 2007, by section 27(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(3): replaced, on 1 November 2007, by section 27(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(4): replaced, on 1 November 2007, by section 27(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(4): amended, on 31 August 2012, by section 7 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Section 292(4A): inserted, on 1 November 2007, by section 27(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(4B): inserted, on 1 November 2007, by section 27(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(4B)(c): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(4B)(d): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(4C): inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(5): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(5): amended, on 1 November 2007, by section 27(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 292(5)(a): replaced, on 26 April 1999, by section 8(1) of the Companies Amendment Act 1999 (1999 No 19).

Section 292(5)(b): amended, on 26 April 1999, by section 8(2)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 292(5)(b): amended, on 3 June 1998, by section 12(1) of the Companies Amendment Act 1998 (1998 No 31).

Section 292(5)(c): inserted, on 3 June 1998, by section 12(1) of the Companies Amendment Act 1998 (1998 No 31).

Section 292(5)(c): amended, on 26 April 1999, by section 8(2)(b) of the Companies Amendment Act 1999 (1999 No 19).

Section 292(5)(c)(ii): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 292(6): repealed, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

293 Voidable charges

(1) A charge over any property or undertaking of a company is voidable by the liquidator if—

(a) the charge was given within the restricted period; and

(b) immediately after the charge was given, the company was unable to pay its due debts.

(1AA) A charge over any property or undertaking of a company is voidable by the liquidator if—

(a) the charge was given to a related party within the related party period; and

(b) immediately after the charge was given, the company was unable to pay its due debts.

(1A) Neither subsection (1) nor (1AA) applies to a charge that—

(a) 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) is in substitution for a charge that,—

(i) in the case of subsection (1), was given before the restricted period:

(ii) in the case of subsection (1AA), was given before the related party period.

(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 (1A)(b) 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) or (1AA) 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 (1A)(a) and subsection (4), where any charge was given by the company within the period specified in subsection (1) or (1AA) (as relevant), 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.

(5A) For the purposes of subsections (1) to (2), **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 section 241(2)(a) or (b),—

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.

(6) For the purposes of subsections (1AA) and (1A), **related party 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 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 section 241(2)(a) or (b),—

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.

(7) *[Repealed]*

Section 293(1): replaced, on 1 November 2007, by section 28(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(1)(a): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(1AA): inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(1A): inserted, on 1 November 2007, by section 28(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(1A): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(1A)(a): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(1A)(b): replaced, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(3): amended, on 1 November 2007, by section 28(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(4): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(5): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(5): amended, on 1 November 2007, by section 28(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(5A): inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(6): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(6)(a): replaced, on 26 April 1999, by section 9(1) of the Companies Amendment Act 1999 (1999 No 19).

Section 293(6)(a): amended, on 1 November 2007, by section 28(4) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(6)(b): amended, on 1 November 2007, by section 28(4) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(6)(b): amended, on 26 April 1999, by section 9(2)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 293(6)(b): amended, on 3 June 1998, by section 13(1) of the Companies Amendment Act 1998 (1998 No 31).

Section 293(6)(c): inserted, on 3 June 1998, by section 13(1) of the Companies Amendment Act 1998 (1998 No 31).

Section 293(6)(c)(ii): amended, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 293(6)(c): amended, on 1 November 2007, by section 28(4) of the Companies Amendment Act 2006 (2006 No 56).

Section 293(6)(c): amended, on 26 April 1999, by section 9(2)(b) of the Companies Amendment Act 1999 (1999 No 19).

Section 293(7): repealed, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

294 Procedure for setting aside transactions and charges

(1) A liquidator who wishes to set aside a transaction or charge that is voidable under section 292 or 293 must—

(a) file a notice with the court that meets the requirements set out in subsection (2); and

(b) serve the notice as soon as practicable on—

(i) the other party to the transaction or the charge holder, as the case may be; and

(ii) any other party from whom the liquidator intends to recover.

(2) The liquidator's notice must—

(a) be in writing; and

(b) state the liquidator's postal, email, and street addresses; and

(c) specify the transaction or charge to be set aside; and

(d) describe the property or state the amount that the liquidator wishes to recover; and

(e) state that the person named in the notice may object to the transaction or charge being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after the liquidator's notice has been served on that person; and

(f) state that the written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting; and

(g) state that the transaction or charge will be set aside as against the person named in the notice if that person does not object; and

(h) state that if the person named in the notice does object, the liquidator may apply to the court for the transaction or charge to be set aside.

(3) The transaction or charge is automatically set aside as against the person on whom the liquidator has served the liquidator's notice, if that person has not objected by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after the liquidator's notice has been served on that person.

(4) The notice of objection must contain full particulars of the reasons for objecting and must identify documents that evidence or substantiate the reasons for objecting.

(5) A transaction or charge that is not automatically set aside may still be set aside by the court on the liquidator's application.

Section 294: replaced, on 1 November 2007, by section 29 of the Companies Amendment Act 2006 (2006 No 56).

295 Other orders

If a transaction or charge is set aside under section 294, the court may make 1 or more of the following orders:

(a) an order that a person pay to the company an amount equal to some or all of the money that the company has paid under the transaction:

(b) an order that a person transfer to the company property that the company has transferred under the transaction:

(c) an order that a person pay to the company an amount that, in the court's opinion, fairly represents some or all of the benefits that the person has received because of the transaction:

(d) an order that a person transfer to the company property that, in the court's opinion, fairly represents the application of either or both of the following:

(i) money that the company has paid under the transaction:

(ii) proceeds of property that the company has transferred under the transaction:

(e) an order releasing, in whole or in part, a charge given by the company:

(f) an order requiring security to be given for the discharge of an order made under this section:

(g) 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.

Compare: Corporations Act 2001 s 588FF(1)(a)–(d) (Aust)

Section 295: replaced, on 1 November 2007, by section 30 of the Companies Amendment Act 2006 (2006 No 56).

296 Additional provisions relating to setting aside transactions and charges

(1) The setting aside of a transaction or an order made under section 295 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 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) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (**A**) proves that when A received the property—

(a) A acted in good faith; and

(b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that the company was, or would become, insolvent; and

(c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.

(4) Nothing in the Land Transfer Act 2017 restricts the operation of this section or sections 292 to 295.

Section 296(3): replaced, on 1 November 2007, by section 31 of the Companies Amendment Act 2006 (2006 No 56).

Section 296(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Voidable dispositions

Heading: inserted, on 1 September 2020, by section 53 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

296A Dispositions of property after application but before appointment of liquidator

(1) A disposition of a company's property is voidable if it is made during the specified period.

(2) However, the disposition is not voidable if it is made—

(a) in the ordinary course of business of the company; or

(b) by an administrator, a deed administrator, or a receiver, on the company's behalf; or

(c) under an order of the court.

(3) In this section,—

disposition has the same meaning as in section 345 of the Property Law Act 2007

property has the same meaning as in section 345 of the Property Law Act 2007

specified period means the period beginning on the date on which an application is made to appoint a liquidator under section 241(2)(c) and ending at the time the liquidator is appointed (or the court otherwise disposes of the application).

Section 296A: inserted, on 1 September 2020, by section 53 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

296B Procedure for setting aside dispositions

(1) A liquidator who wishes to set aside a disposition that is voidable under section 296A must—

(a) file a notice with the court; and

(b) serve the notice as soon as practicable on—

(i) the party to which the disposition was made; and

(ii) any other party from whom the liquidator intends to recover.

(2) The notice must—

(a) be in writing; and

(b) state the liquidator's postal, email, and street addresses; and

(c) specify the disposition to be set aside; and

(d) describe the property or state the amount that the liquidator wishes to recover; and

(e) state that the person named in the notice may object to the disposition being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator's notice within 20 working days after the notice has been served on that person; and

(f) state that the written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting; and

(g) state that the disposition will be set aside as against the person named in the notice if that person does not object; and

(h) state that if the person named in the notice does object, the liquidator may apply to the court for the disposition to be set aside.

(3) The disposition is automatically set aside as against the person on whom the liquidator has served the notice unless that person has sent to the liquidator a written notice of objection that is received by the liquidator at an address stated in the liquidator's notice within 20 working days after the liquidator's notice has been served on that person.

(4) The notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.

(5) A disposition that is not automatically set aside may still be set aside by the court on the liquidator's application.

Section 296B: inserted, on 1 September 2020, by section 53 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

296C Other orders

If a disposition is set aside under section 296B, the court may make 1 or more of the following orders:

(a) an order that a person transfer to the company—

(i) property that the company disposed of:

(ii) any proceeds of property referred to in subparagraph (i):

(iii) property that, in the court's opinion, fairly represents the application of proceeds referred to in subparagraph (ii):

(b) an order that a person pay to the company an amount that, in the court's opinion, fairly represents some or all of the benefits that the person has received because of the disposition:

(c) an order releasing, in whole or in part, a charge given by the company:

(d) an order requiring security to be given for the discharge of an order made under this section:

(e) an order specifying the extent to which a person affected by the setting aside of a disposition by an order made under this section is entitled to claim as a creditor in the liquidation.

Section 296C: inserted, on 1 September 2020, by section 53 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

296D Additional provisions relating to setting aside dispositions

(1) The setting aside of a disposition or an order made under section 296C does not affect the title or interest of a person in property that the person has acquired—

(a) from a person other than the company; and

(b) for valuable consideration; and

(c) without knowing the circumstances in which the property was acquired from the company.

(2) The setting aside of a charge or an order made under section 296C does not affect the title or interest of a person in property that the person has acquired—

(a) as the result of the exercise of a power of sale by the mortgagee of the charge; and

(b) for valuable consideration; and

(c) without knowing the circumstances relating to the giving of the charge.

(3) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (**A**) proves that when A received the property—

(a) A acted in good faith; and

(b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds to suspect, that the company was, or would become, insolvent; and

(c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.

(4) Nothing in the Land Transfer Act 2017 restricts the operation of this section or sections 296A to 296C.

Section 296D: inserted, on 1 September 2020, by section 53 of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Recovery in other cases

297 Transactions at undervalue

(1) Under subsection (2) the liquidator may recover from a person (**X**) the amount **C** in the formula A − B = C, where—

(a) **A** is the value that X received from a company under a transaction to which the company was or is a party; and

(b) **B** is the value (if any) that the company received from X under the transaction.

(2) The liquidator may recover the difference in value (that is, C in the formula in subsection (1)) from X if—

(a) the company entered into the transaction within the specified period; and

(b) either—

(i) the company was unable to pay its due debts when it entered into the transaction; or

(ii) the company became unable to pay its due debts as a result of entering into the transaction.

(3) For the purposes of this section,—

(a) **transaction** has the same meaning as in section 292(3):

(b) **specified period** means—

(i) 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

(ii) 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

(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 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.

(4) This section does not apply to transactions to which the limit in section 142(2) of the Infrastructure Funding and Financing Act 2020 applies under a levy order made under that Act.

Section 297(1): replaced, on 1 November 2007, by section 32(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 297(2): replaced, on 1 November 2007, by section 32(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 297(3)(a): replaced, on 1 November 2007, by section 32(2) of the Companies Amendment Act 2006 (2006 No 56).

Section 297(3)(b)(i): replaced, on 26 April 1999, by section 10(1) of the Companies Amendment Act 1999 (1999 No 19).

Section 297(3)(b)(i): amended, on 1 November 2007, by section 32(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 297(3)(b)(ii): amended, on 1 November 2007, by section 32(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 297(3)(b)(ii): amended, on 26 April 1999, by section 10(2)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 297(3)(b)(ii): amended, on 3 June 1998, by section 14 of the Companies Amendment Act 1998 (1998 No 31).

Section 297(3)(b)(iii): inserted, on 3 June 1998, by section 14 of the Companies Amendment Act 1998 (1998 No 31).

Section 297(3)(b)(iii): amended, on 1 November 2007, by section 32(3) of the Companies Amendment Act 2006 (2006 No 56).

Section 297(3)(b)(iii): amended, on 26 April 1999, by section 10(2)(b) of the Companies Amendment Act 1999 (1999 No 19).

Section 297(4): inserted, on 7 August 2020, by section 161 of the Infrastructure Funding and Financing Act 2020 (2020 No 47).

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; and

(b) the provisions of section 7 apply with such modifications as may be necessary to determine control of a company.

(4) For the purposes of subsections (1) and (2), **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

Section 298(4)(a): replaced, on 26 April 1999, by section 11(1) of the Companies Amendment Act 1999 (1999 No 19).

Section 298(4)(b): amended, on 26 April 1999, by section 11(2)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 298(4)(b): amended, on 3 June 1998, by section 15 of the Companies Amendment Act 1998 (1998 No 31).

Section 298(4)(c): inserted, on 3 June 1998, by section 15 of the Companies Amendment Act 1998 (1998 No 31).

Section 298(4)(c): amended, on 26 April 1999, by section 11(2)(b) of the Companies Amendment Act 1999 (1999 No 19).

299 Court may set aside certain securities and charges

(1) Subject to subsection (2), 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) 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 2017 restricts the operation of this section.

(5) The provisions of section 7 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

Section 299(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

300 Liability if proper accounting records not kept

(1) Subject to subsection (2), if—

(a) a company that is in liquidation and is unable to pay all its debts has failed to comply with—

(i) section 194 (which relates to the keeping of accounting records); or

(ii) section 201 or 202 (which relates to the preparation of financial statements or group financial statements) or any other enactment that requires the company to prepare financial statements or group 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 1 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) 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 17(1)(a) of the Insolvency Act 2006.

Compare: 1955 No 63 s 319; 1980 No 43 s 31

Section 300(1)(a): replaced, on 1 April 2014, by section 37 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 300(5): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

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, administrator, 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, administrator, 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 17(1)(a) of the Insolvency Act 2006.

(4) In making an order under subsection (1) against a past or present director, the court must, where relevant, take into account any action that person took for the appointment of an administrator to the company under Part 15A.

Compare: 1955 No 63 s 321; 1980 No 43 s 33

Section 301(1): amended, on 1 November 2007, by section 14(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 301(1)(a): amended, on 1 November 2007, by section 14(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 301(3): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 301(4): inserted, on 1 November 2007, by section 14(2) of the Companies Amendment Act 2006 (2006 No 56).

Creditors' claims

302 Application of bankruptcy rules to liquidation of insolvent companies

(1) Subject to this Part, 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 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 2006.

Section 302(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

303 Admissible claims

(1) Subject to subsection (2), 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, sentences of reparation, orders, and costs to which section 308 applies are not claims that may be admitted against a company in liquidation.

Section 303: replaced, on 1 July 1994, by section 34 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 303(2): amended, on 8 September 2018, by section 24 of the Statutes Amendment Act 2018 (2018 No 27).

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).

(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) or producing a document under subsection (2) 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).

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) 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), 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).

(6) Where a claim is made by a secured creditor under subsection (4), 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); or

(b) accepts a revised valuation and claim under subsection (6)(b)(i); or

(c) accepts a valuation and claim on revoking or amending a decision to reject a claim under subsection (6)(b)(ii),—

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) 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) who fails to comply with the notice, is to be taken as having surrendered the charge to the liquidator under subsection (1)(c) 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) or who is taken as having surrendered a charge under subsection (9) 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) 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).

Section 305(4): replaced, on 1 July 1994, by section 35 of the 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 1 rate of exchange on that date, at the average of those rates.

Section 306(1): amended, on 26 April 1999, by section 12 of the Companies Amendment Act 1999 (1999 No 19).

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 limits or affects the recovery of—

(a) a fine, monetary penalty, sentence of reparation, or other order for the payment of money 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.

Section 308(a): amended, on 8 September 2018, by section 25 of the Statutes Amendment Act 2018 (2018 No 27).

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, as a claim for the present value of the debt.

(2) For the purposes of subsection (1), the present value of a debt is to be determined by deducting from the amount of the debt interest at the interest rate as defined in section 12(3) of the Interest on Money Claims Act 2016 (as at the date of commencement of the liquidation) for the period from the date on which the company is put into liquidation to the date when the debt is due.

Section 309(1): amended, on 26 April 1999, by section 13 of the Companies Amendment Act 1999 (1999 No 19).

Section 309(2): amended, on 1 January 2018, by section 29 (transitional provision applies, see Schedule 1 clause 6) of the Interest on Money Claims Act 2016 (2016 No 51).

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), **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), **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.

Section 310(6)(a): replaced, on 26 April 1999, by section 14(1) of the Companies Amendment Act 1999 (1999 No 19).

Section 310(6)(b): amended, on 26 April 1999, by section 14(2)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 310(6)(b): amended, on 3 June 1998, by section 16(1) of the Companies Amendment Act 1998 (1998 No 31).

Section 310(6)(c): inserted, on 3 June 1998, by section 16(1) of the Companies Amendment Act 1998 (1998 No 31).

Section 310(6)(c): amended, on 26 April 1999, by section 14(2)(b) of the Companies Amendment Act 1999 (1999 No 19).

Section 310(7)(a): replaced, on 26 April 1999, by section 14(3) of the Companies Amendment Act 1999 (1999 No 19).

Section 310(7)(b): amended, on 26 April 1999, by section 14(4)(a) of the Companies Amendment Act 1999 (1999 No 19).

Section 310(7)(b): amended, on 3 June 1998, by section 16(2) of the Companies Amendment Act 1998 (1998 No 31).

Section 310(7)(c): inserted, on 3 June 1998, by section 16(2) of the Companies Amendment Act 1998 (1998 No 31).

Section 310(7)(c): amended, on 26 April 1999, by section 14(4)(b) of the Companies Amendment Act 1999 (1999 No 19).

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.

Section 310A: inserted, on 26 April 1999, by section 15 of the 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.

Section 310B: inserted, on 26 April 1999, by section 15 of the 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.

Section 310C: inserted, on 26 April 1999, by section 15 of the Companies Amendment Act 1999 (1999 No 19).

310D Mutuality required for transactions under bilateral netting agreements

(1) 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.

(2) Subsection (3) applies for the purpose of determining under this section whether there are mutual credits, mutual debts, or other mutual dealings.

(3) A debt or other liability incurred by a person (**T**) who holds property as a trustee is to be regarded as incurred by T in the same capacity as that in which T holds the property, if T incurs, and is authorised by the terms of the trust to incur, the debt or other liability acting as the trustee.

Section 310D: inserted, on 26 April 1999, by section 15 of the Companies Amendment Act 1999 (1999 No 19).

Section 310D(2): inserted, on 31 March 2017, by section 31 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 310D(3): inserted, on 31 March 2017, by section 31 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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.

Section 310E: inserted, on 26 April 1999, by section 15 of the 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.

Section 310F: inserted, on 26 April 1999, by section 15 of the 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(4A) 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.

Section 310G: inserted, on 26 April 1999, by section 15 of the Companies Amendment Act 1999 (1999 No 19).

Section 310G(2): amended, on 7 July 2010, by section 6 of the Companies Amendment Act (No 2) 2010 (2010 No 53).

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.

Section 310H: inserted, on 26 April 1999, by section 15 of the 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.

Section 310I: inserted, on 26 April 1999, by section 15 of the 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).

Section 310J: inserted, on 26 April 1999, by section 15 of the 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).

Section 310K: inserted, on 26 April 1999, by section 15 of the 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; or

(b) any laws or regulatory requirements relating to the operation of that clearing house and compliance with those laws or regulatory requirements; or

(c) any other matters that the Bank may, in any particular case, consider appropriate.

Section 310L: inserted, on 26 April 1999, by section 15 of the 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.

Section 310M: inserted, on 26 April 1999, by section 15 of the 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.

Section 310N: inserted, on 26 April 1999, by section 15 of the 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.

Section 310O: inserted, on 26 April 1999, by section 15 of the 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, of the amount that is payable on the judgment debt.

(2) If any surplus assets remain after the payment of all admitted claims, the specified interest must be paid 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 specified interest in accordance with subsection (2), interest must be paid, on all admitted claims referred to in subsection (1)(a), of an amount equal to the difference between the specified interest paid under subclause (2) and the interest that would have been payable under the contract for that period and, if the amount of the surplus assets is insufficient to pay interest in full on all those claims, payment must abate rateably among them.

(4) For the purpose of subsection (2), **specified interest** means interest calculated in accordance with Schedule 2 of the Interest on Money Claims Act 2016.

Section 311(1): amended, on 26 April 1999, by section 16 of the Companies Amendment Act 1999 (1999 No 19).

Section 311(1)(b): amended, on 1 January 2018, by section 29 (transitional provision applies, see Schedule 1 clause 6) of the Interest on Money Claims Act 2016 (2016 No 51).

Section 311(2): amended, on 1 January 2018, by section 29 (transitional provision applies, see Schedule 1 clause 6) of the Interest on Money Claims Act 2016 (2016 No 51).

Section 311(3): replaced, on 1 January 2018, by section 29 (transitional provision applies, see Schedule 1 clause 6) of the Interest on Money Claims Act 2016 (2016 No 51).

Section 311(4): replaced, on 1 January 2018, by section 29 (transitional provision applies, see Schedule 1 clause 6) of the Interest on Money Claims Act 2016 (2016 No 51).

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 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 2(1)(b) of Schedule 7, the term **assets** in subsection (1) does not include assets subject to a charge unless the charge is surrendered or taken to be surrendered or redeemed under section 305.

Section 312(2): amended, on 1 November 2007, by section 38 of the Companies Amendment Act 2006 (2006 No 56).

313 Claims of other creditors and distribution of surplus assets

(1) After paying preferential claims in accordance with section 312, the liquidator must apply the assets of the company in satisfaction of all other claims.

(2) The claims referred to in subsection (1) 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, after paying the claims referred to in subsection (1), 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), 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 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.

Section 314(2)(c): replaced, on 1 July 1994, by section 37 of the 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:

(d) assist the liquidator as appropriate in the conduct of the liquidation.

(3) The provisions set out in Schedule 8 govern proceedings at meetings of liquidation committees.

(4) A meeting of creditors called under subsection (2)(b) shall be held in accordance with Schedule 5.

(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 6-monthly report required to be prepared and sent under section 255(2)(d).

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 Trusts Act 2019, and 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

Section 316(1): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 316(1): amended, on 3 June 1998, by section 17 of the Companies Amendment Act 1998 (1998 No 31).

Section 316(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 316(3): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

Section 316(5): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 316(6): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Transitional provisions

Heading: replaced, on 30 June 1997, by section 17 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

316A Transitional provision in relation to voidable transactions

[Repealed]

Section 316A: repealed, on 5 December 2013, by section 9 of the Companies Amendment Act 2013 (2013 No 111).

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, and that section applies as if the money represented unclaimed assets of a company registered under this Act; and

(b) section 316 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 applies as if the money represented unclaimed assets of a company registered under this Act.

Section 316B: inserted, on 30 June 1997, by section 18 of the 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—

(aaa) the company does not comply with section 10; or

(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; or

(b) the Registrar has reasonable grounds to believe that—

(i) the company is not carrying on business; and

(ii) there is no proper reason for the company to continue in existence; or

(ba) the company has failed to respond to a requirement made under section 365(1)(caaa) or (c); or

(bb) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed to respond to a requirement made in relation to that or another company under section 365F or 365G; or

(bc) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information; or

(bd) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed in a persistent or serious way to comply with duties relating to the company—

(i) under this Act; or

(ii) under the Financial Reporting Act 1993 while in force, except that the Registrar may not rely on this ground after 5 years have elapsed after this subparagraph came into force; 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) 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); 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.

(1A) The Registrar may choose not to proceed with the removal of a company from the New Zealand register despite subsection (1)(aaa), (bb), (bc), or (bd) applying.

(2) A request that a company be removed from the New Zealand register under subsection (1)(d) 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 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) 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) only if—

(a) the Registrar has complied with section 319; and

(b) the company has not satisfied the Registrar that it is carrying on business or that a proper 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; or

(ii) if an objection to the removal has been received, has complied with section 322.

(4A) The Registrar may remove a company from the New Zealand register under subsection (1)(aaa), (ba), (bb), (bc), or (bd) only if—

(a) the Registrar has complied with section 319; and

(b) the Registrar—

(i) is satisfied that no person has objected to the removal under section 321; or

(ii) if an objection to the removal has been received, has complied with section 322.

(5) The Registrar must remove a company from the New Zealand register under paragraphs (c), (d), or (e) of subsection (1) only if—

(a) the Registrar is satisfied that notice has been given in accordance with section 320; and

(b) the Registrar—

(i) is satisfied that no person has objected to the removal under section 321; or

(ii) if an objection to the removal has been received, has complied with section 322.

Section 318(1)(aaa): inserted, on 1 May 2015, by section 38(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(1)(b): replaced, on 1 May 2015, by section 38(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(1)(ba): inserted, on 1 May 2015, by section 38(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(1)(bb): inserted, on 1 May 2015, by section 38(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(1)(bc): inserted, on 1 May 2015, by section 38(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(1)(bd): inserted, on 1 May 2015, by section 38(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(1)(d)(i): replaced, on 1 July 1994, by section 39 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 318(1)(e): replaced, on 3 June 1998, by section 18 of the Companies Amendment Act 1998 (1998 No 31).

Section 318(1)(e)(ii): amended, on 15 April 2004, by section 15(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 318(1)(f): inserted, on 15 April 2004, by section 15(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 318(1A): inserted, on 1 May 2015, by section 38(3) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(3A): inserted, on 15 April 2004, by section 15(2) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 318(4)(b): amended, on 1 May 2015, by section 38(4) of the Companies Amendment Act 2014 (2014 No 46).

Section 318(4A): inserted, on 1 May 2015, by section 38(5) of the Companies Amendment Act 2014 (2014 No 46).

319 Notice of intention to remove company under paragraph (aaa), (b), (ba), (bb), (bc), (bd), or (f) of section 318(1)

(1) Before a company can be removed from the New Zealand register under section 318(1)(aaa), (b), (ba), (bb), (bc), (bd), or (f), the Registrar must—

(a) give notice to the company in accordance with subsection (2); 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).

(2) The notice to be given under subsection (1)(a) must state the section under, and the grounds on which, it is intended to remove the company from the New Zealand register and must include the following information in respect of the relevant grounds:

(a) if section 318(1)(aaa) applies, that the company will be removed from the New Zealand register unless—

(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that it complies with section 10:

(b) if section 318(1)(b) applies, that the company will be removed from the New Zealand register unless—

(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that it is carrying on business or that there is a proper reason for it to continue in existence:

(c) if section 318(1)(ba) applies, that the company will be removed from the New Zealand register unless—

(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company (by notice in writing)—

(A) responds to the requirement made under section 365(1)(caaa) or (c) to the Registrar's satisfaction; or

(B) satisfies the Registrar that there is a proper reason for it to continue in existence:

(d) if section 318(1)(bb) applies, that the company will be removed from the New Zealand register unless—

(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that—

(A) information has been disclosed as required by the Registrar under section 365F or 365G (in accordance with any specification under section 365H); or

(B) there is a proper reason for the company to continue in existence:

(e) if section 318(1)(bc) applies, that the company will be removed from the New Zealand register unless—

(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that—

(A) the information provided is accurate; or

(B) the inaccurate information was provided unintentionally; or

(C) accurate information has since been supplied; or

(D) there is a proper reason for the company to continue in existence:

(f) if section 318(1)(bd) applies, that the company will be removed from the New Zealand register unless—

(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that—

(A) there has been no persistent or serious failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993; or

(B) there is a proper reason for the company to continue in existence:

(g) if section 318(1)(f) applies, that the company will be removed from the New Zealand register 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.

(3) The notice to be given under paragraph (b) and paragraph (c) of subsection (1) 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)(aaa), (b), (ba), (bb), (bc), or (bd) applies, the date by which an objection to the removal under section 321 must be delivered to the Registrar, which shall not be less than 20 working days after the date of the notice.

Section 319 heading: amended, on 1 May 2015, by section 39(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 319(1): amended, on 1 May 2015, by section 39(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 319(1): amended, on 15 April 2004, by section 16(2) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 319(1)(b): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 319(2): replaced, on 1 May 2015, by section 39(3) of the Companies Amendment Act 2014 (2014 No 46).

Section 319(3)(a): amended, on 30 June 1997, by section 19 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 319(3)(c): amended, on 1 May 2015, by section 39(4) of the Companies Amendment Act 2014 (2014 No 46).

Section 319(3)(c): amended, on 15 April 2004, by section 16(5) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

320 Notice of intention to remove company under paragraph (c), (d), or (e) of section 318(1)

(1) If a company is to be removed from the register under section 318(1)(c) or (d), the Registrar must give public notice of the matters set out in subsection (4).

(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), the Registrar, or, if it is to be removed from the register under section 318(1)(d), the applicant, as the case may be, must also give notice of the matters set out in subsection (4) 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 must be delivered to the Registrar, which shall be not less than 20 working days after the date of the notice.

Section 320 heading: amended, on 1 May 2015, by section 40 of the Companies Amendment Act 2014 (2014 No 46).

Section 320(1): amended, on 15 April 2004, by section 17(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 320(2): replaced, on 15 April 2004, by section 17(2) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 320(3)(b): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 320(4)(a): amended, on 30 June 1997, by section 20 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

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 1 or more of the following grounds:

(a) that the company is carrying on business or there is a proper 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; 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),—

(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 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).

(4) Where a notice is given of an intention to remove a company from the New Zealand register, in addition to an objection to the removal on 1 or more of the grounds identified in subsection (1), in relation to any of the grounds for removal specified in the first column of the following table, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any of the corresponding grounds specified in the second column of the following table:

Grounds for removal	Grounds for objection
The company does not comply with section 10	The company complies with section 10
The company has failed to respond to a requirement made under section 365(1)(caaa) or (c)	The company has responded to the requirement made under section 365(1)(caaa) or (c)
The Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed to respond to a requirement made in relation to that or another company under section 365F or 365G	Information has been disclosed as required by the Registrar under section 365F or 365G (in accordance with any specification under section 365H)
The Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information	The company has provided accurate information or inaccurate information was provided unintentionally
The Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed to comply with duties relating to the company under this Act or the Financial Reporting Act 1993 in a serious or persistent way	There has been no serious or persistent failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993

(5) An objection on the grounds described in subsection (1) or (4) must, if required by the Registrar, be verified by the production of original documents or certified copies of original documents or by statutory declaration.

Section 321(1)(a): amended, on 1 May 2015, by section 41(1)(a) of the Companies Amendment Act 2014 (2014 No 46).

Section 321(1)(a): amended, on 1 May 2015, by section 41(1)(b) of the Companies Amendment Act 2014 (2014 No 46).

Section 321(3): inserted, on 15 April 2004, by section 18 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 321(4): inserted, on 1 May 2015, by section 41(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 321(5): inserted, on 1 May 2015, by section 41(3) of the Companies Amendment Act 2014 (2014 No 46).

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), or (4), 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

(ba) despite the objection, section 318(1)(aaa), (ba), (bb), (bc), or (bd) applies; 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), 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), that the company be put into liquidation; or

(b) under section 323, that, on any ground specified in section 321, 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; 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) or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 318(1)(e).

Section 322(1): amended, on 1 May 2015, by section 42(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 322(1)(ba): inserted, on 1 May 2015, by section 42(2) of the Companies Amendment Act 2014 (2014 No 46).

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) 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), 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.

(3A) However, subsection (3) does not apply to the extent that the property is rights under a security or charge and the Secretary to the Treasury is satisfied that all amounts and all other obligations secured by the security or charge are paid, performed, or otherwise discharged.

(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), 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) shall be paid out of a Crown Bank Account without further appropriation than this section.

Section 324(3A): inserted, on 24 October 2019, by section 24 of the Statutes Amendment Act 2019 (2019 No 56).

Section 324(6): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

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 if the property is onerous property within the meaning of section 269.

(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.

(4) Subsections (3), (5), and (6) of section 269 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

Section 325(5)(b): amended, on 1 July 1994, by section 40 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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), 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 grounds for the removal did not exist at the time the company was removed; or

(b) the company was a party to legal proceedings; or

(c) the company was in receivership, or liquidation, or both.

(1A) The Registrar may, on the application of a person referred to in subsection (2), or on his or her own motion, restore a company that has been removed from the register to the register if the Registrar is satisfied that the company was carrying on business at the time of its removal and there is a proper reason for the company to continue in existence.

(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).

(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 section 318(1)(aaa), (b), (ba), (bb), (bc), (bd), or (c), 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.

Section 328(1)(a): replaced, on 1 May 2015, by section 43(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 328(1A): inserted, on 1 May 2015, by section 43(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 328(3): replaced, on 30 June 1997, by section 21 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 328(3)(a): amended, on 1 May 2015, by section 43(3) of the Companies Amendment Act 2014 (2014 No 46).

329 Court may restore company to New Zealand register

(1) The court may, on the application of a person referred to in subsection (2), 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 carrying on business or a proper 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; or

(b) for any other reason it is just and equitable to restore the company to the New Zealand register.

(1A) In considering whether to restore a company to the register on the ground referred to in subsection (1)(a)(i) or (b), the court must have regard to the reasons for the company's removal and whether those grounds existed at the time of removal or exist at the time of the hearing of the application.

(2) The following persons may make an application under subsection (1):

(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.

Section 329(1)(a)(i): amended, on 1 May 2015, by section 44(1)(a) of the Companies Amendment Act 2014 (2014 No 46).

Section 329(1)(a)(i): amended, on 1 May 2015, by section 44(1)(b) of the Companies Amendment Act 2014 (2014 No 46).

Section 329(1A): inserted, on 1 May 2015, by section 44(2) of the Companies Amendment Act 2014 (2014 No 46).

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, 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) applies to any property vested in the Crown pursuant to section 324 if the court has made an order for the payment of compensation to any person pursuant to section 324(4)(b) in respect of that property.

(3) Nothing in subsection (1) applies to land or any estate or interest in land that has vested in the Crown pursuant to section 324 if transmission to the Crown of the land or that estate or interest in land has been registered under the Land Transfer Act 2017.

(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 has been registered under the Land Transfer Act 2017, 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), 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) shall be paid out of a Crown Bank Account without further appropriation than this section.

Compare: 1955 No 63 s 337

Section 331(3): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 331(4): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 331(6): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Part 18
Overseas companies

332 Meaning of carrying on business

For the purposes of this Part,—

(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; or

(x) enters into a contract of insurance as an insurer with a New Zealand policyholder (within the meaning of section 6(1) of the Insurance (Prudential Supervision) Act 2010).

Compare: Corporations Act 1989 s 21(2), (3) (Aust)

Section 332(b)(ix): amended, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 332(b)(x): inserted, on 1 February 2011, by section 241(2) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

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: inserted, on 1 September 2007, by section 11 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

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) *[Repealed]*

(3) An overseas company registered under this Part 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 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); and

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

Compare: 1955 No 63 s 396A; 1983 No 53 s 23

Section 333(2): repealed, on 5 December 2013, by section 10 of the Companies Amendment Act 2013 (2013 No 111).

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 in accordance with section 336 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 in accordance with section 336 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 instead of under Part 12 of the Companies Act 1955.

(4) An overseas company that is deemed to be registered under this Part 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); 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).

335 Validity of transactions not affected

A failure by an overseas company to comply with section 333 or section 334 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 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), 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 1 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 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 by virtue of section 334(3), 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), 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), 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.

Section 338(1)(a): amended, on 1 July 1994, by section 41 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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),—

(a) the overseas company commits an offence and is liable on conviction to the penalty set out in section 373(2); 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).

Section 339(1): replaced, on 1 July 1994, by section 42 of the 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: inserted, on 15 April 2004, by section 19 of the 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, 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).

(5) Notwithstanding subsection (1), an overseas company, not being an overseas company that is deemed to be registered under this Part, need not make an annual return in the calendar year of its registration under this Part.

(6) If an overseas company fails to comply with subsection (1) or subsection (2),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); 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).

340A Financial reporting requirements for large overseas companies

Subpart 2 of Part 11 imposes obligations on large overseas companies (within the meaning of section 198).

Section 340A: inserted, on 1 April 2014, by section 38 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

341 Overseas company ceasing to carry on business in New Zealand

(1) An overseas company registered under this Part 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), 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); or

(b) receipt of a notice given by a liquidator in accordance with the provisions of Schedule 9.

(3) The Registrar may (in any event) remove an overseas company from the overseas register if satisfied that it has ceased to carry on business in New Zealand.

(4) Before an overseas company can be removed from the overseas register under subsection (3), the Registrar must—

(a) give notice to the overseas company—

(i) that the Registrar intends to remove the overseas company from the overseas register under subsection (3); and

(ii) that the overseas company may, within 20 working days after the date of the notice, deliver to the Registrar an objection to its removal on the ground that it is still carrying on business in New Zealand; and

(b) give public notice—

(i) that the Registrar intends to remove the overseas company from the overseas register under subsection (3); and

(ii) that any person may, within 20 working days after the date of the public notice, deliver to the Registrar an objection to the overseas company's removal on the ground that the overseas company is still carrying on business in New Zealand.

(5) Subsection (4) does not apply if the Registrar is satisfied that the overseas company has been dissolved, or has otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

(6) If any person objects to the removal of the overseas company as referred to in subsection (4)(a)(ii) or (b)(ii), the Registrar must not proceed with the removal unless the Registrar is satisfied that—

(a) the objection has been withdrawn; or

(b) the facts on which the objection is based are not, or are no longer, correct; or

(c) the objection is frivolous or vexatious.

Compare: 1955 No 63 s 405

Section 341(2): replaced, on 1 July 1994, by section 43 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 341(3): inserted, on 30 May 2017, by section 32 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 341(4): inserted, on 30 May 2017, by section 32 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 341(5): inserted, on 30 May 2017, by section 32 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 341(6): inserted, on 30 May 2017, by section 32 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

342 Liquidation of overseas company

(1) An application may be made to the court for the liquidation of an overseas company in accordance with Part 16, subject to the modifications and exclusions set out in Schedule 9.

(2) An application may be made under subsection (1) whether or not the overseas company—

(a) is registered under this Part; 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); 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); or

(ca) has objected as referred to in section 341(4)(a)(ii); or

(d) has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

(3) An application may be made under subsection (1) whether or not the Registrar has acted under section 341(3) to (6).

Section 342 heading: amended, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

Section 342(1): amended, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

Section 342(2)(ca): inserted, on 30 May 2017, by section 33(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 342(3): inserted, on 30 May 2017, by section 33(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

343 Attorneys of overseas companies

(1) Sections 19 to 21 of the Property Law Act 2007 apply, with all necessary modifications, in relation to a power of attorney executed by an overseas company registered under this Part, to the same extent as if the company was a natural person and as if the commencement of the liquidation of the company was an event revoking the power of attorney within the meaning of those sections.

(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.

Section 343(1): replaced, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

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: inserted, on 1 September 2007, by section 12 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

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, 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; and

(d) the documents and information that are required to register a company under Part 2; 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 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% 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 s 135 (Aust)

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 s 134 (Aust)

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; 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, 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

An 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 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; 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 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 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 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 if—

(a) the company is in liquidation or an application has been made to the court under section 241 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 or a compromise has been proposed under that Part in relation to the company; or

(d) a compromise has been approved by the court under Part 15 in relation to the company or an application has been made to the court to approve a compromise under that Part.

(2) A company must not be removed from the New Zealand register under section 355 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 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 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 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, the Insolvency Practitioners Regulation Act 2019, and the Limited Partnerships Act 2008,—

each of whom must be appointed under the Public Service Act 2020.

(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, the Insolvency Practitioners Regulation Act 2019, the Financial Reporting Act 2013, and the Limited Partnerships Act 2008.

(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.

Section 357(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 357(1)(b): amended, on 1 September 2020, by section 54(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 357(1)(b): amended, on 2 May 2008, by section 119(1) of the Limited Partnerships Act 2008 (2008 No 1).

Section 357(2): amended, on 1 September 2020, by section 54(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 357(2): amended, on 1 July 2015, by section 17 of the Financial Reporting Amendment Act 2014 (2014 No 64).

Section 357(2): amended, on 2 May 2008, by section 119(2) of the Limited Partnerships Act 2008 (2008 No 1).

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 Public Service Act 2020.

(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.

Section 358(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

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 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,—

is kept in New Zealand.

(2) *[Repealed]*

(3) *[Repealed]*

(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.

Section 360(2): repealed, on 25 February 2012, by section 5 of the Companies Amendment Act 2012 (2012 No 7).

Section 360(3): repealed, on 25 February 2012, by section 5 of the Companies Amendment Act 2012 (2012 No 7).

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, correct those particulars.

(2) Unless the rectification or correction relates solely to the person who provided it, the Registrar, before rectifying the register under subsection (1)(a), 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.

Section 360A: inserted, on 15 April 2004, by section 20 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Section 360A(1)(b): amended, on 1 May 2015, by section 45(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 360A(2): amended, on 1 May 2015, by section 45(2) of the Companies Amendment Act 2014 (2014 No 46).

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.

Section 360B: inserted, on 15 April 2004, by section 20 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

360C Alteration of entries on New Zealand register and overseas register without application

(1) This section applies if —

(a) a company has provided information about the company to the Registrar in addition to the information the company is compelled to provide under this Act or regulations made under it (regardless of whether the information was provided before or after the commencement of this section or is visible to the public on the New Zealand register); and

(b) that information is updated in the New Zealand Business Number Register.

(2) The Registrar may update the information provided and, if applicable, the New Zealand register, so that the information is consistent with the information in the New Zealand Business Number Register.

Section 360C: inserted, on 13 May 2016, by section 41 of the New Zealand Business Number Act 2016 (2016 No 16).

361 Registrar may direct transfer

[Repealed]

Section 361: repealed, on 25 February 2012, by section 6 of the Companies Amendment Act 2012 (2012 No 7).

362 Registration of documents

(1) On receipt of a document for registration under this Act, the Registrar must,—

(a) subject to subsection (2), 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

(ba) is involved in a requirement made under section 365(1)(caaa) or (c), 365F, or 365G; 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), 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).

(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.

Section 362(1)(b): amended, on 30 June 1997, by section 22 of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Section 362(2)(ba): inserted, on 1 May 2015, by section 46 of the Companies Amendment Act 2014 (2014 No 46).

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):

(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); 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)—

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)—

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) is, in the absence of proof to the contrary, conclusive evidence of the entry of those particulars.

(6) This section is subject to section 367A.

Compare: 1955 No 63 s 9

Section 363(6): inserted, on 1 May 2015, by section 17 of the Companies Amendment Act 2014 (2014 No 46).

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), 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 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—

(iaa) ascertaining whether information provided to the Registrar is correct; or

(i) ascertaining whether a company or a director of a company is complying, or has complied, with this Act; or

(ii) ascertaining whether the Registrar should exercise any of his or her rights or powers under this Act; or

(iii) detecting offences against this Act; and

(b) if, in the Registrar's opinion, it is in the public interest to do so,—

do any of the following:

(caaa) require a person, in relation to information provided to the Registrar, to—

(i) confirm that the information is correct; or

(ii) correct the information; or

(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.

(1A) When exercising the powers described in subsection (1)(caaa) or (c), the Registrar may specify—

(a) a particular form in which the confirmation or correction must be provided; and

(b) a date by which the confirmation or correction must be provided; and

(c) whether the confirmation or correction must be verified by the production of original documents or certified copies of original documents or by a statutory declaration.

(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) 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).

(5) Any person who—

(a) fails to comply with a requirement under subsection (1)(caaa) or (c); or

(b) acts in contravention of subsection (4)—

commits an offence and is liable on conviction to the penalty set out in section 373(2).

(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

Section 365(1)(a)(iaa): inserted, on 1 May 2015, by section 47(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 365(1)(a)(i): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 365(1)(a)(ii): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 365(1)(a)(iii): amended, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 365(1)(caaa): inserted, on 1 May 2015, by section 47(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 365(1A): inserted, on 1 May 2015, by section 47(3) of the Companies Amendment Act 2014 (2014 No 46).

Section 365(2): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 365(5)(a): amended, on 1 May 2015, by section 47(4) of the Companies Amendment Act 2014 (2014 No 46).

Section 365(5)(b): amended, on 1 July 1994, by section 44 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Registrar's powers to identify controllers of company

Heading: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365A Purpose of sections 365B to 365H

(1) The purpose of sections 365B to 365H is to ensure that the Registrar may, for law enforcement purposes, obtain adequate, accurate, and timely information on the beneficial ownership and control of companies in order to conform with New Zealand's obligations under the FATF Recommendations.

(2) In this section,—

FATF means the Financial Action Task Force on Money Laundering established in Paris in 1989

FATF Recommendations means the revised Recommendations adopted by FATF at its plenary meeting on 15 to 17 February 2012.

Section 365A: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365B Control interests in shares (basic rule)

(1) In sections 365D to 365F, a person has a **control interest** in a share if the person—

(a) is a shareholder; or

(b) is a beneficial owner of the share; or

(c) has the power to exercise, or to control the exercise of, a right to vote attached to the share; or

(d) has the power to acquire or dispose of, or to control the acquisition or disposal of, the share.

(2) Subsection (1) applies regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular share or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely 1 of many votes is not, in itself, a joint power of this kind).

(3) Subsection (1) applies regardless of whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfilment of a condition.

(4) If 2 or more persons can jointly exercise a power, each of those persons is taken to have that power.

Compare: 1988 No 234 s 5

Section 365B: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365C Extension of basic rule to powers or controls exercisable through trust, agreement, etc

(1) A person has a power or control referred to in section 365B if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust or an agreement (or any combination of them).

(2) Subsection (1) applies regardless of whether or not the trust or agreement is legally enforceable or whether or not the person is a party to it.

Compare: 1988 No 234 s 5A

Section 365C: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365D Extension of basic rule to interests held by other persons under control or acting jointly

(1) A person (**A**) has a control interest in a share that another person (**B**) has if—

(a) B or B's directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A's directions, instructions, or wishes in relation to a power or control referred to in section 365B; or

(b) A has the power to exercise, or control the exercise of, 20% or more of the votes that may be cast at a meeting of shareholders of B; or

(c) A has the power to acquire or dispose of, or to control the acquisition or disposal of, shares that have 20% or more of votes that may be cast at a meeting of shareholders of B; or

(d) A and B are related bodies corporate; or

(e) A and B have an agreement, arrangement, or understanding to act in concert in relation to a power or control referred to in section 365B.

(2) For the purposes of subsection (1),—

share includes—

(a) a share in a company:

(b) a share in an industrial and provident society:

(c) a share in a building society:

(d) a partnership interest in a partnership

shareholder means a holder of a share.

(3) For the purposes of subsection (1)(a), **director** means,—

(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:

(b) in relation to a partnership (other than a limited partnership), any partner:

(c) in relation to a limited partnership, any general partner:

(d) in relation to a body corporate or unincorporate other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company.

(4) For the purposes of subsection (1)(d), a body corporate (**A**) is **related** to another body corporate (**B**) if—

(a) B is A's holding company or subsidiary; or

(b) more than half of A's issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; 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 A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or

(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or

(e) there is another body corporate to which A and B are both related.

Compare: 1988 No 234 s 5B(1)

Section 365D: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365E Situations not giving rise to control interests

A person (**A**) does not have a control interest in a share under section 365B merely because—

(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the control interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or

(b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the share on behalf of that person in the ordinary course of A's business of carrying out those trading activities; or

(c) A has been authorised by resolution of the directors of a company to act as its representative at a particular meeting of shareholders, or of a class of shareholders, of the company, and a copy of the resolution is deposited with the company before the meeting; or

(d) A is appointed as a proxy to vote at a particular meeting of shareholders, or of a class of shareholders, of a company and the instrument of A's appointment is deposited with the company before the meeting; or

(e) A is a shareholder of a company and the company's constitution gives the shareholder pre-emptive rights on the transfer of the shares, if all shareholders have pre-emptive rights on the same terms.

Compare: 1988 No 234 s 6

Section 365E: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365F Registrar may require persons to disclose control interests and powers to get control interests

(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in section 365A, require a specified person to disclose full details of all (or any class of)—

(a) control interests that the specified person has in shares of a company and of the circumstances that give rise to those interests; or

(b) powers that the specified person has or may at any time have to acquire a control interest in shares of a company and of the circumstances that give rise to that interest; or

(c) control interests that any other person (whom the specified person must identify by name and with current contact details) has in shares of a company and of the circumstances that give rise to the other person's interests.

(2) However, a matter referred to in subsection (1)(c) need only be disclosed to the extent to which it is known to the specified person required to make the disclosure.

(3) Subsection (1) applies regardless of whether the shares referred to in subsection (1) have voting rights or not or are issued or yet to be issued.

(4) Sections 365B to 365E apply in determining whether or not a person has a power referred to in subsection (1)(b) (and for this purpose every reference in those sections to a control interest must be read as including a reference to the power to acquire a control interest).

(5) The person must disclose the information required under subsection (1) in accordance with any specifications under section 365H.

(6) For the purposes of this section, **specified person**, in relation to the company to which the requirement under subsection (1) relates, means—

(a) a shareholder in the company:

(b) a director of the company:

(c) a person named in a previous disclosure under subsection (5) as having a control interest in shares of the company.

(7) If a person fails to comply with subsection (5), he or she commits an offence and is liable on conviction to the penalty set out in section 373(2).

Compare: 1988 No 234 ss 34, 35; Corporations Act 2001 ss 672A, 672B (Aust)

Section 365F: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365G Registrar may require disclosure about controllers or delegates of directors

(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in section 365A, require a specified person to disclose control information in relation to a company.

(2) However, the following types of control information need only be disclosed to the extent to which they are known to the specified person:

(a) directions or instructions given to any other person:

(b) directions or instructions—

(i) given to the board that were not provided to the specified person; or

(ii) given to the board when the specified person was not a director.

(3) A specified person must disclose the information required under subsection (1) in accordance with any specifications under section 365H.

(4) If a specified person fails to comply with subsection (3), he or she commits an offence and is liable on conviction to the penalty set out in section 374(2).

(5) For the purposes of this section,—

control information, in relation to the company to which the requirement under subsection (1) relates, means—

(a) any directions or instructions relating to the management and administration of the company given to a specified person (**A**) (or to the board or to any other person who is responsible for the management and administration of the company) by another person (**B**); or

(b) any delegation of powers relating to the management and administration of the company by a specified person to another person

specified person, in relation to the company to which the requirement under subsection (1) relates, means—

(a) a director of the company:

(b) a person named in a previous disclosure under subsection (3) concerning that company.

Section 365G: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

365H Registrar may specify deadlines, form, and verification for information required under section 365F or 365G

When exercising a power described in section 365F or 365G, the Registrar (or a person authorised by the Registrar) may specify—

(a) a particular form in which the information must be provided; and

(b) a date by which the information must be provided; and

(c) whether the information must be verified by the production of original documents or certified copies of original documents or by a statutory declaration.

Section 365H: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

Other matters relating to Registrar's powers

Heading: inserted, on 1 May 2015, by section 48 of the Companies Amendment Act 2014 (2014 No 46).

366 Disclosure of information and reports

(1) A person authorised by the Registrar for the purposes of section 365, 365F, 365G, or 365H 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) except in the case of an authorisation under section 365F, 365G, or 365H, any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.

(1A) The Registrar or any person authorised by the Registrar may give information disclosed to the Registrar under section 365F or 365G to a government agency for law enforcement purposes if the Registrar is satisfied that the agency has a proper interest in receiving the information.

(1B) For the purposes of subsection (1A),—

government agency means—

(a) the Crown Law Office:

(b) the Department of Internal Affairs:

(c) the Financial Markets Authority:

(d) the Government Communications Security Bureau:

(e) the Inland Revenue Department:

(f) the Ministry of Business, Innovation and Employment:

(fa) the Ministry of Foreign Affairs and Trade:

(g) the Ministry of Justice:

(h) the New Zealand Customs Service:

(i) the New Zealand Security Intelligence Service:

(j) the New Zealand Police:

(k) the Reserve Bank of New Zealand:

(l) the Serious Fraud Office:

(m) any international counterpart of the entities in paragraphs (a) to (l)

law enforcement purposes means—

(a) the administration of this Act and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:

(b) the detection, investigation, and prosecution of—

(i) any offence under this Act; or

(ii) any offence under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; or

(iii) a money laundering offence (within the meaning of section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009); or

(iv) any offence under section 143B of the Tax Administration Act 1994; or

(v) any offence that is punishable by imprisonment for a term of 5 years or more and includes any act, wherever committed, that if committed in New Zealand would constitute an offence punishable by imprisonment for a term of 5 years or more:

(c) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009:

(d) the enforcement of the Misuse of Drugs Act 1975:

(e) the enforcement of the Terrorism Suppression Act 2002:

(ea) the enforcement of the Russia Sanctions Act 2022:

(f) the administration of the Mutual Assistance in Criminal Matters Act 1992:

(g) the performance by the New Zealand Security Intelligence Service or the Government Communications Security Bureau of its function under section 10 or 11 of the Intelligence and Security Act 2017:

(h) any action referred to in paragraphs (a) to (g) taken in respect of legislation of an overseas jurisdiction that is broadly equivalent to the enactments listed in those paragraphs.

(2) A person authorised by the Registrar for the purposes of section 365, 365F, 365G, or 365H 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, 365F, 365G, or 365H 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), (1A), (1B), or (2); 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).

Section 366(1): amended, on 1 May 2015, by section 49(1)(a) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(1): amended, on 1 May 2015, by section 49(1)(b) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(1)(c): replaced, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 366(1)(d): replaced, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 366(1)(g): amended, on 1 May 2015, by section 49(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(1A): inserted, on 1 May 2015, by section 49(3) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(1B): inserted, on 1 May 2015, by section 49(3) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(1B) **government agency** paragraph (fa): inserted, on 12 March 2022, by section 34(2) of the Russia Sanctions Act 2022 (2022 No 6).

Section 366(1B) **law enforcement purposes** paragraph (b)(v): replaced, on 7 November 2015, by section 5 of the Companies Amendment Act 2015 (2015 No 97).

Section 366(1B) **law enforcement purposes** paragraph (ea): inserted, on 12 March 2022, by section 34(3) of the Russia Sanctions Act 2022 (2022 No 6).

Section 366(1B) **law enforcement purposes** paragraph (g): replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 366(2): amended, on 1 May 2015, by section 49(4) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(3): amended, on 1 May 2015, by section 49(4) of the Companies Amendment Act 2014 (2014 No 46).

Section 366(3)(c): amended, on 1 May 2015, by section 49(5) of the Companies Amendment Act 2014 (2014 No 46).

366A Registrar's powers to insert note of warning in register

(1) The Registrar may, if the Registrar thinks it is appropriate, insert a note of warning in the register in relation to a company in any of the following circumstances:

(a) information or documents relating to the company are subject to a requirement made under section 365(1)(caaa) or (c), 365F, 365G, or 365H:

(b) any of the grounds described in section 318(1)(aaa) or (b) to (f) apply to the company.

(2) If the Registrar has inserted a note of warning in relation to a company (**company A**) under subsection (1), the Registrar may, if the Registrar thinks it is appropriate, also insert a note of warning in relation to any other company that shares a director with company A.

Section 366A: inserted, on 1 May 2015, by section 50 of the Companies Amendment Act 2014 (2014 No 46).

366B Registrar must remove note of warning

The Registrar must remove a note of warning inserted under section 366A if the Registrar is satisfied that the reasons for inserting it do not exist.

Section 366B: inserted, on 1 May 2015, by section 50 of the Companies Amendment Act 2014 (2014 No 46).

367 Application of Official Information Act 1982 and Privacy Act 1993

[Repealed]

Section 367: repealed, on 13 January 2020, by section 7 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

367A Confidentiality of director information

(1) The Registrar must treat director information as confidential and must not make it available to a member of the public.

(2) The Official Information Act 1982 does not apply to director information.

(3) In this section, **director information** means a director's date and place of birth.

Compare: 2008 No 1 s 115

Section 367A: inserted, on 1 May 2015, by section 18 of the Companies Amendment Act 2014 (2014 No 46).

368 Appeals from decisions under section 367

[Repealed]

Section 368: repealed, on 13 January 2020, by section 8 of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

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, or in relation to a disclosure under section 365F, 365G, or 365H, is admissible in evidence at the hearing of an application to the court to appoint a liquidator.

Section 369: amended, on 1 May 2015, by section 51 of the Companies Amendment Act 2014 (2014 No 46).

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, 365F, 365G, or 365H not affected by appeal

(1) Subject to subsection (2), 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, 365F, 365G, or 365H, 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

Section 371 heading: amended, on 1 May 2015, by section 52(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 371(1): amended, on 1 May 2015, by section 52(2) of the Companies Amendment Act 2014 (2014 No 46).

371A Sharing of information with Financial Markets Authority

(1) The Registrar may provide to the FMA any information, or a copy of any document, that the Registrar—

(a) holds in relation to the exercise or performance of the Registrar's functions, powers, or duties; and

(b) considers may assist the FMA in the exercise or performance of the FMA's functions, powers, or duties under this Act or any other enactment.

(2) The Registrar may use any information, or a copy of any document, provided to him or her by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Registrar's exercise or performance of the Registrar's functions, powers, or duties.

(3) In this section, **Registrar's functions, powers, or duties** means his or her functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Markets Conduct Act 2013).

(4) This section applies despite anything to the contrary in any contract, deed, or document.

(5) Nothing in this section limits the Privacy Act 2020.

Section 371A: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 371A(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 371A(5): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

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 or exercise of the Registrar's functions, powers, and duties 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 or exercise a function, power, or duty until the prescribed fee or amount is paid.

(3) Any Order in Council made under subsection (1) 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, 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), 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.

(3C) Regulations made under this section may authorise a fee, or a portion of a fee, payable under this section to be used to recover the costs, or a share of the costs, of the Registrar of New Zealand Business Numbers in the performance or exercise of the Registrar's functions, powers, and duties under the New Zealand Business Number Act 2016.

(3D) The costs recovered in accordance with subsection (3C), and the functions, powers, and duties in relation to which those costs were incurred, need not be related, directly or indirectly, to the company or companies from which the fee is collected.

(3E) Subsections (3C) and (3D) and this subsection are repealed on 1 July 2023.

(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.

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1955 No 63 s 8; 1973 No 13 s 3; 1975 No 137 s 4

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 372(1)(a): amended, on 6 June 2019, by section 4(1) of the New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25).

Section 372(2): amended, on 6 June 2019, by section 4(2) of the New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25).

Section 372(3A): inserted, on 1 July 1994, by section 45 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 372(3B): inserted, on 1 July 1994, by section 45 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 372(3C): inserted, on 6 June 2019, by section 4(3) of the New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25).

Section 372(3D): inserted, on 6 June 2019, by section 4(3) of the New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25).

Section 372(3E): inserted, on 6 June 2019, by section 4(3) of the New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25).

Section 372(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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 financial products, 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):

(8A) Section 63(10)(a) (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% 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) section 239AEB(3) (which relates to the failure by a company in administration to disclose the fact of administration):

(27B) section 239AW(4) (which relates to attendance by a director at a watershed meeting):

(28) section 243(10) (which relates to the failure of a director to sign a certificate as to solvency).

(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 207Q(3)(a) (which relates to the appointment of an auditor):

(ia) section 207R(2)(a) (which relates to notification of the resignation of an auditor):

(j) *[Repealed]*

(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):

(la) section 239F(4) (which relates to being appointed as an administrator when disqualified):

(lb) section 239G(2) (which relates to the duty of administrators to certify certain matters before appointment):

(lc) section 239R(3) (which relates to the duty of replacement administrators to table an interests statement):

(ld) section 239TA(5) (which relates to the duty of administrators to provide information and assistance to their successor):

(le) section 239AMC(5) (which relates to the duty of administrators to give notice to creditors in certain circumstances):

(lf) section 239AP(2) (which relates to the duty of administrators to table certain documents):

(lg) section 239ABYA(5) (which relates to the duty of administrators to provide information and assistance to liquidators):

(lh) section 239ACD(4) (which relates to being appointed as a deed administrator when disqualified):

(li) section 239ACE(2) (which relates to the duty of deed administrators to certify certain matters and table certain documents before appointment):

(lj) section 239ACJA(5) (which relates to the duty of deed administrators to provide information and assistance to their successor):

(lk) section 239ACZ(4) (which relates to the duty of administrators to file accounts):

(ll) section 239ACZA(3) (which relates to the duty of administrators to file updates to interests statements):

(lm) section 239ACZB(4) (which relates to the duty of administrators and deed administrators to file summary reports):

(ln) section 243A(3) (which relates to declarations made by directors about a company's ability to pay its debts):

(lo) section 245D(5) (which relates to the duty of liquidators to give notice to creditors in certain circumstances):

(m) section 250(7) (which relates to the termination of the liquidation of a company):

(ma) section 255(3A) (which relates to the duty of liquidators to send an interests statement and initial and 6-monthly reports):

(mb) section 256(4) (which relates to the duty of liquidators to keep records and documents):

(mc) section 257(3) (which relates to the duty of liquidators to submit final reports and summary reports):

(n) section 280(6) (which relates to being appointed as a liquidator when disqualified):

(na) section 282(2) (which relates to the duty of liquidators to certify certain matters before appointment):

(nb) section 283(9) (which relates to the duty of liquidators to notify the Registrar of certain matters):

(nc) section 283A(5) (which relates to the duty of liquidators to provide information and assistance to their successor):

(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):

(sa) section 365F(7) (which relates to the Registrar's powers to require disclosure in relation to control interests):

(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:

(aa) section 256A(5) (which relates to the duty of liquidators to hold the money of a company on trust):

(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) section 274(2) (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:

(aaa) section 138A(1) (which relates to serious breach of director's duty to act in good faith and in best interests of company):

(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 or dishonestly incurring debt):

(g) section 382(4) (which relates to persons prohibited from managing companies):

(h) section 383(6) (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 or the FMA):

(j) section 386A(2) (which relates to acting as a director of a phoenix company).

Section 373(1)(2): amended, on 1 July 1994, by section 46 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 373(1)(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 373(1)(8A): inserted, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(1)(27A): inserted, on 1 November 2007, by section 39(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 373(1)(27A): amended, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(1)(27B): inserted, on 1 November 2007, by section 39(1) of the Companies Amendment Act 2006 (2006 No 56).

Section 373(1)(28): amended, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(2)(h): replaced, on 1 April 2014, by section 39 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 373(2)(i): replaced, on 1 April 2014, by section 39 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 373(2)(ia): inserted, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(2)(j): repealed, on 1 April 2014, by section 39 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 373(2)(la): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lb): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lc): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(ld): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(le): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lf): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lg): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lh): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(li): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lj): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lk): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(ll): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lm): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(ln): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(lo): inserted, on 1 September 2020, by section 55(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(ma): replaced, on 1 September 2020, by section 55(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(mb): inserted, on 1 September 2020, by section 55(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(mc): replaced, on 1 September 2020, by section 55(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(n): replaced, on 1 September 2020, by section 55(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(na): inserted, on 1 September 2020, by section 55(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(nb): inserted, on 1 September 2020, by section 55(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(nc): inserted, on 1 September 2020, by section 55(3) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(2)(sa): inserted, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(3)(aa): inserted, on 1 September 2020, by section 55(4) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 373(3)(a): replaced, on 3 May 2001, by section 14(2) of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 373(3)(b): replaced, on 3 May 2001, by section 14(2) of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 373(3)(c): inserted, on 3 May 2001, by section 14(2) of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 373(4)(aaa): inserted, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(4)(f): amended, on 3 July 2014, by section 5 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(4)(h): amended, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 373(4)(i): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 373(4)(j): inserted, on 1 November 2007, by section 39(2) of the Companies Amendment Act 2006 (2006 No 56).

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)(b) (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% 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) *[Repealed]*

(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(6) (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 financial products, 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):

(10A) section 94B(3) (which relates to the obligation to give notice of a change in ultimate holding company information):

(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 195(3)(b) (which relates to the place where accounting records must be kept):

(16) section 207Q(3)(b) (which relates to the appointment of an auditor):

(16A) *[Repealed]*

(17) section 207R(2)(b) (which relates to the notification of the resignation of an auditor):

(18) section 207W(2) (which relates to the attendance of auditors at meetings of shareholders):

(19) section 208(3) (which relates to the duty to prepare an annual report):

(20) *[Repealed]*

(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):

(32) section 365G(4) (which relates to the Registrar's powers to require directors to disclose their controllers).

(3) 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 $50,000:

(a) section 194(4) (which relates to the keeping of accounting records):

(b) section 207G(3) (which relates to the preparation, audit, and registration of financial statements).

Section 374(1)(c): amended, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 374(2)(1): repealed, on 1 July 1994, by section 47 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

Section 374(2)(5): amended, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 374(2)(7): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 374(2)(10A): inserted, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 374(2)(15): replaced, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(16): replaced, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(16A): repealed, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(17): replaced, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(17): amended, on 11 September 2014, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 374(2)(18): replaced, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(19): replaced, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(20): repealed, on 1 April 2014, by section 40(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 374(2)(21): replaced, on 18 June 2007, by section 13 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 374(2)(22): replaced, on 18 June 2007, by section 13 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 374(2)(22A): inserted, on 18 June 2007, by section 13 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 374(2)(32): inserted, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 374(3): inserted, on 1 April 2014, by section 40(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

375 Proceedings for offences

(1) *[Repealed]*

(2) *[Repealed]*

(3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011,—

(a) a charging document may be filed at any time in respect of an offence against section 373(4); and

(b) the limitation period in respect of an offence specified in section 373(1) or (2), or section 374 of this Act ends on the date that is 3 years after the date on which the offence was committed.

(4) Nothing in sections 377 to 380 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.

Section 375(1): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 375(2): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 375(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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).

(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).

(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 for the use or benefit of a person other than 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).

Compare: 1955 No 63 s 461A; 1980 No 43 s 47

Section 378(a): amended, on 3 July 2014, by section 6 of the Companies Amendment Act 2014 (2014 No 46).

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).

(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).

Compare: 1955 No 63 s 461C; 1980 No 43 s 47

380 Carrying on business fraudulently or dishonestly incurring debt

(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).

(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).

(3) Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4), who, with intent to defraud a creditor or creditors of the company, does any thing that causes material loss to any creditor.

(4) Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4) if—

(a) the company incurs a debt (the **debt**); and

(b) the company—

(i) is insolvent at the time that it incurs the debt; or

(ii) becomes insolvent by incurring the debt; or

(iii) is insolvent at the time that it incurs debts that include the debt; or

(iv) becomes insolvent by incurring debts that include the debt; and

(c) the director knows, at the time when the company incurs the debt, that the company is insolvent or will become insolvent as a result of incurring the debt or other debts that include the debt; and

(d) the director's failure to prevent the company incurring the debt is dishonest.

(5) In subsection (4), **insolvent** means that the company is unable to pay its debts.

Compare: 1955 No 63 s 461D; 1980 No 43 s 47

Section 380 heading: amended, on 3 July 2014, by section 7(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 380(3): inserted, on 1 November 2007, by section 33 of the Companies Amendment Act 2006 (2006 No 56).

Section 380(4): inserted, on 3 July 2014, by section 7(2) of the Companies Amendment Act 2014 (2014 No 46).

Section 380(5): inserted, on 3 July 2014, by section 7(2) of the Companies Amendment Act 2014 (2014 No 46).

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).

Compare: 1955 No 63 s 462

382 Persons prohibited from managing companies

(1) Where—

(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months), including an offence under section 138A; or

(b) a person has been convicted of an offence under any of sections 377 to 380 or of any crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or

(ba) a person has been convicted of an offence under section 143A(1)(d) or 143B(1) of the Tax Administration Act 1994; or

(bb) a person has been convicted of an offence under section 148 of the Tax Administration Act 1994 of aiding, abetting, inciting, or conspiring with another person to commit an offence against section 143B(1) of that Act,—

(c) *[Repealed]*

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).

(5) In this section, the term **company** includes an overseas company that carries on business in New Zealand.

Section 382(1)(a): replaced, on 1 May 2015, by section 53 of the Companies Amendment Act 2014 (2014 No 46).

Section 382(1)(a): amended, on 13 January 2020, by section 9(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 382(1)(b): amended, on 13 January 2020, by section 9(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 382(1)(ba): inserted, on 13 January 2020, by section 9(3) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 382(1)(bb): inserted, on 13 January 2020, by section 9(3) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 382(1)(c): repealed, on 29 February 2008, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

383 Court may disqualify directors

(1) Where—

(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months), including an offence under section 138A, 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; or

(ba) a person has been convicted of an offence under section 143A(1)(d) or 143B(1) of the Tax Administration Act 1994; or

(bb) a person has been convicted of an offence under section 148 of the Tax Administration Act 1994 of aiding, abetting, inciting, or conspiring with another person to commit an offence against section 143B(1) of that 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, the Financial Markets Conduct Act 2013, 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) *[Repealed]*

(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 permanently or for a period specified in the order.

(1A) The court may make an order under this section permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.

(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 FMA, 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.

(3A) Subsection (3B) applies on the hearing of—

(a) an application for an order under this section by the Registrar, the FMA, 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 FMA, the Official Assignee, or the liquidator.

(3B) The Registrar, the FMA, the Official Assignee, or the liquidator (as the case may be)—

(a) must appear and call the attention of the court to any matters that seem to him, her, or it to be relevant; and

(b) 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 44F of the Takeovers Act 1993, and subpart 6 of Part 8 of the Financial Markets Conduct Act 2013, 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).

(7) In this section, **company** includes an overseas company.

Compare: 1955 No 63 s 189; 1988 No 236 s 4

Section 383(1): amended, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 383(1)(a): replaced, on 1 May 2015, by section 54 of the Companies Amendment Act 2014 (2014 No 46).

Section 383(1)(a): amended, on 13 January 2020, by section 10(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 383(1)(ba): inserted, on 13 January 2020, by section 10(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 383(1)(bb): inserted, on 13 January 2020, by section 10(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 383(1)(c)(i): replaced, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 383(1)(c)(i): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 383(1)(ca): inserted, on 22 November 2006, by section 14 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 383(1)(d): repealed, on 29 February 2008, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 383(1A): inserted, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 383(3): replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 383(3A): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 383(3B): inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 383(4A): inserted, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 383(4A): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

384 Liability for contravening sections 382 and 383

A person who acts as a director of a company in contravention of section 382 or an order made under section 383 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 or FMA 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) that is in voluntary administration under Part 15A.

(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 or the FMA 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 10 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) may be exercised in relation to—

(a) any person who the Registrar or the FMA is satisfied was, within a period of 5 years before a notice was given to that person under subsection (5) (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 or the FMA 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 or the FMA is satisfied was, within a period of 5 years before a notice was given to that person under subsection (5) (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 or the FMA—

(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 or the FMA must not exercise the power conferred by subsection (3) unless—

(a) not less than 10 working days' notice of the fact that the Registrar or the FMA intends to consider the exercise of it is given to the person; and

(b) the Registrar or the FMA considers any representations made by the person.

(6) No person to whom a notice under subsection (3) 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 or the FMA has issued a notice under subsection (3) 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 or the FMA may, by notice in writing to a person to whom a notice under subsection (3) 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) 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).

(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

Section 385 heading: amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(1)(g): inserted, on 1 November 2007, by section 34 of the Companies Amendment Act 2006 (2006 No 56).

Section 385(3): amended, on 1 April 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 385(3): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(4)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(4)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(5): replaced, on 3 May 2001, by section 15 of the Companies Act 1993 Amendment Act 2001 (2001 No 18).

Section 385(5): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(5)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(5)(b): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(7): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385(8): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

385AA Additional power for Registrar or FMA to prohibit persons from managing companies

(1) This section applies in relation to a company that has been removed from the New Zealand register on any of the grounds described in section 318(1)(ba), (bb), (bc), or (bd).

(2) The Registrar or the FMA 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 10 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*.

(3) The power conferred by subsection (2) may be exercised in relation to any person who the Registrar or the FMA is satisfied was, within a period of 5 years before a notice was given to that person under subsection (4) (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 to which this section applies, unless that person satisfies the Registrar or the FMA—

(a) that the acts or omissions of that person were not wholly or partly responsible for the company being a company to which this section applies; or

(b) that it would not be just or equitable for the power to be exercised.

(4) The Registrar or the FMA must not exercise the power conferred by subsection (2) unless—

(a) not less than 10 working days' notice of the fact that the Registrar or the FMA intends to consider the exercise of it is given to the person; and

(b) the Registrar or the FMA considers any representations made by the person.

(5) No person to whom a notice under subsection (2) applies may be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.

(6) Where a person to whom the Registrar or the FMA has issued a notice under subsection (2) 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.

(7) The Registrar or the FMA may, by notice in writing to a person to whom a notice under subsection (2) has been given,—

(a) revoke that notice; or

(b) exempt that person from the notice in relation to a specified company or companies.

(8) The Registrar or the FMA must publish a notice under subsection (7) in the *Gazette*.

(9) Every person to whom a notice under subsection (2) 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).

Section 385AA: inserted, on 1 May 2015, by section 55 of the Companies Amendment Act 2014 (2014 No 46).

385A Appeals from FMA's exercise of power under section 385 or section 385AA

(1) A person who is aggrieved by the FMA's exercise of a power under section 385 or section 385AA may appeal to the court within 15 working days after the

date that the notice is published in the *Gazette* under section 385(3), or within any further time as the court may allow.

(2) On hearing the appeal, the court may approve the FMA's exercise of the power or may give any directions or make any determination in the matter that the court thinks fit.

(3) Section 370 provides for appeals from the Registrar's acts or decisions under section 385.

Section 385A: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 385A heading: amended, on 1 May 2015, by section 56(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 385A(1): amended, on 1 May 2015, by section 56(2) of the Companies Amendment Act 2014 (2014 No 46).

386 Liability for contravening section 385 or section 385AA

A person who acts in contravention of a notice under section 385 or 385AA 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.

Section 386 heading: amended, on 1 May 2015, by section 57(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 386: amended, on 1 May 2015, by section 57(2) of the Companies Amendment Act 2014 (2014 No 46).

386A Director of failed company must not be director, etc, of phoenix company with same or substantially similar name

(1) Except with the permission of the court, or unless one of the exceptions in sections 386D to 386F applies, a director of a failed company must not, for a period of 5 years after the date of commencement of the liquidation of the failed company,—

(a) be a director of a phoenix company; or

(b) directly or indirectly be concerned in or take part in the promotion, formation, or management of a phoenix company; or

(c) directly or indirectly be concerned in or take part in the carrying on of a business that has the same name as the failed company's pre-liquidation name or a similar name.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to the penalty set out in section 373(4).

Compare: Insolvency Act 1986 s 216 (UK)

Section 386A: inserted, on 1 November 2007, by section 35 of the Companies Amendment Act 2006 (2006 No 56).

Section 386A(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

386B Definitions for purpose of phoenix company provisions

(1) In sections 386A to 386F,—

director of a failed company means a person who was a director of a failed company at any time in the period of 12 months before the commencement of its liquidation, and **director of the failed company** has a corresponding meaning

failed company means a company that was placed in liquidation at a time when it was unable to pay its due debts

phoenix company means, in relation to a failed company, a company that, at any time before, or within 5 years after, the commencement of the liquidation of the failed company, is known by a name that is also—

(a) a pre-liquidation name of the failed company; or

(b) a similar name

pre-liquidation name means any name (including any trading name) of a failed company in the 12 months before the commencement of that company's liquidation

similar name means a name that is so similar to a pre-liquidation name of a failed company as to suggest an association with that company.

(2) For the purposes of sections 386A to 386F, a company is known by a name if that name is its registered name or if it carries on business, or carries on a part of its business, under that name.

Compare: Insolvency Act 1986 s 216(6) (UK)

Section 386B: inserted, on 1 November 2007, by section 35 of the Companies Amendment Act 2006 (2006 No 56).

386C Liability for debts of phoenix company

(1) A person who contravenes section 386A(1)(a) or (b) is personally liable for all of the relevant debts of the phoenix company.

(2) A person (**A**) who is involved in the management of a phoenix company is personally liable for all of the relevant debts of the company if—

(a) in the management of the company A acts or is willing to act on instructions given by another person (**B**); and

(b) at that time A knows that B is contravening section 386A(1)(a) or (b) in relation to the company.

(3) In this section, **relevant debts**—

(a) in subsection (1), means the debts and liabilities incurred by the phoenix company during the period when the person liable was involved in the management of the company and the phoenix company was known by a pre-liquidation name of the failed company or a similar name:

(b) in subsection (2), means the debts and liabilities incurred by the phoenix company during the period when A was acting or was willing to act on the instructions of B and the phoenix company was known by a pre-liquidation name of the failed company or a similar name.

(4) Liability under this section is joint and several.

(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given by a person who he or she knew at the time to be in contravention of section 386A is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

Compare: Insolvency Act 1986 s 217 (UK)

Section 386C: inserted, on 1 November 2007, by section 35 of the Companies Amendment Act 2006 (2006 No 56).

386D Exception for person named in successor company notice

(1) Section 386A does not apply to a person named in a successor company notice.

(2) A **successor company** is a company that acquires the whole or substantially the whole of the business of a failed company under arrangements made by a liquidator or receiver or made under a deed of company arrangement under Part 15A.

(3) A **successor company notice** is a notice by a successor company that—

(a) is sent by the successor company to all creditors of the failed company for whom the successor company has an address; and

(b) is sent to those creditors within 20 working days after the arrangements for the acquisition of the business are made under subsection (2); and

(c) specifies—

(i) the name and registered number of the failed company; and

(ii) the circumstances in which the business has been acquired by the successor business; and

(iii) the name that the successor company has assumed, or proposes to assume, for the purpose of carrying on that business; and

(iv) any change of name that the successor company has made, or proposes to make, for the purpose of carrying on that business; and

(d) states, in respect of a person named in the notice,—

(i) his or her full name; and

(ii) the duration of his or her directorship of the failed company; and

(iii) the extent of his or her involvement in the management of the failed company.

Compare: Insolvency Rules 1986 rule 4.228 (UK)

Section 386D: inserted, on 1 November 2007, by section 35 of the Companies Amendment Act 2006 (2006 No 56).

386E Exception for temporary period while application for exemption is made

(1) A person does not contravene a prohibition in section 386A for the temporary period set out in subsection (2) if that person applies to the court within 5 working days after the commencement of the liquidation of the failed company for an order exempting that person from the prohibition in question.

(2) The temporary period in subsection (1) is the period beginning on the date of the commencement of the liquidation of the failed company and ending on the earlier of—

(a) the close of 6 weeks after the commencement of liquidation; and

(b) the date on which the court makes an order of exemption.

Compare: Insolvency Rules 1986 rule 4.229 (UK)

Section 386E: inserted, on 1 November 2007, by section 35 of the Companies Amendment Act 2006 (2006 No 56).

386F Exception in relation to non-dormant phoenix company known by pre-liquidation name of failed company for at least 12 months before liquidation

(1) The prohibitions in section 386A(1)(a) and (b) do not apply in respect of a phoenix company that has been known by a name or names that are the same as the failed company's pre-liquidation name or are similar names if—

(a) it has been known by that name or those names for not less than the period of 12 months before liquidation commences; and

(b) it has not been dormant during those 12 months.

(2) For the purposes of subsection (1), a company has not been dormant during the 12-month period if transactions that are required by section 194(1) to be recorded in its accounting records have occurred throughout that period.

Compare: Insolvency Rules 1986 rule 4.230 (UK)

Section 386F: inserted, on 1 November 2007, by section 35 of the Companies Amendment Act 2006 (2006 No 56).

Section 386F(2): amended, on 1 April 2014, by section 41 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

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) are the only methods by which a document in legal proceedings may be served on a company in New Zealand.

Section 387(1)(e): amended, on 3 June 1998, by section 19 of the Companies Amendment Act 1998 (1998 No 31).

Section 387(1)(f): inserted, on 3 June 1998, by section 19 of the Companies Amendment Act 1998 (1998 No 31).

387A Service of documents on directors in legal proceedings

(1) A document, including a writ, summons, notice, or order, in any legal proceedings involving a director in his or her capacity as director may be served on the director as follows:

(a) by delivery to the director; or

(b) by leaving it at the director's residential address (as that address is shown in the register); 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 director; 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) are the only methods by which a document in legal proceedings may be served on a director in New Zealand.

Section 387A: inserted, on 1 May 2015, by section 19 of the Companies Amendment Act 2014 (2014 No 46).

388 Service of other documents on companies

(1) 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; 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; or

(d) by emailing it to the company at an email address that is used by the company.

(2) Subsection (1) is subject to section 391(3A) to (3C).

Section 388(1)(c): amended, on 1 May 2015, by section 20 of the Companies Amendment Act 2014 (2014 No 46).

Section 388(1)(d): inserted, on 1 May 2015, by section 20 of the Companies Amendment Act 2014 (2014 No 46).

Section 388(1)(d): amended, on 16 December 2017, by section 48 of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 388(2): inserted, on 31 August 2012, by section 8 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

388A Service of other documents on directors

A document, other than a document in any legal proceedings, may be served on a director as follows:

(a) by any of the methods set out in paragraphs (a), (b), (c), and (e) of section 387A; or

(b) by posting it to the director at the director's residential address (as that address is shown in the register) or delivering it to a box at a document exchange that the director is using at the time; or

(c) by posting it to the company's registered office or address for service or delivering it to a box at a document exchange that the company is using at the time; or

(d) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the director's residential address (as that address is shown in the register); or

(e) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the company's registered office or address for service or its head office or principal place of business; or

(f) by emailing it to the director at an email address that is used by the director; or

(g) by emailing it to the company at an email address that is used by the company.

Section 388A: inserted, on 1 May 2015, by section 21 of the Companies Amendment Act 2014 (2014 No 46).

Section 388A(f): amended, on 16 December 2017, by section 49(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 388A(g): amended, on 16 December 2017, by section 49(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

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) 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

(1) 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; 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; or

(d) by emailing it to the overseas company at an email address that is used by the overseas company.

(2) Subsection (1) is subject to section 391(3A) to (3C).

Section 390(1)(c): amended, on 16 December 2017, by section 50(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 390(1)(d): inserted, on 16 December 2017, by section 50(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 390(2): inserted, on 31 August 2012, by section 9 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

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; or

(g) sent by email to an electronic address used by the body corporate.

(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.

(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.

(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.

Section 391(3)(f): amended, on 13 January 2020, by section 11(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 391(3)(g): inserted, on 13 January 2020, by section 11(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 391(3A): inserted, on 31 August 2012, by section 10 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Section 391(3B): inserted, on 31 August 2012, by section 10 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Section 391(3C): inserted, on 31 August 2012, by section 10 of the Companies Amendment Act (No 2) 2012 (2012 No 60).

392 Additional provisions relating to service

(1) Subject to subsection (2), for the purposes of sections 387 to 391,—

(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:

(ca) a document sent by email 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:

(f) in proving service of a document by email, it is sufficient to prove that—

(i) the document was properly addressed; and

(ii) the document was properly sent to the email address.

(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.

Section 392(1)(ca): inserted, on 1 May 2015, by section 22(1) of the Companies Amendment Act 2014 (2014 No 46).

Section 392(1)(f): inserted, on 1 May 2015, by section 22(2) of the Companies Amendment Act 2014 (2014 No 46).

393 Privileged communications

(1) Subject to subsection (2), nothing in this Act requires a legal practitioner to disclose a privileged communication.

(2) Nothing in subsection (1) applies to a communication made to or by a person referred to in section 261(2)(f) 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).

(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 6 of the Lawyers and Conveyancers Act 2006.

(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 or an incorporated law firm (within the meaning of the Lawyers and Conveyancers Act 2006) in which he or she is, or is held out to be, a partner, director, or shareholder.

Compare: 1990 No 51 s 24

Section 393(4): amended, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 393(6): replaced, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

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:

(ba) prescribing a country, State, or territory outside New Zealand as an enforcement country for the purposes of section 10(d) if the country, State, or territory has an agreement with New Zealand that allows for the recognition and enforcement there of New Zealand judgments imposing regulatory regime criminal fines:

(bb) prescribing information required for the purposes of section 12(3)(b) and paragraph (ga) of Schedule 4:

(bc) prescribing information required for the purposes of section 94A(e):

(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):

(caa) prescribing countries, States, or territories outside New Zealand for the purposes of section 151(2)(ec):

(cb) prescribing requirements for the preparation of concise annual reports:

(cba) prescribing information that must be contained in a report or statement for the purpose of—

(i) section 239ACZB(3), 243A(2), 255(2)(c)(ii), 255(2)(d), 257(1)(a), or 257(1)(c); or

(ii) section 24(3) or 24A(2) of the Receiverships Act 1993, in relation to a receivership under that Act:

(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.

(3) Regulations made under this section may provide for different regulations to apply in respect of different kinds or classes of persons or circumstances.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 395(1)(ba): inserted, on 1 May 2015, by section 23 of the Companies Amendment Act 2014 (2014 No 46).

Section 395(1)(bb): inserted, on 1 May 2015, by section 23 of the Companies Amendment Act 2014 (2014 No 46).

Section 395(1)(bb): amended, on 30 May 2017, by section 34 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 395(1)(bc): inserted, on 1 May 2015, by section 23 of the Companies Amendment Act 2014 (2014 No 46).

Section 395(1)(ca): inserted, on 22 November 2006, by section 15(1) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 395(1)(caa): inserted, on 1 May 2015, by section 58 of the Companies Amendment Act 2014 (2014 No 46).

Section 395(1)(cb): inserted, on 22 November 2006, by section 15(1) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 395(1)(cba): inserted, on 18 June 2019, by section 56(1) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 395(1)(cc): inserted, on 22 November 2006, by section 15(1) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 395(1)(cd): inserted, on 22 November 2006, by section 15(1) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 395(2): inserted, on 22 November 2006, by section 15(2) of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 395(3): inserted, on 18 June 2019, by section 56(2) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Section 395(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

395A COVID-19 business debt hibernation

(1) The provisions set out in Schedule 13 have effect according to their terms.

(2) That schedule applies to companies and other entities in accordance with clause 3 of that schedule.

(3) This section, section 395B, and Schedule 13 are repealed on the close of 31 May 2022.

Section 395A: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

395B Regulations relating to COVID-19 business debt hibernation

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing classes of entities and circumstances for the purposes of clause 3 of Schedule 13, including providing for either or both of the following:

(i) that schedule to apply only if prescribed preconditions are satisfied:

(ii) that schedule to cease to apply if prescribed ongoing conditions are not satisfied:

(b) prescribing a date under clause 3(3)(b) of Schedule 13:

(c) prescribing any kind of debt or claim as an excluded debt:

(d) prescribing a date under clause 5(3) of Schedule 13:

(e) specifying, for the purposes of clause 8 of Schedule 13, circumstances in which a subsequent notice may be delivered:

(f) prescribing further information that must be included under clause 10 of Schedule 13 in a notice under clause 9 of that schedule:

(g) providing for the manner in which voting must or may be conducted for the purposes of Schedule 13 and requirements for adopting a resolution under clause 24 of that schedule:

(h) specifying modifications, additions, or variations to how Part 8 of Schedule 13 applies:

(i) specifying modifications, additions, or variations to how the Tax Administration Act 1994 applies to an instalment arrangement referred to in clause 74 of Schedule 13:

(j) prescribing effects of arrangements that are permitted under clause 30 of that schedule:

(k) exempting, on terms or conditions, any class of entities, or class of arrangements, from—

(i) compliance with any provision or provisions of Schedule 13; or

(ii) any requirement or restriction under that schedule:

(l) prescribing transitional, savings, or related provisions in connection with an entity ceasing to be an entity in BDH (including provisions relating to the rights, duties, or powers of the entity or its creditors, or both and provisions relating to an instalment arrangement that ceases to be in force under clause 74 of Schedule 13).

(2) Regulations under subsection (1)(a) may, without limitation, prescribe a class of entity to which Schedule 13 does not apply in any way, including (for example) by reference to the size of the entity, its legal form, or the nature of any of its business, property, or affairs.

(3) Regulations under this section must be made on the recommendation of—

(a) the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act; and

(b) the Minister of Finance.

(4) The Ministers may make a recommendation under subsection (3) only if the Ministers have had regard to—

(a) the purposes of Schedule 13 as set out in clause 1 of that schedule; and

(b) the effect of the regulations on—

(i) the creditors of entities that have significant liquidity problems; and

(ii) the integrity of corporate insolvency law.

(5) The Ministers may make a recommendation for regulations under subsection (1)(l) only if the Ministers are satisfied that the regulations are necessary or desirable for the orderly transition of an entity out of being an entity in BDH.

(6) Different matters may be prescribed, provided for, or specified in respect of different kinds of entity or other circumstances.

(7) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 395B: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Section 395B(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

396 Summary Proceedings Act 1957 amended

Amendment(s) incorporated in the Act(s).

397 Securities Transfer Act 1991 amended

Amendment(s) incorporated in the Act(s).

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

(1) Parts 14, 15, 15A, and 16 and all other provisions of this Act are subject to section 106 of the Civil Aviation Act 1990 (which provides for the primacy of the provisions of the Cape Town Convention and the Aircraft Protocol) and the rest of Part 12 of the Civil Aviation Act 1990 (which implements the Cape Town Convention and the Aircraft Protocol).

(2) In this section,—

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

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

Section 398: inserted, on 1 November 2010, by section 14(1) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

399 Companies Act 1955 continues to apply for limited purposes

(1) The Companies Act 1955 continues to apply in respect of every winding up or liquidation of a company commenced before the close of 30 June 1997.

(2) Section 42(3) to (7) of the Companies Amendment Act 1993 continue to apply in respect of every company to which those subsections applied immediately before the repeal of the Companies Act 1955.

(3) Part 6A of the Companies Act 1955 continues to apply in respect of every company that, immediately before the repeal of that Act, was subject to any action under that Part of that Act to remove the company from the register, or had been removed from the register.

(4) Subsections (1) to (3) apply despite the repeal of the Companies Act 1955 by the Companies Act Repeal Act 1993.

(5) Nothing in subsection (1) applies in relation to section 290 of the Companies Act 1955.

(6) In this section and section 400, **company** and **register** have the same meanings as those terms had under the Companies Act 1955 immediately before its repeal.

Compare: 1993 No 126 s 3

Section 399: inserted, on 5 December 2013, by section 11 of the Companies Amendment Act 2013 (2013 No 111).

400 Companies restored to register or that have ceased to be in liquidation may be reregistered

(1) This section applies to a company that, but for the repeal of the Companies Reregistration Act 1993, would have been deemed to have been reregistered under this Act in accordance with section 13A or 13B of the Companies Reregistration Act 1993 (which relate to companies that have been restored to the register or that have ceased to be in liquidation).

(2) Sections 12 and 13A to 15 and the Schedule of the Companies Reregistration Act 1993 continue to apply to the company as if the Companies Amendment Act 2013 had not been enacted.

Section 400: inserted, on 5 December 2013, by section 11 of the Companies Amendment Act 2013 (2013 No 111).

401 References to companies incorporated under Companies Act 1955

A reference in any enactment to a company incorporated under the Companies Act 1955 or to which that Act applies must, unless the context otherwise

requires, be read as including a company registered under this Act or to which this Act applies.

Section 401: inserted, on 5 December 2013, by section 11 of the Companies Amendment Act 2013 (2013 No 111).

402 Validation of fee used to recover costs of Registrar of New Zealand Business Numbers

(1) This section applies to a fee—

(a) payable or purportedly payable on or before 30 June 2019 in accordance with the Companies Act 1993 Regulations 1994; but

(b) that was (or is or will be) used (in whole or in part) to recover the costs, or a share of the costs, of the Registrar of New Zealand Business Numbers in the performance or exercise of a function, power, or duty conferred by or under the New Zealand Business Number Act 2016.

(2) The fee is and always has been validly imposed by regulations made under section 372.

(3) Money received by the Registrar of Companies in payment of the fee is and always has been lawfully collected and applied.

Section 402: inserted, on 6 June 2019, by section 5 of the New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25).

Schedule 1AA
Transitional, savings, and related provisions

s 8A

Part 1
Provisions relating to Regulatory Systems (Commercial Matters) Amendment Act 2017

1 Financial assistance not exceeding 5% of shareholders' funds

This Act, as amended by section 17 of the Regulatory Systems (Commercial Matters) Amendment Act 2017, applies only to financial assistance given after the commencement of that section.

2 Financial reporting and annual report amendments

This Act, as amended by sections 20 to 27 of the Regulatory Systems (Commercial Matters) Amendment Act 2017, applies to a company or an overseas company in relation to the following accounting periods:

(a) an accounting period that commenced before, but ends on or after, the commencement of those sections:

(b) accounting periods that commence on or after the commencement of those sections.

3 Variation of compromise

Section 231(1A) (as inserted by section 29 of the Regulatory Systems (Commercial Matters) Amendment Act 2017)—

(a) applies to a compromise whether approved before or after the commencement of section 231(1A); but

(b) does not apply to a variation made before the commencement of section 231(1A).

4 Mutuality required for transactions under bilateral netting agreements

(1) Section 239AEJ(2) and (3) (as inserted by section 30 of the Regulatory Systems (Commercial Matters) Amendment Act 2017)—

(a) applies to a bilateral netting agreement whether made before or after the commencement of section 239AEJ(2) and (3); but

(b) does not apply if the administration of the company began before the commencement of section 239AEJ(2) and (3).

(2) Section 310D(2) and (3) (as inserted by section 31 of the Regulatory Systems (Commercial Matters) Amendment Act 2017)—

(a) applies to a bilateral netting agreement whether made before or after the commencement of section 310D(2) and (3); but

(b) does not apply if the liquidation of the company began before the commencement of section 310D(2) and (3).

Part 2
Provision relating to Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019

Schedule 1AA Part 2: inserted, on 31 August 2019, by section 11 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

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

The amendments made by subpart 2 of Part 1 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 apply to—

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

(b) a qualifying derivative entered into on or after the commencement of this clause.

Schedule 1AA clause 5: inserted, on 31 August 2019, by section 11 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Part 3
Provision relating to COVID-19 Response (Further Management Measures) Legislation Act 2020

Schedule 1AA Part 3: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

6 Application of changes to voidable transactions provisions

(1) The amendments made to section 126 and Part 16 by the COVID-19 Response (Further Management Measures) Legislation Act 2020 apply only in respect of liquidations that commence on or after the date on which those amendments came into force.

(2) Section 126 and Part 16, as in force immediately before those amendments come into force, continue to apply in respect of liquidations that commenced before those amendments came into force.

Schedule 1AA clause 6: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 4
Provisions relating to Part 1 of Insolvency Practitioners Regulation (Amendments) Act 2019

Schedule 1AA Part 4: inserted, on 1 September 2020, by section 57(a) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

7 Interpretation

In this Part,—

amendment Act means Part 1 of the Insolvency Practitioners Regulation (Amendments) Act 2019

commencement date, in relation to a provision of this Act, means the date on which the provision is amended, replaced, repealed, or inserted by the amendment Act

company, in relation to a liquidation under Part 16, has the meaning given to it in section 240(1A)

new, in relation to a provision of this Act, means the provision as amended, replaced, or inserted by the amendment Act

old, in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act.

Schedule 1AA clause 7: inserted, on 1 September 2020, by section 57(a) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

8 Application of new provisions to insolvency engagements already under way

(1) The new provisions do not apply (and the old provisions continue to apply) in relation to—

(a) the administration of a company under Part 15A for which an administrator was appointed before the commencement date; or

(b) a company under a deed of company arrangement under Part 15A for which the deed of company arrangement was executed before the commencement date; or

(c) the liquidation of a company under Part 16 for which a liquidator was appointed before the commencement date.

(2) Subclause (1)(c) applies subject to clause 5(2) to (4) of Schedule 1 of the Insolvency Practitioners Regulation Act 2019.

Schedule 1AA clause 8: inserted, on 1 September 2020, by section 57(a) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

9 Existing court orders relating to appointments continue to have effect

(1) This clause applies to each court order that—

(a) is made under old section 239F(2), 239ACD(2), or 280(1) and permits a person to be appointed as an administrator, a deed administrator, or a liquidator despite being a person described in old section 280(1)(d) to (m); and

(b) is in force on the commencement date of the old provision under which the order is made.

(2) Until the court order ceases to be in force, the order must be treated as if it were made under the new provision that replaces the old provision under which the court order is made.

(3) However, a person is not eligible to be appointed as an administrator, a deed administrator, or a liquidator (as the case may be) if the person is ineligible under any new provision of this Act for a reason that is not covered by the court order.

Schedule 1AA clause 9: inserted, on 1 September 2020, by section 57(a) of the Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28).

Schedule 1
Proceedings at meetings of shareholders

s 124

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) 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; and

(ba) the text of any resolution for the purposes of section 207I or 207J to be submitted to the meeting; and

(c) in the case of special resolutions required by section 106(1)(a) or (b), the right of a shareholder under section 110.

(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.

Schedule 1 clause 2(2)(b): amended, on 17 September 2008, by section 10 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Schedule 1 clause 2(2)(ba): inserted, on 1 April 2014, by section 42 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Schedule 1 clause 2(2)(c): inserted, on 17 September 2008, by section 10 of the Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69).

Schedule 1 clause 2(3A): inserted, on 1 July 1994, by section 49 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

3 Methods of holding meetings

A meeting of shareholders may be held by a quorum of the shareholders—

(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).

Schedule 1 clause 3: replaced, on 31 August 2012, by section 11(1) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

4 Quorum

(1) Subject to subclause (3), 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), 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.

(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.

Schedule 1 clause 4(4): inserted, on 31 August 2012, by section 11(2) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

5 Voting

(1) In the case of a meeting of shareholders held under clause 3(a), 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) or (c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.

(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).

(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% of the total voting rights of all shareholders having the right to vote at the meeting; or

(c) 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% 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.

Schedule 1 clause 5(2): amended, on 31 August 2012, by section 11(3) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 1 clause 5(4)(c): amended, on 3 June 1998, by section 20(1) of the Companies Amendment Act 1998 (1998 No 31).

Schedule 1 clause 5(4)(d): inserted, on 3 June 1998, by section 20(1) of the 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 or, in the case of an electronic notice, sent by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

(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.

(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.

(5A) However, if a time is specified in the constitution of a company under subclause (5) but the notice of the meeting provides that a proxy may be produced by a later time (being a time before the start of the meeting), a proxy produced by that later time is still effective.

(6) For the purposes of subclauses (5) and (5A), the constitution or the notice may provide for different matters for different kinds of proxies (for example, a different specified time for the production of a proxy by electronic means).

Schedule 1 clause 6(3): amended, on 31 August 2012, by section 11(4) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 1 clause 6(3): amended, on 3 June 1998, by section 20(2) of the Companies Amendment Act 1998 (1998 No 31).

Schedule 1 clause 6(3A): inserted, on 31 August 2012, by section 11(5) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 1 clause 6(5A): inserted, on 13 January 2020, by section 12(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Schedule 1 clause 6(6): inserted, on 30 May 2017, by section 36(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 1 clause 6(6): amended, on 13 January 2020, by section 12(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

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.

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

(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.

(4A) Despite subclause (4),—

(a) the constitution of a company, or the notice of the meeting, may specify a time (being a time less than 48 hours before the start of the meeting) by which postal votes that are cast using electronic means must reach the person who is authorised to receive and count postal votes at the meeting; and

(b) such postal votes must reach that person by the specified time (or, if different times are specified in the constitution and the notice, the later of those times).

(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) and which sets out the results of the counts required by paragraph (b); and

(d) to ensure that the certificate required by paragraph (c) 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.

Schedule 1 clause 7(1A): inserted, on 31 August 2012, by section 11(6) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 1 clause 7(4A): replaced, on 13 January 2020, by section 12(3) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

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 1 000 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 shareholder 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.

Schedule 1 clause 9(4): amended, on 15 April 2004, by section 22(1) of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Schedule 1 clause 9(6): replaced, on 15 April 2004, by section 22(2) of the 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.

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.

Schedule 1 clause 14: inserted, on 31 August 2012, by section 11(7) of the Companies Amendment Act (No 2) 2012 (2012 No 60).

Schedule 2
Sections of this Act that confer powers on directors that cannot be delegated

s 130

(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 financial products):

(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% 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).

Schedule 2 paragraph (da): inserted, on 15 April 2004, by section 23 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Schedule 2 paragraph (da): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 3
Proceedings of the board of a company

s 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 1 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 1 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

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(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), 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 1 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, dates and places of birth, and residential addresses of the directors of the company:

(ga) in relation to at least 1 director of the company who lives in an enforcement country, the prescribed information in respect of 1 body corporate that is incorporated in that enforcement country under a law that is equivalent to this Act and of which the director is a director (but this paragraph applies only if no directors of the company live in New Zealand):

(gb) the company's ultimate holding company information:

(h) in respect of shares of the company that are quoted on a stock exchange, 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 1 class of shares, the persons holding the 10 largest numbers of shares in each class:

(i) in respect of shares of the company that are not quoted on a stock exchange, 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:

(C) *[Repealed]*

(D) *[Repealed]*

(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:

(C) *[Repealed]*

(D) *[Repealed]*

(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,—

(iii) *[Repealed]*

(iv) *[Repealed]*

the financial statements or group financial statements of the company were required to be registered or lodged under any Act or the company was a code company within the meaning of section 2A of the Takeovers Act 1993:

(ja) a statement as to whether the company at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products under a regulated offer (as defined in section 41 of the Financial Markets Conduct Act 2013):

(jb) a statement as to whether the company at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products for which a disclosure document was required to be provided under clause 26 of Schedule 1 of the Financial Markets Conduct Act 2013, and, if so, the exclusion under that schedule that the offeror relied on:

(jc) a statement as to whether the company at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products and has knowingly relied on an exclusion under clause 3(2)(b) or (3), 4(3), 8, 10, 11, 12, 15, 16, or 19 of Schedule 1 of the Financial Markets Conduct Act 2013, and, if so, which of those exclusions the offeror relied on:

(k) in the case of a company that has passed a resolution under section 207I or 207J, the text and date of the resolution:

(ka) in the case of a company in respect of which a notice has been given under section 207K, the text and date of the notice:

(l) the date of the last annual meeting of the company held under this Act or, if the company is not required to hold an annual meeting, the date on which a resolution was passed under section 120(5)(b) or 122.

(m) *[Repealed]*

Notes

The information required by paragraph (f)(i) 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) 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 one of the 2 preceding years if that annual return contained the information required by that paragraph.

Schedule 4 paragraph (g): amended, on 1 May 2015, by section 24(1) of the Companies Amendment Act 2014 (2014 No 46).

Schedule 4 paragraph (ga): replaced, on 30 May 2017, by section 37(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 4 paragraph (gb): inserted, on 1 May 2015, by section 24(2) of the Companies Amendment Act 2014 (2014 No 46).

Schedule 4 paragraph (h): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 4 paragraph (i): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 4 paragraph (i)(ii)(B): replaced, on 5 December 2013, by section 12(1) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (i)(ii)(C): repealed, on 5 December 2013, by section 12(1) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (i)(ii)(D): repealed, on 5 December 2013, by section 12(1) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (i)(iv)(B): replaced, on 5 December 2013, by section 12(2) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (i)(iv)(C): repealed, on 5 December 2013, by section 12(2) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (i)(iv)(D): repealed, on 5 December 2013, by section 12(2) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (j): amended, on 1 April 2014, by section 43(1) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Schedule 4 paragraph (j): amended, on 31 August 2012, by section 10(2) of the Takeovers Amendment Act 2012 (2012 No 68).

Schedule 4 paragraph (j): amended, on 7 July 2010, by section 20 of the Takeovers Amendment Act 2010 (2010 No 88).

Schedule 4 paragraph (j)(ii): replaced, on 5 December 2013, by section 12(3) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (j)(iii): repealed, on 5 December 2013, by section 12(3) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (j)(iv): repealed, on 5 December 2013, by section 12(3) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 paragraph (ja): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 4 paragraph (jb): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 4 paragraph (jc): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 4 paragraph (k): replaced, on 1 April 2014, by section 43(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Schedule 4 paragraph (ka): inserted, on 1 April 2014, by section 43(2) of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Schedule 4 paragraph (l): replaced, on 30 May 2017, by section 37(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 4 paragraph (m): repealed, on 5 December 2013, by section 12(4) of the Companies Amendment Act 2013 (2013 No 111).

Schedule 4 notes: amended, on 31 August 2012, by section 10(3) of the Takeovers Amendment Act 2012 (2012 No 68).

Schedule 5
Proceedings at meetings of creditors

ss 229(2), 230(1), 243(5), 314(4), 315(4)

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 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); or

(b) the time and method of communication for every meeting to be held under clause 1(b); 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)—

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) 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.

Schedule 5 clause 2(2)(c): amended, on 3 June 1998, by section 21(1) of the Companies Amendment Act 1998 (1998 No 31).

Schedule 5 clause 2(2)(d): inserted, on 3 June 1998, by section 21(1) of the 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).

(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 one 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 one of their number to act as chairperson of the meeting.

(3) The person convening a meeting under clause 1(c) must do everything necessary that would otherwise be done by the person chairing a meeting.

Schedule 5 clause 3(2): replaced, on 3 June 1998, by section 21(2) of the Companies Amendment Act 1998 (1998 No 31).

Schedule 5 clause 3(2A): inserted, on 3 June 1998, by section 21(2) of the Companies Amendment Act 1998 (1998 No 31).

4 Quorum

(1) A quorum for a meeting of creditors is present if—

(a) 3 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, 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, a resolution is adopted if a majority in number representing 75% 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.

Schedule 5 clause 5(1): amended, on 30 June 1997, by section 23(1) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

Schedule 5 clause 5(2): amended, on 30 June 1997, by section 23(1) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

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.

Schedule 5 clause 6(4): amended, on 30 June 1997, by section 23(2) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

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) 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), 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); and

(ii) stating the results of the counts and determinations required by paragraph (b); and

(d) to ensure that the certificate required by paragraph (c) 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) 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) in relation to the postal votes cast in respect of a meeting of creditors must be annexed to the minutes of the meeting.

Schedule 5 clause 7(1A): inserted, on 3 June 1998, by section 21(3) of the Companies Amendment Act 1998 (1998 No 31).

Schedule 5 clause 7(4): amended, on 30 June 1997, by section 23(3) of the Companies Act 1993 Amendment Act 1997 (1997 No 27).

8 Minutes

(1) The person chairing a meeting of creditors, or in the case of a meeting held under clause 1(c), 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.

Schedule 5 clause 11: inserted, on 3 June 1998, by section 21(4) of the Companies Amendment Act 1998 (1998 No 31).

Schedule 6
Powers of liquidators

s 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.

Schedule 6 paragraph (o): inserted, on 15 April 2004, by section 24 of the Companies Amendment Act (No 2) 2004 (2004 No 24).

Schedule 7
Preferential claims

s 312

Schedule 7: replaced, on 1 November 2007, by section 40(1) of the Companies Amendment Act 2006 (2006 No 56).

1 Priority of payments to preferential creditors

(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; and

(b) the fees and expenses properly incurred by the administrator in carrying out the duties and exercising the powers of the administrator and the remuneration of the administrator; and

(c) 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 incurred between lawyer and client in procuring the order; and

(d) the actual out-of-pocket expenses necessarily incurred by a liquidation committee; and

(e) to any creditor who protects, preserves the value of, or recovers assets of the company for the benefit of the company's creditors by the payment of money or the giving of an indemnity,—

(i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting, preserving the value of, or recovering those assets.

(2) After paying the claims referred to in subclause (1), the liquidator must next pay, to the extent that they remain unpaid, the following claims:

(a) subject to clause 3(1), 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 provided to the company during the 4 months before the commencement of the liquidation:

(aa) subject to clause 3(1), all untransferred amounts of an employee's payroll donations by an employer or PAYE intermediary under section 124ZG of the Tax Administration Act 1994 during the 4 months before the commencement of the liquidation:

(b) subject to clause 3(1), any holiday pay payable to an employee on the termination of his or her employment before, or because of, the commencement of the liquidation:

(c) subject to clause 3(1), any compensation for redundancy owed to an employee that accrues before, or because of, the commencement of the liquidation:

(d) subject to clause 3(1), amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee (including amounts payable to the Commissioner of Inland Revenue in accordance with section 163(1) of the Child Support Act 1991 and section 167(2) of the Tax Administration Act 1994 as applied by section 70 of the Student Loan Scheme Act 2011):

(e) subject to clause 3(1), any reimbursement or payment provided for, or ordered by, the Employment Relations Authority, the Employment Court, or the Court of Appeal under section 123(1)(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(1)(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:

(f) amounts that are preferential claims under section 263(2):

(g) 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:

(h) all sums that, by any other enactment, are required to be paid in accordance with the priority established by this subclause.

(3) After paying the claims referred to in subclause (2), the liquidator must next pay all sums, for which a buyer is a creditor in the liquidation of the company under section 36J of the Fair Trading Act 1986,—

(a) paid by the buyer to a seller on account of the purchase price of goods; or

(b) to which the buyer is or becomes entitled to receive from a seller under section 36H of the Fair Trading Act 1986.

(4) After paying the claims referred to in subclause (3), the liquidator must next pay the amount of any costs referred to in section 234(c).

(5) After paying the claims referred to in subclause (4), the liquidator must next pay, to the extent that it remains unpaid to the Commissioner of Inland Revenue or to the Comptroller of Customs, as the case may require, the amount of—

(a) tax payable by the company in the manner required by Part 3 of the Goods and Services Tax Act 1985; and

(b) tax deductions made by the company under the PAYE rules of the Income Tax Act 2007; and

(c) non-resident withholding tax deducted by the company under the NRWT rules of the Income Tax Act 2007; and

(d) resident withholding tax deducted by the company under the RWT rules of the Income Tax Act 2007; and

(e) duty payable within the meaning of section 5(1) of the Customs and Excise Act 2018.

Schedule 7 clause 1(2)(aa): inserted, on 6 January 2010, by section 862 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Schedule 7 clause 1(2)(aa): amended, on 1 April 2019, by section 259 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 (2018 No 5).

Schedule 7 clause 1(2)(d): amended, on 1 April 2012, by section 223 of the Student Loan Scheme Act 2011 (2011 No 62).

Schedule 7 clause 1(3) : amended, on 17 June 2014, by section 41(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Schedule 7 clause 1(3)(b) : amended, on 17 June 2014, by section 41(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Schedule 7 clause 1(5): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Schedule 7 clause 1(5)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 7 clause 1(5)(c): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 7 clause 1(5)(d): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Schedule 7 clause 1(5)(e): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

2 Conditions to priority of payments to preferential creditors

(1) The claims listed in each of subclauses (2), (3), (4), and (5) of clause 1—

(a) rank equally among themselves and, subject to any maximum payment level specified in any legislation, must be paid in full, unless the assets of the company are insufficient to meet them, in which case they abate in equal proportions; and

(b) in so far as the assets of the company available for payment of those claims 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 that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and

(C) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the commence-

ment of the liquidation and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and

(D) is not a security interest referred to in subclause (3A); and

(ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).

(2) For the purposes of subclauses (1)(b) and (3A), 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.

(3) To the extent that the claims to which subclause (1) applies are paid out of assets referred to in paragraph (b) of that subclause, the amount so paid is an unsecured debt due by the company to the secured party.

(3A) For the purposes of subclause (1)(b)(i)(D), the security interest is a security interest over accounts receivable, inventory, or both to the extent that that security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

(a) the counterparties to the derivative are—

(i) 2 qualifying counterparties; or

(ii) a qualifying counterparty and an overseas person; and

(b) before enforcement of the interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—

(i) the enforcing counterparty; or

(ii) another person (who is not the company that granted the security interest) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.

(3B) Terms and expressions defined in section 122A of the Reserve Bank of New Zealand Act 1989 and used in subclause (3A) have in that subclause the same meanings as in that section.

(3C) Section 122B of the Reserve Bank of New Zealand Act 1989 applies with all necessary modifications for the purposes of subclause (3A)(b) (and those modifications include treating references to section 122(9A)(b) of that Act as references to subclause (3A)(b) of this clause and treating references to the grantor as references to the company that granted the security interest).

(4) Clause 9 of this schedule, as was 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.

Schedule 7 clause 2(1)(a): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 7 clause 2(1)(b)(i)(D): inserted, on 31 August 2019, by section 13(1) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 7 clause 2(2): amended, on 31 August 2019, by section 13(2) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 7 clause 2(3A): inserted, on 31 August 2019, by section 13(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 7 clause 2(3B): inserted, on 31 August 2019, by section 13(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Schedule 7 clause 2(3C): inserted, on 31 August 2019, by section 13(3) of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

3 Provisions concerning preferential payments to employees

(1) The total sum to which priority is to be given under any, or all, of paragraphs (a) to (e) of clause 1(2) must not, in the case of any one employee, exceed $25,480 or any greater amount that is prescribed under subclause (2) at the commencement of the liquidation.

(2) The sum stated in subclause (1) 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 2006 and ending on 30 June 2009 and after every 3-year period following that (an **adjustment period**) (*see* subclause (5)):

(b) subject to paragraph (d), the Order in Council must be made within 4 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 the Quarterly Employment Survey on 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 subclause.

(3) The sum stated in subclause (1), or any greater amount prescribed under subclause (2) that applies on the date of commencement of a liquidation, continues to apply to that liquidation regardless of any change to that sum that is prescribed after the date of commencement of the liquidation.

(4) For the purposes of this clause and clause 1,—

(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:

(b) **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:

(c) **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 that 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.

(5) An order under subclause (2)(a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 7 clause 3(1): $25,480 is the maximum priority amount, on 30 September 2021, by clause 3 of the Companies (Maximum Priority Amount) Order 2021 (LI 2021/256).

Schedule 7 clause 3(2)(a): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 7 clause 3(2)(b): amended, on 30 May 2017, by section 38 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Schedule 7 clause 3(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

4 Subrogation of persons if payment has been made

If a payment has been made to a person (**A**) on account of any preferential claim set out in this schedule out of money advanced by another person (**B**) for that purpose, then B has, in a liquidation, the same right of priority in respect of the money so advanced as A would have if the payment had not been made.

5 Priority given to person who distrains on goods

If a person has distrained on goods or effects of the company during the 20 working days before the commencement of the liquidation, the preferential claims set out in this schedule are a first charge on the goods or effects so distrained, or the proceeds from their sale; but if any money is paid to a claimant under that charge, the person has the same rights of priority as that claimant.

Schedule 7 clause 5: amended, on 1 January 2008, by section 370(2) of the Property Law Act 2007 (2007 No 91).

6 Saving provision for liquidation that has commenced

If a liquidation of a company commenced before the Companies Amendment Act 2006 came into force, that company's property must be applied in accordance with the priorities stated in this schedule on the date the liquidation commenced as if the Companies Amendment Act 2006 had not come into force.

Schedule 8
Proceedings at meetings of liquidation committees

s 315(3)

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 creditors, 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.

Schedule 8 clause 6(b): amended, on 1 July 1994, by section 50 of the Companies Act 1993 Amendment Act 1994 (1994 No 6).

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
Liquidation of overseas companies

ss 341(2), 342(1)

Schedule 9 heading: amended, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

1 Modified application of Part 16

Part 16 applies to the liquidation of an overseas company, with the following modifications and exclusions:

(a) *[Repealed]*

(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) *[Repealed]*

(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.

Schedule 9 clause 1: amended, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

Schedule 9 clause 1(a): repealed, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

Schedule 9 clause 1(e): repealed, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

2 Rights of action not affected

Nothing in this Act excludes the right of a creditor of an overseas company in relation to 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.

Schedule 9 clause 2: amended, on 24 July 2008, by section 13 of the Insolvency (Cross-border) Act 2006 (2006 No 57).

Schedule 10
Interest class: principles

s 236A

Schedule 10: inserted, on 3 July 2014, by section 35 of the Companies Amendment Act 2014 (2014 No 46).

For the purposes of section 236A, an **interest class** may be determined in accordance with the following principles:

(a) shareholders whose rights are so dissimilar that they cannot sensibly consult together about a common interest are in different interest classes:

(b) shareholders whose rights are sufficiently similar that they can consult together about a common interest are in the same interest class:

(c) the issue is similarity and dissimilarity of shareholders' legal rights against the company (not similarity or dissimilarity of any interest not derived from legal rights against the company):

(d) if the rights of different shareholders will be different under a proposed arrangement or amalgamation, then those shareholders are in different interest classes.

Schedule 11
Liquidation of associations

s 240B

Schedule 11: inserted, on 1 March 2017, by section 8 of the Companies Amendment Act 2016 (2016 No 57).

1 Modified application of Part 16 to associations

(1) Part 16 applies to the liquidation of an association with the following modifications and exclusions:

(a) section 241(2)(a), (b), (c)(v), (va), (vii), and (viii), and (d) does not apply:

(b) clause 2 applies instead of section 241(4):

(c) clauses 3 and 4 apply instead of sections 287 and 288(1) and (2):

(d) clause 5 applies instead of section 268:

(e) references in that Part to section 241(4), 268, 287, or 288(1) or (2) (or to a provision of any of those sections) must be taken as references to the relevant replacement clause or clauses under paragraphs (b) to (d) (or to the relevant replacement provision):

(f) section 257(1)(a)(ii)(C) and (1)(a)(iii) does not apply:

(g) all other necessary modifications must be made.

(2) A document may be served on an association for the purposes of this schedule and Part 16 as follows:

(a) by delivery to a director, a principal officer, or the secretary of the association; or

(b) by leaving it at the association's principal place of business in New Zealand; or

(c) in the case of a document in any legal proceedings, by a method set out in paragraph (a) or (b) or by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings.

Compare: 1908 No 89 s 17B

2 Grounds for appointment of liquidator

The court may appoint a liquidator of an association under section 241 if the court is satisfied that—

(a) the association is dissolved, has ceased to carry on business, or is carrying on business solely for the purpose of terminating its affairs; or

(b) the association is unable to pay its debts; or

(c) it is just and equitable that the association be put into liquidation.

Compare: 1908 No 89 s 17A(4)

3 Meaning of inability to pay debts

(1) Unless the contrary is proved, and subject to clause 4 and section 288(3) to (5), an association is presumed to be unable to pay its debts if—

(a) the association has failed to comply with a demand in respect of a debt owed by the association that is made in accordance with subclause (2); or

(b) all of the following apply:

(i) a proceeding has been commenced against a member of the association for the payment of a debt owed by the association or the member in that capacity; and

(ii) notice of the proceeding has been served on the association; and

(iii) within 10 days after the notice was served on it, the association has not paid or secured the debt, or otherwise compounded with the creditor, had the proceeding stayed, or indemnified the member for the amount of any judgment debt plus costs; or

(c) execution issued against the association, a member of the association in that capacity, or a person authorised to be sued on behalf of the association in respect of a judgment debt has been returned unsatisfied in whole or in part.

(2) A demand under subclause (1)(a) must—

(a) be in respect of a debt that is due that is not less than the prescribed amount; and

(b) be in writing; and

(c) be served on the association; and

(d) require the association to pay or secure the debt, or otherwise compound with the creditor to the reasonable satisfaction of the creditor within 15 working days after the date of service of the demand or any longer period that the court orders.

Compare: 1908 No 89 s 17C

4 Evidence of inability to pay debts

(1) On an application to the court for an order that an association be put into liquidation, evidence of failure to comply with a demand under clause 3 is not admissible as evidence that an association is unable to pay the debts unless the application is made within 30 working days after the last date for compliance with the demand.

(2) Clause 3(2) does not limit proof by other means that an association is unable to pay its debts.

5 Power of liquidator to enforce liability of contributors

The liquidator may enforce a liability of a person to pay or contribute to—

(a) any debt or liability of an association; or

(b) any amount for the adjustment of the rights of members of the association among themselves.

Schedule 12
Safe harbour provisions relating to outbreak of COVID-19

s 138B

Schedule 12: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

1 Purpose of schedule

(1) The purpose of this schedule is to give to directors of companies that are facing significant liquidity problems because of the effects of the outbreak of COVID-19 more certainty about their duties when—

(a) agreeing to the business of the company being carried on or causing or allowing the business of the company to be carried on; and

(b) agreeing to the company incurring obligations.

(2) However, it is not a purpose of this schedule to facilitate the ability of a company that has no realistic prospect of continuing to trade or operate in the medium or long term to defer a decision to enter into liquidation to the detriment of its creditors.

Schedule 12 clause 1: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

2 Overview of schedule

(1) This schedule applies in relation to actions of directors of certain companies during safe harbour periods.

(2) Subclause (1) is only a guide to the overall scheme and effect of this schedule.

Schedule 12 clause 2: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

3 Interpretation

In this schedule, unless the context otherwise requires,—

action includes omission

commencement date means the commencement date of section 138B

company in BDH means a company to which the protections in Part 5 of Schedule 13 apply

Ministers means the Minister of Finance and the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act, acting jointly

reaching a compromise or other arrangement includes a proposed arrangement being approved by the company's creditors under Schedule 13

safe harbour period has the meaning set out in clause 5.

Schedule 12 clause 3: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Application of safe harbour provisions

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

4 Companies to which safe harbour provisions apply

(1) Clauses 6 and 7 apply to a company (including a company in BDH) if,—

(a) as at 31 December 2019 (or any later benchmark date prescribed in regulations for a new safe harbour period), the company was able to pay its debts as they became due in the normal course of business; or

(b) the company was incorporated on or after 1 January 2020 but before 3 April 2020.

(2) However, clauses 6 and 7 do not apply to a company that is—

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

(b) a licensed insurer:

(c) an NBDT within the meaning of section 5 of the Non-bank Deposit Takers Act 2013:

(d) a qualifying counterparty within the meaning of section 122A of the Reserve Bank of New Zealand Act 1989:

(e) a company incorporated on or after 3 April 2020:

(f) a company of a class prescribed in any regulations made under clause 9.

(3) In addition, clauses 6 and 7—

(a) do not apply in the circumstances, or to the transactions, prescribed in any regulations made under clause 9; and

(b) cease to apply if conditions prescribed in any regulations made under clause 9 are not satisfied.

Schedule 12 clause 4: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

5 Meaning of safe harbour period

(1) In this schedule, **safe harbour period** means—

(a) the initial safe harbour period; and

(b) if regulations are made under clause 10(1)(b), the new safe harbour period.

(2) The **initial safe harbour period** means the period that starts on 3 April 2020 and ends—

(a) on the close of 30 September 2020; or

(b) if regulations are made under clause 10(1)(a), on the close of the date to which the period is extended.

(3) The **new safe harbour period** means the period prescribed in the regulations made under clause 10(1)(b).

Schedule 12 clause 5: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Safe harbour provisions

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

6 Safe harbour relating to reckless trading

(1) This clause applies to the following actions of a director of a company taken during a safe harbour period:

(a) agreeing to the business of the company being carried on in any manner:

(b) causing or allowing the business of the company to be carried on in any manner.

(2) The actions of the director do not breach section 135 if, at the time of taking them, the director, in good faith, is of the opinion that—

(a) the company has, or in the next 6 months is likely to have, significant liquidity problems; and

(b) the liquidity problems are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and

(c) it is more likely than not that the company will be able to pay its due debts on and after the date in subclause (3).

(3) For the purposes of subclause (2)(c), the date is—

(a) 30 September 2021; or

(b) any later date prescribed by the regulations.

(4) For the purposes of the opinion required by subclause (2)(c), the director may have regard to—

(a) the likelihood of trading conditions improving:

(b) the likelihood of the company reaching a compromise or other arrangement with its creditors:

(c) any other matters the director considers to be relevant.

(5) In this clause, **regulations** means regulations made under clause 10.

(6) *See* clause 4, for companies to which this clause applies.

Schedule 12 clause 6: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

7 Safe harbour relating to section 136 duty

(1) Subclause (2) applies to a director of a company—

(a) who, during a safe harbour period, agrees to the company incurring an obligation; and

(b) who, at the time of agreeing to the company incurring the obligation, is, in good faith, of the opinion that the company has, or in the next 6 months is likely to have, significant liquidity problems.

(2) For the purposes of section 136, the director has reasonable grounds to believe that the company will be able to perform the obligation when it is required to do so if the director, in good faith, is of the opinion that—

(a) the liquidity problems are, or will be, a result of the effects of COVID-19 on the company, its debtors, or its creditors; and

(b) it is more likely than not that the company will be able to pay its due debts on and after the date in subclause (4).

(3) However, subclause (2) only applies if the company incurs the obligation in the safe harbour period.

(4) For the purposes of subclause (2)(b), the date is—

(a) 30 September 2021; or

(b) any later date prescribed by the regulations.

(5) For the purposes of the opinion required by subclause (2)(b), the director may have regard to—

(a) the likelihood of trading conditions improving:

(b) the likelihood of the company reaching a compromise or other arrangement with its creditors:

(c) any other matters the director considers to be relevant.

(6) In this clause, **regulations** means regulations made under clause 10.

(7) *See* clause 4, for companies to which this clause applies.

Schedule 12 clause 7: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Miscellaneous

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

8 Burden of proof

A person who wishes to rely on a provision of this schedule in a proceeding for, or relating to, a breach of section 135 or 136 has the burden of proving that the provision applies.

Schedule 12 clause 8: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

9 Regulations relating to companies, etc, to which safe harbour provisions apply

(1) The Governor-General may, by Order in Council made on the recommendation of the Ministers, make regulations that prescribe classes of companies, or classes of transactions or other circumstances, for the purposes of clause 4, including providing for either or both of the following:

(a) for clause 6 or 7, or both, to apply only if conditions prescribed in the regulations are satisfied:

(b) for clause 6 or 7, or both, to cease to apply if conditions prescribed in the regulations are not satisfied.

(2) Before recommending the making of regulations under subclause (1), the Ministers must have regard to—

(a) the provisions of clause 1 (which relates to the purpose of this schedule); and

(b) the effect of the regulations on—

(i) the creditors of companies that have significant liquidity problems; and

(ii) the integrity of corporate insolvency law.

(3) Different matters may be prescribed in respect of different classes of companies, transactions, or other circumstances.

(4) *See also* clause 10 (for regulations prescribing a benchmark date).

(5) Regulations under subclause (1) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 12 clause 9: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Schedule 12 clause 9(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

10 Regulations relating to safe harbour periods

(1) The Governor-General may, by Order in Council made on the recommendation of the Ministers, make regulations that—

(a) extend the initial safe harbour period until no later than 31 March 2021:

(b) provide for clause 6 or 7, or both, to apply for a new safe harbour period—

(i) of no more than 6 months; and

(ii) that ends no later than the close of 30 September 2021.

(2) The powers in subclause (1)(a) and (b) may each be exercised once only.

(3) However, the Governor-General may, by Order in Council made on the recommendation of the Ministers,—

(a) revoke regulations made under subclause (1) (wholly or in part):

(b) amend regulations made under subclause (1) to reduce the period of an extension or a new safe harbour period.

(4) The Ministers must not recommend the making of regulations under subclause (1) unless the Ministers—

(a) have had regard to the provisions of clause 1 (which relates to the purpose of this schedule); and

(b) are satisfied that the extension or new safe harbour period is—

(i) necessary or desirable to address the effects of COVID-19; and

(ii) no longer than is reasonably necessary to address the matters that gave rise to it.

(5) Regulations made under subclause (1)(a) may prescribe a date for the purposes of clauses 6(3) and 7(4), but that date must be no later than 31 March 2022.

(6) Regulations made under subclause (1)(b) may do either or both of the following:

(a) prescribe a benchmark date under clause 4(1)(a), being a date that is—

(i) no earlier than 30 June 2020; and

(ii) no later than the date that is 3 months before the start of the new safe harbour period:

(b) prescribe a date, for the purposes of clauses 6(3) and 7(4), but that date must be not later than 18 months after the start of the new safe harbour period.

(7) Subclauses (5) and (6) do not limit subclause (1).

(8) Regulations under subclause (1) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(9) An order under subclause (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 12 clause 10: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Schedule 12 clause 10(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 12 clause 10(9): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 13
COVID-19 business debt hibernation

s 395A

Schedule 13: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

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Part 1
Preliminary provisions

Schedule 13 Part 1: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

1 Purposes

(1) A purpose of this schedule is to provide for the business, property, and affairs of an entity that is facing significant liquidity problems, or an entity that may in the future face such problems, because of the effects of the outbreak of COVID-19 to operate in a way that—

(a) maximises the chances of the entity, or as much as possible of its business, continuing in existence; or

(b) if it is not possible for the entity or its business to continue in existence, results in a better return for the entity's creditors and members than would result from an immediate liquidation of the entity.

(2) In addition, it is a purpose of this schedule to give an entity referred to in subclause (1) some temporary protections relating to its debts in order to give it an opportunity to develop, with its creditors, a longer-term approach to its liquidity problems.

(3) However, it is not a purpose of this schedule to—

(a) facilitate the ability of an entity that has no realistic prospect of continuing to trade or operate in the medium or long term to defer a decision to enter into liquidation to the detriment of its creditors; or

(b) allow any debts owing by an entity to be cancelled; or

(c) allow the rights of a creditor to be varied, in any significant way, after the end of the temporary period of protection.

Schedule 13 clause 1: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

2 Overview of schedule

(1) This schedule provides for certain entities to enter into business debt hibernation (**BDH**).

(2) If an entity is in BDH, certain protections apply. These protections temporarily prevent certain actions being taken by the entity's creditors and other persons (*see* Part 5). In summary (and subject to Part 6),—

(a) a mortgage or other charge over the entity's property is unenforceable:

(b) an owner or a lessor must not recover property used by the entity:

(c) a proceeding in a court, a tribunal, or an arbitral tribunal must not be begun or continued against the entity:

(d) enforcement processes against the entity are halted.

(3) The protections do not apply in relation to a creditor with security over the whole, or substantially the whole, of the entity's property.

(4) The protections start when the entity delivers to the Registrar a notice that the entity is entering into BDH (*see* Part 2). A copy of the notice must be sent to each known creditor.

(5) The protection initially lasts for up to 1 month. This is to give the entity and its creditors an opportunity to consider an arrangement to deal with the entity's situation. If the arrangement is approved by a majority of the creditors in number and value, the protection may continue for a further 6 months (*see* Part 3).

(6) The process for obtaining the creditors' approval of the arrangement is set out in Part 4. That Part also sets out the effects of an approved arrangement. In particular, the permitted scope of an arrangement is narrower than a compromise under Part 14 of the Companies Act 1993 (for example, an arrangement cannot involve any cancellation of the debts of an entity).

(7) The protections are subject to certain rights of creditors and other persons under Part 6.

(8) While the entity is in BDH, certain voidable transaction provisions do not apply. This is intended to encourage businesses to keep transacting with the entity (*see* Part 7).

(9) This clause is only a guide to the general scheme and effect of this schedule.

Schedule 13 clause 2: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

3 Application of schedule

(1) This schedule applies to a company or any other kind of entity (as defined in clause 4(1)).

(2) However, this schedule does not apply to any of the following:

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

(b) a licensed insurer:

(c) an NBDT within the meaning of section 5 of the Non-bank Deposit Takers Act 2013:

(d) an operator of a designated settlement system within the meaning of section 156M(1) of the Reserve Bank of New Zealand Act 1989:

(e) an entity that holds a market services licence that covers the service of acting as a derivatives issuer in respect of a regulated offer of derivatives (as those terms are defined in section 6(1) of the Financial Markets Conduct Act 2013):

(f) an entity that is in liquidation, in voluntary administration, subject to a deed of company arrangement, or subject to statutory management:

(g) an entity if a receiver has been appointed in relation to the whole or substantially the whole of the assets and undertaking of the entity:

(h) an entity that is subject to any other process (whether in New Zealand or another country) under which the assets and affairs of the entity are administered, or the assets of the entity are realised, for the benefit of creditors:

(i) a qualifying counterparty within the meaning of section 122A(1) of the Reserve Bank of New Zealand Act 1989:

(j) an entity formed or established on or after 3 April 2020:

(k) an entity of a class prescribed by the regulations.

(3) In addition,—

(a) this schedule—

(i) does not apply in the circumstances prescribed in the regulations; and

(ii) ceases to apply if conditions prescribed in the regulations are not satisfied; and

(b) an entity may not enter into BDH after the later of—

(i) 24 December 2020; and

(ii) any later date prescribed by the regulations.

(4) If an entity enters into BDH before the date that applies under subclause (3)(b), nothing in that paragraph prevents the entity from continuing as an entity in BDH after that date.

Schedule 13 clause 3: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Schedule 13 clause 3(3)(b): 31 October 2021 is prescribed as the last date on which an entity may enter into BDH, on 24 December 2020, by regulation 4 of the Companies (COVID-19—Business Debt Hibernation) Regulations 2020 (LI 2020/294).

4 Interpretation

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

arrangement—

(a) means any arrangement between an entity and its creditors (including an arrangement that relates to the governance or management of the entity); but

(b) does not include an arrangement to the extent that it contravenes clause 30

BDH means business debt hibernation under this schedule

board means,—

(a) in relation to a company within the meaning of this Act, the board of the company:

(b) in relation to a partnership (other than a limited partnership), the partners:

(c) in relation to a limited partnership, the general partners:

(d) in relation to a body corporate or unincorporate, other than a company, partnership, or limited partnership, the committee or other governing body by whatever name called

broker has the same meaning as in section 77A(1) of the Financial Advisers Act 2008

creditor—

(a) includes—

(i) a person who, in a liquidation, would be entitled to claim in accordance with section 303 that a debt or liability is owing to that person by the entity; and

(ii) a secured creditor; but

(b) does not include a person to the extent that the person is owed or must be paid an excluded debt

director means,—

(a) in relation to a company or an overseas company, any person occupying the position of a director of the company, by whatever name called:

(b) in relation to a partnership (other than a limited partnership), any partner:

(c) in relation to a limited partnership, any general partner:

(d) in relation to a body corporate or unincorporate, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company

electronic vote has the meaning set out in subclause (2)

enforce, in relation to a charge over property of an entity in BDH, includes—

(a) to appoint a receiver of property of the entity under a power contained in an instrument relating to the charge:

(b) to obtain an order for the appointment of a receiver of that property for the purpose of enforcing the charge:

(c) to enter into possession, or assume control, of that property for that purpose:

(d) to appoint a person to enter into possession or assume control (whether as agent for the secured creditor or for the entity) for that purpose:

(e) to exercise, as secured creditor or as a receiver or person so appointed, a right, power, or remedy existing because of the charge, whether arising under an instrument relating to the charge, under a written or unwritten law, or otherwise

enforcement process, in relation to property, means—

(a) execution against that property; or

(b) any other enforcement process in relation to that property that involves a court or a sheriff (within the meaning of section 239C)

enters into BDH has the meaning set out in subclause (4)

entity means any of the following:

(a) a company:

(b) an overseas company registered under Part 18 of this Act:

(c) a limited partnership registered under the Limited Partnerships Act 2008:

(d) an overseas limited partnership registered under that Act:

(e) any other body corporate:

(f) a partnership (within the meaning of the Partnership Law Act 2019):

(g) an unincorporated body of persons

entity in BDH has the meaning set out in subclause (4)

excluded debt—

(a) means—

(i) a debt that was incurred after the entity enters into BDH; or

(ii) any salary, wages, or other amounts owed by the entity to an employee in connection with the employment relationship; or

(iii) any amount withheld or deducted from the salary or wages of an employee as required by the Income Tax Act 2007, the Tax Administration Act 1994, the Child Support Act 1991, the KiwiSaver Act 2006, or the Student Loan Scheme Act 2011 and any such amount that should have been withheld or deducted from the salary or wages by the entity; or

(iv) any amount payable by an entity to the Commissioner of Inland Revenue in accordance with subpart 3 of Part 3 of the KiwiSaver Act 2006; or

(v) any other amount payable by an entity to the Commissioner of Inland Revenue that is subject to an instalment arrangement under section 177B of the Tax Administration Act 1994 that was entered into before the entity enters into BDH; or

(vi) any other debt or claim of a kind prescribed in the regulations; but

(b) does not include—

(i) interest or penalties (regardless of when they fall due for payment) if the interest or penalties relate to a debt that was incurred before the entity enters into BDH; or

(ii) any other amount that falls due for payment after the entity enters into BDH if the obligation to pay the amount is imposed under a contract or a deed that was entered into by the entity before the entity enters into BDH

general security holder has the meaning set out in clause 21

protection period has the meaning set out in clause 13

regulations means regulations made under section 395B

secured creditor, in relation to an entity, means a person entitled to a charge on or over property owned by that entity

voting date means—

(a) the last date on which a creditor may vote on the resolution referred to in clause 9; or

(b) if the entity decides to hold a meeting of creditors to vote on that resolution, the date of the meeting.

(2) For the purposes of this schedule, a creditor may make an **electronic vote** by giving the creditor's vote in electronic form, whether by means of an electronic communication or otherwise (for example, a vote sent by email).

(3) In subclause (2), **electronic** and **electronic communication** have the same meanings as in section 209 of the Contract and Commercial Law Act 2017.

(4) For the purposes of this schedule, an entity—

(a) is an **entity in BDH** if the protections in Part 5 of this schedule apply to the entity; and

(b) **enters into BDH** when the protections in Part 5 of this schedule start to apply to the entity (*see* clause 14).

(5) Any term or expression that is defined or used in another part of this Act and used in this schedule has, in relation to an entity other than a company, the same meaning as in the other part of this Act (but applied with all necessary modifications as if it were a company).

Schedule 13 clause 4: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 2
Board of entity may agree to enter into BDH

Schedule 13 Part 2: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

5 Board of entity may agree to entity entering into BDH

(1) The board of an entity may agree to the entity entering into BDH if,—

(a) as at 31 December 2019, the entity was able to pay its debts as they became due in the normal course of business; and

(b) at least 80% of the directors of the entity vote in favour of a resolution for the entity to enter into BDH; and

(c) each director who votes in favour of the resolution has signed a certificate that—

(i) states that, as at 31 December 2019, the entity was able to pay its debts as they became due in the normal course of business; and

(ii) includes statements about the matters set out in subclause (2); and

(iii) sets out the grounds for the opinions referred to in that subclause; and

(d) each of the directors who vote in favour of the resolution are acting in good faith.

(2) For the purposes of subclause (1)(c)(ii), the director must state that, in good faith, the director is of the opinion that,—

(a) the entity has, or in the next 6 months is likely to have, significant liquidity problems; and

(b) the liquidity problems are, or will be, a result of the effects of COVID-19 on the entity, its debtors, or its creditors; and

(c) it is more likely than not that the entity will be able to pay its due debts on and after the date in subclause (3).

(3) For the purposes of subclause (2)(c), the date is—

(a) 30 September 2021; or

(b) any later date prescribed by the regulations.

(4) For the purposes of the opinion required by subclause (2)(c), the director may have regard to—

(a) the likelihood of trading conditions improving:

(b) the likelihood of a proposed arrangement being approved by its creditors under this schedule (or of the entity reaching a compromise or other arrangement with its creditors):

(c) any other matters they consider to be relevant.

(5) Subclause (1)(a) and (c)(i) does not apply to an entity that was formed or established on or after 1 January 2020 but before 3 April 2020.

Schedule 13 clause 5: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Schedule 13 clause 5(2)(c): 31 July 2022 is the date prescribed for the purposes of clause 5(2)(c) of Schedule 13, on 24 December 2020, by regulation 5 of the Companies (COVID-19—Business Debt Hibernation) Regulations 2020 (LI 2020/294).

6 Entity may enter BDH by delivering notice to Registrar

(1) This clause provides for how an entity may enter into BDH (and receive the benefit of the protections in Part 5 of this schedule).

(2) The entity enters into BDH by delivering to the Registrar a notice that—

(a) states that the board of the entity has agreed to the entity entering into BDH under clause 5; and

(b) states the legal name and the address of the entity (including the registered office of the entity (if any)); and

(c) states the entity's New Zealand Business Number (if any); and

(d) states the address (which may be an electronic address) and telephone number to which inquiries may be directed during normal business hours.

Schedule 13 clause 6: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

7 Copy of notice must be sent to creditors

(1) The board of the entity must send to each known creditor a copy of the notice under clause 6 as soon as is reasonably practicable after the notice is delivered to the Registrar under that clause.

(2) The notice sent to creditors under subclause (1) must—

(a) contain, or be accompanied by, a copy of each certificate signed under clause 5; and

(b) contain at least a high-level description of a proposed arrangement between the entity and its creditors that is intended to address the entity's significant liquidity problems; and

(c) include the information specified in subclause (4)(b) and (c); and

(d) state the address (which may be an electronic address) and telephone number to which inquiries may be directed during normal business hours; and

(e) state the date on which the notice is delivered to the Registrar under clause 6.

(3) The notice that is sent to a creditor must also specify the amount owing or estimated to be owing to that particular creditor.

(4) For the purposes of this clause, the entity must compile a list of creditors known to the entity, setting out—

(a) the amount owing or estimated to be owing to each of them; and

(b) the total amount owing or estimated to be owing to the creditors; and

(c) the number of creditors.

(5) If the entity is a broker, the board of the entity must send to the FMA a copy of the notice under clause 6 as soon as is reasonably practicable after the notice is delivered to the Registrar under that clause.

(6) If the board of an entity fails to comply with this clause, every director of the entity commits an offence and is liable on conviction to a fine not exceeding $10,000.

Schedule 13 clause 7: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

8 Restriction on entering into BDH more than once

(1) If a protection period has started as a result of an entity complying with clause 6, the entity may not, at any time, deliver a subsequent notice under that clause.

(2) Accordingly, an entity may not enter into BDH more than once.

(3) However, this clause does not apply if—

(a) the court orders otherwise (on an application made by the entity); or

(b) the regulations permit a subsequent notice to be delivered.

Schedule 13 clause 8: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

9 Entity must develop proposal for arrangement and send notice to creditors

(1) This clause facilitates a vote by the entity's creditors to approve an arrangement proposed by the entity. *See* clause 15, which provides that the protections of BDH will cease after 1 month unless the creditors vote to approve the arrangement.

(2) The entity must—

(a) prepare a final proposed arrangement; and

(b) send to each known creditor a notice that—

(i) requests that the entity's creditors vote on a resolution to approve the proposed arrangement (the **resolution**); and

(ii) includes the matters set out in clause 10.

(3) The notice must be sent and received not less than 5 working days before the voting date.

(4) The voting date must be before the expiry of the 1-month period that starts on the date on which the entity enters into BDH (*see* clause 14).

(5) *See* section 392 (which provides for when a notice is deemed to have been received).

Schedule 13 clause 9: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

10 Contents of notice

(1) The notice under clause 9 must—

(a) describe the proposed arrangement in sufficient detail to enable a creditor to form a reasoned judgment in relation to it (including the terms of the proposed arrangement and the reasons for it); and

(b) set out the text of the resolution to be voted on; and

(c) explain when and how a creditor may vote on the resolution, including the voting date and the manner of voting (for example, the notice may state that the creditor may email its vote to a particular email address before a particular time on a particular date); and

(d) explain that the proposed arrangement will be binding on all creditors if approved in accordance with clause 23; and

(e) explain that a related creditor's vote on the resolution must be disregarded unless the court orders otherwise (*see* clauses 32 to 35); and

(f) state the name of the person authorised to receive and count votes; and

(g) contain the information required under clause 11 (if any); and

(h) contain all other information (if any) required by the regulations.

(2) The notice may include any other information that the entity considers is useful to its creditors.

(3) The information about when and how a creditor may vote on the resolution must—

(a) give the creditors a fair and reasonable opportunity to participate in the vote; and

(b) comply with all other requirements prescribed by the regulations (if any).

(4) Subclause (3) is subject to clauses 32 to 35 (which may prevent related creditors from voting).

Schedule 13 clause 10: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

11 Creditors' meeting is voluntary

(1) An entity is not required to hold a meeting of creditors to vote on a resolution to approve the proposed arrangement.

(2) However, if the entity decides to hold a meeting of creditors the notice sent under clause 9 must include a statement of the following (as applicable):

(a) the time and place of the meeting to be held under clause 55(a):

(b) the time and method of communication for the meeting to be held under clause 55(b):

(c) the time and address for the return of voting information for the meeting to be held under clause 55(a), (b), or (c).

(3) If a meeting of creditors is held, it must be conducted in accordance with Part 8 of this schedule (subject to the modifications, additions, or variations specified in the regulations).

Schedule 13 clause 11: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

12 Effect of irregularity or failure

An irregularity in or a failure to receive a notice under clause 9 does not invalidate a vote by creditors if—

(a) the irregularity or failure is not material; or

(b) in the case of a meeting of creditors being held, 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 the creditors entitled to vote agree to waive the irregularity or failure.

Schedule 13 clause 12: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 3
When protection applies

Schedule 13 Part 3: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

13 Protection period

(1) This Part sets out when the protections in Part 5 of this schedule apply.

(2) In this schedule, the **protection period** is the period during which the protections in Part 5 of this schedule apply.

Schedule 13 clause 13: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

14 When protections start to apply (and entity enters into BDH)

Part 5 of this schedule starts to apply (and the entity enters into BDH) when the entity has delivered to the Registrar a notice under clause 6.

Schedule 13 clause 14: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

15 Protections generally apply for 1 month and additional 6 months if creditors approve arrangement

(1) Part 5 of this schedule ceases to apply on the earlier of the following:

(a) immediately after the expiry of the 1-month period that starts when the entity enters into BDH (*see* clause 14):

(b) at the close of the voting date, if the proposed arrangement is not approved under clause 23.

(2) However, if the arrangement is approved under clause 23, Part 5 of this schedule continues to apply until the expiry of the 6-month period that starts on the date of the approval.

(3) This clause is subject to clauses 16 to 22.

Schedule 13 clause 15: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

16 Protections cease to apply if conditions not complied with

If the approval under clause 23 is given subject to the entity complying with 1 or more conditions and the entity materially fails to comply with any of those conditions, Part 5 of this schedule ceases to apply.

Schedule 13 clause 16: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

17 Protections cease to apply if entity fails to send new certificates on request

(1) During the protection period, a creditor may request that—

(a) at least 80% of the directors of the entity sign new certificates that comply with clause 5(1)(c); and

(b) the entity sends to the creditor a copy of those certificates within 5 working days after the request is received.

(2) The entity must comply with the request unless the entity has complied with another request under this clause from the creditor or another creditor within the previous 2-month period.

(3) If the entity relies on subclause (2), the entity must instead, within that 5-working-day period, send to the creditor a copy of the certificates sent for the other request.

(4) Part 5 of this schedule ceases to apply if the entity fails to comply with this clause.

Schedule 13 clause 17: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

18 Protections cease if entity subsequently becomes subject to compromise or enters voluntary administration, receivership, or liquidation

(1) This clause applies if, after the entity enters into BDH,—

(a) a compromise is approved under section 230 in relation to the entity; or

(b) the court orders that an arrangement or a compromise be binding on the entity under section 236; or

(c) a vote on a compromise is held at a meeting of creditors or a class of creditors in accordance with Schedule 5 but the compromise is not adopted in accordance with clause 5 of that schedule; or

(d) voluntary administration of the entity begins under Part 15A of this Act; or

(e) a receiver is appointed for the whole, or substantially the whole, of the property of the entity; or

(f) the entity is put into liquidation.

(2) Part 5 of this schedule ceases to apply, in the case of—

(a) subclause (1)(a), when the compromise comes into effect:

(b) subclause (1)(b), when the order comes into effect:

(c) subclause (1)(c), at the close of the meeting:

(d) subclause (1)(d), when the voluntary administration begins:

(e) subclause (1)(e), when the receiver is appointed:

(f) subclause (1)(f), when the liquidation commences.

Schedule 13 clause 18: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

19 Entity may decide to come out of BDH early

(1) This clause applies if a majority of the directors of an entity that is in BDH vote in favour of a resolution for the entity to cease to be an entity in BDH before the end of the protection period that would otherwise apply.

(2) The board of the entity may deliver to the Registrar a notice that states that the board of the entity has agreed to the entity ceasing to be an entity in BDH on a date specified in the notice (the **specified date**).

(3) The specified date must be at least 5 working days after the date on which the notice is delivered to the Registrar.

(4) Part 5 of this schedule ceases to apply on the close of the specified date.

(5) The board of the entity must send to each known creditor a copy of the notice under subclause (2) as soon as is reasonably practicable after the notice is delivered to the Registrar.

(6) If the board of an entity fails to comply with subclause (5), every director of the entity commits an offence and is liable on conviction to a fine not exceeding $10,000.

Schedule 13 clause 19: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

20 Protections subject to approval

If approval under clause 23 is given, Part 5 of this schedule applies subject to the modifications or variations specified in the arrangement that limit or reduce the protections provided by those provisions.

Schedule 13 clause 20: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

21 Protections do not apply to general security holders

(1) Part 5 of this schedule does not apply in relation to a general security holder of an entity in BDH (or to the debts owing to the general security holder).

(2) In particular, nothing in this schedule prevents any of the following persons from enforcing a charge referred to in subclause (4):

(a) the general security holder:

(b) a receiver or person appointed as mentioned in paragraph (a), (b), or (d) of the definition of enforce in clause 4(1) as that definition applies in relation to the charge (regardless of when the receiver or person is appointed).

(3) Subclause (2) does not limit subclause (1).

(4) In this schedule, **general security holder**, in relation to an entity, means a secured creditor that—

(a) holds a charge on or over the whole, or substantially the whole, of the property of the entity; or

(b) holds 2 or more charges on or over the property of the entity where the property that is subject to those charges together constitutes the whole, or substantially the whole, of the property of the entity.

Schedule 13 clause 21: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

22 Protections do not apply to excluded debts

Part 5 of this schedule does not apply in relation to excluded debts.

Schedule 13 clause 22: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 4
Process for approval of arrangement and its effects

Schedule 13 Part 4: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Approval of arrangement

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

23 When arrangement is approved

(1) An arrangement is approved by creditors if the arrangement is adopted in accordance with clause 24.

(2) This clause and clause 24 are subject to clauses 32 to 35 (which may prevent a related creditor from voting).

Schedule 13 clause 23: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

24 Approval needs majority in number and value of creditors

(1) A resolution to approve a proposed arrangement is adopted if—

(a) a majority in number and value of the creditors who are entitled to vote and who vote on the proposal, vote in favour of the resolution; and

(b) all other requirements prescribed in the regulations (if any) are satisfied.

(2) The value attributed to creditors must not include any excluded debt (and, accordingly, every amount of excluded debt must be disregarded).

Schedule 13 clause 24: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

25 Duty to receive and count votes

(1) A person (**A**) who is authorised to receive and count votes that have been made on a resolution to approve a proposed arrangement must—

(a) collect together all votes that have been made; and

(b) count the number of creditors voting in favour of the resolution and determine the total amount of the debts owed by the entity to those creditors (*see* clause 24(2), which provides for excluded debts to be disregarded); and

(c) count the number of creditors voting against the resolution and determine the total amount of the debts owed by the entity to those creditors (*see* clause 24(2), which provides for excluded debts to be disregarded); and

(d) sign a certificate—

(i) that certifies that A has carried out the duties set out in paragraphs (a) to (c); and

(ii) that states whether A is relying on subclause (2); and

(iii) if A is relying on subclause (2), that describes how A has made the assessment or estimate referred to in that subclause; and

(iv) that states the results of the counts and determinations required by paragraphs (b) and (c); and

(e) ensure that the certificate required by paragraph (d) is given to the entity.

(2) If A, acting in good faith, considers there is uncertainty about—

(a) whether a person is a creditor, A may act under this clause on the basis of a reasonable assessment of whether the person is a creditor:

(b) whether a person is a related creditor, A may act under this clause on the basis of a reasonable assessment of whether the person is a related creditor:

(c) the amount owing to a creditor, A may act under this clause on the basis of a reasonable estimate of the amount that is owing.

(3) Nothing in subclause (2), clause 27 or 28, or any other provision in this schedule prevents a court from making a determination about whether a resolution to approve a proposed arrangement was, in fact, approved under clause 23.

Schedule 13 clause 25: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

26 Amounts must not be determined by reference to class of creditor

The person who is acting under clause 25 must not determine amounts by reference to different classes of creditor (but this does not limit clauses 32 to 35).

Schedule 13 clause 26: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

27 Board of entity must prepare certificate of result of vote

(1) The board of the entity must, as soon as practicable, prepare a certificate of the result of the vote, including—

(a) a statement of whether the arrangement was approved under clause 23; and

(b) a statement of the terms of the arrangement (if it is approved).

(2) The certificate is evidence of the outcome of the vote (unless the contrary is proved).

(3) If the board of an entity fails to comply with subclause (1), every director of the entity commits an offence and is liable on conviction to a fine not exceeding $10,000.

Schedule 13 clause 27: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

28 Board must ensure creditors and Registrar are notified of result of vote

(1) The board of the entity must ensure that, as soon as practicable,—

(a) a copy of each certificate under clauses 25 and 27 is sent to each known creditor of the entity; and

(b) there is delivered to the Registrar a notice of the outcome of the vote and a statement of whether the arrangement was approved under clause 23.

(2) If the entity is a broker, the board of the entity must send to the FMA a copy of the notice and statement referred to in subclause (1)(b) as soon as is reasonably practicable after the notice and statement are delivered to the Registrar.

(3) If the board of an entity fails to comply with subclause (1) or (2), every director of the entity commits an offence and is liable on conviction to a fine not exceeding $10,000.

Schedule 13 clause 28: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Effect of approved arrangement

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

29 Arrangement is binding

(1) An arrangement approved by the creditors of an entity in accordance with this schedule is—

(a) binding on the entity; and

(b) binding on all creditors to whom notice was sent under clause 9.

(2) This clause is subject to clauses 21 and 30.

Schedule 13 clause 29: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

30 Restriction on effect of arrangement

(1) The arrangement must not have the effect of—

(a) cancelling all or part of a debt of the entity that is owing to a creditor; or

(b) varying the rights of a creditor or the terms of that debt (other than a variation specified in subclause (2) or permitted under subclause (3)); or

(c) preventing the exercise of any of the creditor's powers, or restricting any of the creditor's rights, after the end of the protection period.

(2) For the purposes of subclause (1)(b), the arrangement may have the effect of—

(a) reducing the amount of any payment to be made by the entity to a creditor during the protection period (without a consequential change being made to an annual interest rate):

(b) postponing, during a protection period, the dates on which payments are to be made by the entity to a creditor (without a consequential change being made to the annual interest rate or annual interest rates):

(c) preventing the exercise of any of the creditor's powers, or restricting any of the creditor's rights, to enforce payment of the due debt during the protection period.

Example

An arrangement may provide that, during the protection period, an entity will pay each of its existing creditors 40 cents for each dollar that they would otherwise be paid.

The other 60 cents in the dollar will remain owing and will need to be paid in the future (unless the creditor later agrees otherwise) because the arrangement only defers payment of an amount. It may not cancel any part of the debt.

(3) For the purposes of subclause (1)(b), the arrangement may also—

(a) have an effect that is incidental or consequential on an effect that is permitted under subclause (2) (whether during or after the protection period); and

(b) have any other effect permitted under the regulations (whether during or after the protection period).

(4) Subclauses (2) and (3) are subject to subclause (1)(a) (that is, the arrangement must not have the effect of cancelling all or part of a debt).

(5) A provision of the arrangement that contravenes this clause is of no effect to the extent of the contravention.

(6) Nothing in this clause limits the application of Part 5 in relation to the creditor.

Schedule 13 clause 30: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Variation of arrangement

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

31 Variation of arrangement

(1) An arrangement approved under clause 23 may be varied—

(a) in accordance with any procedure for variation incorporated in the arrangement as approved; or

(b) by the approval of a variation of the arrangement in accordance with this schedule, which, for that purpose, applies with all necessary modifications as if the proposed variation were a proposed arrangement.

(2) A variation made as referred to in subclause (1)(a) must be notified to the Registrar and can have no effect before that happens.

(3) The provisions of this schedule apply to any arrangement that is varied in accordance with this clause.

(4) A variation may not purport to extend the length of the protection period.

Schedule 13 clause 31: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Related creditors

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

32 Related creditor's vote to be disregarded unless court orders otherwise

(1) The entity (and the person who is acting under clause 25) must disregard a related creditor's vote on a resolution to approve a proposed arrangement unless the court orders otherwise.

(2) A related creditor may apply to the court for an order that its vote be taken into account.

(3) A related creditor that intends to apply for an order must,—

(a) before a vote is taken on the resolution, send notice in writing to the entity that the creditor—

(i) is a related creditor; and

(ii) intends to apply to the court for an order that its vote be taken into account; and

(b) within 5 working days of the meeting of creditors, make an application to the court.

(4) The court may make an order that a related creditor's vote be taken into account only if satisfied that ordering that the applicant's vote (or the applicants' votes) be taken into account—

(a) is not contrary to the interests of the creditors, or a class of creditors, as a whole; and

(b) will not prejudice, and is not reasonably likely to prejudice, the interests of the creditors to an extent that is unreasonable having regard to—

(i) the benefits accruing to the applicant (or the applicants), or to some or all of the related creditors, from the resolution or from the failure to pass the resolution; and

(ii) the nature of the relationship between the applicant (or the applicants) and the entity, or between the related creditors and the entity; and

(iii) any other relevant matter.

(5) In this schedule,—

related creditor means a creditor who is a related person of the entity

related person means, in relation to an entity,—

(a) a promoter; or

(b) a relative or spouse of a promoter; or

(c) a relative of a spouse of a promoter; or

(d) a director, shareholder, or other member; or

(e) a relative or spouse of a director, shareholder, or other member; or

(f) a relative of a spouse of a director, shareholder, or other member; or

(g) a related body corporate (within the meaning of section 12(2) of the Financial Markets Conduct Act 2013); or

(h) another entity of which a director is also a director of the entity

relative has the same meaning as in clause 5(2) of Schedule 1 of the Financial Markets Conduct Act 2013 (applied with all necessary modifications).

Schedule 13 clause 32: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

33 Creditor's vote disregarded if entity considers creditor is related creditor

(1) If the entity (or the person who is acting under clause 25) considers that a creditor that votes on a resolution to approve a proposed arrangement is a related creditor, and the creditor has not sent a notice under clause 32, the entity or person must (unless the court orders otherwise)—

(a) disregard the creditor's vote; and

(b) send a notice in writing to the creditor stating the reasons for the entity's or person's view.

(2) The court may, on the application of the creditor, order that the creditor's vote be taken into account if satisfied that the creditor is not a related creditor.

(3) The creditor must make any application under this clause to the court within 5 working days of receiving the notice.

Schedule 13 clause 33: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

34 Further powers where court orders creditor's vote be taken into account

(1) If the court orders, under clause 32 or 33, that a creditor's vote be taken into account, the court may also do 1 or more of the following:

(a) order that the resolution be set aside or treated as having passed:

(b) order that a new vote be held on the resolution:

(c) order that the protection period is extended by a period that the court thinks fit to allow a new vote to be held on the resolution:

(d) make any other orders that the court thinks necessary.

(2) Despite any application under clause 32 or 33, the outcome of the vote on the resolution is valid and effective unless the court orders otherwise.

Schedule 13 clause 34: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

35 Power of court where outcome of voting determined by related creditor

(1) Subclauses (2) and (3) apply in relation to a resolution to approve a proposed arrangement if,—

(a) after the voting is completed, the board of the entity becomes aware that a creditor that voted on the resolution is a related creditor; and

(b) the board is satisfied that,—

(i) in accordance with clause 32 or 33, the related creditor's vote should have been disregarded; and

(ii) the resolution would not have been passed or defeated if the vote cast by the related creditor (or, if there is more than 1 related creditor, the votes cast by the related creditors) had been disregarded.

(2) Despite clause 32(1) or 33(1), the outcome of the vote on the resolution is valid and effective unless the court orders otherwise under subclause (4).

(3) The board of the entity must, as soon as practicable after becoming aware that this subclause applies to the resolution, send a notice of that fact to every known creditor.

(4) The court may, on the application of the entity or a creditor, do 1 or more of the following:

(a) order that the resolution be set aside or treated as having passed:

(b) order that a new vote be held on the resolution:

(c) order that a specified related creditor or creditors must not vote or may vote on the resolution:

(d) order that the protection period is extended by a period that the court thinks fit to allow a new vote to be held on the resolution:

(e) make any other orders that the court thinks necessary.

(5) If the board of an entity fails to comply with subclause (3), every director of the entity commits an offence and is liable on conviction to a fine not exceeding $10,000.

Schedule 13 clause 35: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Other powers of court

Heading: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

36 Powers of court

(1) On the application of the entity, the court may—

(a) give directions in relation to a procedural requirement imposed by this schedule, 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 sent about the proposed arrangement and ending not later than 5 working days after the date on which notice was sent of the result of the voting on it,—

(i) proceedings in relation to a debt owing by the entity be stayed; or

(ii) a creditor refrain from taking any other measure to enforce payment of a debt owing by the entity.

(2) Subclause (1)(b) does not apply in relation to—

(a) any debt that is owed by the entity to a general security holder; or

(b) any excluded debt.

Schedule 13 clause 36: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

37 Court may order that creditor is not bound

(1) The court may order that a creditor is not bound by an arrangement, or make any other order that it thinks fit, if the court is satisfied that—

(a) insufficient notice of the matters required to be notified under clause 7 or 9 was sent to the creditor (or no notice was received by the creditor); or

(b) clause 10(3) was materially contravened in relation to the creditor; or

(c) there was some other material irregularity in obtaining approval of the arrangement; or

(d) in the case of a creditor who voted against the arrangement, the arrangement is unfairly prejudicial to the creditor.

(2) An arrangement is not unfairly prejudicial to a creditor merely because the creditor is a secured creditor (or has a preferential claim under Schedule 7) and other creditors are not secured creditors (or do not have a preferential claim).

(3) An application under this clause—

(a) may only be made by a creditor of the entity who was entitled to vote on the arrangement; and

(b) must be made not later than 10 working days after the date on which notice of the result of the voting was sent to the creditor under clause 28.

Schedule 13 clause 37: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 5
Protections for entity in BDH

Schedule 13 Part 5: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

38 Charge unenforceable

(1) A person must not, during the protection period for an entity in BDH, enforce a charge over the property of the entity, except—

(a) with the permission of the court; or

(b) in accordance with terms of an arrangement that has been approved under clause 23.

(2) This clause is subject to Part 6.

Schedule 13 clause 38: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

39 Owner or lessor must not recover property used by entity

During the protection period for an entity in BDH, the owner or lessor of property that is used or occupied by, or is in the possession of, the entity must not take possession of the property or otherwise recover it, except—

(a) with the entity's written consent; or

(b) with the permission of the court; or

(c) in accordance with terms of an arrangement that has been approved under clause 23.

Schedule 13 clause 39: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

40 Proceeding must not be begun or continued

(1) During the protection period for an entity in BDH, a proceeding against the entity in connection with a debt or in relation to any of its property must not be begun or continued, except—

(a) with the entity's written consent; or

(b) with the permission of the High Court and in accordance with the terms that the High Court imposes; or

(c) in accordance with terms of an arrangement that has been approved under clause 23.

(2) This clause does not apply to a proceeding against the entity in connection with—

(a) a debt that is owed by the entity to a general security holder; or

(b) an excluded debt.

(3) In this clause, **proceeding** means a proceeding in the High Court or any other court, a tribunal, or an arbitral tribunal.

Schedule 13 clause 40: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

41 Entity not liable in damages for refusing consent

An entity is not liable in damages for a refusal to give an approval or consent for the purposes of this schedule.

Schedule 13 clause 41: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

42 Enforcement process halted

During the protection period for an entity in BDH, an enforcement process in relation to the entity's property must not be begun or continued except with the permission of the court and in accordance with the terms that the court imposes.

Schedule 13 clause 42: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

43 Duties of court officer in relation to entity's property

(1) This clause applies to a sheriff or registrar or other appropriate officer of the court (a **court officer**) who receives written notice that an entity is in BDH under this schedule.

(2) During the protection period for the entity, the court officer must not—

(a) take action to sell property of the entity under an execution process; or

(b) pay to a person (other than the entity)—

(i) proceeds of the sale of the entity's property (at any time) under an execution process; or

(ii) money of the entity seized (at any time) under an execution process; or

(iii) money paid (at any time) to avoid the seizure or sale of property of the entity under an execution process; or

(c) take action in relation to the attachment of a debt due to the entity; or

(d) pay to any person (other than the entity) money received because of the attachment of a debt due to the entity.

(3) The court officer must deliver to the entity any property of the entity that is in the court officer's possession under an execution process (whenever begun).

(4) The court officer must pay to the entity all proceeds or money of a kind referred to in subclause (2)(b) or (d) that—

(a) is in the court officer's possession; or

(b) has been paid into the court and has not since been paid out.

(5) The costs of the execution or attachment are a first charge over property delivered under subclause (3) or proceeds or money paid under subclause (4).

(6) In order to give effect to a charge under subclause (5) on proceeds or money the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds as the court officer thinks necessary.

(7) The court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or make a payment, that subclause (2) would otherwise prevent.

(8) A person who buys property in good faith under a sale under an execution process obtains a good title to the property as against the entity, despite anything else in this schedule.

Schedule 13 clause 43: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

44 Certain guarantees may not be enforced during protection period

(1) During the protection period for an entity in BDH, except with the court's permission and in accordance with the terms that the court may impose, a guarantee of a liability of the entity must not be enforced against—

(a) a director of the entity; or

(b) a shareholder or other member of the entity; or

(c) the spouse or relative of a director, a shareholder, or any other member of the entity.

(2) In this clause,—

liability means a debt, liability, or other obligation

relative has the same meaning as in clause 5(2) of Schedule 1 of the Financial Markets Conduct Act 2013 (applied with all necessary modifications).

Schedule 13 clause 44: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 6
Rights of secured creditor, owner, or lessor

Schedule 13 Part 6: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

45 If enforcement of charges begins before entity enters into BDH

(1) This clause applies if, before the start of the protection period, a secured creditor, receiver, or other person, for the purpose of enforcing a charge over the property,—

(a) entered into possession, or assumed control, of the property of the entity; or

(b) entered into an agreement to sell the property; or

(c) made arrangements for the property to be offered for sale by public auction; or

(d) publicly invited tenders for the purchase of the property; or

(e) exercised any other power in relation to the property.

(2) Nothing in clause 38 prevents the secured creditor, receiver, or other person from enforcing the charge in relation to the property.

Schedule 13 clause 45: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

46 Charge over perishable property

(1) This clause applies if perishable property of an entity in BDH is subject to a charge.

(2) Nothing in clause 38 prevents the secured creditor, a receiver, or a person appointed (at any time) as mentioned in paragraph (a), (b), or (d) of the definition of enforce in clause 4(1) from enforcing the charge, so far as it is a charge over perishable property.

Schedule 13 clause 46: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

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

(1) This clause—

(a) applies if,—

(i) for the purpose of enforcing a charge over property of an entity, the secured creditor, a receiver, or other person does an act of a kind referred to in clause 45; and

(ii) the entity is an entity in BDH when the secured creditor, receiver, or other person does that act; but

(b) does not apply in connection with the enforcement of a charge that is held by a general security holder.

(2) On an application by the entity, the court may order the secured creditor, receiver, or other person not to perform specified functions or exercise specified powers, except as permitted by the order.

(3) The court may make an order only if satisfied that what the entity proposes to do during the protection period will adequately protect the secured creditor's interests.

(4) An order—

(a) may be made only, and has effect only, during the protected period; and

(b) has effect despite clauses 45 and 46.

Schedule 13 clause 47: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

48 Giving notice under security agreement

Clause 38 does not prevent a person from giving a notice under the provisions of a security agreement.

Schedule 13 clause 48: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

49 If recovery of property begins before protection period

(1) This clause applies if, before the protection period, a receiver or other person, for the purpose of enforcing a right of the owner or lessor of the property to take possession of the property or otherwise recover it,—

(a) entered into possession of, or assumed control of, property used or occupied by, or in the possession of, the entity; or

(b) exercised any other power in relation to the property.

(2) Clause 39 does not prevent the receiver or other person from performing a function, or exercising a power, in relation to the property.

Schedule 13 clause 49: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

50 Recovering perishable property

Nothing in clause 39 prevents a person from taking possession of, or otherwise recovering, perishable property.

Schedule 13 clause 50: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

51 Court may limit powers of receiver, etc, in relation to property used by entity

(1) This clause applies if,—

(a) for the purpose of enforcing a right of the owner or lessor of property used or occupied by, or in the possession of, an entity to take possession of the property or otherwise recover it, a person—

(i) enters into possession, or assumes control, of the property; or

(ii) exercises any other power in relation to the property; and

(b) the entity is in BDH when the person does so.

(2) On an application by the entity, the court may order the person not to perform specified functions, or exercise specified powers, in relation to the property, except as permitted by the order.

(3) The court may make an order only if satisfied that what the entity proposes to do during the protection period will adequately protect the interests of the owner or lessor.

(4) An order—

(a) may be made only, and has effect only, during the protection period; and

(b) has effect despite clauses 49 and 50.

Schedule 13 clause 51: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

52 Giving notice under agreement about property

Nothing in clause 39 prevents a person from giving a notice to an entity under an agreement relating to property that is used or occupied by, or is in the possession of, the entity.

Schedule 13 clause 52: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 7
Exemption from provisions about voidable transactions and dispositions that prejudice creditors

Schedule 13 Part 7: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

53 When provisions do not apply

(1) The provisions referred to in subclause (2) do not apply to a transaction by an entity in BDH if—

(a) the transaction is—

(i) entered into by the entity during the protection period; or

(ii) specifically authorised under an arrangement that has been approved under clause 23; and

(b) the transaction is entered into by all the parties—

(i) in good faith; and

(ii) on arm's-length terms.

(2) The provisions are—

(a) section 292 (which relates to insolvent transactions) and sections 294 to 296 to the extent that those sections relate to section 292; and

(b) subpart 6 of Part 6 of the Property Law Act 2007 (which relates to setting aside dispositions that prejudice creditors).

(3) A transaction between an entity and another party (**P**) is on **arm's-length terms** if the terms—

(a) would be reasonable in the circumstances if the parties were connected or related only by the transaction in question, each acting independently, and each acting in its own best interests; or

(b) are less favourable to P than the terms referred to in paragraph (a).

(4) In this clause, **transaction** includes a disposition within the meaning of section 345 of the Property Law Act 2007.

(5) Section 92 of the Limited Partnerships Act 2008 applies subject to this clause.

Schedule 13 clause 53: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 8
Procedure for meeting

Schedule 13 Part 8: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

54 Part applies only if creditors' meeting is held

(1) This Part applies only if a meeting of creditors is held for the purposes of this schedule.

(2) However, this Part applies subject to the modifications, additions, or variations specified in the regulations.

Schedule 13 clause 54: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

55 Methods of holding meetings

A meeting of creditors may be held in 1 or more of the following ways:

(a) by assembling together those creditors who are entitled to take part and who choose to attend at the place, date, and time appointed for the meeting:

(b) by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting:

(c) by conducting a postal or an electronic vote in accordance with clause 60 of those creditors entitled to take part.

Schedule 13 clause 55: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

56 Adjournment of meeting

(1) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.

(2) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.

(3) An adjournment does not extend the protection period (and, in all cases, the voting date must continue to be before the expiry of the 1-month period that starts on the date on which the entity enters into BDH).

Schedule 13 clause 56: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

57 Chairperson

(1) A person appointed by the directors of the entity must act as chairperson of the meeting, but if no such person is appointed or is able to act, the creditors participating must choose one of their number to act as chairperson of the meeting.

(2) The person convening a meeting under clause 55(c) must do everything necessary that would otherwise be done by the person chairing a meeting.

(3) The chairperson or convenor does not have a casting vote.

Schedule 13 clause 57: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

58 Quorum

A quorum for a meeting of creditors is present if—

(a) 3 creditors who are entitled to vote, or their proxies, are present or have cast postal or electronic 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 or electronic votes.

Schedule 13 clause 58: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

59 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 the meeting unless a copy of the notice of appointment is delivered to the entity not less than 2 working days before the start of the meeting.

Schedule 13 clause 59: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

60 Postal or electronic votes

(1) A creditor entitled to vote at a meeting of creditors held in accordance with clause 55(a), (b), or (c) may exercise the right to vote by casting a postal or an electronic vote in relation to a matter to be decided at that meeting.

(2) A creditor may cast a postal or an electronic vote on all or any of the matters to be voted on at the meeting by sending, by post or electronic means, information that indicates their vote to a person authorised to receive and count those 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 55(c), not later than the date named for the return of the voting information.

Schedule 13 clause 60: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

61 Proposed arrangement may not be varied at meeting

The proposed arrangement that is voted on at a meeting must be the final proposed arrangement described in the notice sent to creditors under clause 9 (that is, the arrangement must not be varied).

Schedule 13 clause 61: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

62 Bodies corporate may act by representatives

A body corporate that is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

Schedule 13 clause 62: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

63 Other proceedings

A meeting of creditors may regulate its own procedure (except as provided in this Part and in the regulations (if any)).

Schedule 13 clause 63: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

64 Effect of irregularity or defect

(1) An irregularity or a 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 a creditor of the entity, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

Schedule 13 clause 64: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Part 9
Miscellaneous provisions

Schedule 13 Part 9: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

65 How notices or documents must be sent to creditors

(1) Section 391 provides for how a notice or other document must be sent to a creditor of an entity under this schedule (regardless of whether the entity is a company).

(2) However, section 391(1) applies for the purposes of this schedule as if it also permitted a notice or other document that must or may be sent to a creditor (**C**) who is a natural person to be sent by email to an electronic address if—

(a) C has previously notified the entity that C uses that electronic address; and

(b) the entity has no reason to believe that the address is incorrect.

Schedule 13 clause 65: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

66 Effect of actions under schedule

Neither an entity becoming an entity in BDH nor anything in or effected by, or done under, this schedule—

(a) places any person in breach of, or otherwise in default under, an enactment, an instrument, a confidence, a trust, or any other rule of law or equity, or makes any person liable for a civil wrong; or

(b) may be used as evidence that an entity is unable to pay due debts or is otherwise insolvent; or

(c) entitles any person—

(i) to require the payment or performance of a liability not otherwise arising for payment or performance; or

(ii) to exercise a right not otherwise becoming exercisable; or

(d) invalidates or discharges an instrument or any provision of an instrument; or

(e) releases a surety from a liability.

Schedule 13 clause 66: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

67 Right for new advance of money or credit may not be enforced

If 1 or more rights of a person (**A**) cannot be enforced against an entity in BDH (**B**) for a period because of any provision in this schedule and B has a right under a contract, an agreement, or an arrangement against A for a new advance of money or credit, that right of B cannot be enforced during the same period.

Schedule 13 clause 67: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

68 Burden of proof

An entity that wishes to rely on a protection in Part 5 of this schedule in a proceeding has the burden of proving—

(a) that clauses 5 and 6 were complied with; and

(b) that notice of the proposed arrangement was sent under clause 9; and

(c) all other matters that are relevant to whether the protection applies to the entity.

Schedule 13 clause 68: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

69 Registrar must register or publicly notify information about notices

(1) If a notice is delivered to the Registrar under clause 6, 19, 28, or 70, the Registrar must do either or both of the following:

(a) arrange for information relating to the notice to be registered on any register kept under this Act or any other enactment that the Registrar thinks fit (and the information may be registered regardless of whether the register is kept by the Registrar):

(b) otherwise make that information available to the public in any way the Registrar thinks fit (for example, publishing it on an Internet site).

(2) The power under subclause (1) includes, without limitation, the power to arrange for information to be registered in the New Zealand Business Number Register established under section 18 of the New Zealand Business Number Act 2016 (and, if the information is registered, it must be treated as being public primary business data for the purposes of that Act).

Schedule 13 clause 69: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

70 Schedule does not prevent subsequent compromise, voluntary administration, receivership, or liquidation

(1) This schedule does not prevent—

(a) an entity in BDH from becoming subject to a compromise under Part 14 of this Act; or

(b) an entity in BDH from becoming subject to an order under section 236; or

(c) a voluntary administration of an entity in BDH beginning under Part 15A of this Act; or

(d) a general security holder appointing a receiver for the whole, or substantially the whole, of the property of the entity; or

(e) the entity being put into liquidation.

(2) *See*, however, clause 18 (which provides for protections to cease).

(3) The board of the entity must, within 5 working days after an event referred to in subclause (1)(a) to (e) occurs, deliver to the Registrar a notice that advises the Registrar of that event.

(4) If the board of an entity fails to comply with subclause (3), every director of the entity commits an offence and is liable on conviction to a fine not exceeding $10,000.

Schedule 13 clause 70: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

71 Effect of arrangement in liquidation of entity

(1) If an arrangement is approved under clause 23, the court may, on an application, make any order that the court thinks fit with respect to the extent, if any, to which the arrangement will, if the entity is put into liquidation, continue in effect and be binding on the liquidator of the entity.

(2) If an arrangement is approved under clause 23 and the entity is subsequently put into liquidation, the court may, on an application, make any order that the court thinks fit with respect to the extent, if any, to which the arrangement will continue in effect and be binding on the liquidator of the entity.

(3) An application under—

(a) subclause (1) may only be made by—

(i) the entity; or

(ii) a receiver appointed in relation to property of the entity; or

(iii) with the leave of the court, any creditor or member of the entity:

(b) subclause (2) may only be made by—

(i) the liquidator; or

(ii) a receiver appointed in relation to property of the entity; or

(iii) with the leave of the court, any creditor or member of the entity.

Schedule 13 clause 71: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

72 Crown not prevented from voting to approve arrangement

(1) This clause applies if the Crown is a creditor of an entity that has entered into BDH.

(2) Nothing in section 65K of the Public Finance Act 1989 prevents the Crown from voting to approve an arrangement under this schedule (including an arrangement that would have the effect of deferring the payment of an amount).

Schedule 13 clause 72: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

73 Schedule applies despite anything contrary in Construction Contracts Act 2002

The schedule applies despite anything to the contrary in the Construction Contracts Act 2002.

Schedule 13 clause 73: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

74 Arrangement treated as instalment arrangement under Tax Administration Act 1994

(1) This clause applies to the extent that an arrangement approved under clause 23 involves 1 or more payments being made to the Commissioner of Inland Revenue.

(2) The arrangement must be treated as being an instalment arrangement under section 177B of the Tax Administration Act 1994 when the arrangement is approved under clause 23.

(3) The instalment arrangement ceases to be in force at the end of the protection period.

(4) The Tax Administration Act 1994 applies to the instalment arrangement—

(a) subject to the modifications, additions, or variations specified in the regulations; and

(b) with all other necessary modifications.

Schedule 13 clause 74: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

Notes

1 General

This is a consolidation of the Companies Act 1993 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Russia Sanctions Act 2022 (2022 No 6): section 34

Financial Reporting (Inflation Adjustments) Regulations 2021 (LI 2021/307): regulation 9

Companies (Maximum Priority Amount) Order 2021 (LI 2021/256): clause 3

Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 (2021 No 8): section 194

Secondary Legislation Act 2021 (2021 No 7): section 3

Companies (COVID-19—Business Debt Hibernation) Regulations 2020 (LI 2020/294)

Infrastructure Funding and Financing Act 2020 (2020 No 47): section 161

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3

Companies (Clarification of Dividend Rules in Companies) Amendment Act 2019 (2019 No 68)

Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62): Part 2

Statutes Amendment Act 2019 (2019 No 56): Part 7

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46): Part 1 subpart 2

Trusts Act 2019 (2019 No 38): section 161

Insolvency Practitioners Regulation (Amendments) Act 2019 (2019 No 28): Part 1

New Zealand Business Number Funding (Validation and Authorisation) Act 2019 (2019 No 25): Part 1

Statutes Amendment Act 2018 (2018 No 27): Part 6

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 (2018 No 5): section 259 (as amended by Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 (2019 No 5))

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Electronic Interactions Reform Act 2017 (2017 No 50): Part 3 subpart 2

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

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 1 subpart 3

Intelligence and Security Act 2017 (2017 No 10): section 335

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Statutes Amendment Act 2016 (2016 No 104): Part 7

Companies Amendment Act 2016 (2016 No 57)

Interest on Money Claims Act 2016 (2016 No 51): section 29

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(c)

New Zealand Business Number Act 2016 (2016 No 16): section 41

Employment Relations Amendment Act 2016 (2016 No 9): section 39

Companies Amendment Act 2015 (2015 No 97)

Financial Reporting Amendment Act 2014 (2015 No 64): section 17

Companies Amendment Act 2014 (2014 No 46)

Fair Trading Amendment Act 2013 (2013 No 143): section 41(2)

Companies Amendment Act 2013 (2013 No 111)

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

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): sections 24–43, 126

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Takeovers Amendment Act 2012 (2012 No 68): section 10

Companies Amendment Act (No 2) 2012 (2012 No 60)

Companies Amendment Act 2012 (2012 No 7)

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

Student Loan Scheme Act 2011 (2011 No 62): section 223

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

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

Takeovers Amendment Act 2010 (2010 No 88): section 20

Companies Amendment Act (No 2) 2010 (2010 No 53)

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

Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53): sections 16–19

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): section 862

Companies (Minority Buy-out Rights) Amendment Act 2008 (2008 No 69)

Limited Partnerships Act 2008 (2008 No 1): section 119

Income Tax Act 2007 (2007 No 97): section ZA 2(1)
Property Law Act 2007 (2007 No 91): sections 364(1), 370(2)
Companies Amendment Act 2007 (2007 No 48)
Companies Amendment Act (No 2) 2006 (2006 No 62)
Insolvency (Cross-border) Act 2006 (2006 No 57): section 13
Companies Amendment Act 2006 (2006 No 56)
Insolvency Act 2006 (2006 No 55): section 445
Securities Amendment Act 2006 (2006 No 46): section 25
Lawyers and Conveyancers Act 2006 (2006 No 1): section 348
Relationships (Statutory References) Act 2005 (2005 No 3): section 7
Companies Amendment Act (No 2) 2004 (2004 No 24)
Companies Amendment Act 2004 (2004 No 10)
Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46): section 48(1)
Public Trust Act 2001 (2001 No 100): section 170(1)
Companies Act 1993 Amendment Act 2001 (2001 No 18)
Personal Property Securities Act 1999 (1999 No 126): section 191(1)
Companies Amendment Act 1999 (1999 No 19)
Companies Amendment Act 1998 (1998 No 31)
Companies Act 1993 Amendment Act 1997 (1997 No 27)
Companies Act 1993 Amendment Act 1996 (1996 No 115)
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)
Income Tax Act 1994 (1994 No 164): section YB 1
Companies Act 1993 Amendment Act (No 2) 1994 (1994 No 82)
Companies Act 1993 Amendment Act 1994 (1994 No 6)
Public Finance Act 1989 (1989 No 44): section 65R(3)

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