to them unless, within a certain period after hearing of the board decision, they take steps to have their dissent recorded. We have come to the conclusion that such a requirement would not be reasonable because the absent director would be dependent on the information given as to the discussion and the significance of the issue.

THIRD SCHEDULE
Proceedings at Meetings of Creditors

743 The third schedule adapts the provisions governing meetings of shareholders to situations where creditors need to hold a meeting, and provides that a vote on a duly circulated draft resolution may be taken by postal ballot without any need for creditors to meet in person. A liquidator who attends a meeting of creditors is to take the chair.

FOURTH SCHEDULE
Proceedings at Meetings of Committee of Inspection

744 This schedule outlines the procedure to be followed at any meeting of a committee of inspection which is representative of creditors or of shareholders or both.

FIFTH SCHEDULE
Liquidation of Assets of Overseas Companies

745 This schedule provides the modifications and exclusions necessary to enable the application of Part 14 [Liquidations] to the liquidation of the New Zealand assets of an overseas company.
THE DRAFT COMPANIES ACT

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Liquidation of assets of overseas companies
An Act to restate and reform the law governing the incorporation, organisation, operation and termination of companies

1 Short title and commencement

(1) This Act may be cited as the Companies Act ( ).

(2) This Act comes into force on [ ].

PART 1
PRELIMINARY

2 Purpose of the Act

The purposes of this Act are

(a) to provide a structure for the organisation and operation of companies that imposes minimum standards but is adaptable to meet diverse needs and circumstances;
(b) to recognise the value of the limited liability company as a means of attaining the economic and social benefits of the aggregation of capital for productive purposes, the spreading of economic risk and the taking of business risks;

(c) to clarify the relationships between companies, their directors, shareholders and creditors;

(d) to encourage the efficient management of companies by permitting directors a wide measure of discretion in matters of business judgment while protecting shareholders and creditors against abuses of management power;

(e) to provide simple and fair procedures for realising and distributing the assets of insolvent companies.

3 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, where by reason of any alteration of the balance date of the company, the period ending on that date is greater or less than a year that greater or lesser period shall be deemed to be an accounting period;

“address for service” has the meaning set out in section 150 [Address for service];

“annual meeting” means a meeting required to be held by virtue of section 90 [Annual meetings of shareholders];

“assigned name”, in relation to a company, means the name of the company referred to in section 16 [Assigned names];

“balance date” has the meaning set out in section 157 [Balance date of company];

“board” and “board of directors” have the meaning set out in section 97 [Meaning of “board”];

“charge” includes any right or interest in relation to property owned by, or in or under the custody or control of, a company, by virtue of which a creditor of the company may claim to be entitled to payment in priority
to creditors entitled to be paid under section 240 [Claims of other creditors];

“class” has the meaning set out in section 87 [Classes and interest groups];

“company” means a body corporate incorporated or registered under Part 2;

“constitution” means a constitution of a company that complies with Part 4;

“Court” means the High Court, or a District Court;

“director” has the meaning set out in section 96 [Meaning of “director”];

“distribution” means a direct or indirect transfer of money or other property (except the company’s own shares) or incurrence of indebtedness by a company to or for the benefit of a shareholder in respect of any of its shares, and may be in the form of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise;

“dividend” has the meaning set out in section 43 [Dividends];

“existing company” means a body corporate registered or deemed to be registered under Part II of the Companies Act 1955, or under the Companies Act 1933, the Companies Act 1908, the Companies Act 1903, the Companies Act 1882, or the Joint Stock Companies Act 1860;

“financial statements” has the meaning set out in section 158 [Meaning of “financial statements”];

“group financial statements” has the meaning set out in section 164 [Meaning of “group financial statements”];

“group of companies” has the meaning set out in section 162 [Meaning of “group of companies”];

“holding company” has the meaning set out in section 161 [Meaning of “holding company” and “subsidiary”];

“incorporator” means a person who applies for incorporation of a company in accordance with Part 2;
“interested”, in relation to a director, has the meaning set out in section 108 [Meaning of “interested”];

“interest group” has the meaning set out in section 87 [Classes and interest groups];

“interests register” means the register kept under section 147 (1) (e) [Company records to be kept];

“major transaction” has the meaning set out in section 99 [Major transactions];

“New Zealand register” means the register of companies incorporated in New Zealand kept pursuant to section 272 (1) (a) [Registers];

“ordinary resolution” has the meaning set out in section 77 [Simple majority of shareholders to exercise powers];

“overseas company” means a body corporate incorporated outside New Zealand;

“overseas register” means the register of bodies corporate incorporated outside New Zealand kept pursuant to section 272 (1) (b) [Registers];

“pre-emptive rights” means the rights conferred on shareholders under section 36 [Pre-emptive rights];

“prescribed form” means a form prescribed by regulations made under this Act and containing and having attached such information and documents as those regulations may require;

“receiver” has the same meaning as in Part VIIA of the Property Law Act 1952;

“records” means the documents and information required to be kept by a company under section 147 [Company records to be kept];

“registered name” means a name of a company registered under section 17 [Registered names];

“registered office”, in relation to a company, means the office referred to in section 145 [Registered office];

“Registrar” means the Registrar of Companies appointed in accordance with section 268 [Registrar and Deputy Registrars of Companies];
"registration day", in relation to any document or other matter relating to a company, means a day on which the District Registrar's office that contains the part of the New Zealand register (or the overseas register) relating to that company is open for registration of documents;

"related company” has the meaning set out in subsection (2);

"secured creditor”, in relation to any company, means a person entitled to a charge in relation to property owned by, or in or under the custody or control of, that company;

"securities” has the same meaning as in the Securities Act 1978;

"share” has the meaning set out in section 26 [Rights attached to shares];

"share description” means a share description adopted in accordance with section 34 [Issue decided on by board];

"shareholder” has the meaning set out in section 72 [Meaning of “shareholder”];

"share register” means the share register required to be kept under section 65 [Company to maintain share register];

"solvency test” has the meaning set out in subsection (3);

"special meeting” means a meeting called in accordance with section 91 [Special meetings of shareholders];

"special resolution” means a resolution approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question;

"subsidiary” has the meaning set out in section 161 [Meaning of “holding company’” and “subsidiary”]

"surplus assets” means assets of a company remaining after the payment of all its creditors and available for distribution in accordance with the company’s constitution and this Act prior to its removal from the New Zealand register;}
“working day” means any day of the week other than
(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day and Waitangi Day; and
(b) a day in the period commencing with the 25th day of December in any year, and ending with the 2nd day of January in the following year.

(2) In this Act, a company is related to another company if
(a) the other company is its holding company or subsidiary; or
(b) there is another company to which both companies are related by virtue of paragraph (a) and “related company” has a corresponding meaning.

(3) A company satisfies the solvency test if
(a) it is able to pay its debts as they become due; and
(b) the realisable value of the company’s assets is greater than the aggregate of the present value of its liabilities, whether contingent or otherwise.

(4) A person required to give public notice of any matter in relation to a company must do so by inserting notice of that matter
(a) in at least one issue of the New Zealand Gazette; and
(b) in at least two issues of a newspaper circulating in the area in which is situated the company’s place of business, or the company’s chief executive office if the company has more than one place of business, or the company’s registered office if the company has no place of business.

4 Act binds Crown
This Act binds the Crown.
PART 2
INCORPORATION UNDER THIS ACT

Characteristics of a company

5 Essential components
Every company shall have
(a) a name, which may be a registered name or an assigned name;
(b) a constitution;
(c) one or more shares;
(d) one or more shareholders, whose liability for the obligations of the company may be limited or unlimited; and
(e) one or more directors, who have the powers and duties set out in Part 7.

6 Essential rights and powers
The issued shares of a company must at all times carry between them the following rights and powers:
(a) the power to appoint or remove directors;
(b) the power to approve any alteration to the constitution;
(c) the power to approve any major transaction;
(d) the power to approve any amalgamation or reconstruction;
(e) the power to approve the liquidation or removal from the New Zealand register of the company;
(f) the right to receive any surplus assets of the company except to the extent that those rights and powers are by its constitution limited, or conferred on persons other than shareholders.

7 Separate personality
A company is a person in its own right separate from its shareholders, and continues in existence until it is removed from the New Zealand register in accordance with this Act.
8 Capacity and powers

(1) Subject to its constitution, a company
   (a) has the capacity, rights, powers and privileges of a
       natural person; and
   (b) without limiting paragraph (a), may do anything
       which it is permitted or required to do by its
       constitution or by any enactment or rule of law.

(2) No act of a company, including any transfer of property to
    or by a company, is invalid by reason only that the act or
    transfer is contrary to its constitution or this Act, but this
    subsection does not limit section 126 [Injunction to
    restrain action], 127 [Derivative actions], 131 [Personal
    action by shareholder against directors], 132 [Personal
    action by shareholder against company], and 135
    [Prejudiced shareholders].

9 Authority to bind a company

A company is bound by the actions of its directors, employees
and agents in the manner set out in Part 9.

Method of incorporation

10 Incorporators

(1) Any person (other than a natural person who is
    disqualified from becoming a director under section 115

(2) (a) to (c) [Qualifications of directors] may, either alone
    or together with any other such person, apply for
    incorporation of a company under this Act.

11 Application for incorporation

(1) An application for incorporation of a company under this
    Act must be sent or delivered to the Registrar, and must
    (a) be in the prescribed form; and
    (b) be signed by each incorporator; and
    (c) be accompanied by consents in the prescribed form
        signed by each of the persons named as directors or
        shareholders of the company in the application form.
(2) Without limiting subsection (1), every application for incorporation must state

(a) the full name and residential address of each incorporator; and

(b) the maximum number of directors of the company; and

(c) the full names and residential addresses of the first director or directors of the proposed company; and

(d) the full names and residential addresses of the first shareholder or shareholders of the proposed company, the number of shares held by each shareholder and the rights, privileges, limitations and conditions attached to each of those shares, if different from those set out in section 26 (2) [Rights attached to shares]; and

(e) the first registered office of the proposed company; and

(f) the first address for service of the proposed company.

12 Incorporation

(1) Forthwith after receipt of a properly completed application for incorporation of a company, the Registrar must

(a) enter on the New Zealand register the particulars of the company required by section 272 [Registers]; and

(b) issue a certificate of incorporation in the prescribed form.

(2) A certificate of incorporation of a company issued under this section must include, among other things, the first name of the company, which will be

(a) the first registered name, if any, of the company; or

(b) if there is no such registered name, the assigned name of the company.

(3) A certificate of incorporation of a company issued under this section is conclusive evidence that

(a) all the requirements of this Act as to incorporation of the company have been complied with; and

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the company has been incorporated under this Act with effect on and from the date of incorporation stated in the certificate.

Registration of existing companies

13 Existing companies to apply for registration under this Act

(1) Every existing company must apply for registration under this Part no later than three years after the commencement of this Act.

(2) An application for registration of an existing company under this Part must be delivered to the Registrar and must

(a) be in the prescribed form; and
(b) be signed by the existing company.

(3) Without limiting subsection (2), every application for registration must state

(a) the name of the existing company; and
(b) the maximum number of directors of the existing company; and
(c) the full names and residential addresses of the directors of the existing company at the date of the application; and
(d) the number of shares of the existing company, and the rights, privileges, limitations and conditions attached to each of those shares, if different from those set out in section 26 (2) [Rights attached to shares]; and
(e) the registered office of the existing company at the date of the application; and
(f) the address for service of the existing company at the date of registration.

14 Registration

(1) Forthwith after receipt of a properly completed application for registration under this Part of an existing company, the Registrar must
(a) enter on the New Zealand register the particulars of the company required under section 272 [Registers]; and
(b) issue a certificate of registration in the prescribed form.

(2) A certificate of registration of a company issued by the Registrar under this section is conclusive evidence that
(a) all the requirements of this Act as to registration of the company have been complied with; and
(b) the company has been registered under this Act with effect on and from the date of registration stated in the certificate.

15 Effect of registration
Every existing company that is registered under this Part shall be the same body corporate before and after registration, and registration does not affect any rights or obligations of the existing company, or render defective any legal proceedings by or against the company.

PART 3
COMPANY NAMES

16 Assigned names
(1) Every company shall have a name (an “assigned name”) by which it will be known whenever it does not have a registered name.

(2) Subject to subsection (3), the assigned name for a company will be “Company No X Limited” where “X” is the number assigned by the Registrar for this purpose upon its incorporation or registration.

(3) The assigned name for a company shall not include the word “Limited” if the constitution of the company provides that the liability of the shareholders of the company is not limited, in accordance with section 73(3) [Liability of shareholders].
17 Registered names

(1) A company may have a name that has been registered as the name of the company by the Registrar pursuant to section 19 [Registration of name].

(2) Subject to the constitution of a company
   (a) the incorporators of the company may apply to the Registrar for registration of the first registered name of the company; and
   (b) any director of the company may, with the prior approval of the company's board, apply to the Registrar for registration of the first or a subsequent registered name of the company.

(3) The inclusion of the name of the company in its constitution does not affect the power of the board to approve an application under subsection 2 (b), and no such application is an amendment of the constitution for the purposes of this Act, unless the constitution expressly so provides.

(4) The registered name of a company must comprise roman letters and arabic numerals only.

(5) If the liability of the shareholders of a company is limited under section 73 [Liability of shareholders], the registered name of the company must end either with the word “Limited” or the abbreviation “Ltd”.

18 Application for registration of name

(1) An application for registration of the first or a subsequent registered name of a company must be sent or delivered to the Registrar, and must
   (a) be in the prescribed form; and
   (b) contain or have attached such information and documents as the prescribed form may require; and
   (c) have attached any consents of the kind referred to in subsection (3); and
   (d) contain the statement specified in subsection (2); and
   (e) if the application is made by a director, contain a statement that the board of the company has approved the making of the application by the director; and
(f) be signed by each applicant.

(2) Every application for registration of the first or a subsequent name of a company must contain a statement by each applicant that

(a) the applicant has caused a search to be made during the period of 10 working days immediately preceding the date of the application, of such registers, directories, and records of names or trademarks as are then prescribed by the Registrar for the purposes of this subsection; and

(b) the applicant has good reason to believe that the name for which registration is sought was adopted in good faith for the purpose of identifying the company and is readily distinguishable from every name, trademark or service mark included in those registers, directories and records, other than any name, trademark, or service mark to which subsection (3) applies.

(3) An application for registration of the first or a subsequent name of a company may have attached a consent in the prescribed form to the registration of the name signed by the owner of any similar name, trademark or service mark.

19 Registration of name

(1) Subject to subsection (2), forthwith after receipt of a properly completed application for registration of the first or a subsequent name of a company, the Registrar must

(a) enter the name on the New Zealand register as being the registered name of the company; and then

(b) unless the name is registered at the time of incorporation or registration of the company under Part 2, issue a certificate of change of name in the prescribed form.

(2) The Registrar is not obliged to enter a name on the New Zealand register if

(a) disregarding the word "Limited" (if any), the name is identical to the name of any body registered on any register prescribed by the Registrar for the purposes
of section 18 [Application for registration of name]; or
(b) the use of the name by a company would contravene any Act which prohibits the use of certain words or names.

(3) A change of name of a company
(a) takes effect from the date of the certificate issued under subsection (1) (b); and
(b) does not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against the company by its former name may be continued or commenced against it by its new name.

20 Cessation order
(1) If at any time the Registrar believes on reasonable grounds that
(a) a name of a company should not have been registered under section 19 [Registration of name]; or
(b) continued registration of the name under that section is undesirable
the Registrar may serve written notice on the company to the effect that the name will cease to be the registered name of the company from a date specified in the notice (being a date not less than 20 working days after the date on which the notice is served on the company).

(2) Where the Registrar has served notice on a company under subsection (1) then, unless the company has changed its registered name from the name specified in the notice, the name of the company will be its assigned name from the date specified in the notice and the Registrar must forthwith after that date issue a certificate of change of name in the prescribed form.

21 Use of name
(1) Every company must ensure that its full name is clearly stated in

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(a) all communications sent by or on behalf of the company; and
(b) all 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) and of section 140 [Method of contracting etc], it is lawful to use any generally recognised abbreviation of a word or words in the name of a company, so long as it is not misleading to do so.

PART 4
COMPANY CONSTITUTION

22 Every company has a constitution

(1) Every company and the board, the shareholders and each director and shareholder of a company have the rights, powers, duties and obligations set out in this Act except in so far as they are negated or modified by the constitution of the company in accordance with this Act.

(2) Every company has a constitution which comprises

(a) the application for incorporation or registration or amalgamation proposal of the company; and
(b) any share descriptions registered under Part 5; and
(c) any document of the kind referred to in section 23 [Initial constitutional document], section 24 (3) [Alteration of constitution] or section 25 (2) [Power of Court to alter constitution].

(3) No provision of a constitution may contravene or be inconsistent with this Act, and a provision which contravenes or is inconsistent with this Act is invalid to the extent of that contravention or inconsistency.

23 Initial constitutional document

(1) An application for incorporation of a company under Part 2 may, but need not, be accompanied by a document certified by at least one of the incorporators as being the initial constitutional document for the company.
(2) An application for registration of an existing company under Part 2 may, but need not, be accompanied by a document certified by the existing company as being its initial constitutional document under this Act.

24 Alteration of constitution

(1) Subject to its constitution and without limiting sections 88 [Alteration of shareholder rights] and 135 [Prejudiced shareholders], the shareholders of a company may at any time alter the constitution by special resolution.

(2) The adoption of a constitutional document for a company is deemed to be an alteration of that company's constitution.

(3) Within 10 registration days of the alteration of the constitution of a company the board must ensure that a notice of change of constitution in the prescribed form is received by the Registrar.

(4) If the board of a company fails to comply with subsection (3), every director of the company may be convicted of an offence under section 277 (2) [Liability of directors for failure by board or company].

25 Power of Court to alter constitution

(1) Where it is not practicable to alter the constitution of a company by means of the procedure set out in this Act or in its constitution, any director or shareholder of the company may apply to the Court for an order altering the constitution, and the Court may make an order altering the constitution on such terms and conditions as it thinks fit.

(2) Where an order is made under subsection (1), the applicant for the order must ensure that a copy of the order is received by the Registrar within 10 registration days.

(3) If an applicant fails to comply with subsection (2) he or she may be convicted of an offence under section 277 (2) [Failure to comply with Act].
PART 5
SHARES

Nature of shares

26 Rights attached to shares

(1) A share is a form of personal property issued in accordance with section 31 [Issue of shares] which represents an entitlement in respect of the capital, income or control of a company and confers on the holder all or any of the following rights:

(a) the right to share in the distribution of income of the company;
(b) the right to share in the distribution of the surplus assets of the company upon its winding up;
(c) the right to vote at meetings of the company;
(d) the right to repayment of a sum in consideration of which the share was issued, at a future date;
(e) the right to be paid a return at a specified rate on a sum in consideration of which the share was issued together with such other rights and privileges and subject to such limitations or conditions as may be provided for in the constitution of the company or the share description in respect of the share.

(2) Unless otherwise specified in the constitution or share description in respect of any share, each share has attached to it the following rights:

(a) the right to one vote at any meeting (other than an interest group meeting) which is held to do any one or more of the following:
   (i) to appoint or remove a director or auditor;
   (ii) to approve any alteration to the constitution;
   (iii) to approve a major transaction;
   (iv) to approve an amalgamation of the company, under section 190 [Manner of approving amalgamation proposal];
   (v) to approve the liquidation of the company;
(b) the right to an equal share in dividends authorised by the directors;
(c) the right to an equal share in the distribution of the
surplus assets of the company.

27 Types of share
Without limiting section 26 [Rights attached to shares], shares
may be convertible, redeemable, subject to calls, entitled to
preferential distribution (whether of income or of capital), and
may have special, conditional, limited or no voting rights.

28 No nominal value
No share shall have a nominal or par value.

29 Transferability of shares
(1) A share may be either transferable or non-transferable.
(2) Any share which is transferable may be transferred by
entry on the company’s register, in accordance with
section 63 [Transfer of shares], and may not be transferred
in any other way.
(3) Unless otherwise specified in the constitution of the
company, a share is transferable.

30 Share options
Sections 34 [Issue decided on by board], 36 [Pre-emptive
rights], 37 [Persons to whom shares may be issued], 58
[Financial assistance], 59 [Special financial assistance], 60
[Disclosure document] and 61 [Enforceability of prohibited
transactions] apply to any deed or contract under which the
company is or may be required to issue shares as if that contract
were a share, and as if entry into such a contract were the issue
of a share.

**Issue of shares**

31 Issue of shares
Every share in a company must be either
(a) an initial share; or
(b) issued by the company, in accordance with section 33
[Company may issue shares].
32 Initial shares

(1) A share is an initial share if
   (a) the holder of the share is named in the application for incorporation of a company; or
   (b) in the case of an existing company, the share is issued at the date of registration under Part 2; or
   (c) in the case of an amalgamated company, the share is provided for in the amalgamation proposal, and the holder of the share becomes entitled to the share under the amalgamation proposal.

(2) Where a share is an initial share the company must forthwith enter the name of the holder on the share register, in accordance with section 65 [Company to maintain share register].

(3) Where an initial share is transferable, that share may, subject to any restrictions in the constitution, be transferred by entry on the share register and any such transfer does not require and is not for the purposes of this Act an alteration of the constitution.

33 Company may issue shares

Subject to the Act and to any restrictions in its constitution, a company may issue shares at any time and in any number, provided that either
   (a) its constitution makes provision for such shares, and they have not yet been issued; or
   (b) the board has resolved to issue shares, in accordance with section 34 [Issue decided on by board].

34 Issue decided on by board

Shares may be issued under section 33 (b) [Company may issue shares] only if the board has passed a resolution
   (a) that shares should be issued, specifying
      (i) the rights, privileges, limitations and conditions attached to each share to be issued, if different from those set out in section 26 (2) [Rights attached to shares]; and
      (ii) the maximum number of shares to be issued; and
whether the shares are transferable or non-transferable, and if transferable, whether their transfer is subject to any conditions or limitations; and

(b) adopting as the share description a written statement of the matters referred to in paragraph (a) in the prescribed form.

35 Share description to be registered

(1) Within 10 registration days of the adoption of a share description under section 34, the board must ensure that the share description is received by the Registrar.

(2) Upon registration the share description forms part of the constitution of the company, provided that

(a) no provision in the constitution prior to the registration of a share description which relates to the rights attached to shares shall apply to the shares described in the share description, unless the share description so provides;

(b) no provision in the share description which relates to the rights attached to shares shall apply to other shares of the company.

(3) If the board of a company fails to comply with subsection (1), every director of the company may be convicted of an offence under section 278 [Liability of directors for failure by board or company].

Persons to whom shares may be issued

36 Pre-emptive rights

Unless excluded or limited by the constitution, all shareholders are entitled to pre-emptive rights, which are the rights

(a) to be offered any further issue of shares which rank equally with or prior to their shares, whether as to voting or distribution rights, or both, in such a manner and on such terms as would, if accepted, preserve their relative voting and distribution rights; and
(b) to be afforded a reasonable opportunity of accepting any such offer.

37 Persons to whom shares may be issued

(1) Shares must be issued in accordance with shareholders’ pre-emptive rights, unless either
   (a) the constitution permits the issue in question to be made in the manner proposed by the board; or
   (b) the board obtains approval for the issue in the same manner as approval is required for an alteration to the constitution which would permit such an issue.

(2) Within 10 registration days of approval being given under subsection (1)(b), the board must ensure that notice of that approval in the prescribed form is received by the Registrar.

(3) Nothing in this section affects the need to obtain the approval of an interest group, where the issue of shares affects the rights of that interest group, in accordance with section 88 [Alteration of shareholder rights].

(4) A failure to comply with this section does not affect the validity of any issue of shares, but has the consequences set out in section 135(3) [Prejudiced shareholders].

(5) If the board of a company fails to comply with subsection (2), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

Consideration for issue of shares

38 Consideration for issue of shares

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

39 Consideration for issue to be decided on by board

(1) Before a company issues shares under section 33 [Company may issue shares] other than as a share split, 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) resolve that in its opinion the consideration for and terms of the issue are fair and reasonable to the company and to the existing shareholders.

(2) The directors who vote in favour of the resolution required by subsection (1) must sign a certificate that, in their opinion, the conditions set out in subsection (1) are satisfied.

(3) The board may at any time resolve to issue shares as a share split, and subsections (1) and (2) do not apply to any such issue.

(4) A share split is an issue of shares where

(a) notwithstanding any provision in the constitution of the company, the issue is in accordance with shareholders’ pre-emptive rights; and

(b) the shares issued are not redeemable; and

(c) the shares issued do not carry any fixed or preferential right to distributions or to the surplus assets of the company.

40 Consent to issue

A company may not issue a share to any person if the issue of that share increases any liability of that person to the company or imposes any new liability on that person unless that person has consented in writing to become the holder of that share and any issue without such consent is void.

Time of issue

41 Time of issue

A share is issued when

(a) the constitution or share description which provides for the share has been registered on the New Zealand register; and
(b) either the holder of the share is named in the constitution, or the name of the holder of the share has been entered on the register of shareholders.

Distributions

42 Board may authorise a distribution

(1) The board of a company may, subject to any restrictions contained in the constitution of the company, authorise a distribution by the company at such time and of such amount and to such shareholders as it thinks fit, provided that it is satisfied that the company will, after the distribution, satisfy the solvency test.

(2) The directors who vote in favour of a distribution must sign a certificate that in their opinion the company will, after the distribution, satisfy the solvency test.

(3) In applying the solvency test for the purposes of this section,

(a) “debts” is to be treated as including fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made; and

(b) “liabilities” is to be treated as including the amount that would be required, if the company were to be removed from the New Zealand register immediately after the time of distribution, to satisfy the fixed entitlements of all shareholders at that time, or upon an earlier redemption;

except where that fixed preferential return or entitlement is expressed in the constitution as being subject to the power of the directors to make distributions.

(4) Every director who fails to comply with subsection (2) may be convicted of an offence under section 277 (1) [Failure to comply with Act].

43 Dividends

(1) A dividend is a distribution which does not fall within section 49 [Acquisition of company’s own shares] or section 58 [Financial assistance].
The board of a company may not authorise a dividend

(a) in respect of some shares in a class, and not of others of that class; or

(b) of a greater value per share in respect of some shares of a class than in respect of others of that class

except where the amount of the dividend is proportional to the amount paid to the company in respect of the shares.

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.

Shares in lieu of dividend options

(1) Notwithstanding section 43 (2) [Dividends], but subject to section 31 [Issue of shares] and to the constitution of the company, a board may offer shareholders the option of receiving shares in the company in lieu of any proposed dividend.

(2) The dividend option offered to shareholders must comply with section 43 (2) [Dividends].

(3) The share option offered to shareholders must be an offer made in accordance with shareholders' pre-emptive rights.

(4) The board must give notice to shareholders of the shares in lieu of dividend option stating the date by which the option must be exercised, and all shareholders must be afforded a reasonable opportunity of exercising the option.

(5) Upon the date specified in the notice given under subsection (4) the board may

(a) subject to section 31 [Issue of shares], issue shares to those shareholders who have elected to receive shares in lieu of the proposed dividend; and

(b) subject to section 42 [Board may authorise a distribution], authorise the proposed dividend to be paid to those shareholders who have not elected to receive shares.
45 Shareholder discounts

(1) Notwithstanding section 42 [Board may authorise a distribution] and section 43 [Dividends], the board of a company may resolve that the company should offer shareholders discounts in respect of some or all of the trading activities of the company.

(2) The board may approve a discount scheme under subsection (1) only if it has previously resolved that the proposed discounts
   (a) are fair and reasonable to the company and to all shareholders; and
   (b) are to be available to all shareholders on the same terms.

(3) No discount scheme may be approved or continued by the board if there are reasonable grounds for believing that the company does not satisfy the solvency test.

46 Recovery of distributions

(1) A distribution to a shareholder made at a time when the company did not immediately after the distribution satisfy the solvency test as required by section 42 [Board may authorise a distribution] may be recovered by the company from the shareholder unless the shareholder
   (a) received the distribution in good faith and without knowledge of the company’s failure to satisfy the solvency test; and
   (b) has altered his or her position in reliance on the validity of the distribution, so that having regard to all possible implications in respect of other persons it is inequitable to require repayment in full or at all, as the case may be.

(2) Where a distribution has been made and, either,
   (a) the procedure set out in section 42 [Board may authorise a distribution] has not been followed; or
   (b) a certificate was given under section 42 (2) [Board may authorise a distribution], and there did not exist reasonable grounds for the opinion set out in the certificate;
those directors who failed to take reasonable steps to ensure the procedure was followed, or who signed the certificate, are personally liable to the company to restore the distribution, except in so far as it may be recoverable from shareholders under subsection (1).

(3) If in any action brought against a director or shareholder under this section the Court is satisfied that the company could properly have made a distribution of lesser value which would not have caused the company to fail to satisfy the solvency test, the Court may
(a) relieve the director from liability in respect of; or
(b) permit the shareholder to retain;
the distribution made up to the value of any distribution that might properly have been made.

Company holding its own shares

47 Company holding its own shares
Except as provided in sections 49 to 53, a company shall not hold shares in itself.

48 Cross-holdings
(1) Where one company (referred to as "the owning company") holds shares in another company (referred to as "the partly-owned company")
(a) the partly-owned company may acquire shares in the owning company unless there are at the time of the acquisition reasonable grounds for believing that the partly-owned company does not, or would not after the acquisition, satisfy the solvency test; and
(b) the owning company, where the partly-owned company is its subsidiary, shall not permit the partly-owned company to acquire any shares in the owning company where there are at the time of acquisition reasonable grounds for believing that the owning company does not, or would not after the acquisition, satisfy the solvency test.
(2) Each director of the partly-owned company owes a duty to that company to take reasonable steps to ensure that it complies with subsection (1) (a).

(3) Each director of the owning company owes a duty to that company to take reasonable steps to ensure that it complies with subsection (1) (b).

(4) In applying the solvency test for the purposes of this section

(a) "debts" is to be treated as including fixed returns on shares; and

(b) "liabilities" is to be treated as including the amount that would be required, if the company were to be removed from the New Zealand register immediately after the time of the acquisition, to satisfy the fixed entitlements of all shareholders to surplus assets at that time, or upon an earlier redemption.

Acquisition by company of its own shares

49 Acquisition of company's own shares

(1) Subject to section 42 [Board may authorise a distribution], a company may purchase or otherwise acquire shares issued by it, if expressly permitted to do so by its constitution, in accordance with section 50 [Board may make offer to acquire shares].

(2) Notwithstanding subsection (1) and sections 50 to 54, a company may purchase or otherwise acquire shares issued by it

(a) in accordance with an order of the Court made under this Act on the terms and conditions set out in that order; or

(b) in accordance with section 81 [Minority buy-out rights] or section 88 [Alteration of shareholder rights].
50  Board may make offer to acquire shares

(1)  At any time when a company is entitled to acquire its own shares by virtue of section 49 (1) [Acquisition of company's own shares], the board may

(a) make an offer to all shareholders to acquire a proportion of their shares, where

(i) such an offer will, if accepted in full, leave unaffected relative voting and distribution rights; and

(ii) all shareholders are afforded a reasonable opportunity to accept the offer; or

(b) make an offer to one or more shareholders to acquire shares, other than in accordance with paragraph (a), if

(i) all shareholders have consented in writing to that offer; or

(ii) such an offer is expressly permitted by the constitution, and the procedure set out in section 51 [Special offers to acquire shares] is followed.

(2) 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 not available 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;

and any such resolution must set out full reasons for the directors' conclusions.

(3) The directors who vote in favour of a resolution required by subsection (2) must sign a certificate as to the matters set out in subsection (2), which may be combined with the
certificate required by section 42 [Board may authorise a
distribution] and any certificate required under section 51
[Special offers to acquire shares].

(4) Every director who fails to comply with subsection (3) may
be convicted of an offence under section 277 (1) [Failure to
comply with Act].

51 Special offers to acquire shares

(1) The board may make an offer under section 50 (1) (b) (ii)
[Board may make offer to acquire shares] only if it has
previously resolved
(a) that the acquisition in question 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;

and any such resolution must set out full reasons for the
directors' conclusions.

(2) The directors who vote in favour of a resolution required
by subsection (1) must sign a certificate as to the matters
set out in subsection (1).

(3) Before an offer is made pursuant to a resolution under
subsection (1), the company must send each shareholder a
disclosure document which complies with section 52
[Disclosure document].

(4) The offer may be made not less than 10 and not more than
30 working days after the disclosure document has been
sent to each shareholder.

(5) A shareholder, the company or any creditor of 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.

(6) Every director who fails to comply with subsection (2) may
be convicted of an offence under section 277 (1) [Failure to
comply with Act].

215
52 Disclosure document

The document to be sent to all shareholders by way of disclosure pursuant to section 48 (3) [Cross-holdings] must set out

(a) the nature and terms of the offer, and if made to specified shareholders, to whom it will be made; and

(b) the text of the resolution required by section 48 (1) [Cross-holdings], 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.

53 Cancellation of shares re-purchased

(1) Any shares acquired by a company pursuant to section 49 [Acquisition of company's own shares] shall immediately upon acquisition be deemed to be cancelled.

(2) Shares are acquired for the purposes of subsection (1) on the date upon which the company would, apart from this section, become entitled to exercise the rights attached to the shares.

(3) Where a share is cancelled under this section

(a) all the rights and privileges attached to that share expire; but

(b) the constitution of the company is not affected, and the share may be reissued in accordance with this Part.

54 Enforceability of contract to re-purchase 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 cannot perform the contract without thereby being in breach of section 42 [Board may authorise a distribution].

(2) In any action brought on a contract referred to in subsection (1), the company has the burden of proving that performance of that contract is prevented by section 42 [Board may authorise a distribution].
(3) Until the company has fully performed a contract referred to in subsection (1), the other party 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.

Redemption of shares

55 Redemption at the option of the company
Where a share is redeemable at the option of the company, any such redemption shall be deemed to be an acquisition of the share for the purposes of sections 50 to 53.

56 Redemption at the option of the shareholder
(1) Where a share is redeemable at the option of the holder of the share, and the holder gives proper notice to the company requiring the share to be redeemed, the company shall redeem the share upon the date specified in the notice, or if none upon the date of receipt of the notice, and as of the date of redemption the share is deemed to be cancelled and the shareholder ranks as an unsecured creditor of the company in respect of the sum specified in the constitution as being payable upon such redemption.

(2) Notwithstanding subsection (1), any sum payable upon redemption is deemed to be a distribution for the purposes of section 46 [Recovery of distributions].

57 Redemption upon a fixed date
(1) Where a share is redeemable upon a date specified in the constitution, the company shall redeem the share upon that date, and as of that date the share is deemed to be cancelled and the holder of the share ranks as an unsecured creditor of the company in respect of the sum specified in the constitution as being payable upon such redemption.
(2) Notwithstanding subsection (1), a sum payable upon redemption is deemed to be a distribution for the purposes of section 46 [Recovery of distributions].

**Assistance by a company in the purchase of its own shares**

58 **Financial assistance**

(1) Subject to section 42 [Board may authorise a distribution] a company may give financial assistance by means of a loan, guarantee, the provision of security or otherwise to any person for the purpose of or in connection with the purchase of any share issued or to be issued by the company, whether directly or indirectly, only if either

(a) the company
   (i) gives the financial assistance in the ordinary course of business and on usual terms and conditions; and
   (ii) receives fair value in connection with the assistance; or

(b) the financial assistance is given in accordance with subsection (3), and either
   (i) all shareholders have consented in writing to the giving of the assistance; or
   (ii) the procedure set out in section 59 [Special financial assistance] is followed.

(2) Financial assistance given under subsection (1) (a) is deemed not to be a distribution for the purposes of this Act.

(3) Financial assistance given otherwise than under subsection (1) (a) is deemed to be a distribution in respect of the shares purchased, or to be purchased, whether or not the person to whom the assistance is given holds or acquires shares in the company at the time the assistance is given.

(4) A company may give financial assistance under subsection (1) (b) if the board has previously resolved that

(a) the company should provide the assistance; and

(b) the giving of such 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; and any such resolution must set out full reasons for the board's conclusions.

(5) The directors who vote in favour of a resolution required by subsection (4) must sign a certificate as to the matters set out in subsection (4), and that certificate may be combined with the certificate required under section 42 [Board may authorise a distribution] and any certificate required under section 59 [Special financial assistance].

(6) For the purpose of determining whether financial assistance may be given under section 42 [Board may authorise a distribution], “assets” is to be taken to exclude the amount of any financial assistance in the form of a loan; and “liabilities” includes the face value of any liability, whether contingent or otherwise, incurred in connection with the giving of the assistance.

(7) Every director who fails to comply with subsection (5) may be convicted of an offence under section 277 (1) [Failure to comply with Act].

59 Special financial assistance

(1) Financial assistance may be given under section 58 (1) (b) (ii) [Financial assistance] 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;

and any such resolution must set out full reasons for the directors' conclusions.

(2) The directors who vote in favour of a resolution required by subsection (1) must sign a certificate as to the matters set out in subsection (1).

(3) Before assistance is given under section 58. (1) (b) (ii) [Financial assistance], the company must send each
shareholder a disclosure document which complies with section 60 [Disclosure document].

(4) The assistance may be given not less than 10 and not more than 30 working days after the disclosure document has been sent to each shareholder.

(5) A shareholder, the company or any creditor of the company, may apply to the Court for an order restraining the proposed financial assistance on the grounds 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.

(6) Every director who fails to comply with subsection (2) may be convicted of an offence under section 277(1) [Failure to comply with Act].

60 Disclosure document

The document to be sent to all shareholders by way of disclosure pursuant to section 59 (4) [Special financial assistance] must set out
(a) the nature and terms of the assistance to be given, and to whom it will be given; and
(b) the text of the resolution required by section 59 (2) [Special financial assistance], 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.

61 Enforceability of prohibited transactions

(1) A failure to comply with the provisions of section 58 [Financial assistance] does not affect the validity of any transaction, but has the consequences set out in section 135 [Prejudiced shareholders].
(2) This section does not affect any liability of a director or any other person for breach of any duty, or as a constructive trustee, or otherwise.

Statement of shareholder rights

62 Statement of shareholder rights

(1) Every shareholder is entitled to be issued by the company, upon request, with a statement of the number of shares held by him or her, and the rights, privileges, conditions and limitations, including restrictions on transfer, attached to his or her shares; and their relative position in relation to other classes of shares (if any).

(2) The company is not obliged to provide a shareholder with a statement under subsection (1) if
(a) such a statement has been provided within the previous six months; and
(b) the shareholder has not acquired or disposed of shares since the previous statement was issued; and
(c) the rights attached to shares of the company have not been altered since the previous statement was issued; and
(d) there are no special circumstances which would make it unreasonable for the company to refuse the request.

(3) No person other than the shareholder to whom a statement is issued under this section is entitled to rely on that statement as evidence of title to the shares or of any of the matters set out in the statement, or otherwise.

(4) If a company fails to comply with subsection (1)
(a) the company may be convicted of an offence under section 277 (1) [Failure to comply with Act]; and
(b) every director of the company may be convicted of an offence under section 278 (1) [Liability of directors for failure by board or company].
Transfer of shares

63 Transfer of shares

(1) Shares which are transferable are transferable by entry of the name of the transferee on the share register.

(2) Where shares are to be transferred, a form of transfer signed by the present holder of the shares must be delivered to the company.

(3) The form of transfer required by subsection (2) must be signed by the transferee if registration as holder of the shares imposes any liability to the company on the transferee.

(4) Upon receipt of a form of transfer in accordance with subsection (2), the company must forthwith enter 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 full reasons for so doing; and

(b) notice of the resolution, including reasons, is sent to the transferor and to the transferee within five working days of its approval 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 where the holder of the shares has failed to pay to the company any 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 share in accordance with the constitution.

(6) If a company fails to comply with subsection (4)

(a) the company may be convicted of an offence under section 277 (1) [Failure to comply with Act]; and

(b) every director of the company may be convicted of an offence under section 278 (1) [Liability of directors for failure by board or company].
64 Permissible dealings with non-transferable shares

Shares which are non-transferable may not be voluntarily transferred to any person by the holder of the shares, but may pass by transmission or by operation of law, or may be repurchased or redeemed by the company in accordance with this Act unless the constitution of the company provides otherwise.

Share register

65 Company to maintain share register

(1) Every company must maintain a share register in which it records the shares issued by the company, showing whether the shares are transferable or non-transferable, and with respect to each class of shares the share register must state

(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;

(b) the number of shares of that class held by each shareholder;

(c) the date and particulars of the issue and transfer within the last 10 years of each share.

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

(a) the company may be convicted of an offence under section 277(2) [Failure to comply with Act]; and

(b) every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

66 Place of register

(1) A company may appoint an agent to maintain the share register of the company.

(2) The share register must be kept at the registered office of the company, provided that

(a) if the maintenance of the register is carried out at another office of the company in New Zealand, it may be kept at that other office; and
(b) if the company arranges with some other person to maintain the register on behalf of the company, it may be kept at the office in New Zealand of that other person at which the work is done.

(3) If a share register is not kept at the registered office of the company, or if the place at which it is kept is changed, the company must ensure that within 10 registration days of it first being kept elsewhere or moved, as the case may be, notice is received by the Registrar of the place where the share register is kept.

(4) If a company fails to comply with subsection (3)
   (a) the company may be convicted of an offence under section 277 (2) [Failure to comply with Act]; and
   (b) every director of the company may be convicted of an offence under section 278 (2) [Liability of directors for failure by board or company].

67 Share register determines legal title

(1) Subject to section 69 [Power of Court to rectify share register], the entry of the name of a person in the share register as holder of a share is effective to vest legal title to that share in that person.

(2) A company may treat the registered holder of a share as the person exclusively entitled to vote, to receive notices, to receive any distribution in respect of the share, and otherwise to exercise all the rights and powers of an owner of the share.

68 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 the share register, in accordance with section 63 [Transfer of shares].

(2) Every director who fails to comply with subsection (1) may be convicted of an offence under section 277 (2) [Failure to comply with Act].
Power of Court to rectify share register

(1) If the name of any person is wrongly entered in or omitted from, or wrongly continues to be entered in the share register of a company, the person aggrieved, or any shareholder, may apply to the Court for rectification of the share register or for compensation for any loss sustained, or both.

(2) Where an application is made under this section, the Court may order rectification of the register and payment of compensation by the company or any director for any loss sustained by any party aggrieved.

(3) On an application under this section the Court may decide any question relating to the entitlement of any person who is a party to the application to have his or her name entered in or omitted from the share register, and generally may decide any question necessary or expedient to be decided for rectification of the share register.

Trusts not to be entered on register

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

Share certificates

Share certificate may be issued

(1) Subject to the constitution of the company, a shareholder may apply to the company for a certificate relating to some or all of his or her shares in the company.

(2) Upon receipt of an application for a share certificate under this section, the company must forthwith

(a) 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;

(b) send to the shareholder a certificate stating

(i) the name of the company;

(ii) the class of shares represented by the certificate;
(iii) the number of shares represented by the certificate.

(3) Notwithstanding section 63(3) [Transfer of shares], where a share certificate has been issued which relates to a parcel of shares, a transfer of that parcel may not be registered by the company unless the form of transfer required by section 63(2) [Transfer of shares] is accompanied by the share certificate relating to that parcel, or by evidence as to its loss or destruction and, if required, an indemnity to the satisfaction of the board.

(4) Where a parcel of shares to which a share certificate relates is 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 without a specific request by the transferee.

PART 6
SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS

72 Meaning of “shareholder”
In this Act, the term “shareholder” means, in relation to a company
(a) any person registered on the share register as the owner of one or more shares in the company; and
(b) any person named as a shareholder in the constitution at the time of incorporation of the company, until such time as his or her name is entered on the share register.

Liability of shareholders

73 Liability of shareholders
(1) Subject to section 26 [Rights attached to shares], a shareholder is not liable for any obligation of the company by virtue only of his or her status as shareholder.

(2) The liability of a shareholder to the company is limited to
(a) any liability expressly provided for in the constitution, including any amount unpaid on any share held by the shareholder; and
(b) any liability under section 80 (2) [Liability of shareholders in respect of exercise of powers]; and
(c) any distribution received by the shareholder to the extent that the distribution is recoverable under section 46 [Recovery of distributions].

(3) The constitution of a company may provide that the liability of the shareholders to the company is unlimited.

(4) For the avoidance of doubt
(a) where
(i) all or part of the consideration for the issue of a share remains unsatisfied; and
(ii) the person to whom the share was issued no longer holds that share the person to whom the share was issued continues to be liable in respect of the unsatisfied consideration, and no liability in respect of that unsatisfied consideration attaches to subsequent holders of the share;
(b) where the constitution provides that 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 no such liability attaches to prior holders of the share.

(5) Nothing in this section affects a shareholder’s liability to the company on any contract (including a contract for the issue of shares) or for any tort or breach of fiduciary duty or other actionable wrong committed by him or her.

74 Liability of personal representative

(1) The liability of an executor, administrator or trustee of the estate of a deceased person, who is registered as the holder of a share comprised in that estate, shall, in respect of that share, not exceed the value of any assets which, at the time when any demand is made for the satisfaction of any such liability, are held by that executor, administrator or trustee upon the same trusts as are applicable to that share.
(2) For the purposes of this section “trust” extends to the duties of a personal representative, and “trustee” has a corresponding meaning.

75 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, shall, in respect of that share, not exceed the value of any property of the bankrupt which, at the time when any demand is made for the satisfaction of any such liability, is vested in the assignee.

(2) In this section, “assignee” means the assignee in whom the property of a bankrupt is vested pursuant to the Insolvency Act 1967.

Powers of shareholders

76 Exercise of powers reserved to shareholders

Powers reserved to the shareholders of a company by this Act or by the constitution may be exercised either at a meeting of shareholders pursuant to sections 90 [Annual meetings of shareholders] and 91 [Special meetings of shareholders], or by a resolution in lieu of meeting pursuant to section 92 [Resolution in lieu of meeting].

77 Simple majority of shareholders to exercise powers

Unless otherwise specified in this Act or the constitution of a company, any power reserved to shareholders may be exercised by an ordinary resolution, being a simple majority of the votes of those shareholders entitled to vote and voting on the matter.

78 Powers exercised by special resolution

(1) Notwithstanding any provision in the constitution of a company, when shareholders exercise a power

(a) to approve any alteration to the constitution; or
(b) to approve a major transaction; or
(c) to approve an amalgamation; or
(d) to approve the liquidation of the company;
that power may be exercised only by a special resolution.

(2) Any decision made by a special resolution pursuant to
subsection (1) may be rescinded only by a special
resolution.

79 Management review by shareholders
Notwithstanding section 98 [Management of company] or any
provision in the constitution of a company
(a) any shareholder may question or discuss the
management of a company at a meeting of
shareholders of the company; and
(b) a meeting of shareholders may pass a resolution
relating to the management of a company (with every
shareholder of the company having one vote per
share), but no such resolution shall be binding on the
board unless this Act or the constitution of the
company expressly provides otherwise.

80 Liability of shareholders in respect of exercise of powers
(1) A shareholder voting on the exercise of any of the powers
set out in section 26 (2) (a) [Rights attached to shares] does
not owe any duty to the company or to any other person
and does not incur any liability in respect of the exercise of
or failure to exercise votes to which that shareholder is
entitled.

(2) If the constitution of a company
(a) confers any power on shareholders which would
otherwise fall to be exercised by the board; or
(b) requires any director or the board to exercise or
refrain from exercising a power in accordance with a
decision or direction of shareholders;
the shareholders who vote on or control
the exercise of that power; or
(d) the decision or direction that the power should be or
should not be exercised;
are deemed to be directors for the purposes of sections 101
to 107.
(3) Nothing in this section affects any liability arising out of a contract or other obligation expressly entered into by a shareholder.

Minority buy-out rights

81 Minority buy-out rights

Where

(a) a shareholder is entitled to vote on the exercise of one of the powers set out in

(i) section 78 (1) (a) [Powers exercised by special resolution], and the proposed alteration removes any restriction on the activities of the company; or

(ii) section 78 (1) (b) and (c) [Powers exercised by special resolution]; and

(b) he or she cast all the votes to which he or she was entitled against the exercise of the power; and

(c) the shareholders resolve pursuant to section 78 [Powers exercised by special resolution] to exercise the power;

that shareholder is entitled to require the company to purchase his or her shares, in accordance with section 82 [Procedure for buy-out].

82 Procedure for buy-out

(1) Any shareholder entitled to require the company to purchase shares by virtue of section 81 [Minority buy-out rights] or section 88 [Alteration of shareholder rights] may within 10 working days of the announcement of the result of the vote in question or the company becoming entitled to take the action, as the case may be, give a written notice to the company requiring it to purchase all his or her shares in the company.

(2) Within 20 working days of receiving a notice under subsection (1), the board must either

(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 exempting the company from minority buy-out under section 85 [Exemption from buy-out] or section 86 [No buy-out if insolvent]; or
(d) arrange for the resolution to be rescinded, in accordance with section 78 (2) [Powers exercised by special resolution], or decide in the appropriate manner not to take the action concerned, as the case may be.

83 Purchase by company

(1) If the board agrees to purchase shares in accordance with section 82 (2) (a) [Procedure for buy-out], the company must pay a fair and reasonable price for the shares.

(2) Within five working days of agreeing to purchase shares, the board must nominate a fair and reasonable price for the shares to be acquired, and must give notice of the price to the holders of those shares.

(3) If a shareholder considers that the price nominated by the board is not fair and reasonable, he or she must forthwith give notice of objection to the company.

(4) If within 10 working days of giving notice to shareholders under subsection (2), no objections to the price have been received by the company, the company must purchase all the shares concerned at the nominated price.

(5) If within 10 working days of giving notice to shareholders under subsection (2), an objection to the price has been received by the company, the company must
   (a) refer the price to arbitration forthwith; and
   (b) within five working days, pay an interim price in respect of each share equal to the price nominated by the board.

(6) Any reference to arbitration under this section is deemed to be a “submission” for the purposes of the Arbitration Act 1908.

(7) The arbitrator must expeditiously determine a fair and reasonable price for the shares to be purchased. If the price
determined equals or exceeds the interim price, the company must purchase the shares at the price determined, and must forthwith pay any balance owing to shareholders. If the price determined is less than the interim price paid, the company must purchase the shares at the price determined, and may recover the excess paid to shareholders.

(8) The arbitrator may award interest on any balance payable or excess to be repaid under subsection (7) at such rate as he or she thinks fit taking into account the reasonableness of the interim price paid and of the reference to arbitration, and may provide for interest to be paid to or payable by some or all of the shareholders whose shares are to be purchased.

84 Purchase by third party

(1) If the company arranges for another person to agree to purchase shares in accordance with subsection 78(2)(b) [Powers exercised by special resolution], that person must agree to purchase the shares at a fair and reasonable price.

(2) The price to be paid by the purchaser shall be determined under section 83 [Purchase by company], as if the company were to purchase the shares, save that

(a) any payment which that section requires to be made by the company must be made by the third party; and

(b) the shares must be purchased by the third party and not by the company; and

(c) any excess paid to shareholders may be recovered by the third party and not by the company.

(3) The company must indemnify the holders of the shares to be purchased in respect of any failure by the intended purchaser to purchase the shares at the price nominated or fixed by the arbitrator, as the case may be.

85 Exemption from buy-out

(1) Where a shareholder seeks to exercise minority buy-out rights, a company may apply to the Court for an order that it should be exempted from the requirement to purchase his or her shares on the grounds that
(a) such a purchase would be disproportionately damaging to the company; or
(b) the company cannot reasonably be required to fund the repurchase; or
(c) the shareholder's notice was not given in good faith or was frivolous or vexatious.

(2) Upon an application under this section, the Court may order that the company should not purchase the shares, and may make such further order as it thinks fit, including, without limiting the generality of this provision, an order that
(a) any resolution of the shareholders be set aside;
(b) the company should refrain from taking or should take certain action;
(c) compensation be paid by the company to the shareholders affected;
(d) the company be put into liquidation.

(3) No company may seek an exemption from buy-out on the grounds set out in paragraphs (a) or (b) of subsection (1) unless it can satisfy the Court that it has made reasonable endeavours to arrange a sale of the shares to a third party.

86 No buy-out if insolvent

(1) If
(a) one or more shareholders seek to exercise buy-out rights; and
(b) the company has made reasonable endeavours to arrange the purchase of their shares by a third party; and
(c) the board considers that if the company purchases those shares which are not to be purchased by a third party, it will not satisfy the solvency test;
the board must apply to the Court for an order under this section.

(2) If an application is made under this section, the Court shall order that the company must not purchase the shares, and the Court may make such further order as it thinks fit, including without limiting the generality of this provision,
any order that might be made under section 85 (2) [Exemption from buy-out].

Interest groups

87 Classes and interest groups
In this Act
“class” means a class of shares comprising all those 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 an interest group of shareholders, and each interest group comprises the holders of shares whose affected rights are identical. In relation to any action or proposal there may be one or more interest groups, and each interest group will comprise the holders of one or more classes.

88 Alteration of shareholder rights
(1) No action may be taken by a company which affects the rights attached to any 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 any voting rights and rights to distributions attached to the share;
(b) pre-emptive rights in accordance with section 36 [Pre-emptive rights];
(c) the right that any acquisition of shares by the company be made in accordance with section 50 (1) (a) [Board may make offer to acquire shares], unless the constitution otherwise permits;
(d) 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, duly observed by the company;
(e) the right that any procedure required by the constitution for the amendment or alteration of rights not be amended or altered itself.

(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 shareholders’ pre-emptive rights.

(4) Where an interest group by special resolution approves the taking of action by a company, and the company becomes entitled to take that action, a shareholder belonging to that interest group who voted against approval of the action is entitled to require the company to purchase the shares voted by him or her, pursuant to section 82 [Procedure for buy-out].

89 Failure to seek interest group approval
If action is taken by a company which required the approval of an interest group under section 88 [Alteration of shareholder rights], and that approval was not obtained, that action
(a) is not for that reason invalid; but
(b) is deemed to be conduct which is unfairly prejudicial to the members of that interest group, and the court is not precluded by paragraph (a) from setting it aside.

Meetings of shareholders

90 Annual meetings of shareholders
The board of a company must call an annual meeting of all shareholders to be held
(a) not later than six months after the balance date in each calendar year; and
(b) at a time such that not more than 15 months will elapse between one annual meeting and the following annual meeting.

91 Special meetings of shareholders

(1) A special meeting of shareholders entitled to vote on one or more issues may be called to consider those issues at any time by the directors or any other person authorised to do so by the constitution.

(2) Such a meeting must be called by the board upon a request being made by written notice to the board signed by persons holding the right to exercise not less than 5 percent of the votes entitled to be cast on the issues set out in the notice as to be discussed at the special meeting.

92 Resolution in lieu of meeting

(1) A resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of those shareholders.

(2) A resolution in writing dealing with all matters to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

93 Meeting called by Court

If for any reason

(a) it is impracticable to call a meeting of shareholders in the manner prescribed by this Act or the constitution or to conduct the meeting in the manner prescribed; or

(b) it is in the opinion of the Court in the interests of the company that a meeting be held;

the Court may, on application by a director, shareholder or creditor of a company, order a meeting to be called or conducted in such manner as the Court directs and upon such terms as to the costs of the meeting and as to security for those costs as the Court may think fit.
Proceedings at meetings

The provisions set out in the First Schedule govern proceedings at meetings of shareholders.

Date for determining shareholder entitlements

Determination of shareholders entitled to receive distributions, attend meetings etc

(1) For the purpose of determining shareholders
   (a) entitled to receive a distribution; or
   (b) entitled to pre-emptive rights in respect of an issue; or
   (c) for any other purpose except the right to receive notice of or to vote at a meeting,

   the board may fix in advance a date on which the shareholders of the company are to be determined, provided that the date fixed may not precede by more than 40 working days the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the board may fix in advance a date on which the shareholders of the company are to be determined, provided that the date fixed may not precede by more than 40 working days or by less than 15 working days the date on which the meeting is to be held.

(3) If no date is fixed by the board under subsections (1) or (2)
   (a) the date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be
      (i) at the close of business on the day immediately preceding the day on which the notice is given; or
      (ii) if no notice is given, the day on which the meeting is held; and
   (b) the date for the determination of shareholders for any purpose except determining the right to receive notice of or to vote at a meeting shall be at the close
of business on the day on which the board passes the resolution relating thereto.

PART 7
DIRECTORS AND THEIR POWERS AND DUTIES

96 Meaning of “director”

(1) In this Act, the term “director”, in relation to a company, includes

(a) any person occupying the position of director of the company by whatever name called; and
(b) for the purposes of sections 97, 101–110, 112, 113 and 226,
   (i) a person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act; and
   (ii) a person who is entitled to exercise or control the exercise of powers which, apart from the constitution of the company, would fall to be exercised by the board;
(c) for the purposes of sections 101–113 and 226, any person to whom any power or duty of the board has been directly delegated by the board with that person’s consent or acquiescence, and any person who exercises any such power or duty with the consent or acquiescence of the board; and
(d) for the purposes of sections 112 [Use of company information or opportunity] and 113 [Directors’ share dealings]
   (i) 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 director; and
   (ii) any employee of the company to the extent that he or she receives information concerning the company or its activities on the basis that it is to be kept confidential.
(2) Paragraphs (b) to (d) of subsection (1) do not include a person to the extent that the person acts only in a professional capacity.

97 Meaning of “board”

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

(a) directors of the company of a number not less than the required quorum, acting together as a board of directors; or

(b) if the constitution provides that a company has only one director, that director.

Powers of management

98 Management of company

The business and affairs of a company shall be managed by or under the direction of the board of the company who shall have all powers necessary for that management except to the extent that the constitution or this Act expressly requires those powers to be exercised by the shareholders or any other person.

99 Major transactions

(1) A company may not enter into a major transaction (as defined in subsection (2)) unless the transaction is

(a) of a kind expressly permitted by the constitution of the company; or

(b) approved by special resolution or contingent upon 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 otherwise) assets equivalent to the greater part of the assets of the company before the acquisition; or
(b) the disposition of (or an agreement to dispose of, whether contingent or otherwise) the whole or the greater part of the assets of the company.

100 Delegation of powers

(1) Subject to this Act and to any restrictions in the constitution of the company, the board of a company may delegate, either formally or informally (including by course of conduct), to a committee of directors, any director or employee of the company, or any other person any one or more of its powers other than its powers under the following sections:

(a) section 17 [Registered names]
(b) section 34 [Issue decided on by board]
(c) section 39 [Consideration for issue to be decided on by board]
(d) section 42 [Board may authorise a distribution]
(e) section 44 [Shares in lieu of dividend options]
(f) section 45 [Shareholder discounts]
(g) section 50 [Board may make offer to acquire shares]
(h) section 51 [Special offers to acquire shares]
(i) section 58 [Financial assistance]
(j) section 59 [Special financial assistance]
(k) section 63 (4) [Transfer of shares]
(l) section 146 [Change of registered office]
(m) section 151 [Change of address for service]
(n) section 190 [Manner of approving amalgamation proposal]
(o) section 191 [Short form amalgamation].

(2) A board that delegates any power under subsection (1) is responsible for every exercise of the power by the delegate, as if the power was exercised by the board, unless the board

(a) believes on reasonable grounds at all times before the exercise of the power that the delegate will 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

101 Fundamental duty
The fundamental duty of every director of a company, when exercising powers or performing duties as a director, is to act in good faith and in a manner that he or she believes on reasonable grounds is in the best interests of the company.

102 Existing shareholders
A director of a company must not, when exercising powers or performing duties as a director, act or agree to the company acting in a manner that unfairly prejudices or unfairly discriminates against any existing shareholder of the company, unless the director believes on reasonable grounds that the duty set out in section 101 [Fundamental duty] requires him or her to do so.

103 Creditors and employees
A director of a company may, when exercising powers or performing duties as a director, have regard to the interests of creditors and employees of the company, but nothing in this section limits the duties or obligations of directors set out in this Act.

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

105 Solvency
(1) A director of a company must not agree to the company entering into a contract or arrangement or acting in any other manner unless he or she believes at that time on reasonable grounds that the act concerned does not
involve an unreasonable risk of causing the company to fail to satisfy the solvency test.

(2) A director of a company must not agree to the company incurring an obligation unless he or she believes at that time on reasonable grounds that the company will be able to perform the obligation when required to do so.

106 Standard of care of directors
Every director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence and skill reasonably to be expected of a director acting in like circumstances.

107 Use of information and advice
Every director of a company, when exercising powers or performing duties as a director, may accept as correct, reports, statements, financial data and other information prepared, and professional or expert advice given, by any of the following persons to the extent only that the director acts in good faith, after reasonable inquiry when the need for inquiry is indicated by the circumstances, and without knowledge that would cause such acceptance to be unwarranted:

(a) any employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;

(b) any professional or expert person 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.
Self-interested transactions

108 Meaning of "interested"

(1) Subject to subsection (2), for the purposes of this Act, a director of a company is to be treated as 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 a related company of the company); or

(d) is the parent, child, or spouse 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 to be treated as interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of any security to a third party which is unconnected 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.

(3) Sections 109 [Disclosure of interest] and 110 [Transactions may be avoided] do not apply

(a) to any remuneration or other benefit given to a director in accordance with section 124 [Remuneration and other benefits]; or

(b) to any indemnity given or insurance provided in accordance with section 125 [Indemnity and insurance].
109 Disclosure of interest

(1) A director of a company who is interested in a transaction or proposed transaction with the company, must forthwith after becoming aware of the transaction or proposed transaction cause to be entered in the interests register, and disclose to the board of the company, the nature and extent of the director's interest.

(2) For the purposes of subsection (1), a general notice entered in the interests register or 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 any such transaction.

(3) A failure by a director to comply with subsection (1) does not affect the validity of any transaction entered into by the company or the director, but the director may be convicted of an offence under section 277(2) [Failure to comply with Act].

110 Transactions may be avoided

(1) A transaction entered into by the company in which a director of the company is in any way interested may be avoided by the company within three months of the transaction being disclosed to all the shareholders (whether by means of the company's annual report or otherwise), unless the company receives fair value under the transaction.

(2) For the purposes of subsection (1), the question whether a company receives fair value under a transaction shall 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.

(3) 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.

(4) For the purposes of subsection (1)
(a) where a person seeking to uphold a transaction knew of the director’s interest at the time the transaction was entered into, the onus of establishing fair value is on that person;
(b) in any other case, the company has the onus of establishing that it did not receive fair value.

(5) Subject to subsection (1) and to the constitution of a company, no transaction entered into by the company in which a director is interested shall be liable to be avoided, nor shall any director be liable to account to the company for any profit realised by any such transaction by reason only of such interest.

(6) The avoidance by a company of any transaction under this section 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 of the transaction under which the second-mentioned person acquired the property from the company.

111 Interested director may vote etc
Subject to the constitution of a company, a director of the company who is interested in a transaction entered into or to be entered into by the company may
(a) vote in respect of the transaction; and
(b) attend any meeting of directors and be included amongst the directors present for the purpose of a quorum; and
(c) sign any documents 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 he or she was not so interested.

112 Use of company information or opportunity
(1) Where a director of a company 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), the director must not disclose that information to any person, or use or act on the basis of that information, other than
(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 accordance with section 109 [Disclosure of interest].

(2) A director of a company may disclose any information to any person who is named in the interests register as a person in accordance with whose directions or instructions the director may be required or is accustomed to act in respect of his or her duties and powers as director.

(3) A director of a company may disclose, use, or act on the basis of any information if particulars of such disclosure, use, or act are entered in the interests register and the director is authorised to do so by the board and the company receives fair value in respect of the disclosure, use, or act.

(4) In this section, the term “director” includes the persons referred to in section 96 (1) (d) [Meaning of “director”].

113 Directors' share dealings

(1) A director of a company who acquires or disposes of shares or other securities issued by the company or a related company, or a direct or indirect interest in such shares or other securities, must
(a) forthwith after the acquisition or disposal is made, disclose to the board the number and type of shares acquired or disposed of, the consideration paid or received therefor and the date of acquisition or disposal; and
(b) ensure that particulars of the acquisition or disposal are forthwith entered in the interests register.

(2) Where 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) and that information
is material to an assessment of the value of the shares or other securities issued by the company or a related company, the director may acquire or dispose of any such shares or other securities, or a direct or indirect interest therein, only if

(a) in the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the securities or interest acquired; or

(b) in the case of a disposition, the consideration received for the disposition is not more than the fair value of the securities or interest disposed of.

(3) For the purposes of subsection (2), the fair value of any securities or interest therein is to be arrived at on the basis of all information known to the director or publicly available.

(4) Subsection (2) shall not apply in respect of any security or interest acquired or disposed of by a director only as a nominee for the company or any related company.

(5) For the purposes of this section and without limiting the meaning of the term "interest", a director of a company has an interest in securities if another body corporate holds or has an interest in them and either

(a) that body corporate, or its board, are accustomed or required to act in accordance with the director's directions or instructions; or

(b) the director is entitled to exercise or control the exercise of one-third or more of the voting power at a meeting of that body corporate.

(6) In this section, the term "director" includes the persons referred to in section 96 (1) (d) [Meaning of "director"].

Appointment and removal of directors

114 Number of directors

Every company must have at least one director.
115 Qualifications of directors

(1) Any 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 becoming or remaining as a director of a company:
   (a) anyone who is under 20 years of age;
   (b) anyone who is an undischarged bankrupt;
   (c) anyone who has been convicted in the immediately preceding five years of an offence:
       (i) under this Act, the Companies Act 1955, or the Securities Act 1978; or
       (ii) involving dishonesty as defined in section 3(1) [Interpretation] of the Crimes Act 1961, unless the leave of the Court is obtained;
   (d) anyone who is subject to a disqualification order made under section 282 [Disqualification of director]
   (e) anyone who is subject to a property order made under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988;
   (f) in relation to any particular company, a person who does not comply with any qualification for directors contained in the constitution of that company;
   (g) any person who is not a natural person.

(3) Any person who is disqualified from being a director but nevertheless acts as a director shall be a director for the purposes of any provision of this Act imposing liability on directors.

116 Director's consent required

No person shall be appointed as a director of a company unless he or she has signed a consent to act as such in the prescribed form.

117 Appointment of first and succeeding directors

(1) Every person named as a director in an application for incorporation or registration or an amalgamation proposal is a director from the date of incorporation or registration until that person ceases to hold office as such in accordance with this Act.
Subject to the constitution of a company, succeeding directors of the company shall be appointed by ordinary resolution.

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

any shareholder or creditor of the company may apply to the Court to appoint one or more persons as directors of the company, and the Court may make any such appointment if it considers that it is in the best interests of the company to do so, and on such terms and conditions as the Court thinks fit.

118 Appointment of directors to be voted on individually

Subject to the constitution of a company, a motion at a meeting of shareholders for the appointment of two or more persons as directors of the company by a single resolution may not be made unless a resolution that it shall be so made has first been passed without any vote being given against it.

A resolution moved in contravention of subsection (1) is void, whether or not its being so moved was objected to at the time, provided that
(a) this subsection shall not be taken as excluding the operation of section 121 [Validity of director's acts];
(b) where a resolution so moved is passed, no provision for the automatic reappointment of retiring directors in default of another appointment shall apply.

Nothing in this section shall be deemed to prevent the election of two or more directors by ballot or poll.

119 Removal of directors

Subject to the constitution of a company, any director of the company may be removed by ordinary resolution passed at a meeting called for the purpose or for purposes including that
removal, and the purpose of removal must be stated in the notice of the meeting.

120 Director ceasing to hold office
(1) An 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 115 [Qualifications of directors]; 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 as such by signing a written notice of resignation and delivering it to the address for service of the company and any such notice shall be effective from the time of receipt at the address for service of the company or from such later time as is specified in the notice.

(3) Notwithstanding vacation of an office of director, a person who held that office remains liable under the provisions of this Act imposing liabilities on directors, in relation to all acts done and decisions made while that person was a director.

121 Validity of director's acts
The acts of any person as director are valid notwithstanding any defect that may afterwards be discovered in the person's appointment or qualification.

122 Notification to Registrar of directors
(1) The board of a company must ensure that, within 20 working days of a change in directors of the company, notice of the change in the prescribed form is received by the Registrar.

(2) A notice to the Registrar of a change in directors of a company must
(a) include the full name and residential address of every person who is a director of the company from the date of the notice; and
(b) have attached the consents to act of any new directors under section 116 [Director's consent required].

(3) If the board of a company fails to comply with subsections (1) or (2), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

Miscellaneous provisions relating to directors

123 Proceedings of board

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

124 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 making of payments by the company to a director by way of remuneration for his or her services as such or in any other capacity or by way of compensation for loss of office; and
(b) the making of payments by the company to a director by way of loan; and
(c) the giving of guarantees by the company for debts incurred by directors; and
(d) entry into a contract to do any of the things set out in paragraphs (a), (b) and (c);

provided that the board is satisfied that the making of such payments or giving of such guarantees is fair to the company and particulars of the payment to or guarantee for the benefit of, or contract with, that director are entered in the interests register.

(2) The payment of remuneration, or any other benefit given to a director in accordance with a contract authorised
under subsection (1) need not be separately authorised under subsection (1).

(3) Directors who vote in favour of authorising a payment or guarantee or contract under subsection (1) must sign a certificate that in their opinion the making of the payment or giving of the guarantee or entry into the contract is fair to the company.

(4) Where a payment is made or guarantee given to which subsection (1) applies and either
(a) the procedures set out in subsections (1) and (3) have not been followed; or
(b) there did not exist reasonable grounds for the opinion set out in the certificate given under subsection (3);

the director to whom the payment is made or in respect of whom the guarantee is given, is personally liable to the company for the amount of the payment, or any amount paid by the company under the guarantee, except to the extent to which he or she proves that the payment or the guarantee was fair to the company at the time it was made or given.

125 Indemnity and insurance

(1) Except as provided in this section, no company may indemnify, or provide insurance for, any director or employee of the company in respect of any liability or costs incurred by him or her in any proceedings, and any indemnity given or insurance provided in breach of this section is void.

(2) A company may, if expressly authorised to do so by its constitution, indemnify or provide insurance for a director or employee of the company in respect of any costs incurred by him or her in any proceedings
(a) brought by the company against the director or employee in that capacity; and
(b) in which judgment is given in his or her favour, or he or she is acquitted, or relief is granted to him or her under section 137; [Court may grant relief].

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(3) A company may indemnify or provide insurance for a director or employee of the company in respect of any liability or costs incurred by him or her in any proceedings
(a) brought by any person other than the company against the director or employee in that capacity; and
(b) which do not result from a failure by the director or employee to act in good faith in a manner that he or she believes on reasonable grounds to be in the best interests of the company.

(4) The board of a company shall ensure that particulars of every indemnity given to or insurance provided for any director or employee of the company shall forthwith be entered in the interests register.

(5) In this section
“director” includes a former director;
“employee” includes a former employee;
“indemnify” includes relieve or excuse from liability;
“proceedings” includes civil, criminal and administrative proceedings.

PART 8
ENFORCEMENT

126 Injunction to restrain action

(1) Where a company or the board proposes to engage in any conduct that contravenes the constitution of the company or the Act, the company or any director, shareholder or creditor of the company may apply to the Court for an order restraining the company or the director, as the case may be, from so acting.

(2) Where the Court grants an order under subsection (1), it may grant such consequential relief as it thinks proper.

(3) No order may be made under this section in respect of any conduct or course of conduct that has been completed at the time the order is to be made.
127 Derivative actions

(1) Subject to subsection (2), a shareholder or director of a company may apply to the Court for leave to bring any proceedings in the name of and on behalf of the company or any of its subsidiaries, or intervene in proceedings to which the company or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the proceedings on behalf of the company or subsidiary, as the case may be.

(2) No proceedings may be brought and no intervention in proceedings may be made under subsection (1) unless the Court is satisfied that either

(a) the company or subsidiary does not intend to bring, diligently prosecute, defend or discontinue the proceedings, and it appears to be in the interests of the company or its subsidiary that the proceedings be brought, prosecuted, defended or discontinued; or

(b) it is in the interests of the company that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

(3) Notice of application for the leave of the Court under subsection (1) must be served on the company or subsidiary, which may appear and oppose the application, and which must advise the Court whether it intends to bring, prosecute, defend, or discontinue the proceedings.

(4) Save as provided in subsection (1), no shareholder shall be entitled to bring or intervene in any proceedings in the name of, or on behalf of, a company or its subsidiary.

128 Cost of derivative action to be borne by company

(1) Subject to subsection (2), where leave is granted under section 127 [Derivative actions] the Court may from time to time order that the whole or any part of the reasonable costs of bringing or intervening in the proceedings shall be borne by the company.

(2) The Court shall not make an order under subsection (1) in respect of the whole or any part of the costs of the
proceedings where it is of the opinion that it would be unjust or inequitable for the company to bear those costs.

(3) Any order made under subsection (1) may include an order that the company advance to the shareholder a sum in respect of costs to be incurred, on such terms and subject to the provision of such security for repayment as the Court may think fit.

129 Powers of Court where leave granted

In connection with any proceedings brought or intervened in under section 127 [Derivative actions] the Court may at any time make any order it thinks fit including, without limiting the generality of this provision, an order

(a) authorising the shareholder or any other person to control the conduct of the action;
(b) giving directions for the conduct of the action;
(c) requiring the company, or the directors, to provide information or assistance in relation to the action;
(d) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present shareholders of the company or its subsidiary instead of to the company or subsidiary.

130 Compromise or settlement of derivative action

No proceedings brought or intervened in under section 127 [Derivative actions] may be settled or compromised without the approval of the Court, which upon granting approval may make such order as it thinks fit as to costs, including an order requiring a shareholder to repay some or all of any sums advanced under section 128 (3) [Cost of derivative action to be borne by company].

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Personal actions

131 Personal action by shareholder against directors

(1) A shareholder may bring an action against a director in respect of any breach of a duty owed to him or her personally, but not
(a) in respect of a breach of a duty owed solely to the company; or
(b) where the only damage complained of is a diminution in or prevention of increase in the value of shares in the company as a result of loss suffered by or gain foregone by the company; except in accordance with section 127 [Derivative actions].

(2) The duties of directors set out in sections 68 [Directors' duty to supervise share register], 102 [Existing shareholders], 104 [Compliance with constitution and this Act] and 113 [Directors' share dealings] are duties owed to shareholders personally.

(3) The duties of directors set out in sections 48 [Crossholdings], 101 [Fundamental duty], 105 [Solvency], 109 [Disclosure of interest] and 112 [Use of company information or opportunity] are duties owed solely to the company.

(4) Notwithstanding subsection (3), a shareholder may apply to the Court for an order requiring the directors of a company to take any action required to be taken by them under the constitution or this Act and, the Court may, if it is in all the circumstances just and equitable to do so, make such an order and grant such consequential relief as it thinks fit.

132 Personal action by shareholder against company

(1) A shareholder may bring an action against the company in respect of any breach of a duty owed by the company to him or her personally.

(2) Notwithstanding subsection (1), a shareholder may apply to the Court for an order requiring the company to take any action required to be taken by it under its constitution
or this Act, and the Court may, if it is in all the circumstances just and equitable to do so, make such an order and grant such consequential relief as it thinks fit.

133 Representative actions

Where a shareholder brings an action 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 action, the Court may appoint that shareholder to represent all or some of the shareholders having the same or substantially the same interest, and may make such order as it thinks fit including, without limiting the generality of this provision, an order
   (a) as to the control and conduct of the action;
   (b) as to the costs of the action;
   (c) directing the distribution of any amount adjudged payable by a defendant in the action among those shareholders represented.

Standing of Attorney-General

134 Standing of Attorney-General

The Attorney-General may, where it is in his or her opinion in the public interest to do so, make an application under section 126 [Injunction to restrain action], 127 [Derivative actions], 133 [Representative actions], 138 [Information for shareholders] or 139 [Investigation of records] as if he or she were a shareholder in the company concerned.

Prejudiced shareholders

135 Prejudiced shareholders

(1) Where 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 a former or existing shareholder, he or she 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 provision, an order
(a) for the acquisition of the shareholder’s shares by the company or any other person;
(b) for the payment of compensation to any person by the company or any other person;
(c) regulating the conduct of the company’s affairs in future;
(d) appointing a receiver of the company;
(e) directing the rectification of the records of the company;
(f) putting the company into liquidation.

(3) Failure to comply with the procedure required by any of the following sections is deemed to be conduct which is unfairly prejudicial to all shareholders:
(a) section 37 [Persons to whom shares may be issued];
(b) section 39 [Consideration for issue to be decided on by board];
(c) section 43 [Dividends];
(d) section 50 [Board may make offer to acquire shares];
(e) section 58 [Financial assistance];
(f) section 99 [Major transactions].

(4) Where directors have signed a certificate required by this Act, and there do not exist reasonable grounds for any opinion set out in the certificate, the signing of that certificate is deemed to be conduct which is unfairly prejudicial to all shareholders.

Ratification of directors’ acts

136 Ratification of directors’ acts

(1) Where a director or the board has purported to exercise a power vested in the shareholders or in some other person or persons, the shareholders or that person or those persons may ratify the exercise of the power by the
director or board in the same manner as would be required to exercise the power.

(2) Any purported exercise of power ratified under subsection (1) shall be deemed to be and always to have been a proper and valid exercise of that power.

(3) Except as provided in this section, ratification or approval by the shareholders or any other person or persons of any action by a director or by the board shall not validate or render lawful that action and shall not of itself preclude the Court from granting any relief or exercising any power which might, apart from such ratification or approval, fail to be granted or exercised in relation to the action.

Relief of directors and auditors

137 Court may grant relief

(1) If, in any proceeding for negligence, default, breach of duty, or breach of trust against a director or auditor of the company, it appears to the Court hearing the case that the director or auditor is or may be liable in respect of the negligence, default, breach of duty, or breach of trust, but that he or she has acted honestly and reasonably, and that, having regard to all the circumstances of the case, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty, or breach of trust, the Court may relieve him or her, either wholly or partly, from liability on such terms as the Court may think fit.

(2) Where any such director or auditor has reason to believe that any claim will or might be made against him or her in respect of any negligence, default, breach of duty, or breach of trust, he or she may apply to the Court for relief, and the Court on any such application shall have the same power to grant relief under this section as it would have had if it had been a Court before which proceedings had been brought against that person.

(3) Where any case to which subsection (1) of this section applies is being tried by a Judge with a jury, the Judge, after hearing the evidence, may, if he or she is satisfied that
the defendant ought under that subsection to be relieved in whole or in part from liability, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge may think proper.

**Inspection of records**

138 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 with sufficient particularity.

(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 specified charge to the company to meet the cost of providing the information, and explain how the specified charge is calculated; or
   (d) refuse to provide the information, and give full reasons for the refusal.

(4) Where the company requires the shareholder to pay a charge for 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 he or she informs the company that he or she will pay the charge.

(5) A shareholder aggrieved by the decision of a company in relation to a request for information may apply to the Court for relief on the grounds that
   (a) the period specified for providing the information is manifestly unreasonable; or
   (b) the charge set by the company is manifestly unreasonable; or
(c) the refusal to provide information is manifestly unreasonable;

and on an application under this subsection the Court may make such order as it thinks fit, including, without limiting the generality of this provision, an order
(d) as to the provision of the information; or
(e) as to the use that may be made of the information, and the persons to whom it may be disclosed; or
(f) as to the costs of the application.

139 Investigation of records

(1) Where
(a) a shareholder or creditor of a company applies to the Court for an order appointing a suitable person to inspect records of the company; and
(b) the Court is satisfied that the shareholder or creditor is acting in good faith and that the inspection is to be made for a proper purpose; and
(c) the Court is satisfied that the person to be appointed is a proper person for the task;

the Court may make an order authorising that person, at such time as is specified in the order, to inspect and to make copies of, or take extracts from, the records of the company or such of the records 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) A person appointed by the Court under subsection (1) must diligently carry out the inspection and must make a full report to the Court.

(3) When the Court receives the report of an inspector in accordance with subsection (2), it may make such order in relation to the disclosure and use that may be made of records and information obtained as it thinks fit.

(4) An order of the Court made under subsection (3) may be varied from time to time.
(5) No person may disclose or make use of information or records obtained under this section other than in accordance with an order of the Court made under subsections (3) or (4).

(6) Every person who acts in contravention of subsection (5) may be convicted of an offence under section 277(2) [Failure to comply with Act].

PART 9
ADMINISTRATION OF COMPANIES

Authority to bind a company

140 Method of contracting etc
Subject to its constitution, contracts and other enforceable obligations may be entered into on behalf of a company as follows:

(a) an obligation which if made between natural persons would by law be required to be by deed may be entered into on behalf of the company in writing signed under the name of the company by

(i) two or more directors of the company (or, if there is only one such director, by that director); or

(ii) one or more attorneys appointed by the company in accordance with section 141 [Attorneys];

(b) any other obligation may be entered into on behalf of the company by any person acting under its authority, express or implied.

141 Attorneys

(1) Subject to its constitution, a company may by deed empower any person as its attorney either generally or in respect of any specified matters, and any act of the attorney in accordance with the deed binds the company.
(2) The provisions of Part XII of the Property Law Act 1952 apply, with the necessary modifications, with respect to any power of attorney executed by a company to the same extent as if the company were a natural person and as if the commencement of the liquidation or, if there is no liquidation, the removal from the register of the company were the death of a person within the meaning of that Part XII.

142 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 any person who has acquired any property, rights or interests from the company that

(a) the constitution of the company has not been complied with;

(b) the persons named as directors of the company in the most recent notice received by the Registrar under section 122 [Notification to Registrar of directors] are not the directors of the company;

(c) a person held out by the company as a director, employee or agent of the company has not been duly appointed, or has no authority to exercise a power that is customary in the operations of the company or usual for such director, employee or agent;

(d) a document issued on behalf of a company by any director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine

except where the person has or ought to have by virtue of his or her position with or relationship to the company knowledge to the contrary.

(2) Subsection (1) applies where a person of the kind referred to in paragraphs (b) to (d) of that subsection acts fraudulently, unless the person dealing with the company or with any person who has acquired any property, rights or interests from the company has actual knowledge of the fraud.
143 No constructive notice

No person is affected by or deemed to have notice or knowledge of the contents of the constitution of, or any other document relating to a company by reason only that the constitution or document is referred to in or forms part of the New Zealand register or is available for inspection at an office of the company.

144 Pre-incorporation contracts

(1) In this section, the term “pre-incorporation contract” means
   (a) a contract purporting to be made by a company before its incorporation;
   (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. A contract so ratified shall, upon ratification, be valid and enforceable as if the company had been a party to the contract when it was made.

(3) 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 140 [Method of contracting etc].

(4) 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.

(5) The amount of any damages recoverable in an action for breach of a warranty implied by virtue of subsection (4) shall be 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.

(6) Where a company after its incorporation does not ratify a pre-incorporation contract, any party to that contract may apply to the Court for an order
(a) directing the company to return any property, whether real or personal, acquired pursuant to the contract to that party; or
(b) for any other relief in favour of that party respecting any such property; or
(c) validating the contract, whether in whole or in part; and the Court may, if it considers it just and equitable to do so, make any order or grant such relief as it thinks fit and whether or not an order has been made under subsection (5).

(7) In any 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, in addition to or in substitution for any order which may be made against the company, against any person by whom that contract was made in the name of, or on behalf of the company, as the Court considers just and equitable.

(8) Where a company, after its incorporation, 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 this section), the liability of any person under subsection (4) (including any liability under an order made by the Court thereunder for the payment of damages) shall be discharged.
(9) Notwithstanding the Contracts (Privity) Act 1982, if a pre-
incorporation contract has not been ratified by a company,
or validated by the Court under subsection (6), the
company may not enforce or otherwise take the benefit of
that contract.

Registered office

145 Registered office

(1) Every company must at all times have a registered office in
New Zealand.

(2) The registered office of a company at any time shall subject
to section 146 (2) [Change of registered office], be the place
that is described as such on the New Zealand register at
that time.

146 Change of registered office

(1) Subject to the company's constitution and to subsection
(2) the board of a company may change the registered
office of the company at any time.

(2) No change of the registered office of a company has effect
until at least five registration days after notice of the
change in the prescribed form is entered on the New
Zealand register, by the Registrar.

Company records

147 Company records to be kept

(1) Subject to subsection (2) every company must keep at its
registered office, or at some other place in New Zealand,
notice of which in the prescribed form has been registered
by the Registrar, each of the following documents and
information relating to the company:

(a) the constitutional documents referred to in section
22 [Every company has a constitution];

(b) minutes of all meetings and resolutions of
shareholders within the last 10 years;
the share register;

(d) an interests register;

(e) minutes of all meetings and resolutions of directors and directors’ committees within the last 10 years;

(f) certificates given by directors under this Act within the last 10 years;

(g) the full names and addresses of the current directors;

(h) copies of all written communications to shareholders during the preceding 10 years, including annual reports made under section 176 [Annual report to shareholders];

(i) the accounting records required by section 156 [Accounting records to be kept] in relation to the last 10 completed financial years of the company;

(j) copies of all financial statements required by section 159 [Obligation to prepare financial statements for company] in relation to the last 10 completed financial years of the company.

(2) A company need not keep its accounting records at a place in New Zealand, but if it does not do so the board of the company must ensure that there shall be sent to, and kept at a place in New Zealand, such accounts and returns with respect to the operations of the company as will disclose with reasonable accuracy the financial position of the company at intervals not exceeding six months and will enable to be prepared in accordance with this Act the company’s balance sheet, its profit and loss account or income and expenditure account, and any other document giving information required by this Act.

(3) If a company fails to comply with subsection (1) or (2)

(a) the company may be convicted of an offence under section 277(2) [Failure to comply with Act]; and

(b) every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board of company].

Form of records

(1) All records of a company must be kept either in written form or so as to enable the documents and information to
be readily accessible and readily convertible into written form.

(2) The board of a company must ensure at all times that adequate precautions are taken against falsification of the company's records, and for facilitating the discovery of any such falsification.

149 Inspection of records by directors

(1) The board of a company must ensure that all records of the company are available in written form at all reasonable times for inspection without charge by any director of the company.

(2) If the board of a company fails to comply with subsection (1), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

Service of documents upon companies

150 Address for service

(1) Every company shall at all times have an address for service in New Zealand to which a document may be delivered at any time between 9.00 a.m. and 5.00 p.m. on any working day.

(2) An address for service may be the company's registered office or another place, but may not be a box or bag at a postal centre or document exchange.

(3) The address for service of a company at any time shall, subject to section 151 (2) [Change of address for service], be the place that is described as such in the New Zealand register at that time.

151 Change of address for service

(1) Subject to the company's constitution and to subsection (2) the board of a company may change the address for service of the company at any time.

(2) No change of the address for service of a company has effect until at least five registration days after notice of the
change in the prescribed form is entered on the New Zealand register by the Registrar.

152 Methods of service of documents

(1) A summons, writ, claim, notice, order, or other document of similar nature may be served on a company as follows:
   (a) by delivery to a director, employee or agent of the company at the company’s address for service, or to a person who appears to be in charge of that place at the time of delivery; or
   (b) if delivery in accordance with paragraph (a) is not practicable at the relevant time, by delivery to a director, employee or agent of the company at any place where the company carries on its operations, or to a person who appears to be in charge of that place at the time of delivery; or
   (c) if delivery in accordance with paragraph (b) is not practicable at the relevant time, by delivery at any time to any person who is named as a director of the company on the New Zealand register at that time; or
   (d) if delivery in accordance with paragraph (c) is not practicable at the relevant time, by posting the document to the company’s address for service, or delivering it to a box at a document exchange which the company is then using.

(2) In addition to subsection (1), a particular document may be served on a company in a manner approved by the Court.

(3) Subsections (1) and (2) shall have effect notwithstanding any other Act or rule of law, but shall not limit section 153 [Agreements as to service].

153 Agreements as to service

A company may agree with another person that service of a document on the company by that person may be made other than in accordance with section 152 (1) [Methods of service of documents], and any such agreement is effective as between the company and that person.
154 Service by delivery

For the purposes of section 152 [Methods of service of documents], where service of a document on a company is to be made by delivery to a natural person, service shall be made

(a) by handing the document to the person; or

(b) if the person refuses to accept the document, by bringing the document to the attention of, and leaving it in a place accessible to, the person.

155 Service by post or document exchange

(1) For the purposes of section 152 [Methods of service of documents], any document posted to a company, or delivered to a document exchange box or bag of the company, is deemed to be received by the company five working days (or such shorter period as the Court may determine in any particular case) after it is so posted or delivered.

(2) In proving service of any document on a company by post or by delivery to a document exchange for the purposes of section 152 [Methods of service of documents], it is sufficient to prove that the document was properly addressed to the company, that all postal or delivery charges were paid, and that the document was posted or delivered to the document exchange.

PART 10
ACCOUNTS AND AUDIT

Accounting records

156 Accounting records to be kept

(1) The board of a company must cause to be kept accounting records that

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

(b) from which the financial position of the company may be ascertained with reasonable accuracy at any time; and
will enable the directors to ensure that any financial statements of the company comply with section 160 [Content of financial statements]; and
(d) will enable the financial statements of the company to be readily and properly audited.

(2) If the board of a company fails to comply with subsection (1), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

Financial statements for companies

157 Balance date of company

(1) In this Act, the term "balance date" in regard to a company, means the close of the 31 March or of such other date as the board of the company adopts as the company's balance date.

(2) Every company shall have a balance date in every calendar year, except that
(a) if a company is incorporated after 31 March in any calendar year, it need not have a balance date in that year so long as its first balance date is no later than 30 June in the succeeding calendar year; and
(b) if a company changes its balance date, it need not have a balance date in a calendar year so long as the period between any two balance dates does not exceed 15 months.

158 Meaning of "financial statements"

In this Act, the term "financial statements" means, in relation to a company and a balance date,
(a) a balance sheet for the company as at that balance date; and
(b) in the case of a company trading for profit, a profit and loss statement for the company in respect of the accounting period ending at that balance date; and
(c) in the case of a company not trading for profit, an income and expenditure statement for the company
in respect of the accounting period ending at that balance date; and
(d) a statement of cash flows for the company in respect of the accounting period ending at that balance date together with any notes thereon or documents attached thereto giving information relating to the balance sheet or statement.

159 Obligation to prepare financial statements for company

(1) The board of every company must ensure that, within three months of every balance date of the company, financial statements that comply with section 160 [Content of financial statements] are
(a) completed in respect of the company and that balance date; and
(b) signed on behalf of the board by two directors of the company (or, if there is then only one director, by that director).

(2) If the board of a company fails to comply with subsection (1), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

160 Content of financial statements

(1) The financial statements of a company shall give a true and fair view of the state of affairs, and the profit or loss (or income and expenditure) and the cash flows of the company as at the balance date, and for the accounting period, concerned.

(2) The onus of establishing that financial statements of a company comply with subsection (1) shall be that of the board of the company.

(3) Without limiting subsection (1), financial statements must comply with any regulations made under section 285 [Regulations].
Group financial statements

161 Meaning of “holding company” and “subsidiary”

(1) For the purposes of this Act, and subject to subsection (3), 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 first-mentioned company; and
   (ii) is entitled to receive more than half of every dividend paid by the first-mentioned company; and
   (iii) is entitled to receive more than half of the surplus assets of the first-mentioned company;

(b) the first-mentioned company is a subsidiary of any company which is that other company’s subsidiary.

(2) For the purposes of subsection (1), the composition of a company’s board shall be deemed to be controlled by another company if, but only if, that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships; and for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, namely:

(a) that a person cannot be appointed thereto without the exercise in his or her favour by that other company of such a power; or

(b) that a person's appointment thereto follows necessarily from his or her appointment as director of that other company.

(3) In determining whether one company is a subsidiary of another company

(a) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d) any shares held or power exercisable
(i) by any person as a nominee for that other company (except where that other company is concerned only in a fiduciary capacity); or
(ii) by a nominee for a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other company;
(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;
(d) any shares held or power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other company if the ordinary business of that other company or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purpose of a transaction entered into in the ordinary course of that business.

(4) For the purposes of this Act, a company is another company's holding company if, but only if, that other company is its subsidiary.

(5) In this section the expression "company" includes any body corporate.

162 Meaning of "group of companies"
In this Act the term "group of companies" means a company and all its subsidiaries.

163 Balance date of group of companies
(1) The board of a company shall ensure that, unless in the board's opinion there are good reasons against it, the balance date of each subsidiary of the company shall be the same as the balance date of the company.
(2) Where the balance date of a subsidiary of a company is not the same as that of the company, the balance date of the subsidiary for the purposes of any particular group financial statements shall be that preceding the balance date of the company.

164 Meaning of “group financial statements”

(1) In this Act the term “group financial statements” means, in regard to a group of companies and a balance date
(a) a consolidated balance sheet for the group as at that balance date; and
(b) where any member of the group trades for profit, a consolidated profit and loss account for the group in respect of the accounting period ending on that balance date; and
(c) where no member of the group trades for profit, a consolidated income and expenditure statement for the group in respect of the accounting period ending on that balance date; and
(d) a consolidated statement of cash flows for the group in respect of the accounting period ending on that balance date;

together with any notes thereon or documents attached thereto giving information relating to the balance sheet or statement.

(2) If a company’s board is of the opinion that it is better for the purpose
(a) of presenting the same or equivalent information about the state of affairs, profit or loss (or income and expenditure), or cash flows of the company and its subsidiaries; and
(b) of so presenting it that it may be readily appreciated by the company’s shareholders—

the group financial statements for the company and its subsidiaries may be prepared in a form other than that required by subsection (1) and in particular may consist of more than one set of consolidated statements dealing respectively with the company and one group of subsidiaries and with other groups of subsidiaries or of
separate statements dealing with each of the subsidiaries, or of statements expanding the information about the subsidiaries in the company’s own statements, or any combination of those forms.

(3) The group financial statements for a company and its subsidiaries may be wholly or partly incorporated in the company’s own balance sheet and profit and loss (or income and expenditure) and cash flow statements.

165 Obligation to prepare group financial statements

(1) Subject to subsections (2) and (3), where on a balance date of a company, the company has one or more subsidiaries, the board of the company must ensure that within three months of the balance date, group financial statements that comply with section 166 [Content of group financial statements] are

(a) completed in respect of that group of companies and that balance date; and

(b) signed on behalf of the board by two directors of the company (or, if there is then only one director, by that director).

(2) Group financial statements shall not be required in respect of a company and a balance date if the only shareholders of the company at that balance date are any or all of another body corporate incorporated in New Zealand, subsidiaries of that body corporate, and its or their nominees.

(3) Group financial statements need not deal with a subsidiary of a company if the board of the company is of the opinion that

(a) it is impracticable, or would be of no real value to shareholders of the company, in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to shareholders of the company; or

(b) the result would be misleading and, if the board is of such an opinion about every subsidiary of the company, group financial statements are not required.
If the board of a company fails to comply with subsection (1), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

166 Content of group financial statements

(1) The group financial statements of a group of companies must give a true and fair view of the state of affairs and the profit or loss (or income and expenditure), and the cash flow of the group as at the balance date, and for the accounting period, concerned.

(2) The onus of establishing that group financial statements of a company comply with subsection (1) is that of the board of the company.

(3) Without limiting subsection (1), group financial statements must comply with any regulations made under section 285 [Regulations].

Auditors

167 Requirement for audit

(1) If

(a) the constitution of a company requires that the financial statements of the company and all or any of its subsidiaries for all or any accounting periods be audited; or

(b) a shareholder or director of a company gives written notice to the board of the company that the shareholder or director requires that the financial statements of the company and all or any of its subsidiaries for all or any accounting periods ending after the date of receipt of the notice by the board be audited.

an auditor must be appointed in accordance with this Part to audit the financial statements of the company and its subsidiaries for the accounting periods concerned.
(2) Any notice given or resolution passed for the purposes of subsection (1) may be withdrawn or amended in the same manner as it was given or passed.

(3) Subject to subsection (1), the financial statements of a company need not be audited.

168 Qualifications of auditors

(1) No person may be appointed or act as auditor of a company unless the person is

(a) a member of the New Zealand Society of Accountants who holds a certificate of public practice; or

(b) a member, fellow or associate of an association of accountants constituted outside New Zealand which is for the time being approved for the purposes of this section by the Minister of Justice by notice in the Gazette.

(2) None of the following persons may be appointed or act as auditor of a company:

(a) a director or employee of the company;

(b) a person who is a partner of or in the employment of a director or employee of the company;

(c) a body corporate;

(d) a person who, by virtue of either of paragraphs (a) and (b), may not be appointed or act as auditor of a related company.

169 Appointment of auditors

(1) Subject to the constitution of a company and to any ordinary resolution, every auditor of a company must be appointed by the board for such period and on such terms as the board may agree with the auditor.

(2) The appointment of a partnership by the firm name to be the auditors of a company is deemed to be the appointment of all the persons who are partners in the firm from time to time.
170 Removal of auditor

(1) Subject to subsection (3), an auditor may be removed from office at any time by ordinary resolution.

(2) Subject to subsection (3), on the expiry of a term of appointment of an auditor, another person may be appointed in his or her place in accordance with section 169(1) [Appointment of auditors].

(3) No auditor may be removed from office, or another person appointed in his or her place, unless
   (a) at least 10 working days’ written notice of intention 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 removal, or appointment of another person, either in writing or by the auditor or his or her representative speaking at a shareholders meeting (whichever the auditor shall choose).

171 Reappointment of retiring auditors

Where the term of appointment of an auditor of a company expires and the company is required by section 167 [Requirement for audit] to continue to have an auditor, the retiring auditor is deemed to be reappointed for a further year (which year is itself a term of appointment for the purposes of this section) unless
   (a) the auditor is not qualified for reappointment; or
   (b) another person is appointed auditor of the company no later than two months from the expiry of the auditor’s term; or
   (c) the auditor has given the board written notice of his or her unwillingness to be reappointed.

172 Auditor’s report

(1) The auditor of a company must make a report to the shareholders and to each director on the financial statements audited by him or her.

(2) An auditor’s report under subsection (1) must state
   (a) whether the auditor has obtained all information and explanations that he or she has required;
(b) whether, in the auditor's opinion, proper accounting records have been kept by the company, so far as appears from their examination of those records;

(c) whether, in the auditor's opinion, according to the best of the information and the explanations given to him or her as shown by the accounting records, documents and other information of the company, the financial statements comply with section 160 [Content of financial statements] or section 166 [Content of group financial statements] (as the case may be) and, where they do not, the respects in which they fail to comply.

173 Auditor's right of access

(1) The board of a company must ensure that an auditor of a company has a right of access at all times to the accounting records, documents and other information of the company.

(2) An auditor of a company is entitled to require from any director or employee of the company such information and explanation as he or she thinks necessary for the performance of his or her duties as auditor.

174 Auditor's attendance at shareholders' meetings

The board of a company must ensure that an auditor of the company

(a) is permitted to attend any meeting of shareholders of the company; and

(b) receives all notices of and other communications relating to any meeting which any shareholder of the company is entitled to receive; and

(c) may be heard at any meeting of shareholders which he or she attends on any part of the business of the meeting which concerns him or her as auditor.

175 Remuneration and relief from liability of auditor

(1) The fees and expenses of an auditor of a company shall be fixed
(a) in the manner provided in the constitution of the company; or
(b) if the constitution does not so provide, by the board.

(2) An auditor 'is entitled to be paid by the company reasonable fees and expenses for making representations to shareholders under section 170(3) [Removal of auditor].

(3) A court may relieve an auditor from liability in any proceedings in accordance with section 137 [Court may grant relief].

PART 11
DISCLOSURE BY COMPANIES

Disclosure to shareholders

176 Annual report to shareholders

Unless all the shareholders of a company otherwise agree, the board of each company must cause to be sent to every shareholder of the company within 20 working days of each date on which financial statements of the company are signed under section 159(b) [Obligation to prepare financial statements for company], an annual report on the affairs of the company during the accounting period to which those statements relate.

177 Contents of annual report

(1) Every annual report for a company must be in writing and unless all the shareholders of the company otherwise agree must

(a) describe, so far as the board believes is material for the appreciation of the state of the company's affairs by its shareholders and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in the nature of the business of the company or of its subsidiaries, or in the classes of business in which the company has an interest (whether as a shareholder of another company or otherwise); and
where group financial statements for the company and its subsidiaries for that accounting period are required to be completed and signed under section 165(1)(b) [Obligation to prepare group financial statements], include those group financial statements; and

(c) where no such group financial statements are required to be so completed and signed, include the financial statements for the company for that accounting period signed under section 159(b) [Obligation to prepare financial statements for company]; and

(d) where an auditor's report is required under Part 10 in respect of the financial statements included in the report, include that auditor's report; and

(e) describe any change in accounting policies made since the date of the previous annual report; and

(f) state particulars of any entries in the interests register made since the date of the previous annual report (other than disclosures under section 113(1) [Directors' share dealings] by employees who are not also directors); and

(g) state any donations, including charitable or political donations made by the company since the date of the previous annual report; and

(h) state the names of the directors of the company; and

(i) state the amount of any fees paid to auditors since the date of the previous annual report; and

(j) be signed on behalf of the board by two directors of the company (or, if there is then only one director, by that director).

178 Takeovers

Where an offer (whether written or not) is made to acquire shares in a company which represent in aggregate 20 percent or more of the total issued shares of the same class, the board of the company shall, upon written request by any shareholder to whom the offer has been made, forthwith advise (in such manner as the board thinks fit) all shareholders to whom the offer has been made of the following information:
whether, having regard to information known only to
the board, the offer is clearly inadequate;
whether any director of the company directly or
indirectly holds or has an interest in any shares to
which the offer relates and, if so, whether the director
intends to accept or recommend acceptance of the
offer;
any direct or indirect interest of any director of the
company in the offeror or in the offer.

179 Other disclosure to shareholders

Disclosure shall be made to shareholders in accordance with the
following provisions of this Act:

(a) section 51 [Special offers to acquire shares];
(b) section 59 [Special financial assistance];
(c) section 62 [Statement of shareholder rights];
(d) section 94 [Proceedings at meetings];
(e) section 138 [Information for shareholders];
(f) section 139 [Investigation of records];
(g) section 184 [Company records available for
inspection by shareholders];
(h) section 190 [Manner of approving amalgamation
proposal];
(i) section 208 [Other duties of liquidator].

180 Method of disclosure to shareholders

(1) Any annual report, notice, or other document to be sent to
a shareholder may be
(a) delivered by hand to the shareholder; or
(b) posted or delivered to the address for that
shareholder shown on the share register; or
(c) sent by telex, facsimile machine, or other similar
means of communication to the number of the
shareholder.

(2) For the purposes of subsection (1)
(a) any document posted to a shareholder, or delivered
to a document exchange, shall be deemed to be
received by the shareholder five working days (or
such shorter period as the Court may determine in any particular case) after it is so posted or delivered;

(b) any document sent by telex, facsimile machine, or other similar means of communication shall be deemed to be received by the shareholder on the working day following the day on which it was sent.

(3) In proving the sending of any document to a shareholder by post or delivery to a document exchange for the purposes of this section, it shall be sufficient to prove that the document was properly addressed to the shareholder, that all postal or delivery charges were paid, and that the document was posted or delivered to the document exchange.

(4) If documents sent to a shareholder at its address shown on the share register are returned unclaimed three consecutive times, the company need not send any further documents to the shareholder until the shareholder notifies the company of its new address.

(5) A shareholder of a company may, by written notice to the company, waive the right to receive all or any documents from the company, and may revoke any such waiver in the same manner. While any such waiver is in effect, the company need not send to the shareholder the documents to which the waiver relates.

Disclosure to Registrar

181 Disclosure required by Act

Documents must be sent or delivered to the Registrar in accordance with the following provisions of this Act:

(a) section 11 [Application for incorporation];
(b) section 13 [Existing companies may apply for registration under this Act];
(c) section 18 [Application for registration of name];
(d) section 24 [Alteration of constitution];
(e) section 25(2) [Power of court to alter constitution];
(f) section 35 [Share description to be registered];
(g) section 37 [Persons to whom shares may be issued];
section 66 [Place of register];
section 122 [Notification to Registrar of directors];
section 146 [Change of registered office];
section 147 [Company records to be kept];
section 151 [Change of address for service];
section 182 [Annual return];
section 192 [Registration of amalgamation];
section 195 [Powers of court in relation to reconstructions etc];
section 199 [Notice of proposed compromise];
section 206 [Completion of liquidation];
section 208 [Other duties of liquidator];
section 241 [Meetings of creditors or shareholders];
section 250 [Liquidator's report];
section 252 [Grounds for removal from register];
section 254 [Grounds for objecting to removal from register];
section 257 [Property of company removed from register];
section 259 [Application for registration];
section 263 [Alteration of constitution, name, etc];
section 264 [Annual return of overseas company];
section 266 [Ceasing to carry on business in New Zealand].

182 Annual return

(1) The board of a company must ensure that the Registrar receives each year, during the month allocated to the company for the purposes of this section, an annual return in the prescribed form confirming that the information of the kind referred to in the return that is on the New Zealand register in respect of the company at the date of the return is correct.

(2) An 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 incorporation or registration of a company under Part 2 the Registrar must allocate a month to the company for the purposes of this section.
(4) The Registrar may, by written notice to a company, alter the month allocated to the company under subsection (3) or under this subsection.

(5) Notwithstanding subsection (1)
   (a) a company need not make an annual return in the calendar year of its incorporation or registration under Part 2;
   (b) a subsidiary may, with the written approval of the Registrar, make an annual return during the month allocated to its holding company for the purposes of this section rather than during the month allocated to it.

(6) If the board of a company fails to comply with subsections (1) and (2), every director of the company may be convicted of an offence under section 278(2) [Liability of directors for failure by board of company].

**Inspection of company records**

183 Company records available for public inspection

(1) Every company must keep the following records available for inspection in the manner specified in section 185 [Manner of inspection] by any person who serves written notice of intention to inspect on the company:
   (a) the certificate of incorporation or registration of the company; and
   (b) the current constitution of the company; and
   (b) the share register; and
   (c) the full names and addresses of the current directors; and
   (d) the current registered office and address for service of the company.

(2) If a company fails to comply with subsection (1)
   (a) the company may be convicted of an offence under section 277(2) [Failure to comply with Act]; and
   (b) every director of a company may be convicted of an offence under section 278(2) [Liability of directors for failure by board of company].

286
184 Company records available for inspection by shareholders

(1) In addition to the records available for public inspection, every company must keep the following records available for inspection in the manner specified in section 185 [Manner of inspection] by any shareholder of the company (or by any person authorised in writing by a shareholder for this purpose) who serves written notice of intention to inspect on the company:

(a) minutes of all meetings and resolutions of shareholders; and

(b) copies of all written communications to shareholders during the preceding three years, including annual reports under section 176 [Annual report to shareholders]; and

(c) certificates given by directors under this Act; and

(d) the interests register of the company.

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

(a) the company may be convicted of an offence under section 277 (2) [Failure to comply with Act]; and

(b) every director of a company may be convicted of an offence under section 278 (2) [Liability of directors for failure by board or company].

185 Manner of inspection

(1) Documents which may be inspected by any person or shareholder under section 183 [Company records available for public inspection] or section 184 [Company records available for inspection by shareholders] must be available for inspection at the place at which the company records are kept in accordance with section 147 [Company records to be kept] between the hours of 9.00 a.m. to 5.00 p.m. 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 that day of service.
186 Copies of documents

(1) Any person may require a copy of or extract from any document which is available for inspection by him or her in accordance with section 183 [Company records available for public inspection] or section 184 [Company records available for inspection by shareholders] to be sent to him or her within five working days after he or she has made a request in writing for the copy or extract and has paid a reasonable copying and administration fee prescribed by the board of 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 may be convicted of an offence under section 277(1) [Failure to comply with Act]; and

(b) every director of a company may be convicted of an offence under section 278(1) [Liability of directors for failure by board or company].

PART 12
RECONSTRUCTIONS AND AMALGAMATIONS

Reconstructions

187 Reconstructions

(1) Any reconstruction of the share structure of a company, whether or not entered into as part of a compromise with creditors, must be effected by amendment of the constitution in accordance with the procedures required by this Act.

(2) Any reconstruction which affects the likelihood of the company meeting its obligations to creditors must be approved as a compromise with creditors under Part 13.
Amalgamations

188 Amalgamations

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

189 Amalgamation proposal

(1) Each company which proposes to amalgamate must approve an amalgamation proposal setting 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 first registered office of the amalgamated company;
(c) the maximum number of directors of the amalgamated company;
(d) the full names and residential addresses of the first director or directors of the amalgamated company;
(e) the first address for service of the amalgamated company;
(f) 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 26(2) [Rights attached to shares];
   (iii) whether the shares are transferable or non-transferable, and if transferable, whether their transfer is subject to any conditions or limitations;
(g) a copy of the first constitutional document, if any, of the amalgamated company;
(h) the manner in which the shares of each amalgamating company are to be converted into shares of the amalgamated company;
(i) if any shares of an amalgamating company are not to be converted into shares of the amalgamated company, the amount of money that the holders of those shares are to receive instead of shares of the amalgamated company;

(j) any payment to be made to any shareholder or director of an amalgamating company, other than a payment of the kind described in paragraph (i);

(k) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamating company.

(2) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies, the amalgamation proposal must provide for the cancellation of those shares when the amalgamation becomes effective without any payment in respect of those shares, and no provision may be made in the proposal for the conversion of such shares into shares of the amalgamated company.

190 Manner of approving amalgamation proposal

(1) The board of each amalgamating company must resolve that in its opinion

(a) the amalgamation is in the best interests of the shareholders of the company; and

(b) the amalgamating company will satisfy the solvency test immediately prior to the time at which the merger is to become effective; and

(c) the amalgamated company will satisfy the solvency test immediately after the time at which the merger is to become effective.

(2) The directors voting in favour of a resolution required by subsection (1) must sign a certificate that, in their opinion, the conditions set out in subsection (1) are satisfied.

(3) The board of each amalgamating company must send to each shareholder of that company not less than 20 working days before the amalgamation is to take effect

(a) a copy of the amalgamation proposal;
(b) copies of the certificates given by each board under subsection (2);
(c) a statement of any material interests of the directors, whether in that capacity or otherwise;
(d) 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 amalgamation proposal will not take effect unless it has been approved
(a) by the shareholders of each amalgamating company, in accordance with section 78 [Powers exercised by special resolution]; and
(b) by any interest group of an amalgamating company, where any provision in the amalgamation proposal would, if contained in an amendment to that company's constitution or otherwise proposed in relation to that company, require the approval of that interest group.

(5) Every director who fails to comply with subsection (2) may be convicted of an offence under section 277(1) [Failure to comply with Act].

191 Short form amalgamation

(1) A company and one or more of its wholly-owned subsidiaries may amalgamate and continue as one company without complying with section 189 [Amalgamation proposal] and 190 [Manner of approving amalgamation proposal] if
(a) the amalgamation is approved by a resolution of the board of each amalgamating company; and
(b) the resolutions provide that
   (i) the shares of each amalgamating subsidiary company shall be cancelled without any payment or any other consideration in respect of those shares;
(ii) the constitution of the amalgamated company will be the same as the constitution of the amalgamating holding company.

(2) Two or more wholly-owned subsidiary companies of the same holding company may amalgamate and continue as one company without complying with sections 189 [Amalgamation proposal] and 190 [Manner of approving of amalgamation proposal] if

(a) the amalgamation is approved by a resolution of the board of each amalgamating company; and

(b) the resolutions provide that

(i) the shares of all but one of the amalgamating companies shall be cancelled without any payment or other consideration in respect of those shares;

(ii) the constitution of the amalgamated company will be the same as the constitution of the amalgamating company whose shares are not cancelled.

192 Registration of amalgamation

After an amalgamation has been approved under sections 190 [Manner of approving of amalgamation proposal] or 191 [Short form amalgamation] the following documents must be sent to the Registrar:

(a) the amalgamation proposal, if any;

(b) any certificates required under section 190 [Manner of approving amalgamation proposal];

(c) a certificate signed by the board of each amalgamating company stating that the company has approved the amalgamation in the manner required by this Act and by the constitution of the company;

(d) a certificate signed by the board, or proposed board, of the amalgamated company stating that in their opinion no creditor will be prejudiced by the amalgamation;

(e) consents in the prescribed form signed by each of the persons named as directors in the amalgamation proposal.
193 Certificate of amalgamation

Forthwith after receipt of the documents required under section 192 [Registration of amalgamation], the Registrar shall

(a) if the amalgamated company is the same as one of the amalgamating companies, issue a certificate of amalgamation in the prescribed form; or

(b) if the amalgamated company is a new company, enter on the New Zealand register the particulars of the company required by section 272 [Registers], and issue a certificate of amalgamation in the prescribed form together with a certificate of incorporation in the prescribed form.

194 Effect of certificate

On the date shown in a certificate of amalgamation

(a) the amalgamation becomes effective;

(b) the Registrar is required to remove the amalgamating companies other than the amalgamated company from the New Zealand register;

(c) the amalgamated company succeeds to all the property, rights and privileges of each of the amalgamating companies;

(d) the amalgamated company succeeds to all the liabilities of each of the amalgamating companies;

(e) proceedings pending by or against any amalgamating company may be continued by or against the amalgamated company;

(f) any conviction, ruling, order or judgment in favour of or against an amalgamating company may be enforced by or against the amalgamated company;

(g) the shares and rights of the shareholders in the amalgamating companies are converted into the shares and rights provided for in the amalgamation proposal, if any.
Powers of Court in relation to reconstructions and amalgamations

195 Powers of Court in relation to reconstructions etc

(1) Notwithstanding any provision in this Act or in the constitution of any company, where it is not practicable to effect a reconstruction or amalgamation in respect of one or more companies in accordance with the procedures set out in this Act or the constitutions of those companies, those companies may apply to the Court for approval of a reconstruction or amalgamation and the Court may approve any such proposal on such terms and subject to such conditions as it thinks fit.

(2) Within 10 registration days of any order being made by the Court under subsection (1), the board of each applicant company must ensure that a copy of the order is received by the Registrar, who must take such steps (if any) as the order may prescribe.

(3) If the board of a company fails to comply with subsection (2), every director of the company may be convicted of an offence under section [Liability of directors for failure by board or company].

PART 13
COMPROMISES WITH CREDITORS

196 Interpretation

In this Part, unless the context otherwise requires, “compromise” means a compromise between a company and its creditors cancelling all or part of any debt of a company, or varying the terms upon which the debt is payable or is secured, or agreeing to an alteration of a company's constitution which
affects the likelihood of the company being able to pay its due debts;
“creditor” includes every person who, in a liquidation, would be entitled to claim in accordance with section 230 [Admissible claims] that a debt is owing to that person by the company;
“proposer” means any person referred to in section 197 [Proposal of compromise] who proposes a compromise in accordance with this Part.

197 Proposal of compromise
Where there is reason to believe that a company is or will be unable to pay its debts within the meaning of section 222 [Inability to pay debts],
(a) the board of directors of the company; or
(b) a receiver appointed in respect of the whole or substantially the whole of the assets and undertaking of the company; or
(c) a liquidator of the company; or
(d) with the leave of the Court, any two or more creditors or shareholders of the company;
may propose a compromise under this Part.

198 Binding effect of compromise
(1) A compromise approved by creditors or any 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 one class of creditors, on all creditors of that class
to whom notice of the proposal was given under section 199 [Notice of proposed compromise].
(2) Subject to subsection (3), a compromise is approved by creditors or any class of creditors if, at a meeting of creditors or that class of creditors conducted in accordance with the Third Schedule,
(a) a resolution proposing the compromise is put to a vote; and
(b) not less than 75% of the votes validly cast by the creditors or that class of creditors are in favour of the resolution.

(3) Where a resolution proposing a compromise is put to the vote of more than one class of creditors, it shall be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise by that class is conditional on the approval of the compromise by every other class voting on the resolution.

199 Notice of proposed compromise

(1) The proposer must compile a list of known creditors of the company who would be affected by the proposed compromise, setting out the amount owing or estimated to be owing to each, and the number of votes which each is entitled to cast on a resolution approving the compromise; and if there is more than one class of creditors so affected, a list of the known creditors in each class.

(2) The proposer must give to each known creditor, the company, any receiver, any liquidator and the Registrar

(a) notice in accordance with the Third Schedule of the intention to hold a meeting of creditors or any two or more classes of creditors for the purpose of voting on the draft resolution; and

(b) the name and address of the proposer and the capacity in which the proposer is acting; and

(c) the address and telephone number to which inquiries may be directed by any creditor during normal business hours; and

(d) a statement fairly setting out the reasons for the proposed compromise and all reasonably foreseeable consequences, for creditors and for the company, if the resolution is approved, including the extent, if any, to which any director is interested in the proposed compromise; and

(e) a copy of the list or lists of creditors referred to in subsection (1); and
(4) The proposer must give to each known creditor, the company, any receiver, any liquidator and the Registrar written notice of the result of the voting.

(5) 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 an expense of the receivership or liquidation; or
(c) if incurred by any other person, are a debt due to that person by the company.

200 Powers of Court

(1) On the application of the proposer or the company, the Court may

(a) give directions in relation to any 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 any 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 thereon,

(i) any proceedings in relation to a debt owing by the company be stayed; or
(ii) any creditor refrain from taking any other measure to enforce payment of any debt owing by the company;

but nothing in this paragraph affects the right of any secured creditor during that period to take possession of, realise or otherwise deal with any property of the company over which that creditor has a charge.

(2) Not later than 10 working days after the date of a notice that, as a result of the voting, a compromise was approved, a creditor who was entitled to take part in the vote may apply to the Court for an order that the creditor is not bound by the compromise on the grounds that
(a) insufficient notice of the meeting or of the matter required to be notified under section 199(3) [Notice of proposed compromise] was given to that creditor; or

(b) there was some other material irregularity in obtaining approval of the compromise; or

(c) that, 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.

PART 14
LIQUIDATIONS

The process of liquidation

201 Interpretation

In this Part, unless the context otherwise requires;
“committee of inspection” means the committee of inspection elected or appointed under section 241 [Meetings of creditors or shareholders];
“liquidator” includes interim liquidator and an Official Assignee when acting as liquidator;
“Official Assignee” means any Official Assignee or Deputy Assignee appointed under the Insolvency Act 1967;
“statutory demand” has the meaning set out in section 223 [Statutory demand].

202 Purpose of this Part

The purpose of this Part is to establish that
(a) liquidation is a process which requires a company to cease carrying on business and its assets to be collected, realised and distributed in accordance with this Part; and
(b) at the completion of the liquidation a company is ready to be removed from the New Zealand register in accordance with Part 15.
203 Commencement of liquidation

(1) A company may be put into liquidation by the appointment of a named person, or of an Official Assignee for a named district, as liquidator by

(a) those shareholders entitled to vote and voting on the question, by special resolution; or

(b) the board of directors, if the constitution of the company so requires or permits, by resolution passed at a meeting of the board; or

(c) the Court, on the application of the company or of any shareholder, director or creditor of the company, or of the Attorney-General, if the Court is satisfied that

(i) the company is unable to pay its debts; or

(ii) the company or the board has persistently or seriously failed to comply with this Act; or

(iii) the company does not comply with section 5 [Essential components]; or

(iv) it is just and equitable that the company be put into liquidation.

(2) The liquidation commences on the date on which the liquidator is appointed.

204 Interim liquidator

(1) Where an application has been made to the Court for an order that a company be put into liquidation, the Court may appoint a named person or an Official Assignee for a named district as interim liquidator on the ground that the appointment is necessary or expedient for the preservation of the value of the company's assets.

(2) An interim liquidator has all the powers, duties and entitlements of a liquidator, unless the Court limits the powers or places conditions on their exercise.

205 Effect of commencement of liquidation

(1) As from the commencement of the liquidation of a company

(a) the liquidator takes custody and control of the company's assets;
(b) the directors remain in office but cease to have any powers, functions or duties other than those required or permitted to be exercised by this Part;
(c) no person may commence or continue legal proceedings against the company or with respect to its property, or enforce any other remedy against property of the company, unless the liquidator otherwise agrees or the Court otherwise orders;
(d) no share of the company may be transferred or other alteration made in the rights or liabilities of any shareholder, and no shareholder may exercise any power under the company's constitution or this Act, other than this Part;
(e) the constitution of the company may not be altered.

(2) Subsection (1) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with any property of the company over which that creditor has a charge, subject to compliance with section 232 (4) (b) [Rights and duties of secured creditors].

206 Completion of liquidation

The liquidation of a company is complete when the liquidator files with the Registrar a final report and final accounts of the liquidation and a statement that:

(a) all known assets have been disclaimed, realised or distributed without realisation;
(b) all proceeds of realisation have been distributed; and
(c) the company is ready to be removed from the New Zealand register.

Duties, powers and entitlements of liquidator

207 Primary duty of liquidator

The primary duty of a liquidator is to take, in a reasonable and expeditious manner, all steps necessary to collect, realise and distribute the assets or the proceeds of the assets of the company to its creditors in accordance with this Part, and, if there are any
surplus assets, to the persons entitled to them under the company’s constitution and this Act.

208 Other duties of liquidator

(1) Without limiting section 207 [Primary duty of liquidator], the liquidator has the other functions and duties specified in this Act.

(2) Without limiting subsection (1), the liquidator must

(a) within 10 working days of the commencement of the liquidation,

(i) give public notice of the appointment of the liquidator, the date of the commencement of the liquidation and the address and telephone number to which inquiries may be directed by any creditor or shareholder during normal business hours;

(ii) send or deliver to the Registrar a notice of the appointment of the liquidator in the prescribed form;

(b) prepare as soon as practicable and after such inquiries as are in all the circumstances reasonable, a list of every known creditor of the company;

(c) within 40 working days of the commencement of the liquidation, or such further period as the Court may allow for the preparation of the list referred to in paragraph (b), prepare and send to every known creditor and every shareholder, and send or deliver to the Registrar,

(i) a report on the state of the company’s affairs, proposals for conducting the liquidation and the estimated date of its completion; and

(ii) a notice explaining the right of any creditor or shareholder to require the liquidator to call a meeting of creditors under section 240 [Claims of other creditors; surplus assets];

(d) within 20 working days of the end of each period of six months following the commencement of the liquidation, prepare and send to every known creditor and every shareholder, and send or deliver to the Registrar, a report on the conduct of the
liquidation during the preceding six months and the liquidator's further proposals for its completion;

(e) prepare and send to every known creditor and every shareholder the final report and final accounts of the liquidation, and the statement referred to in section 206 [Completion of liquidation], together with a summary of the grounds on which the creditor or shareholder may object to the removal of the company from the New Zealand register under section 254 [Grounds for objecting to removal from register];

(f) send or deliver to the Registrar copies of the documents referred to in paragraph (e);

(g) keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records of the company, to be inspected by

(i) any committee of inspection appointed under section 241 [Meetings of creditors or shareholders], unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; or

(ii) if the Court so orders, any creditor or shareholder;

(h) retain the accounts and records of the liquidation and of the company for not less than six years after the completion of the liquidation, unless the Court orders otherwise;

(i) in every document issued by the liquidator on the company's behalf, give notice that the company is in liquidation, but failure to comply with this paragraph does not affect the validity of the document.

209 Powers of a liquidator

(1) A liquidator has all the powers necessary to carry out the functions and duties of liquidator under this Act.

(2) Without limiting subsection (1), a liquidator may

(a) subject to subsection (4), require any director or shareholder of the company or other person having possession of books, records or documents of the company to deliver them to the liquidator;

302
(b) require
   (i) any director or shareholder of the company;
   (ii) any person who has been a director of the company;
   (iii) any person who was an incorporator of the company;
   (iv) any person who is or has been an employee of the company;
   (v) a receiver, solicitor, accountant or auditor or any other person having knowledge of the financial affairs of the company;

to attend on the liquidator at any reasonable time, provide the liquidator with such information concerning the business, accounts or other affairs of the company as the liquidator requests, be examined on oath or affirmation by the liquidator on any of those matters, and assist in the liquidation to the utmost of the person's ability.

(3) A liquidator may administer an oath to, or take the affirmation of, any person required to be examined under subsection (2).

(4) No person may withhold a document of the company from the liquidator on the ground that possession of the document creates a charge over property of the company, but, subject to subsection (5), production of a document to the liquidator does not prejudice the existence or priority of the charge, and the liquidator must make the document available to any person otherwise entitled to it for the purpose of dealing with or realising the charge or the secured property.

(5) No person may enforce a lien over any document of the company in respect of a debt for services rendered to the company before the commencement of the liquidation, but the debt is a preferential claim against the company under section 239 [ Preferential claims] to the extent of $500 (or such greater amount as may be prescribed at the commencement of the liquidation).

(6) Where any person fails to comply with a requirement of the liquidator under subsection (2), the Court, on the
application of the liquidator, may order the person to comply.

(7) On the application of the liquidator, the Court may order any person to whom subsection (2) applies to attend before the Court and be examined on oath or affirmation by the Court or the liquidator on any matter relating to the company.

(8) A person examined under subsections (2) or (7) is not excused from answering any question on the ground that the answer may incriminate or tend to incriminate him or her.

(9) The testimony of any person examined under subsections (2) or (6) is not admissible as evidence in any criminal proceedings against that person, except on a charge of perjury in respect of that testimony.

(10) A person examined under subsections (2) or (7) may apply to the Court to be exculpated from any allegation made or suggested against him or her.

(11) On the hearing of any application under subsection (10), the liquidator shall appear and call the attention of the Court to any matter which appears to be relevant.

210 Power to make calls

Where the company's constitution provides that a share renders its holder liable to calls or otherwise imposes a liability on its holder, the liquidator may make calls or enforce all or part of any outstanding liability.

211 Power to disclaim onerous property

(1) The liquidator may disclaim any onerous property, even if the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership.

(2) For the purposes of this section "onerous property" means
(a) any unprofitable contract; or
(b) any other property of the company which is unsaleable or not readily saleable or may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this section
(a) brings to an end the rights, interests and liabilities of the company in respect of the property disclaimed; but
(b) does not, except so far as necessary to release the company from any liability, affect the rights or liabilities of any other person.

(4) 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 any 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, and the Court may make such an order.

212 Pooling of assets of related companies
On the application of the liquidator or any creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may order that
(a) any company that is or has been related to the company in liquidation shall pay to the liquidator the whole or part of any or all of the claims made in the liquidation;
(b) where two or more related companies are in liquidation, the liquidations in respect of each company shall proceed together, as if they were one company, to the extent that the Court so orders and subject to such terms and conditions as the Court may impose.

213 Offences, search and seizure
(1) Where a company is in liquidation or an application has been made to the Court for an order that a company be put into liquidation, no person may
(a) leave New Zealand with the intention of
   (i) avoiding payment of money due to the company; or
   (ii) avoiding examination with respect to the affairs of the company; or
(iii) avoiding compliance with an order of the Court or some other obligation under this Part with respect to the affairs of the company; or

(b) conceal or remove property of the company with the intention of preventing or delaying the assumption of custody or control of the property by the liquidator; or

(c) destroy, conceal or remove books, documents or records of the company.

(2) Upon the commencement of the liquidation of a company, it is the duty of every present or former director and employee of the company

(a) to discover fully and truly to the liquidator all the property of the company, and the details of the disposal of any property by the company other than in the ordinary course of business; and

(b) to deliver to the liquidator, or in accordance with the liquidator's directions

(i) all property of the company; and

(ii) all books, documents or records belonging to the company;

in or under his or her custody or control.

(3) A person who

(a) acts in contravention of subsection (1); or

(b) fails to comply with subsection (2);

may be convicted of an offence under section 277 (2) [Failure to comply with Act].

(4) Where a company is in liquidation or an application has been made to the Court for an order that a company be put into liquidation, and the Court is satisfied, on the application of the liquidator, that there are reasonable grounds for believing that there is, in or on any place or thing, any property, books, documents or records of the company in respect of which an offence under subsection (1) or (2) has been or is about to be committed, the Court may issue a warrant authorising the person named in the warrant to search for and seize property, books, documents or records of the company in or on that place or thing and deliver them to the liquidator.
(5) In issuing a search warrant under subsection (2), the Court may specify in the warrant such reasonable conditions as it thinks fit.

(6) Subject to any conditions specified in the warrant, the person named in the warrant may
(a) enter and search the place or thing at any time which is reasonable in the circumstances on one occasion within 14 days of the date of issue of the warrant; and
(b) use such assistance as is reasonable in the circumstances; and
(c) use such force, both for making entry (whether by breaking open doors or otherwise) and for breaking open anything therein or thereon as is reasonable in the circumstances.

214 Refusal of essential services prohibited

(1) For the purposes of this section an "essential service" means:
(a) the supply of gas;
(b) the supply of electricity;
(c) the supply of water;
(d) telecommunication services;
(e) any other prescribed service.

(2) For the purposes of this section "telecommunication services" means the conveyance from one device to another by any line, radio frequency or other medium of any sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of any person using the device.

(3) Nothing in any other Act or in any contract entitles a supplier of an essential service to:
(a) refuse to supply the service to a liquidator or to the company in liquidation by reason of the company's default in paying any charges due for the service in respect of any period before the commencement of the liquidation; or
(b) make it a condition of the further supply of the service to a liquidator or to a company in liquidation.
that payment be made of any outstanding charges due for the service in respect of any period before the commencement of the liquidation.

(2) A supplier of an essential service may make it a condition of the supply of the service to a company in liquidation that the liquidator shall personally guarantee the payment of charges to be incurred for the supply.

215 Expenses of liquidation
The expenses of the liquidation, including the reasonable remuneration of the liquidator, are payable out of the assets of the company.

216 When liquidator ceases to hold office
On sending or delivering to the Registrar the final report, the final accounts and the statement referred to in section 206 [Completion of liquidation], the liquidator ceases to hold office, but this section does not limit section 220 [Court supervision of liquidation] or section 221 [Enforcement of a liquidator's duties].

Qualifications and supervision of liquidator

217 Persons qualified to be liquidators
(1) A person who has substantial experience in administering or advising on the insolvency of individuals, or the liquidation of companies, or receiverships is an experienced insolvency practitioner for the purposes of this Part.

(2) Unless the Court orders otherwise, a sole liquidator, or where there is more than one liquidator, at least one of them, must be an experienced insolvency practitioner or an Official Assignee.

(3) The following persons may not be appointed or act as a liquidator:
(a) a person less than 20 years old;
(b) a body corporate;
(c) a creditor of the company in liquidation;
(d) a person who has, within the two years immediately preceding the commencement of the liquidation, been a shareholder, director or auditor of the company in liquidation or of any related company;

(e) an undischarged bankrupt;

(f) a person who is mentally disordered within the meaning of the Mental Health Act 1969;

(g) a person in respect of whom an order has been made under section 30 [Temporary orders] or 31 [Appointment of manager] of the Protection of Personal and Property Rights Act 1988;

(h) a person in respect of whom a prohibition order has been made under section 221 [Enforcement of a liquidator's duties], or under section 104AS [Enforcement of a receiver's duties] of the Property Law Act 1952;

(i) any person who has been convicted in the preceding five years of an offence
   (i) under this Act, the Companies Act 1955 or the Securities Act 1978, or
   (ii) involving dishonesty as defined in section 2 (1) [Interpretation] of the Crimes Act 1961.

(4) The fact that a person is disqualified under this section from acting as a liquidator does not affect the validity of anything done while so acting, unless the Court orders otherwise.

218 Consent to appointment as liquidator

(1) A person's appointment as liquidator is of no effect unless that person has consented in writing to the appointment.

(2) An Official Assignee may not withhold consent to an appointment as liquidator unless satisfied that there is another qualified person willing to consent to appointment.

219 Vacancies in the office of liquidator

(1) The office of liquidator becomes vacant if the person holding office resigns, dies, or becomes disqualified under section 217 [Persons qualified to be liquidators].
(2) An experienced insolvency practitioner may resign from the office of liquidator by appointing another experienced insolvency practitioner as his or her successor and sending or delivering notice in writing of the appointment to the Official Assignee for New Zealand.

(3) An Official Assignee may resign from the office of liquidator by appointing an experienced insolvency practitioner as his or her successor.

(4) The Court, on the application of the company or of any shareholder, director or creditor of the company, may review any appointment of a successor to a liquidator made under subsection (2) or (3), and, if it thinks fit, may appoint instead any other experienced insolvency practitioner or an Official Assignee of a named district.

(5) Where, for any reason other than resignation, a vacancy occurs in the office of liquidator, written notice of the vacancy shall forthwith be sent or delivered to the Official Assignee for New Zealand by the person vacating office, or if that person is unable to act, by his or her personal representative.

(6) Where, as the result of the vacation of office by a liquidator, no person, or no experienced insolvency practitioner, is acting as liquidator, the Official Assignee of New Zealand shall appoint an Official Assignee of a named district to act as liquidator until a successor is appointed under subsection (3).

(7) A person vacating the office of liquidator must, where practicable, provide such information and give such assistance in the conduct of the liquidation as that person’s successor reasonably requires.

220 Court supervision of liquidation

(1) On the application of the liquidator, any committee of inspection or the Attorney-General, or, with the leave of the Court, any creditor, shareholder 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 any 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 any 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 any 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 any claim in respect of anything done or not done in accordance with the direction.

(4) A Court may order that, by reason of the circumstances in which a direction is obtained under subsection (1), the
liquidator shall not have the protection given by subsection (3).

221 Enforcement of a liquidator's duties

(1) In this section, unless the context otherwise requires, "failure to comply" means a failure of a liquidator to comply with any relevant duty arising
(a) under the special resolution or unanimous shareholder agreement or resolution of the board or the order of the Court by which the liquidator was appointed; or
(b) under this or any other Act or rule of law or rules of court; or
(c) under any order or direction of a Court other than an order so to comply made under this section;
and "comply", "compliance" and "failed to comply" have corresponding meanings.

(2) An application for an order under this section may be made by
(a) a liquidator;
(b) a person seeking appointment as a liquidator;
(c) any creditor, shareholder or director of the company in liquidation;
(d) a receiver appointed in respect of any property of the company in liquidation;
(e) the President of the New Zealand Society of Accountants;
(f) the President of the New Zealand Law Society;
(g) an Official Assignee.

(3) No application may be made to a Court by any person other than a liquidator in respect of any 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.

(4) In respect of any failure to comply, a Court may
(a) relieve the liquidator of the duty to comply, wholly or in part; or
(b) without prejudice to any other remedy which may be available in respect of any breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

(5) A Court may, in respect of a person who fails to comply with an order made under subsection (4)(b), or is or becomes disqualified under section 217 [Persons qualified to be liquidators] to become or remain a liquidator,
(a) remove the liquidator from office; or
(b) order that the person may be appointed and act or may continue to act as liquidator, notwithstanding the provisions of section 217.

(6) Where it is shown to the satisfaction of a Court that a person is unfit to act as liquidator by reason of
(a) persistent failures to comply within the meaning of this section; or
(b) the seriousness of any failure to comply the Court shall make in respect of that person a prohibition order having such duration not exceeding 5 years as the Court thinks fit.

(7) For so long as a prohibition order under subsection (6) remains in force in respect of any person, that person shall not
(a) act as a liquidator in any current or other liquidation; or
(b) act as a receiver in any current or other receivership.

(8) Evidence that, on two or more occasions within the preceding 5 years, while a person was acting as a liquidator or as a receiver,
(a) a Court has made
(i) an order to comply under this section; or
(ii) an order to comply under section 104AS [Enforcement of a receiver's duties] of the Property Law Act 1952; in respect of the same person; or
(b) an application for
(i) an order to comply under this section; or
(ii) an order to comply under section 104AS of the Property Law Act 1952
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 within the meaning of this section.

(9) In making any order under this section a Court may if it sees fit
(a) make an order extending any time for compliance; or
(b) impose any term or condition; or
(c) make any other ancillary order.

(10) All proceedings relating to any application for an order under this section shall be served on the Official Assignee for New Zealand who shall keep a copy of the proceedings on a public file indexed by reference to the name of the liquidator concerned.

**Company unable to pay its debts**

222 Inability to pay debts

(1) Unless the contrary is proved, and subject to subsection (2), 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) all or substantially all the assets of the company are in the possession or control of a receiver or some other person empowered to enforce a charge over those assets; or
(d) a compromise between a company and its creditors has been put to a vote in accordance with Part 13 but has not been approved.

(2) 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 receivable 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.

(3) Subsection (1) does not prevent proof by other means that
a company is unable to pay its debts.

(4) Information or records acquired under section 138
[Information for shareholders] or, if the Court so orders,
under section 139 [Investigation of records] may be
received as evidence that a company is unable to pay its
debts.

(5) In determining whether a company is unable to pay its
debts, its contingent or prospective liabilities may be taken
into account.

(6) 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.

223 Statutory demand

(1) A demand by a creditor in respect of a debt owing by a
company made in accordance with this section is a
statutory demand.

(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) except where the debt is a judgment debt, be verified
by affidavit attached to the demand; and
(d) be served on the company; and
(e) require the company to pay the debt, or enter into a
compromise under Part 13 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 20 working days of
the date of service, or such longer period as the Court
may order.
Setting aside a statutory demand

(1) The Court may, on the application of the company, set aside a statutory demand.

(2) The application must
   (a) be made within 10 working days of the date of service of the demand; and
   (b) be supported by affidavit; and
   (c) be served on the creditor with the affidavit 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 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) If, on the hearing of the application, 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 that the company pay the debt within a specified period and that, in default of payment, the creditor may forthwith make an application to put the company into liquidation; or
   (b) dismiss the application and forthwith make an order under section 203[1](c) [Commencement of liquidation] putting the company into liquidation; on the ground that the company is unable to pay its debts.

(6) On the hearing of an application to put the company into liquidation pursuant to an order made under subsection (5)(a), failure of the company to pay the debt within the
specified period is presumptive evidence that the company is unable to pay its debts.

(7) A demand shall 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.

(8) In subsection (7), "defect" includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the demand.

(9) An order under this section may be made subject to conditions.

Voidable transactions

Voidable transfers

(1) A transaction involving a transfer of property by the company to another person is voidable on the application of the liquidator if the transfer

(a) was made

(i) on account of antecedent debt; and

(ii) at a time when the company was unable to pay its due debts; and

(iii) within the year preceding the commencement of the liquidation; and

(b) enabled that person to receive more toward satisfaction of the debt than the person would otherwise have received or be likely to receive in the liquidation;

unless the debt was incurred in the ordinary course of business and the transfer was made no later than 45 working days after the debt was incurred.

(2) Unless the contrary is proved, a transfer made within the six months preceding the commencement of the liquidation is presumed to have been made

(a) at a time when the company was unable to pay its due debts; and

(b) on account of a debt not incurred in the ordinary course of business.
226 Transactions at undervalue

(1) A transaction entered into by a company is voidable on the application of the liquidator if
   (a) it was entered into within the year preceding the commencement of the liquidation; and
   (b) the value of the consideration received by the company was significantly less than the value of the consideration provided by the company; and
   (c) when the transaction was entered into, the company
      (i) was unable to pay its due debts; or
      (ii) was engaged or about to engage in business for which its financial resources were unreasonably small; or
      (iii) incurred the obligation knowing that the company would not be able to perform the obligation when required to do so; or
   (d) the company became unable to pay its due debts as a result of the transaction.

(2) Unless the contrary is proved, the value of the consideration received by the company under a transaction
   (a) with a related company; or
   (b) in which a director of the company is interested;
   entered into within the six months preceding the commencement of the liquidation is presumed to be significantly less than the value of the consideration provided by the company.

227 Voidable charges

(1) A transaction providing for or creating a charge over any property or undertaking of a company in respect of any debt is voidable on the application of the liquidator if the charge was given within the year preceding the commencement of the liquidation on account of antecedent debt, unless
   (a) the charge secures the actual price or value of property sold or supplied to the company, or any other valuable consideration given by the grantee of the charge prior to the execution of the security, and,
immediately after the charge was given, the company was able to pay its due debts; or
(b) the charge is in substitution for a charge given more than one year preceding the commencement of the liquidation.

(2) Unless the contrary is proved, a company giving a charge within the six months preceding the commencement of the liquidation is presumed to have been unable to pay its due debts immediately after giving the charge.

228 Procedure for setting aside voidable transactions

(1) A liquidator who wishes to have a transaction that is voidable under sections 225 [Voidable transfers], 226 [Transactions at undervalue] or 227 [Voidable charges] set aside must
(a) file in the Court a notice to that effect specifying the transaction to be set aside and the property or value thereof which the liquidator wishes to recover, and also the effect of subsections (2), (3) and (4); and
(b) serve a copy of the notice on the person with whom the transaction was entered into, and on every other person from whom the liquidator wishes to recover.

(2) Any person
(a) who would be affected by the setting aside of the transaction specified in the notice; and
(b) who considers that the transaction is not voidable under sections 225 [Voidable transfers], 226 [Transactions at undervalue] or 227 [Voidable charges]

may apply to the Court for an order that the transaction not be set aside.

(3) Unless a person on whom the notice was served has applied to the Court under subsection (2), the transaction is set aside as from the twentieth working day after the date of service of the notice.

(4) Where one or more persons have applied to the Court under subsection (2), the transaction is set aside as from the day on which the last such application is finally determined, unless the Court orders otherwise.
(5) Where a transaction is set aside under this section, any person affected may, after giving up the benefit of the transaction, claim for the value of the benefit as a creditor in the liquidation.

(6) Where a transaction is set aside under this section, the Court may make one or more of the following orders:

(a) an order requiring a person to pay to the liquidator, in respect of benefits received by that person as a result of the transaction, such sums as fairly represent those benefits;

(b) an order requiring property transferred as part of the transaction to be restored to the company;

(c) an order requiring property to be vested in the company if it represents in a person's hands the application, either of the proceeds of sale of property, or of money, so transferred;

(d) an order releasing, in whole or in part, a charge given by the company;

(e) an order requiring security to be given for the discharge of an order made under this section;

(f) an order specifying the extent to which a person affected by the setting aside of a transaction or by a declaration or order made under this section is entitled to claim as a creditor in the liquidation.

(7) The setting aside of a transaction or a declaration or order made under this section 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 of the transaction under which the second-mentioned person acquired the property from the company.

(8) Recovery by the liquidator of any property or the value thereof (whether under this section or any other section of this Act or under any other enactment or in equity or otherwise) may be denied wholly or in part if

(a) the person from whom recovery is sought received the property in good faith and has altered his or her position in the reasonably held belief that the transfer
or payment of the property to that person was validly made and would not be set aside; and
(b) in the opinion of the Court it is inequitable to order recovery, or recovery in full.

(9) Nothing in the Land Transfer Act 1952 restricts the operation of this section.

(10) In this section, “transaction” includes an execution under any judicial proceedings, or a payment (including a payment made in pursuance of a judgment or order of a court) in respect of any transaction to which sections 225, 226 or 227 applies.

**Creditors’ claims**

229 Application of bankruptcy rules to a liquidation

(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 a liquidation 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 a liquidation.

(2) In applying in a liquidation the rules in force under the law of bankruptcy, a claim made under section 231 [Claims by unsecured creditors] and admitted by the liquidator is to be treated as if it were a debt proved in accordance with the requirements of the Insolvency Act 1967.

230 Admissible claims

Any debt or liability, present or future, certain or contingent, whether it is an ascertained debt or liability or a liability sounding only in damages, may be admitted as a claim against a company in liquidation.
231 Claims by unsecured creditors

(1) Unless otherwise required by the liquidator, an unsecured creditor may make a claim without formality.

(2) Where the liquidator requires a claim to be made formally, the claimant must complete and give to the liquidator a claim verified by statutory declaration
   (a) setting out full particulars of the claim; and
   (b) identifying any documents that evidence or substantiate the claim.

(3) The liquidator may require the production of any document mentioned in paragraph (2)(b).

(4) The liquidator may admit or reject any 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, the liquidator may revoke or amend any such decision.

232 Rights and duties of secured creditors

(1) As soon as practicable after the liquidator of a company has given public notice of the commencement of the liquidation under section 208(2)(a)(i) [Other duties of liquidator], every secured creditor of a company in liquidation must send or deliver to the liquidator written notice of any debt secured by a charge over any property of the company; including particulars of the property subject to the charge and the amount secured.

(2) On the expiry of 30 working days from the time at which the liquidator has given public notice of the commencement of the liquidation under section 208(2)(a)(i) [Other duties of liquidator], a secured creditor whose charge is not
   (a) a charge relating to land
      (i) created by an instrument registered under the Deeds Registration Act 1908 the Land Transfer Act 1952; or
      (ii) in respect of which a caveat or other notice has been lodged or recorded under the Land Transfer Act 1952; or
(b) a transfer or assignment or mortgage or assignment of a mortgage of any ship or vessel or any share of any ship or vessel registered under Part XII of the Shipping and Seamen Act 1952; or
(c) a charge perfected by registration under the Personal Property Securities Act [ ];

and who has not sent notice of his or her charge to the liquidator in accordance with subsection (1), is to be taken as having surrendered that charge to the liquidator under subsection (3) (c).

(3) A secured creditor may
(a) realise any property subject to a charge, if entitled to do so; or
(b) claim as a secured creditor in the liquidation; or
(c) surrender the charge to the liquidator for the general benefit of creditors, and claim in the liquidation as an unsecured creditor for his or her whole debt.

(4) A secured creditor who realises property subject to a charge
(a) may claim as an unsecured creditor for any balance due to him or her, after deducting the net amount realised;
(b) must account to the liquidator for any surplus remaining from the net amount realised after satisfaction of his or her whole debt, including any 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.

(5) If a creditor claims as a secured creditor in the liquidation, the claim must be verified by statutory declaration and must
(a) set out full particulars of the claim; and
(b) set out 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;

and sections 233 [Ascertainment of amount of claim], 234 [Claim not of an ascertained amount] and 236 [Claim in
respect of debts payable at a future time] apply to any claim as a secured creditor.

(6) The liquidator may require production of any document mentioned in subsection 5(c).

(7) Where a claim is made by a creditor as a secured creditor, the liquidator must
(a) meet the claim in full and redeem the security; or
(b) realise the property subject to the charge, and pay the secured creditor the lesser of the amount of the claim and the net amount realised taking into account the liquidator's reasonable remuneration; or
(c) reject the claim in whole or in part, but
   (i) where a claim is rejected in whole or in part, the creditor may make a revised claim as a secured creditor within 10 working days of receiving notice of the rejection; and
   (ii) the liquidator may, if he or she subsequently considers that a claim was wrongly rejected in whole or in part, revoke or amend any such decision.

(8) A creditor who claims in the liquidation as a secured creditor may claim as an unsecured creditor for any balance due to him or her, after deducting any payment made by the liquidator under subsection (6).

(9) The liquidator may at any time require a secured creditor by notice in writing either to
(a) take possession of property subject to a charge, if entitled to do so; or
(b) file a claim as a secured creditor in accordance with subsection (5); within not more than 20 working days of receipt of the notice, if he or she intends to rely on the security.

(10) A secured creditor on whom notice has been served under subsection (9) who fails to comply with the notice, is to be taken as having surrendered his or her charge to the liquidator under subsection (3)(c) for the general benefit of creditors, and may claim in the liquidation as an unsecured creditor for his or her whole debt.
(11) A secured creditor who has surrendered his or her charge under this section may, with the leave of the Court or the liquidator and subject to such terms and conditions as the Court or the liquidator thinks fit, at any time before the liquidator has realised the property charged
(a) withdraw the surrender and rely on the charge; or
(b) submit a new claim under this section.

233 Ascertainment of amount of claim

(1) The amount of a claim shall be ascertained as at the date 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 shall be converted into New Zealand currency at the rate of exchange on the date of commencement of the liquidation, or, if there is more than one such rate of exchange on that date, at the average of those rates.

234 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 any claimant who is aggrieved by an estimate made by the liquidator, the Court shall determine the amount of the claim as it sees fit.

235 Fines and penalties

A fine or other monetary penalty imposed on a company, whether before or after the commencement of the liquidation, in respect of an offence committed before the commencement of the liquidation, and costs ordered to be paid with respect to proceedings for the offence, may be admitted as a claim in the liquidation.
236 Claim in respect of debts payable at a future time

The amount of a claim made in respect of a debt that, but for the liquidation, would not be due and payable until 6 months after the commencement of the liquidation shall be ascertained according to the present value of the debt, having regard to the prescribed rate of interest as at the date of commencement of the liquidation.

237 Mutual credit and set-off

(1) Subject to section 227 [Voidable charges], 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 shall 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 shall be set off against any 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) This section does not apply to any amount paid or payable by a shareholder as the consideration or part of the consideration for the issue of a share or in satisfaction of a call in respect of any outstanding liability of the shareholder made by the board of directors or by the liquidator.

238 Ascertainment of amount of interest

If there is a surplus after payment in full of all admitted claims, interest on a claim accrues as from the date of the commencement of the liquidation at a rate not exceeding the prescribed rate.

239 Preferential claims

(1) Subject to section 232 (7) (a) and (b) [Rights and duties of secured creditors], the liquidator must pay, out of the assets of the company, the following expenses, fees and
claims, to the extent and in the order of priority specified in this section.

(2) 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 collecting, preserving, realising or distributing the company’s assets, including the remuneration of the liquidator other than a liquidator appointed by the Court;

(b) the taxed costs of any person who applied to the Court for an order that the company be put into liquidation, including the taxed costs of any person appearing on the application whose costs are allowed by the Court;

(c) the remuneration of any special manager;

(d) the costs and expenses of any person who makes or concurs in making the report on the state of the company’s affairs;

(e) the taxed charges of any shorthand writer appointed to take an examination of any person under this Part (other than a shorthand writer appointed at the instance of an Official Assignee, in which case the charges are an expense incurred by the Official Assignee in collecting and realising the company’s assets);

(f) the necessary disbursements of any liquidator appointed by the Court, other than fees and expenses payable under paragraph (a);

(g) the costs of any person properly employed by a liquidator appointed by the Court;

(h) the remuneration of a liquidator appointed by the Court;

(i) The actual out-of-pocket expenses necessarily incurred by any committee of inspection, subject to the approval of the Audit Office.

(3) After paying the expenses and fees referred to in subsection (2), the liquidator must next pay the following claims:

(a) subject to subsection (6), all wages or salary of any employee, whether or not earned wholly or in part by
way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the four months preceding the commencement of the liquidation;

(b) subject to subsection (6), all holiday pay becoming payable to any employee (or where the employee has died, to any other person in the employee’s right) on the termination of the employment before or by reason of the commencement of the liquidation;

(c) all amounts due in respect of any compensation or liability for compensation under the Workers’ Compensation Act 1956 accrued before the commencement of the liquidation;

(d) subject to subsection (6), all amounts deducted by the company from the wages or salary of any employee in order to satisfy obligations of the employee;

(e) all amounts that are preferential claims under section 209 (4) [Powers of a liquidator];

(f) subject to subsection (8), any sum that, in accordance with section 57 [First week] of the Accident Compensation Act 1982 is payable by a company in respect of time lost before the commencement of the liquidation;

(g) any amount that, under section 23 [Winding up of businesses] of the Apprenticeship Act 1983 the Court may order to be paid to an apprentice who is deprived of employment by reason of the commencement of the liquidation;

(h) all sums that the Motor Vehicle Dealers Institute Incorporated is entitled to recover from a defaulting licensee company under section 42 [Subrogation of rights of action against defaulting motor dealers] of the Motor Vehicle Dealers Act 1975 in the event of the company being put into liquidation;

(i) subject to subsection (9), any sum ordered or adjudged to be paid by a company under section 6 [Workers not to be dismissed by reason of protected voluntary service or training] of the Volunteers Employment Protection Act 1973 as compensation in respect of a default or contravention occurring
before the commencement of the liquidation, whether or not the order or judgment for compensation was made or given before that date;

(j) all sums which by any other enactment are required to be paid in accordance with the priority established by this subsection.

(4) After paying the claims referred to in subsection (3), the liquidator must next pay all sums
(a) paid by a buyer to a seller on account of the purchase price of goods; or
(b) to which a buyer is or becomes entitled to receive from a seller under section 9 [Rights of seller and buyer on cancellation of layby sale] of the Layby Sales Act 1971;

and for which the buyer is a creditor in the liquidation of the company under section 11 [Preference on winding up, bankruptcy, or receivership of seller] of the Layby Sales Act 1971.

(5) After paying the sums referred to in subsection (4), the liquidator must next pay the amount of
(a) any tax payable by the company in the manner required by Part III of the Goods and Services Tax Act 1985;
(b) any tax deductions made by the company under Part XI of the Income Tax Act 1976;
(c) any non-resident withholding tax deducted by a company under Part IX of the Income Tax Act 1976;
(d) every resident withholding tax deduction made by a company under Part IXA of the Income Tax Act 1976 (as inserted by section 11 of the Income Tax Amendment (No.8) Act 1989);

to the extent that the amount is for the time being unpaid to the Commissioner of Inland Revenue.

(6) The total sum to which priority is to be given under subsection (3)(a), (b), or (d) shall not, in the case of any one employee, exceed $6,000 or such greater amount as is prescribed at the commencement of the liquidation.

(7) Where any payment has been made
(a) to any employee of a company, on account of wages or salary; or
(b) to any such employee or, where the employee has died, to any other person in the employee's right, on account of holiday pay;

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a liquidation have the same right of priority in respect of the money so advanced as the employee, or other person receiving the payment in right of the employee, would have had if the payment had not been made.

(8) The total sum to which priority is to be given under subsection (3) (f) shall not, in the case of any one claimant, exceed $1,500; but where the Accident Compensation Corporation is a claimant in respect of time lost by more than one employee, its claim in respect of the time lost by each of those employees shall be treated as a separate claim made by a separate claimant.

(9) The total sum to which priority is to be given under subsection (3)(i) shall not, in the case of any one claimant, exceed $200.

(10) The claims listed in each of subsections (3), (4) and (5)
(a) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of secured parties in respect of assets
(i) which are subject to a security interest; and
(ii) became subject to that security interest by reason of its application to certain existing assets of the company and those of its future assets which were after acquired property or proceeds;

and must be paid accordingly out of those assets.

(11) To the extent that the claims to which subsection (10) applies are paid out of assets referred to in paragraph (b) of
that subsection, the amount so paid is an unsecured debt due by the company to the secured party.

(12) If a landlord or other person has distrained on any goods or effects of the company within the month preceding the commencement of the liquidation, the claims to which priority is given by this section are a first charge on the goods or effects so distrained on, or the proceeds from their sale, but where any money is paid to a claimant under any such charge, the landlord or other person has the same rights of priority as that claimant.

(13) For the purposes of this section
(a) any 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) the expression “holiday pay”, in relation to any person, means all sums payable to that person by the company under sections 11 to 23 of the Holidays Act 1981, and includes all sums which by or under any other enactment or any award, agreement, or contract of service are payable to that person by the company as holiday pay.
(c) the expressions “after acquired property”; “proceeds”; “security interest”; and “secured party” have the same meanings as in the Personal Property Securities Act [  ].

240 Claims of other creditors; surplus assets
(1) After paying preferential claims in accordance with section 239 [Preferential claims], the liquidator shall 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 shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(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

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section, nothing in this section prevents the agreement from having effect according to its terms.

(4) After paying the claims referred to in subsection (1), the liquidator shall distribute the company's surplus assets in accordance with its constitution and this Act.

Rights of creditors and shareholders

241 Meetings of creditors or shareholders

(1) Any two or more creditors or shareholders of a company in liquidation may, by notice served on the liquidator at any time in the course of the liquidation, request the liquidator to call a meeting of creditors or of shareholders

(a) to vote on a proposal that a committee of inspection 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 any such request 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) the costs of calling a meeting would be out of proportion to the value of the company's assets.

(3) The decision of a liquidator to decline a request to call a meeting of creditors or of shareholders may be reviewed by the Court on the application of any one or more creditors or shareholders, 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 shall forthwith call such a meeting in accordance with the Third Schedule or the Second Schedule as the case may be.

(5) The members of a committee of inspection chosen by any 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 committee of inspection; or
(b) the membership of a committee of inspection;
the liquidator shall refer the matter to the Court which may make such decision thereon 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 shall for all purposes be treated as though it were a decision taken at a meeting of shareholders.

(7) The liquidator shall send or deliver to the Registrar a copy of all communications received or sent by the liquidator, and all decisions taken at any meeting of creditors or shareholders, in accordance with this section.

242 Committees of inspection

(1) A committee of inspection shall consist of not less than three persons who are creditors or shareholders, or persons holding general powers of attorney from creditors or shareholders, or authorised directors of companies which are creditors or shareholders of the company in liquidation.

(2) A committee of inspection 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; and
   (c) assist the liquidator as appropriate in the conduct of the liquidation.

(3) The provisions set out in the Fourth Schedule govern proceedings at meetings of committees of inspection.

(4) Where, by reason of vacancies in a committee of inspection the committee is unable to act, the liquidator must call attention to the situation in the next six-monthly report required to be prepared and sent under section 208 (2) (c) [Other duties of liquidator].
243 Interpretation
For the purposes of sections 244–250, unless the context otherwise requires,
“Fund” means the Insolvency (Assetless Companies) Fund established by section 244(1) [Insolvency (Assetless Companies Fund)];
“supervisory board” means the supervisory board set up under section 244(2).

244 Insolvency (Assetless Companies) Fund
(1) The Registrar shall establish, maintain and administer a fund to be called the Insolvency (Assetless Companies) Fund.
(2) The Registrar shall convene a supervisory board consisting of nominees of
(a) the Registrar; and
(b) the President of the New Zealand Law Society; and
(c) the President of the New Zealand Society of Accountants.
(3) The Registrar may invest money forming part of the Fund in the manner in which money in the Public Account may be invested under section 50 [Investment of money in Public Account] of the Public Finance Act 1977.

245 Property of the Fund
The Fund consists of
(a) all contributions paid under section 247 [Payment of contributions];
(b) all interest received from the investment of moneys forming part of the Fund; and
(c) any other money lawfully paid into the Fund.

246 Expenditure from the Fund
There shall be paid out of the Fund
(a) the expenses of maintaining and administering the Fund; and
(b) the amounts advanced from the Fund under section 248 [Advances for inquiries or proceedings].

247 Payment of contributions

A company that lodges an annual return shall pay to the Registrar, at the time of lodging the return, such fee by way of contribution to the Fund as is prescribed.

248 Advances for inquiries or proceedings

(1) On the application of the liquidator of a company in liquidation that does not have unencumbered assets immediately available to the liquidator of a value greater than the prescribed amount (an “assetless company”), the supervisory board may make one or more advances from the Fund under this section, if it is satisfied that it would be in the interests of the company’s creditors or shareholders, or both, for the liquidator to
   (a) make inquiries concerning the business, property, affairs or entitlements of the company; or
   (b) bring, continue or defend proceedings relating to the business, property or affairs of the company;
   for the purpose of recovering, retaining or realising the company’s assets.

(2) Advances from the Fund under this section shall be of such amount as the supervisory board determines, having regard to the proposals of the liquidator for the conduct of the proceedings or the inquiry, and may be made in relation to any one or more stages of the proceedings or the inquiry, and on such terms and conditions as the supervisory board thinks fit.

(3) Advances from the Fund may include an amount to meet any costs awarded against the liquidator.

249 Priority of the Fund

(1) Where an advance has been authorised by the supervisory board under section 248 [Advances for inquiries or proceedings], the Registrar has, in the liquidation of the company concerned, a claim to be repaid the amount of that advance.
The Registrar's claim under subsection (1) shall be treated as an expense properly incurred by the liquidator under section 239 (2) (a) [Preferential claims].

250 Liquidator's report

As soon as practicable after the completion of the inquiry or proceedings, or any stage of the inquiry or proceedings, in respect of which an advance was made under section 248 [Advances for inquiries or proceedings], the liquidator must send or deliver to the Registrar a report on the purposes for which the money advanced was expended and the outcome of the proceedings or inquiry to date.

PART 15
REMOVAL FROM THE NEW ZEALAND REGISTER

251 Effect of removal from register

A company ceases to exist when it is removed from the New Zealand register.

252 Grounds for removal from register

(1) Subject to subsection (3), the Registrar shall remove a company from the New Zealand register if

(a) the company is an amalgamating company other than an amalgamated company and, on the same day, the Registrar issues a certificate of amalgamation under section 193 [Certificate of amalgamation]; or

(b) the Registrar is satisfied that the company has ceased to carry on business; or

(c) there is sent or delivered to the Registrar a request made by

(i) those shareholders entitled to vote and voting on the question, by special resolution; or

(ii) the board of directors, if the constitution of the company so requires or permits, by resolution passed at a meeting of the board.
that the company be removed from the New Zealand register on one or other of the grounds specified in subsection (2); or

(d) a liquidator sends or delivers to the Registrar the final report and final accounts of the liquidation and the statement required by section 206 [Completion of liquidation].

(2) A request that a company be removed from the New Zealand register under subsection (1)(c) 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 203 [Commencement of liquidation] for an order putting the company into liquidation.

(3) The Registrar shall remove a company from the New Zealand register under subsection (1) paragraphs (b), (c) or (d) only when

(a) the Registrar has given the notice required by section 253 [Notice of intention to remove company from register] and

(b) the Registrar

(i) is satisfied that no person has objected to the removal under section 254 [Grounds for objecting to removal from register]; or

(ii) if an objection to the removal has been received, has carried out the duties required by section 255 [Duties of Registrar where objection received].

253 Notice of intention to remove company from register

(1) Where the Registrar

(a) has reason to believe that a company has ceased to carry on business and ought to be removed from the
New Zealand register under section 252 (1) (b) [Grounds for removal from register]; or
(b) has received a request that the company be removed from the New Zealand register under section 252 (1) (c); or
(c) has received from a liquidator the documents referred to in section 252 (1) (d);
the Registrar must, as soon as practicable, give public notice of the matters specified in subsection (3).

(2) Where the Registrar intends to remove the company from the New Zealand register on the ground referred to in subsection (1) (a) or (b), the Registrar must also give notice of the matters specified in subsection (3) to
(a) the company; and
(b) any secured party who has registered a financing statement under the Personal Property Securities Act [ ] in relation to any property of the company; and
(c) the Inland Revenue Department.

(3) The notice to be given under this section must specify
(a) the name of the company and its registered office;
(b) the section under and the grounds on which the Registrar proposes to remove the company from the New Zealand register;
(c) the date by which an objection to the removal under section 254 [Grounds for objecting to removal from register] must be sent or delivered to the Registrar, which shall be not less than 20 working days after the date of the notice.

254 Grounds for objecting to removal from register

(1) Where the Registrar gives notice of an intention to remove a company from the New Zealand register, any person may send or deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any one or more of the following grounds:
(a) that the company is still carrying on business; or
(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, a shareholder or any other 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 8; 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 where:
   (i) the claim has been paid in full; or
   (ii) the claim has been paid in part under a compromise entered into under Part 13 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 is not undischarged where
   (i) payment has been made to the shareholder or that person in accordance with any right under the company’s constitution and this Act to receive or share in any of 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.

255 Duties of Registrar where objection received

(1) Where an objection to the removal of a company from the New Zealand register is made on a ground specified in section 254 (1)(a), (b) or (c) [Grounds for objecting to
removal from register], the Registrar shall not proceed with the removal unless the Registrar is satisfied that
(a) the objection has been withdrawn; or
(b) any facts on which the objection is based are not, or are no longer, correct; or
(c) the objection is frivolous or vexatious.

(2) Where an objection to the removal of a company from the New Zealand register is made on a ground specified in section 254(1)(d), (e) or (f) [Grounds for objecting to removal from register],
(a) the Registrar shall give notice to the person objecting that, unless notice of an application to the Court by that person for an order
   (i) under section 203(1)(c) [Commencement of liquidation], that the company be put into liquidation; or
   (ii) under section 256 [Powers of the Court], that, on any ground specified in section 254 [Grounds for objecting to removal from register], the company not be removed from the New Zealand register;

   is served on the Registrar not later than 30 working days after the date of the notice, the Registrar intends to proceed with the removal; and
(b) if
   (i) notice of such an application to the Court is not duly served on the Registrar; or
   (ii) 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 shall proceed with the removal.

(3) The Registrar shall send
(a) a copy of any objection under section 254 [Grounds for objecting to removal from register]; and
(b) a copy of any notice given by or served on the Registrar under this section; and

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(c) if the company is removed from the New Zealand register, notice of the removal;

to any person who sent or delivered to the Registrar a request that the company be removed from the New Zealand register under section 252(1)(c) [Grounds for removal from register] or, while acting as liquidator, sent or delivered to the Registrar the documents referred to in section 252(1)(d).

256 Powers of the Court

On an application by any person for an order that, on any ground specified in section 254 [Grounds for objecting to removal from register], the company not be removed from the New Zealand register, the Court may make such order as it thinks fit.

257 Property of a company removed from register

(1) If, after the removal of a company from the New Zealand register, it should be found that property of the former company has not been distributed, that property is to be treated as unclaimed property and vests in the Crown.

(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) When the vesting of any property under this section comes to the notice of the Secretary to the Treasury, the Secretary must forthwith give public notice of the vesting, setting out the name of the former company and particulars of the property vesting, and must send or deliver a copy of the notice to the Registrar.

(4) The Secretary to the Treasury may disclaim the Crown's title to any property vesting in the Crown under this section if the property is onerous property within the meaning of section 211(2) [Power to disclaim onerous property].

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(5) The Secretary to the Treasury must forthwith give public notice of any disclaimer under subsection (4) and send or deliver a copy of the notice to the Registrar.

(6) Whether or not any property vesting in the Crown under this section is disclaimed under subsection (4), any 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 any such person, may apply to the Court for an order

(a) vesting all or part of the property in that person; or

(b) awarding that person compensation from the Crown of an amount not greater than the value of the property.

(7) On an application made under subsection (6), the Court may

(a) decide any question concerning the value of the property vesting in the Crown under this section, the entitlement of any applicant to any such property or to compensation, and the apportionment of any property or compensation among any two or more applicants;

(b) order that the hearing of any two or more applications be consolidated;

(c) order that any 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;

(d) make any ancillary order.

(8) Any compensation awarded under subsection (6) shall be paid out of the Consolidated Account without further appropriation than this Act.
PART 16
OVERSEAS COMPANIES

258 Overseas companies to register under this Act

(1) Every overseas company that, on or after the commencement of this Act, establishes a place of business (including a share transfer or share registration office) within New Zealand must apply for registration under this Part in accordance with section 259 [Application for registration] within 10 registration days of establishing the place of business.

(2) Every overseas company whose constitutional documents are registered under Part XII 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 XII of the Companies Act 1955.

(3) Every overseas company that, before the commencement of this Act, has established a place of business (including a share transfer or share registration office) within New Zealand but whose constitutional documents are not registered under Part XII of the Companies Act 1955, must apply for registration under this Part in accordance with section 259 [Application for registration] within 10 registration days of the commencement of this Act.

(4) If an overseas company fails to comply with subsections (1) or (3)
   (a) the overseas company may be convicted of an offence under section 277(2) [Failure to comply with Act]; and
   (b) every director of the overseas company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

259 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), every application for registration of an overseas company under this Part must
(a) state the name of the overseas company; and
(b) contain a statement by the applicant
   (i) that the applicant has caused a search to be made, during the period of 10 working days immediately preceding the date of the application, of such registers, directories and records of names, trademarks, or service marks as are then prescribed by the Registrar for the purposes of this paragraph; and
   (ii) whether, disregarding the word "Limited" (if any) the name of the overseas company is identical to the name of any body registered on any register prescribed by the Registrar for the purposes of subparagraph (i) and, if the name of the overseas company is so identical, whether the body has consented to the use of the name in New Zealand by the overseas company; and
(c) state the full names and residential addresses of the directors of the overseas company at the date of the application; and
(d) state the full address of the principal place of business of the overseas company; and
(e) have attached evidence of incorporation of the overseas company and a copy of the instrument constituting or defining the constitution of the company, both being certified in accordance with regulations made under this Act; and
(f) state the full name and address of one or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the overseas company.
260 Registration of overseas company

Forthwith after receipt of a properly completed application for registration under this Part of an overseas company, the Registrar must

(a) enter on the overseas register the particulars of the company required under section 272 [Registers]; and
(b) assign a number to the overseas company for the purposes of section 261 [Name of overseas company].

261 Name of overseas company

(1) If at any time the Registrar believes on reasonable grounds that

(a) disregarding the word “Limited” (if any), the name of an overseas company is identical to the name of any body registered on any register prescribed by the Registrar for the purposes of section 259 (2) (b) (i) [Application for registration]; or
(b) the use in New Zealand by an overseas company of its name contravenes any Act which prohibits the use of certain words or names; or
(c) the use in New Zealand by an overseas company of its name is undesirable;

the Registrar may serve written notice on the overseas company to the effect that the overseas company must not use its name in New Zealand from a date specified in the notice (being a date not less than 20 working days after the date on which the notice is served on the overseas company).

(2) Subject to subsection (3), where the Registrar has served notice on an overseas company under subsection (1) then, unless the overseas company has changed its name from the name specified in the notice, from the date specified in the notice the name of the overseas company in New Zealand will be “Company No X Limited” where “X” is the number assigned by the Registrar for this purpose upon the overseas company’s registration under this Part.
(3) The name given to an overseas company under subsection (2) shall not include the word "Limited" if the liability of the members of the overseas company is unlimited.

262 Use of name by overseas company

(1) Every overseas company must ensure that its full name, and the name of the country where it was incorporated, are clearly stated in

(a) all communications sent by or on behalf of the company; and

(b) all 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), it is lawful to use any generally recognised abbreviation of a word or words in the name of an overseas company, so long as it is not misleading to do so.

263 Alteration of constitution, name, etc

(1) Where there is

(a) an alteration to the instrument constituting or defining the constitution of an overseas company; or

(b) a change in the directors of an overseas company; or

(c) a change in the persons authorised to accept service in New Zealand of documents on behalf of the overseas company,

the overseas company must ensure that the Registrar receives notice in the prescribed form of the alteration or change within 20 registration days of the day on which the alteration or change takes effect.

(2) If an overseas company fails to comply with subsection (1)

(a) the overseas company may be convicted of an offence under section 277(2) [failure to comply with Act]; and

(b) every director of the overseas company may be convicted of an offence under section 278(2) [liability of directors for failure by board or company].
264 Annual return of overseas company

(1) Every overseas company 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 of the kind referred to in the return on the overseas register in respect of the overseas company at the date of the return is correct.

(2) An annual return must be dated 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) or under this subsection.

(5) Notwithstanding subsection (1), an overseas company 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 subsections (1) and (2)

(a) the company may be convicted of an offence under section 277(2) [Failure to comply with Act]; and

(b) every director of the overseas company may be convicted of an offence under section 278(2) [Liability of directors for failure by board or company].

265 Service of documents upon overseas company

(1) A summons, writ, claim, notice, order or other document of similar nature may be served on an overseas company registered under this Part as follows:

(a) 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

(b) if delivery in accordance with paragraph (a) is not practicable at the relevant time, by delivery to a director, employee or agent of the company at any
place of business of the company in New Zealand, or to a person who appears to be in charge of that place at the time of delivery; or

(c) if delivery in accordance with paragraph (b) is not practicable at the relevant time, by posting the document to the address of a person referred to in paragraph (a), or delivering it to a box at a document exchange which that person is then using; or

(d) if delivery in accordance with paragraph (c) is not practicable at the relevant time, by posting the document to the address of any place of business in New Zealand of the company, or delivering it to a box at a document exchange which the company is then using.

(2) In addition to subsection (1), a particular document may be served on an overseas company in a manner approved by the Court.

(3) Subsections (1) and (2) have effect notwithstanding any other Act or rule of law, but do not limit section 153 [Agreements as to Service] (as applied by subsection (4)).

(4) Sections 153 [Agreements as to service], 154 [Service by delivery] and 155 [Service by post or document exchange] apply in respect of an overseas company as if

(a) every reference therein to a company were a reference to an overseas company; and

(b) every reference therein to section 152 [Methods of service of documents] were a reference to subsection (1).

266 Ceasing to carry on business in New Zealand

(1) Every overseas company registered under this Part that intends to cease to have a place of business in New Zealand must

(a) give public notice of that intention; and

(b) no earlier than three 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 have a place of business in New Zealand.
(2) The Registrar must remove an overseas company from the overseas register forthwith after receipt of a notice given in accordance with subsection (1) (b), or by a liquidator in accordance with the provisions of the Fifth Schedule.

(3) An application may be made to the Court for the liquidation of the assets in New Zealand of an overseas company in accordance with Part 14, subject to the modifications and exclusions set out in the Fifth Schedule.

(4) An application may be made under subsection (3) whether or not
(a) the overseas company is registered under this Part; or
(b) the overseas company has given public notice of an intention to cease to have a place of business in New Zealand; or
(c) the overseas company has given notice to the Registrar in accordance with subsection (1)(b); or
(d) it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of any other country.

267 Attorneys of overseas companies

(1) Part XII of the Property Law Act 1952 applies, with the necessary modifications, with respect to any power of attorney executed by an overseas company registered under this Part to the same extent as if the company were a person and as if the commencement of the winding up of the company were the death of a person within the meaning of the said Part XII.

(2) A declaration endorsed upon or annexed to any instrument appointing, or purporting to appoint an attorney of an overseas company, made or purporting to be made by one of the directors before a person authorised by section 11 [Declarations made outside New Zealand] to take a declaration for use in New Zealand, in the country concerned, is valid if it is a written declaration in the form set out in the Fifth Schedule, and is signed by one of the directors of the company, and is witnessed by a person authorised by section 11 to take a declaration for use in New Zealand, if
(a) the company is incorporated under the style mentioned in the instrument, in accordance with the law of the country in which it is so incorporated, the
PART 17
REGISTRAR OF COMPANIES

268 Registrar and Deputy Registrars of Companies

(1) There shall be appointed in accordance with the State Sector Act 1988
   (a) a Registrar of Companies; and
   (b) as many Deputy Registrars of Companies as may be found necessary for the purposes of this Act.

(2) Subject to the control of the Registrar of Companies, a Deputy Registrar shall have and may exercise all the powers, duties and functions of the Registrar of Companies under this Act. The fact that a Deputy Registrar exercises any such power, duty, or function is conclusive evidence of his or her authority to do so.

269 District and Assistant Registrars of Companies

(1) There shall from time to time be appointed in accordance with the State Sector Act 1988 as many District Registrars of Companies and Assistant Registrars of Companies as may be found necessary for the purposes of this Act.

(2) Subject to the control of the Registrar, every District Registrar shall have and may exercise all the powers, duties and functions of the Registrar.
(3) Subject to the control of the Registrar and of the District Registrar, every Assistant Registrar shall have and may exercise all the powers, duties and functions of the Registrar.

(4) The fact that a District Registrar or an Assistant Registrar exercises any powers or functions conferred by this Act on the Registrar is conclusive evidence of his or her authority to do so.

270 Official seals

There shall be an official seal in the custody of the Registrar, and there shall also be an official seal in the custody of each District Registrar.

271 Fees

(1) The Governor-General may by Order in Council, prescribe
   (a) fees payable to the Registrar for the performance of the Registrar’s functions under this Act; and
   (b) penalty fees payable to the Registrar for failure to lodge a document with the Registrar within the time prescribed by this Act; and
   (c) fees payable to the Registrar for the purposes of or as contemplated by this Act.

(2) Where a fee is prescribed for the performance of a function of the Registrar, the Registrar may refuse to perform the function until the fee is paid.

(3) The Registrar may waive or reduce a penalty fee prescribed pursuant to subsection (1)(b) in any particular case if the Registrar considers that in the circumstances it is proper and reasonable to do so.

272 Registers

(1) The Registrar shall cause to be kept in New Zealand
   (a) a register of companies incorporated or registered in New Zealand under Part 2; and
   (b) a register of overseas companies registered in New Zealand under Part 16
each of which must contain such information as is prescribed by regulations made under this Act.

(2) The New Zealand register may be divided into different parts which may be kept in different places in New Zealand.

(3) The overseas register must be kept in full at Wellington.

(4) The Registrar may, after giving notice to such persons as the Registrar considers have an interest in the transfer, direct the transfer of any part of the New Zealand register, and of any record relating to any company, from one place in New Zealand to another such place.

273 Registration of documents

(1) On receipt of a document for registration under this Act the Registrar shall

(a) mark the time and date of receipt on the document; and

(b) subject to subsection (2), forthwith register it in the New Zealand register or the overseas register, as the case may be; and

(c) forthwith give written advice of registration to the person from whom the document was received.

(2) If any document received by the Registrar for registration under this Act

(a) is not in the prescribed form, if any; or

(b) has not been duly completed; or

(c) contains any matter that is not clearly legible, the Registrar may refuse to register the document, and in that event shall forthwith request either that the document be appropriately amended or completed and submitted for registration again or that a fresh document be submitted in its place.

(3) Neither registration, nor refusal of registration, of a document by the Registrar shall affect, or create any presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in the document.
274 Inspection and evidence of registers

(1) Any person may, on payment of the prescribed fee and during normal business hours on any registration day, inspect the New Zealand register or overseas register and any information or document forming part of either register.

(2) Any person may, on payment of the prescribed fee, require a certificate of the incorporation or registration of any company, or a copy of or extract from any document or any part of any document forming part of the New Zealand register or the overseas register to be given or certified by the Registrar.

(3) No process for compelling the production of any document kept by the Registrar shall issue from any Court, except with the leave of that Court, and any such process if issued must have attached a statement that it is issued with the leave of the Court.

(4) A copy of or extract from any document forming part of the New Zealand register or the overseas register, certified to be a true copy under the hand and seal of the Registrar (whose official position and signature it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

275 Notice by Registrar

(1) Where the Registrar is required by this Act to give notice to any person, the Registrar shall give such notice in writing in such manner as the Registrar considers appropriate in the circumstances.

(2) Without limiting subsection (1), the Registrar may give notice in writing to a person by

(a) having a notice delivered to the person; or
(b) sending a notice to the person by registered post, ordinary post or courier; or
(c) having a notice published in a newspaper or other publication in circulation in the area where the person resides.
276 Appeal from Registrar

(1) Any person who is aggrieved by any 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.

PART 18
OFFENCES AND PENALTIES

277 Failure to comply with Act

(1) Every person who acts in contravention of or fails to comply in any respect with any of the following provisions of this Act, or any requirement imposed under any such provision, namely
(a) section 42 (2) [Board may authorise a distribution];
(b) section 50 (3) [Board may make offer to acquire shares];
(c) section 51 (2) [Special offers to acquire shares];
(d) section 58 (5) [Financial assistance];
(e) section 59 (2) [Special financial assistance];
(f) section 62 (1) [Statement of shareholder rights];
(g) section 63 (4) [Transfer of shares];
(h) section 186 (1) [Copies of documents];
(i) section 190 (2) [Manner of approving amalgamation proposal],
commits an offence and is liable on conviction to a fine not exceeding $5,000.

(2) Every person who acts in contravention of or fails to comply in any respect with any of the following provisions of this Act, or any requirement imposed under any such provisions, namely
(a) section 25 (2) [Power of Court to alter constitution];
(b) section 65 (1) [Company to maintain share register];
(c) section 66 (3) [Place of register];
(d) section 68 (1) [Directors’ duty to supervise share register];
(e) section 109 (1) [Disclosure of interest];
(f) section 139 (5) [Investigation of records];
(g) section 147 [Company records to be kept];
(h) section 213 (1) [Offences, search and seizure];
(i) section 213 (2) [Offences, search and seizure];
(j) section 258 (1) [Overseas companies to register under this Act];
(k) section 258 (3) [Overseas companies to register under this Act];
(l) section 263 (1) [Alteration of constitution, name etc];
(m) section 264 (1) and (2) [Annual return of overseas company];

commits an offence and is liable on conviction to a fine not exceeding $10,000.

278 Liability of directors for failure by board or by company

(1) Where a company or the board of a company acts in contravention of or fails to comply with any of the following provisions of this Act, or any requirement imposed pursuant to any such provision, namely
(a) section 62 (1) [Statement of shareholder rights];
(b) section 63 (4) [Transfer of shares];
(c) section 186 (1) [Copies of documents];

then, without limiting the liability of any person under section 277 [Failure to comply with Act], every director of the company commits an offence, and is liable on conviction to a fine not exceeding $5,000.

(2) Where a company or the board of a company acts in contravention of or fails to comply with any of the following provisions of this Act, or any requirement imposed pursuant to any such provision, namely
(a) section 24 (3) [Alteration of constitution];
(b) section 35 (1) [Share description to be registered];
(c) section 37 (2) [Persons to whom shares may be issued];
then, without limiting the liability of any person under section 277 [Failure to comply with Act], every director of the company commits an offence, and is liable on conviction to a fine not exceeding $10,000.

(3) Where a director is charged under subsection (1) or (2) in respect of a duty imposed on the board of a company, it is a defence to the charge to show that the board had taken reasonable and proper steps in all the circumstances to ensure that the requirements of the Act would be complied with.

(4) Where a director is charged under subsection (1) or (2) in respect of a duty imposed on a company, it is a defence to the charge to show that
(a) he or she did not know of and could not reasonably have been expected to know of the contravention or failure to comply; or

(b) he or she took all reasonable steps to ensure that the requirements of the Act would be complied with.

279 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 therein that is false or misleading in a material particular knowing it to be false or misleading; or

(b) omits or authorises the omission therefrom of any matter knowing that the omission renders the document false or misleading in a material particular commits an offence, and is liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding five years, or to both.

(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, committee of inspection, or receiver or manager of any property of the company; or

(c) where the company is a subsidiary, a director, employee, or auditor of the holding company knowing it to be false or misleading, commits an offence, and is liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding five years, or to both.

(3) Where a person at a meeting votes in favour of the making of a statement the person shall, for the purposes of this section, be deemed to have authorised the making of the statement.
280 Fraudulent 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 any use or purpose other than the use or purpose of the company; or

(b) fraudulently conceals or destroys any property of the company

commits an offence, and is liable on conviction to a fine not exceeding $200,000 or to imprisonment for a term not exceeding five years, or to both.

281 Falsification of records

(1) Every director, employee, or shareholder of a company who, with intent to defraud or deceive any 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 a fine not exceeding $200,000 or to imprisonment for a term not exceeding five years, or to both.

(2) Where any mechanical, electronic, or other device is 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, every person who

(a) records or stores in the device, or makes available to any person from the device, any 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 any matter recorded or stored in the device,
or fails or omits to record or store in the device any matter
commit an offence, and is liable on conviction to a fine
not exceeding $200,000, or to imprisonment for a term not
exceeding five years, or to both.

282 Disqualification of director

(1) Where

(a) it appears that a person has been guilty of any offence
for which the person is liable (whether convicted or not) under this Part; or

(b) it appears that a person has, while a director of a
company and whether convicted or not
(i) persistently failed to comply with this Act, the
Companies Act 1955 or the Securities Act 1978;
or
(ii) been guilty of fraud in relation to the company
or of any breach of duty to the company or any
shareholder or third party; or
(iii) acted in a reckless or incompetent manner in
the performance of his or her duties as director;
or

(c) any person was a director of a company which went
into liquidation (whether while that person was a
director or subsequently) and was unable to pay its
debts at that time; and was also the director of
another unrelated company which went into
liquidation (whether while that person was a director
or subsequently) within five years of the date on
which the first mentioned company went into
liquidation; and it appears that that person's conduct
as director of either of the companies makes him or
her unfit to be a director of a company; or

(d) it appears that a person has become of unsound
mind;

the Court may make an order that the person shall not,
without the leave of the Court, be a director of any
company for such period not exceeding 10 years as may be
specified in the order.

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(2) A person intending to apply for an order under this section must give not less than 10 days' notice of that intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and give evidence or call witnesses.

(3) An application for an order under this section may be made by the Registrar, the Official Assignee, or by the liquidator of the company, or by any person who is or has been a shareholder or creditor of the company; and on the hearing of

(a) any application for an order under this section by the Registrar or the Official Assignee or the liquidator; or

(b) of any application for leave under this section by a person against whom an order has been made on the application of the Registrar, the Official Assignee, or the liquidator;

the Registrar, Official Assignee, or liquidator shall appear and call the attention of the Court to any matters which seem to him or her to be relevant, and may himself or herself give evidence or call witnesses.

(4) An order may be made under this section notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.

(5) If any person acts in contravention of an order made under this section, that person shall, in respect of each offence, be liable on conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding $200,000 or to both.

PART 19
MISCELLANEOUS

283 Information for creditors

(1) Any notice, statement, report, accounts or other document to be sent to a creditor may be

(a) delivered by hand to the creditor, or, if the creditor is a company, delivered in accordance with section
(a), (b) or (c) [Methods of service of documents]; or
(b) posted or delivered to the last known address of the creditor or if the creditor is a company to the company's address for service, or delivered to a box at a document exchange which the creditor is then using; or
(c) sent by telex, facsimile machine, or other similar means of communication to the number of the creditor.

(2) For the purposes of subsection (1)
(a) any document posted to a creditor, or delivered to a document exchange, shall be deemed to be received by the creditor five working days (or such shorter period as the Court may determine in any particular case) after it is so posted or delivered;
(b) any document sent by telex, facsimile machine, or other similar means of communication shall be deemed to be received by the creditor on the working day following the day on which it was sent.

(3) In proving the sending of any document to a creditor by post or delivery to a document exchange for the purposes of this section, it shall be sufficient to prove that the document was properly addressed to the creditor, that all postal or delivery charges were paid, and that the document was posted or delivered to the document exchange.

(4) If documents sent to a creditor's last known address, or if the creditor is a company, to the company's address for service, are returned unclaimed three consecutive times, the liquidator need not send any further documents to the creditor until the creditor notifies the company of its new address.

284 Prescribed forms
The Governor-General may, by regulations made under this Act,
(a) prescribe forms for the purposes of this Act; and
(b) require the inclusion in or attachment to any such form, when used for the purposes of this Act, of any information or document; and

(c) require the signing of any such form by specified persons.

285 Regulations

The Governor-General may, by Order in Council, make regulations providing for such matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to this Act and for its due administration.
FIRST SCHEDULE

PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

1 Chairman

(1) If the directors have elected a chairman of the board, and the chairman of the board is present at a meeting of shareholders, he or she shall chair the meeting.

(2) If no chairman of the board has been elected or if, at any meeting of shareholders, the chairman of the board is not present within five minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairman of the meeting.

2 List of shareholders entitled to notice of meetings

(1) A company must prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder,

(a) if a date has been fixed under section 95(2) [Determination of shareholders entitled to distributions, attend meetings etc], not later than ten working days after that date; or

(b) if no such date has been fixed,

(i) at the close of business on the day immediately preceding the day on which the notice is given; or

(ii) where no notice is given, on the day on which the meeting is held.

(2) A person named in a list prepared under paragraph (1) is entitled to attend the meeting and to vote the shares shown opposite his or her name in person or by proxy or by postal vote, except to the extent that

(a) that person has, since the date on which shareholders entitled to receive notice of the meeting were determined, transferred the ownership of any of his or her shares; and

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(b) the transferee of those shares has been registered as the holder of those shares and demands not later than ten working days before the meeting that his or her name be included in the list before the meeting.

(3) A shareholder may examine the list of shareholders during normal business hours at the registered office of the company.

3 Notice of meetings

(1) Written notice of the time and place of any meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and any auditor of the company not less than ten 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 resolution to be submitted to the meeting.

(3) Any irregularity in notice for 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.

(4) 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.

4 Methods of holding meetings

Subject to the constitution, a meeting of shareholders may be held either
   (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
   (b) by means of audio, or audio and visual, communication by which all shareholders participating, being a quorum, can simultaneously hear each other throughout the meeting.
5 Quorum

(1) 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.

(2) No business may be transacted at a meeting of shareholders if a quorum is not present.

6 Voting

(1) Unless a poll is demanded, voting at a meeting of shareholders is to be by show of hands.

(2) A declaration by the chairman of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded by any shareholder entitled to vote on the resolution.

(3) A poll may be demanded by any shareholder entitled to vote on the resolution either before or after the vote is taken on a resolution.

(4) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.

(5) The chairman of a shareholders’ meeting is not entitled to a casting vote.

7 Proxies

(1) A shareholder may exercise the right to vote either by being present in person or by proxy.

(2) A proxy for any shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

(3) A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

(4) No proxy is effective in respect of any meeting unless a copy of the notice of appointment is produced before the start of the meeting.
Postal votes

(1) Subject to the constitution of a company, a shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.

(2) The notice of any 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 on a matter to a person authorised to receive and count postal votes at that meeting, which must reach that person not less than 24 hours before the start of the meeting.

(5) It is the duty of a person authorised to receive and count postal votes at a meeting
(a) to collect together all postal votes received by him or her, or by any other authorised person, or by the company;
(b) in respect of 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;
(c) to sign a certificate that he or she has carried out the duties set out in subparagraphs (a) and (b) and which sets out the results of the counts required by subparagraph (b);
(d) to ensure that the certificate required by subparagraph (c) is presented to the chairman of the meeting.

(6) If a vote is taken at a meeting on any resolution on which postal votes have been cast, the chairman of the meeting must

(a) on any vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
(b) on any poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

(7) The chairman of a meeting must call for a poll on any 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 chairman of a meeting must ensure that any certificate of postal votes held by him or her is annexed to the minutes of the meeting.

9 Minutes

(1) The board must ensure that full and accurate minutes are kept of all proceedings at all meetings of shareholders.

(2) Minutes which have been signed correct by the chairman of the meeting are prima facie evidence of the proceedings.

10 Shareholder proposals

(1) A shareholder may give written notice to the board of any 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) The written notice given under paragraph (1) must be received by the board no less than five working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board.

(3) The board must give notice of any shareholder proposal and the text of any proposed resolution received by it under paragraph (1) in the notice of the meeting given to shareholders, and, if the directors intend that shareholders
may vote on that proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in the notice of meeting 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.

(4) The board is not required to include in the notice of meeting any statement prepared by a shareholder which the directors consider to be defamatory, frivolous or vexatious.

11 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.

12 Votes of joint holders
Where two 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 any matter shall be accepted to the exclusion of the votes of the other joint holders.

13 Loss of voting right if calls unpaid
Subject to the constitution of a company, where any sum is due to a company in respect of a share and has not been paid, that share may not be voted at any shareholders' meeting other than a meeting of an interest group.

14 Other proceedings
Except as provided above, and subject to the constitution of a company, a meeting of shareholders may regulate its own procedure.
SECOND SCHEDULE

PROCEEDINGS OF THE BOARD OF A COMPANY

1 Chairman
(1) The directors may elect one of their number as chairman of the board and determine the period for which the chairman is to hold office.

(2) If no such chairman is elected, or if at any meeting of the board the chairman is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairman of the meeting.

2 Notice of meeting
(1) Any director or, if requested by a director to do so, any employee of the company may convene a meeting of the board by giving notice in accordance with this clause.

(2) Not less than two days' notice of a meeting of the board shall be given to every director who is in New Zealand, and the notice shall include the date, time and place of the meeting and the matters to be discussed.

(3) Any irregularity in notice for a meeting shall be waived if all directors attend the meeting without protest as to the irregularity or if all directors 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, not less than the 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, being a number not less than the quorum, can simultaneously hear each other throughout the meeting.
4 Quorum
A quorum for a meeting of the board shall be a majority of the directors.

5 Voting
(1) Every director shall have one vote.
(2) The chairman of the board shall not have a casting vote.
(3) A resolution of the board shall be 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 shall ensure that full and accurate minutes are kept of all proceedings at meetings of the board.

7 Unanimous resolution
A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, shall be as valid and effectual as if it had been passed at a meeting of the board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors. A copy of any such resolution shall be entered in the minute book of board proceedings.

8 Other proceedings
Except as stated above, the board may meet for the dispatch of business, adjourn, and otherwise regulate its meetings as it thinks fit.
THIRD SCHEDULE

PROCEEDINGS AT MEETINGS OF CREDITORS

1 Methods of holding meetings
A meeting of creditors may be held
(a) by assembling together those creditors entitled to take part and who choose to attend at the place, date and time appointed for the meeting; or
(b) by means of audio, or audio and visual communication by which all creditors participating can simultaneously hear each other throughout the meeting; or
(c) by conducting a postal ballot in accordance with clause 5 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); and
(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 given to every creditor entitled to attend the meeting, and to any liquidator not less than ten 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;
(c) include a voting paper in respect of each such resolution and voting and mailing instructions.

(3) Any irregularity in a notice for a meeting shall not invalidate anything done by that meeting if it is not material or all the creditors entitled to attend and vote at
the meeting attend the meeting without protest as to the irregularity or if all such creditors agree to waive the irregularity.

(4) If a meeting of creditors under clause 1(a) or (b) is adjourned for less than thirty 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.

3 Chair

(1) If a liquidator has been appointed and is present, he or she shall chair a meeting held in accordance with clause 1(a) or (b).

(2) In any case where there is no liquidator or the liquidator is not present, the creditors participating shall choose one of their number to chair the meeting.

(3) The person convening a meeting under clause 1(c) shall do any necessary thing that would otherwise be done by the person chairing a meeting.

4 Voting

(1) At any meeting,

(a) each creditor is entitled to cast a number of votes proportionate to the value which the amount of the debt owing to that creditor bears to the aggregate of the debts owing to all creditors or, if there is more than one class of creditors, to the aggregate of the debts owing to all creditors of the class to which that creditor belongs;

(b) a resolution is adopted if approved by a majority of the votes cast, unless in the particular case a greater majority is required by this Act;

(c) a creditor chairing the meeting does not have a casting vote.

5 Postal votes

(1) Any 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 respect of any matter to be decided at that meeting.

(2) The notice of any meeting must state the name of the person authorised to receive and count postal votes in respect of that meeting.

(3) If no person has been authorised to receive and count postal votes in respect of 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 respect of that meeting, so as to reach that person not later than 24 hours 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 respect of a meeting

(a) to collect together all postal votes received by him or her, or by any other authorised person;

(b) in respect of each resolution to be voted on, to count

(i) the number of creditors voting in favour of the resolution, and the number of votes cast by each creditor in favour of the resolution; and

(ii) the number of creditors voting against the resolution, and the number of votes cast by each creditor against the resolution;

(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 required by paragraph (b);

(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 any resolution on which postal votes have been cast, the
person chairing the meeting must count the votes cast by each creditor who has sent in a voting paper duly marked as for or against the resolution.

(7) Any certificate given under subclause (5) in relation to the postal votes cast in respect of any meeting of creditors must be annexed to the minutes of the meeting.

6 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 full and accurate 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.

7 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.

8 Other proceedings

Except as provided above, a meeting of creditors may regulate its own procedure.
FOURTH SCHEDULE

PROCEEDINGS AT MEETINGS OF COMMITTEES OF INSPECTION

1 Frequency of meetings
The committee shall meet at such times as it from time to time appoints, and the liquidator or any 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 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 shall thereupon become 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 five 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 the same or another creditor or shareholder, as the case may be, (or of a person holding a general power of attorney from, or being an authorised director
of, a company which is a creditor or shareholder, as the case may be).

7 Committee with vacancy may act
The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.
FIFTH SCHEDULE

LIQUIDATION OF ASSETS OF OVERSEAS COMPANIES

1 Application of Part 14

Part 14 applies to the liquidation of the assets in New Zealand of an overseas company, with the following modifications and exclusions:

(a) all references to assets are to be taken as references to assets in New Zealand;
(b) all references to a company are to be taken as references to an overseas company;
(c) all 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 do not apply to such a liquidation:
   (i) section 205(1)(d) and (e) [Effect of commencement of liquidation];
   (ii) section 210 [Power to make calls];
   (iii) sections 243-250, relating to the Insolvency (Assetless Companies) Fund;
(e) section 205(1)(b) [Effect of commencement of liquidation] does not affect the tenure of directors of an overseas company in any way, but the overseas company and its directors shall cease to have any powers, functions or duties in respect of the company's assets in New Zealand, other than those required or permitted to be exercised by Part 14;
(f) section 206 [Completion of liquidation] applies to such a liquidation, but instead of making the statement required by paragraph (c), the liquidator shall state that the company has ceased to carry on business in New Zealand and is ready to be removed from the overseas register.

2 Rights of action not affected

Nothing in this Act shall be taken to exclude the right of a creditor of an overseas company in respect of the assets of which a liquidator has been appointed.
(a) to bring any proceeding outside New Zealand against the overseas company in respect of any debt not claimed in the liquidation, or any balance of a debt remaining unpaid after the completion of a liquidation; or

(b) to bring an action in New Zealand in respect of any balance of a debt remaining unpaid after the completion of a liquidation.
VI

Receiverships

746 This chapter contains a draft Property Law Amendment Act which, if enacted, would insert a complete new Part VIIA (sections 104AB to 104AV), dealing with receivers and receiverships, in the Property Law Act 1952 (hereinafter referred to as "the principal Act").

747 A "receiver" may generally be described as a person appointed by another (normally a creditor) or by the Court whose first function is to preserve the property of a third party (usually a debtor). In many (if not most) cases the receiver will also have a power of sale which is to be exercised in the interests of the person by whom the receiver was appointed. In contemporary usage, the term "receiver" is often used to describe a "receiver/manager" with power to manage, as well as to hold or sell the property in question.

748 At the present time, receiverships and receivers are most often associated with the assumption of management of a company under the terms of a debenture or similar security when the secured creditor has grounds for believing that the company is at risk of failure. Much of modern business would be severely hampered, if not rendered impossible, were secured creditors denied the ability to appoint receivers as a means of enforcing their securities.
Part VII of the Companies Act 1955 (sections 342 to 352) relates to receivers and managers of companies. Some residual provisions as to debentures are located in Part III of the Act (sections 97 to 101). Part VII deals with a number of matters, including

- specification of qualifications for appointment of receivers (for example, exclusion of bodies corporate)
- conferral of powers on receivers (for example, to make calls on unpaid share capital)
- imposition of obligations on receivers (for example, to obtain the best price for assets sold)
- publication of the fact and progress of the receivership (for example, company documents must refer to the receivership)
- sorting out of problems where liquidations and receiverships overlap (for example, the Court may determine receivership on a liquidator’s application)
- provision of assistance for receivers (for example, giving directions) by the Court
- determination of disputes over remuneration
- provision of sanctions to enforce the penalties of the Part (generally by imposing monetary penalties).

The work of the Law Commission and its advisory committee on personal property securities, which resulted in Report No. 8 (*A Personal Property Securities Act for New Zealand*), emphasises that no useful distinction can be drawn between securities granted by companies and those granted by sole traders, partnerships or other entities. That being so, the ability of a creditor effectively to appoint a receiver is more properly located in a general property statute than in the Companies Act. For this purpose, the obvious statute is the Property Law Act 1952 which already deals extensively with aspects of mortgages. The proposed new Companies Act therefore contains no provisions related to receivership.

The proposed new Part VIIA of the principal Act is set out later in this Chapter. This new Part would apply to receivers appointed under securities granted by both incorporated and unincorporated persons as well as to receivers appointed under other kinds of instrument or by the Court.
The proposals do not amount to a complete codification of the relevant law. Such a code would require wider inquiry (including close examination of the law relating to mortgagees in possession) than has been possible and might justify a separate statute. In developing the present proposals the Commission has addressed those areas where substantive reform is clearly justified or the law is unclear or inaccessible.

The central features of the proposals are

- application of the statutory rules to a far wider range of receiverships (involving property owned by bodies corporate, individuals or firms)
- codification of the primary and secondary duties of care owed by a receiver
- limitation of the appointment of receivers to independent and experienced insolvency practitioners
- the introduction of civil compliance remedies as a replacement for offences as the main means of enforcement
- provision of a different means of distinguishing between the receivership remedy and that of entry into possession by a mortgagee.

It should be noted that sections 97 to 100 of the 1955 Act are miscellaneous provisions relating to tradeable debentures and the Law Commission’s proposals would repeal and not replace these. If required, such provisions should be relocated in the Securities Act 1978.

In this area, as in liquidation, the Law Commission has drawn on the insolvency law reform work of the Australian Law Reform Commission. We also acknowledge with appreciation the valuable assistance of Peter Blanchard of Auckland, author of a standard text on company receivers, and a member of the Law Commission’s advisory committee on personal property securities.

Section 2 of the draft Amendment Act inserts section 91A in the principal Act. Section 91A, in conjunction with the definition of “receiver” in section 104AB, applies a limited number of the provisions of the new Part to mortgagees in possession.
757 Section 3 inserts the new Part VIIA (which makes up the rest of the draft amending Act) in the principal Act.

758 Section 104AB sets out the additional definitions required for Part VIIA. It should, however, be noted that definitions from section 2 of the principal Act are also relevant (for example, “instrument”, “mortgage” and “property”). The new definitions are largely self-explanatory but the following points should be noted:

- “director”—this extended definition is necessary to ensure that the responsible officers of all bodies corporate are subject to the obligations imposed by section 104AI.
- “grantor”—this term will ordinarily refer to the person who has granted to a third party (usually a secured creditor) the power to appoint a receiver but extends to cover the owner of the property placed in the hands of a receiver by a Court, or pursuant to a power contained in an Act or another instrument.
- “receiver”—the definition extends to catch managers and receiver/managers, and applies whether the appointment is made under a security agreement, some other form of contract or deed, pursuant to a power contained in an Act or another instrument.

A receiver without a power of sale falls within the definition. The definition of “receiver” excludes mortgagees or their agents. Under section 352 of the Companies Act 1955, mortgagees (or their agents) can, in some circumstances, be subject to the receivership provisions as if they were a receiver. By adopting that approach, the Companies Act 1955 renders the law less accessible. Part VII of the Property Law Act contains provisions regarding mortgagees in possession (for example, section 91) and yet makes no reference to the fact that in some circumstances mortgagees in possession are also subject to the provisions of Part VII of the Companies Act 1955. Overall, accessibility will be improved by the insertion of section 91A in Part VII of the principal Act thereby highlighting the existence of other provisions relevant to mortgagees in possession.
For drafting convenience, section 104AB(2) defines the requirements for the giving of public notice.

Section 104AC determines the extent to which the new provisions would apply to receivers appointed before the coming into force of the draft Act and to documents executed prior to that time.

As in the case of a liquidator, it is important that receivers be competent and independent of the person in respect of whose property they are appointed. Section 104AD therefore adopts the system of experienced insolvency practitioners described in Chapter 4 in the context of liquidators. A sole receiver, and at least one of a group of joint receivers, must be an experienced insolvency practitioner. Subsection (3) of this section renders certain types of person ineligible for appointment as receivers. These exclusions apply whether or not the person is otherwise an experienced insolvency practitioner.

In special circumstances, the Court has power to permit the appointment of a person otherwise excluded. There may be cases where, because of particular expertise or knowledge, an interested or otherwise disqualified person might be the best person to act as a receiver.

There is presently no statutory provision which expressly recognises the ability of any person (including a company) to grant a power to appoint a third party to act as the receiver of their property. This power is implicit in the Companies Act 1955 and in the Industrial and Provident Societies Amendment Act 1952. Section 104AE removes any doubt as to whether individuals and partnerships have the same power. The exercise of the power of appointment (in the case of a mortgage) is limited to the point at which the mortgagee would otherwise have been entitled to commence to exercise a power of sale.

Where section 92 applies, there can be no entitlement to sell or enter into possession of property until the mortgagee has complied with section 92(1). Section 104AE(3) provides that no such compliance is required prior to the appointment of a receiver.
765 In those security agreements which contain a power to appoint a receiver, it is almost universal to provide that a receiver, when appointed, is to act as the agent of the grantor. A person purportedly appointed by a mortgagee as a receiver would otherwise, prima facie, be the agent of the mortgagee and the mortgagee would be exposed (through the agent) to the duties imposed upon mortgagees in possession. It is not intended that mortgagees be denied the option of entering into possession of property through the agency of a third party. However, in such a case the law relating to mortgagees in possession would apply and Part VIIA would only apply to the extent set out in the proposed section 91A. Section 104AE(4) provides the default provision where a document containing a power to appoint a receiver is silent on the question of agency. It is to be noted that similar provisions have, for many years, existed in the statute law of jurisdictions such as the United Kingdom and some Australian states.

766 Section 104AF reiterates what is to be found in many security agreements. However, agreements have sometimes been less than adequate to deal with the power to appoint substitutes or with the issue of whether or not joint receivers have the ability to act jointly and severally. The section is designed to reduce the grounds upon which the appointment or acts of receivers can be challenged on technicalities alone. While the section will effectively override the provisions of some security agreements, subsection (2) permits subsection (1) to be overriden by an order of the Court or express provision in the written document of appointment.

767 Section 104AG rewrites the rule presently found in section 346 of the 1955 Act and extends its application to all receiverships. The obligation to give notice of appointment is imposed upon the receiver. In many cases the receiver already prepares and gives the requisite notice. By imposing the duty on the receiver, it becomes a matter which can be policed through the compliance procedures provided in the proposals.

768 Section 104AH has no equivalent in the 1955 Act. Because most receivers are appointed under a contract, statute should not interfere more than necessary. It is, however, appropriate that some protection be given against the possibility that
a receiver’s resignation will jeopardise other parties interested in the property in receivership. For this reason, prior notice of the intention to resign is required, so as to give an opportunity for a successor to be appointed in time to achieve a smooth transition.

769 Section 104AI is designed to ensure that the grantor does not frustrate the receiver in carrying on the receivership. It is essential that the receiver promptly receives all necessary information and assistance.

770 The powers of a receiver are set out in section 104AJ. The provision is drafted widely to cover the normal requirements of receiverships. The statutory powers will apply unless added to (or excluded) by the Court or by the instrument under which the appointment is made. The written document of appointment could, in relevant cases, cut back the powers otherwise available under the instrument giving rise to the appointment.

771 Subsections (7) and (8) of section 104AJ are new and intended to facilitate the sale of assets where other mortgagees attempt to obstruct the sale. While this imposes a gloss upon the law of priority of mortgages, the interests of prior mortgagees are protected by the fact that the power can only be exercised if the Court is satisfied that the interests of the mortgagee are sufficiently protected in terms of subsection (8). In reality, a receiver appointed by a second or subsequent mortgagee is closely supervised by the first mortgagee (or indeed, in some cases, receivers are appointed to act jointly for both mortgagees) and use of this provision should be rare.

772 A receiver’s primary responsibility is to protect the interests of the person by whom the receiver is effectively (if not always technically) appointed. It would entirely defeat the purpose of receiverships were this prime duty removed. But if a receiver exercises his or her powers purely in the interests of that party, unnecessary loss may be suffered by the grantor or other persons interested in the property in receivership. However, in many cases, the receiver will be able to both serve the interests of the appointor and take into account the interest of those other parties. Section 345B of the Companies Act 1955 is one example of attempts to ensure that a receiver exercises receivership powers in the manner least detrimental to other
parties. Case law has also imposed secondary duties on receivers designed to achieve similar purposes.

773 Section 104AK codifies both these primary and secondary duties. This removes any uncertainty there might otherwise have been as to the extent of a receiver’s duties to persons other than the appointor.

774 Section 104AL lists the other duties traditionally imposed on receivers whether by statute (for example, see sections 348 and 349 of the Companies Act 1955) or the common law. It will be noted that section 104AL(5) amends the law with regard to statements of position under the 1955 Act. It rationalises the present law by requiring the receiver to prepare the statement of position on the basis of information supplied by the grantor or, in the case of a body corporate, by the responsible officers. This provision should be read in conjunction with section 104AI. Not only will this regime enable statements to be prepared more promptly but it also highlights, for the benefit of other creditors, any lack of co-operation of the grantor or its responsible officers.

775 Section 104AM restructures the rules presently found in section 101 of the 1955 Act in order to fit the structure of the proposed Personal Property Securities Act. It is not intended to widen the pool of assets from which preferential claims must be paid beyond the limits defined by section 101, pending reconsideration of this topic in a general insolvency review. However, there may be relatively rare circumstances in which the limits are not precisely the same under the two rules.

776 There is, at present, a degree of confusion as to the effect of liquidation upon a receiver. Section 104AN confirms that only the liquidator can act as the agent of a company in liquidation. The Court and the liquidator are empowered to approve the receiver continuing to act as agent of the company. The position of receivers and individual bankruptcy is dealt with likewise.

777 Section 104AO addresses the matter of a receiver’s personal liability in respect of contracts entered into by the receiver and two classes of pre-existing contract with which a receiver is commonly required to deal. The rules governing
liability for wages, salary and rent give the receiver a period within which to assess the benefits of retention of the employee or the premises respectively. If the contracts are permitted to continue, the receiver becomes personally liable under them (although entitled to indemnity from the property in receivership) during the period of the receivership.

778 Section 104AP re-enacts, and extends the application of, section 345A of the 1955 Act but introduces the requirement that the action giving rise to the liability be fair and reasonable.

779 Section 104AQ removes any doubt over access to the court in respect of receivers appointed under instruments. Although giving wide standing to various interested parties to apply under subsection (2), an application for directions may only be made under subsection (1) by the receiver. Section 104 AQ (1) (c) addresses an important issue canvassed by the Australian Law Reform Commission in its 1988 final report on insolvency law.

780 Section 104AR re-enacts section 346A of the 1955 Act but specifies the grounds upon which the Court may order a receiver to cease to act.

781 Section 104AS is central to the enforcement regime of the draft Act. The Commission is of the view that penalties are, in this context, ineffective in securing proper compliance with the duties of a receiver. Adoption of the concept of experienced insolvency practitioners enables the creation of effective incentives in the ultimate form of prohibition orders. If a receiver fails in performance of a duty, he or she may be ordered to comply and evidence of two such orders would, in the absence of special reasons, result in a prohibition order.

782 All proceedings commenced under section 104AS must be filed on a new public register to be kept by the Official Assignee for New Zealand. That register may provide evidence of repeated non-compliance regardless of whether or not compliance orders are made. Such evidence could form the basis of further enquiry leading ultimately to a prohibition order.

783 Section 104AT is further recognition of the need to protect grantors and their creditors against the effects of an interruption in a receivership.
Zealous use of a monopoly position can give an effective preference to an otherwise unsecured creditor. Such action may jeopardise not only the secured creditor but the prospects of less fortunate unsecured creditors. The concern of insolvency practitioners about this situation was made known to the Law Commission on many occasions.

Section 104AU proscribes this abuse by certain suppliers of their monopoly and is based on the Australian Law Reform Commission proposals. There are numerous other classes of monopoly supplier not presently caught by the provision. It is, however, more difficult to determine which of those other classes should be caught and which should not. The Commission considers that other classes should be brought within the provision by Order in Council if circumstances prove such action necessary. Parallel provisions appear in the liquidation part of the (draft) Companies Act.

The text of the proposed Property Law Amendment Act follows.
(DRAFT) PROPERTY LAW AMENDMENT ACT ( )

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104AS Enforcement of a receiver's duties
104AT Preservation of the property in receivership
104AU Refusal of essential services prohibited
104AV Regulations
(Draft) Property Law Amendment Act (___)

(Enacting words)

An Act to amend the Property Law Act 1952

1 Short title and commencement

(1) This Act may be cited as the Property Law Amendment Act [___], and forms part of the Property Law Act 1952 (referred to as the principal Act).

(2) This Act comes into force on [___].

2 Duties of mortgagee

The principal Act is amended by inserting after section 91 the following section:

91A Other duties of a mortgagee in possession

The provisions of sections 104AG [Notice of appointment], 104AI [Obligations of grantor when receiver appointed] 104AL [Other duties of receiver] and
104AR [Court may determine or limit receivership] apply to:
(a) a mortgagee in possession (whether personally or by agent) of any mortgaged property; and
(b) any mortgagee who (whether personally or by agent) is in receipt of the income from any mortgaged property:
as if that person were a receiver within the meaning of section 104AB [Interpretation].

3 New Part inserted relating to receivers
The principal Act is amended by adding, after section 104AA, the following Part:

PART VIIA
RECEIVERS

104AB Interpretation
(1) In this Part:
"Official Assignee" means, in relation to the estate of a bankrupt, any Official Assignee or Deputy Assignee appointed under the Insolvency Act 1967 and having charge of that estate;
"company" has the same meaning as in the Companies Act [1] and includes an overseas company;
"Court" means the High Court or a District Court;
"creditor" includes every person who, in a liquidation, would be entitled to claim in accordance with section 230 [Admissible claims] of the Companies Act [1] that a debt is owing to that person by the company;
"director"
(a) in respect of a company, has the same meaning as in the Companies Act [1]; and
(b) in respect of an overseas company, includes any agent, officer or employee responsible in
New Zealand for the business of the overseas company; and

(c) in respect of any other body corporate, means a person having functions similar to those of a director,

but does not include a receiver;

“grantor” means the person in respect of whose property a receiver is, or may be, appointed;

“liquidator” means a liquidator appointed under Part 14 of the Companies Act and “liquidation” has a corresponding meaning;

“overseas company” has the same meaning as in the Companies Act;

“property in receivership” means property in respect of which a receiver is appointed;

“preferential claims” are the claims referred to in section 239(3), (4) and (5) [Preferential claims] of the Companies Act, as applied by section 104AM [Priority of preferential claims] of this Act;

“receiver” means a receiver, or a manager, or a receiver and manager in respect of any property, and includes any person appointed as a receiver

(a) by or under any instrument; or

(b) by the Court in the exercise of a power to make such an appointment given by any Act or any rule of court or in the exercise of its inherent jurisdiction

whether or not the person appointed is empowered to sell any of the property in receivership; but does not include a mortgagee who, whether personally or through an agent, exercises a power to:

(c) receive income from any mortgaged property; or

(d) enter into possession or assume control of any mortgaged property; or

(e) sell or otherwise alienate any mortgaged property.

“Registrar” means, in relation to
(a) a company, the Registrar of Companies appointed in accordance with section 268 [Registrar and Deputy Registrars of Companies] of the Companies Act; and

(b) a society registered under the Industrial and Provident Societies Act 1908, the Registrar of Industrial and Provident Societies; and

(c) a society registered under the Incorporated Societies Act 1908, the Registrar of Incorporated Societies; and

(d) a friendly society or a credit union registered under the Friendly Societies and Credit Unions Act 1982, the Registrar of Friendly Societies and Credit Unions; and

(e) any other body corporate registered under any enactment, any person discharging the powers functions and duties of a registrar under that enactment.

(2) A person required to give public notice of any matter shall do so by inserting notice of that matter

(a) in at least one issue of the New Zealand Gazette; and

(b) in at least two issues of a newspaper circulating in the area in which is situated the grantor's place of business, or the grantor's chief executive office if the grantor has more than one place of business, or the grantor's principal residence if the grantor has no place of business.

104AC Application of this Part

(1) This Part applies

(a) to every receiver appointed after the coming into force of this Part; and

(b) with the exceptions and modifications specified in subsection (2), to every receiver holding office on the coming into force of this Part.

(2) In the application of this Part to a receiver holding office on the coming into force of this Part
sections 104AD [Persons qualified to be receivers] and 104AF(2) [Powers of appointment and authority of receivers] do not apply; and

(b) section 104AO(1) [Liabilities of a receiver] does not apply to a contract entered into before the coming into force of this Part; but nothing in this paragraph affects any personal liability which a receiver otherwise has in respect of the contract; and

(c) in section 104AO(4), the expression “7 days” shall be read as “one month”.

104AD Persons qualified to be receivers

(1) A person who has substantial experience in administering or advising on the insolvency of individuals, or the liquidation of companies or receiverships is an experienced insolvency practitioner for the purposes of this Part.

(2) Unless the Court orders otherwise, a sole receiver, or where there is more than one receiver at least one of them, must be an experienced insolvency practitioner.

(3) The following persons may not be appointed or act as a receiver:

(a) a person less than 20 years old;

(b) a body corporate;

(c) a mortgagee of the property in receivership;

(d) a person who has, within the two years immediately preceding the commencement of the receivership, been a shareholder, director or auditor of any mortgagee of the property in receivership;

(e) an undischarged bankrupt;

(f) a person who is mentally disordered within the meaning of the Mental Health Act 1969;

(g) a person in respect of whom an order has been made under section 30 [Temporary orders] or
31 [Appointment of manager] of the Protection of Personal and Property Rights Act 1988;

(h) a person in respect of whom a prohibition order has been made under section 104AS [Enforcement of a receiver's duties] of this Act or under section 221 [Enforcement of a liquidator's duties] of the Companies Act [ ];

(i) any person who has been convicted in the preceding five years of an offence

(i) under the Companies Act [ ], the Companies Act 1955 or the Securities Act 1978; or

(ii) involving dishonesty as defined in section 2(1) [Interpretation] of the Crimes Act 1961;

(j) a person who is disqualified from acting as a receiver by the instrument giving the power to appoint a receiver.

(4) The fact that a person is disqualified under this section from acting as a receiver does not affect the validity of anything done while so acting, unless the Court orders otherwise.

104AE Appointment of receivers under deed or agreement

(1) A receiver may be appointed in respect of any property of the grantor by, or in the exercise of any power conferred by, any deed or agreement to which the grantor is a party.

(2) The appointment of a receiver in the exercise of a power referred to in subsection (1) must be in writing.

(3) Nothing in section 92 of this Act prevents a mortgagee from appointing a receiver in accordance with any power to do so given by a mortgage, but the powers of a receiver so appointed are subject to section 104AJ(2) [Powers of a receiver].

(4) A receiver appointed by or under any power given by a deed or agreement shall be treated as the agent of the grantor unless expressly provided to the contrary
in the deed or agreement or the writing by or under which the appointment was made.

104AF Powers of appointment and authority of receivers

(1) Where an instrument confers a power to appoint a receiver, that power extends to the appointment of
  (a) a sole receiver; or
  (b) two or more receivers; or
  (c) a receiver additional to one or more presently in office; or
  (d) a receiver in succession to one whose office has become vacant.

(2) Where two or more receivers are appointed, they may act jointly and severally to the extent that they share the same powers, unless expressly provided to the contrary in the writing or the order of the Court by which the appointment is made.

104AG Notice of appointment

(1) Immediately following appointment, a receiver shall give written notice of the appointment to the grantor.

(2) A receiver shall, within 7 days of appointment, give public notice of the appointment including:
  (a) the date of the appointment;
  (b) the receiver's full name;
  (c) the receiver's office address;
  (d) a brief description of the property in receivership.

(3) Where the grantor is a body corporate, the receiver shall send or deliver to the Registrar, within seven days of appointment, a copy of the notice referred to in subsection (2).

104AH Vacancies in the office of receiver

(1) The office of receiver becomes vacant if the person holding office resigns, dies, or becomes disqualified under section 104AD [Persons qualified to be receivers].
(2) A receiver may resign from office by giving not less than seven days' notice in writing of his or her intention to resign to the person by whom that receiver was appointed, or, if the receiver was appointed in the interests of any person other than the person making the appointment, then to the person who nominated the receiver for appointment.

(3) Where, for any reason other than resignation, a vacancy occurs in the office of receiver, the person vacating office, or, if unable to act, his or her personal representative, shall forthwith give written notice of the vacancy to the person who would have been entitled under subsection (2) to receive notice of the receiver's intention to resign from office.

(4) Where a receiver appointed by the Court gives notice of an intention to resign under subsection (2) or the office of that receiver becomes vacant under subsection (3), a copy of the notice required by the applicable subsection shall also be filed in the registry of that Court.

(5) A person vacating the office of receiver must, where practicable, provide such information and give such assistance in the conduct of the receivership as that person's successor reasonably requires.

(6) On the application of a person appointed to fill a vacancy in the office of receiver, the Court may make any order that it considers necessary to facilitate the performance of the receiver's duties.

104AI Obligations of grantor when receiver appointed

(1) The grantor shall make available to the receiver all books, documents and information relating to the property in receivership and give all assistance reasonably required by the receiver.

(2) If required by the receiver, the grantor shall verify by statutory declaration that the material and information made available to the receiver is complete and correct.
(3) If the grantor is a body corporate, each director shall comply with this section as if that director were the grantor.

(4) If the grantor is a body corporate whose constitution provides that it shall have a common seal, it shall make the common seal available for use by the receiver on any document required by the constitution to be executed under the common seal, but nothing in this subsection affects the application of sections 140 [Method of contracting etc], 142 [Dealings between company and other persons] or 143 [No constructive notice] of the Companies Act [ ].

(5) On the application of the receiver, the Court may order the grantor or any director to whom subsection (3) applies to comply with this section.

(6) Any person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding $10,000.

104AJ Powers of a receiver

(1) Except as provided in subsection (2), a receiver has the powers and authorities expressly or impliedly conferred by the instrument or the writing or the order of the Court by or under which the appointment was made.

(2) Section 92 of this Act applies to the exercise of a power of sale by a receiver appointed under any mortgage of land, as if the receiver were the mortgagee, subject however to subsection (3).

(3) Unless expressly provided to the contrary in the instrument or the writing or the order of the Court by or under which the appointment was made, a receiver may:
   (a) demand and recover, by action or otherwise, all income of the property in receivership;
   (b) issue receipts for income recovered;
   (c) manage any of the property in receivership;
   (d) carry on any associated business;
(e) inspect at any reasonable time any books or records of the grantor (including records stored by the use of a computer or other electronic or mechanical device) relating to the property in receivership, and whether in the custody of the grantor or of some other person;

(f) execute in the name and on behalf of the grantor all documents necessary or incidental to the exercise of the receiver's powers.

(4) Where the property in receivership includes the outstanding liability, under the constitution of a company, of the holder of any share, the receiver may make calls on the shareholder or otherwise enforce all or part of the outstanding liability.

(5) A receiver appointed in respect of all, or substantially all, the assets and undertaking of a company may change its registered office or its address for service.

(6) A person paying money or giving other consideration to a receiver need not enquire whether the receiver was validly appointed or authorised to act.

(7) If the receiver is unable to obtain the consent of any mortgagee (where that consent is required) to the sale of any property in receivership, the receiver may apply to the Court for an order authorising the sale of the property, by itself or together with other assets.

(8) The Court may make an order sought by a receiver under subsection (7), on such terms and conditions as it sees fit, if satisfied that

(a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and

(b) the sale

   (i) is in the interests of the grantor and the grantor's creditors; and

   (ii) will not substantially prejudice the interests of the mortgagee.

104AK Receiver's duty of care

(1) The fundamental duty of a receiver is to exercise all powers in respect of the property in receivership in a manner which the receiver believes on reasonable
grounds to be in the best interests of all persons in whose interests the receiver was appointed.

(2) Except where inconsistent with the duty owed under subsection (1), a receiver shall exercise all powers in respect of the property in receivership with reasonable regard to the interests of
(a) the grantor; and
(b) any person claiming, through the grantor, an interest in the property in receivership; and
(c) any unsecured creditor of the grantor; and
(d) any surety who may be called upon to fulfil any obligation of the grantor to a person in whose interests the receiver was appointed, if that obligation is not satisfied by recourse to the property in receivership;

and, in particular, a receiver who exercises a power of sale in respect of any property in receivership shall take all reasonable care to obtain the best price reasonably obtainable as at the time of the sale.

(3) No rule of law and nothing in any instrument or writing by or under which the receiver was appointed entitles a receiver to
(a) defend any proceedings relating to any breach of duty under this section on the ground that the receiver was acting as the grantor’s agent or under a power of attorney from the grantor; or
(b) receive compensation or indemnity from the property in receivership or the grantor in respect of any liability incurred by the receiver through any breach of a duty under this section.

104AL Other duties of receiver

(1) A receiver shall keep all money relating to the property in receivership separate from other money received in the course of, but not relating to, the receivership and from other money held by or under the control of the receiver.

(2) A receiver shall give adequate notice of the receivership in entering into any transaction or issuing any document in connection with the
property in receivership, but a failure to comply with this subsection does not affect the validity of the transaction or document.

(3) At all times during a receivership the receiver shall keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the property in receivership, and to any associated business carried on by the receiver; and shall retain the accounts and records for not less than six years after the receivership ends.

(4) Within two months of appointment a receiver shall prepare a report on the state of affairs with respect to the property in receivership including:

(a) particulars of the assets comprising the property in receivership; and

(b) particulars of the debts and liabilities to be satisfied from the property in receivership; and

(c) the names and addresses of all creditors with an interest in the property in receivership; and

(d) the names and addresses of all creditors of any associated business; and

(e) particulars of any encumbrance over the property in receivership held by any creditor (including the date on which it was created); and

(f) particulars of any default by the grantor in making available any relevant information; and

(g) such other information as may be prescribed.

(5) The report referred to in subsection (4) shall include a description of

(a) the events leading up to the appointment of the receiver, so far as the receiver is aware of them; and

(b) the disposal or proposed disposal of the property in receivership; and

(c) the carrying on, or proposed carrying on, of any associated business; and
(d) any amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed; and

(e) any amounts owing, as at the date of appointment, to creditors of the grantor having preferential claims; and

(f) any amounts likely to be available for payment to creditors other than those referred to in paragraphs (d) and (e); and

(g) where the grantor is a company, any breaches of the Companies Act [ ] by the grantor or any director of the grantor so far as the receiver is aware of them.

(6) A receiver shall, within two months after

(a) the end of each period of six months following the appointment of the receiver; and

(b) the date on which the receivership ends;

prepare a further report summarising the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership, including all amounts received and paid, during the period to which the report relates, with particular reference, so far as relevant, to the matters specified in subsections (4) and (5).

(7) The receiver may omit from any report required under this section any matter which, if included, would materially prejudice the exercise of the receiver's functions; but the fact of the omission must be stated in the report.

(8) A receiver has qualified privilege in any proceedings for defamation in respect of any matter included in a report prepared under this section.

(9) A receiver shall send to the grantor and to all persons in whose interests the receiver is appointed a copy of every report prepared under this section, and, if the receiver was appointed by the Court, shall file a copy of every report in the registry of that Court.

(10) Within 21 days after receiving a written request for a copy of any report prepared under this section from

(a) any creditor, director or surety of the grantor; or
(b) any other person with an interest in any of the property in receivership; or
(c) the authorised agent of any of them;

a receiver shall send the copy of the report to the person requesting it, if the receiver's reasonable costs in making and sending the copy have been paid.

(11) A receiver shall permit a person entitled to receive a copy of any report prepared under this section to inspect the report at the receiver's office during regular business hours.

(12) Where the grantor is a body corporate, the receiver must send or deliver to the Registrar
(a) within seven days of its preparation, a copy of every report prepared under this section; and
(b) within seven days after the ending of the receivership, written notice of that fact.

### 104AM Priority of preferential claims

(1) Where

(a) the grantor is a company which is not in liquidation; and
(b) the property in receivership includes assets

(i) which are subject to a security interest; and
(ii) became subject to that security interest by reason of its application to certain existing assets of the company and those of its future assets which were after acquired property or proceeds;

the receiver shall apply all assets subject to that security interest at the date of the appointment of the receiver

first: to reimburse the receiver for his or her expenses and remuneration, to the extent that full reimbursement cannot be made out of other assets forming part of the property in receivership; and

next: to pay any claim specified in section 239 (3), (4), and (5) [Preferential claims] of the
Companies Act [ ... ], to the extent and in the order of priority specified in that section,
before paying any claim of the secured party.

(2) In the application of section 239 [Preferential claims] of the Companies Act [ ... ] in accordance with subsection (1), all references to a liquidator shall be read as references to a receiver; all references to the commencement of the liquidation shall be read as references to the appointment of the receiver and all references to a company being put into or being in liquidation shall be read as references to the company being put into or being in receivership.

(3) To the extent that claims to which subsection (1) applies are paid out of assets referred to in that subsection, and are not otherwise recoverable from the property in receivership the amount so paid is an unsecured debt due by the company to the secured party.

(4) In this section "after acquired property"/"proceeds" and "security interest" have the same meanings as in the Personal Property Securities Act [ ... ].

104AN Powers of receiver on liquidation or bankruptcy

(1) Subject to subsection (2), a receiver may be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of any property of
(a) a company which has been put into liquidation; or
(b) a debtor who has been adjudged bankrupt under the Insolvency Act 1967;
unless the Court orders otherwise.

(2) A receiver holding office in respect of any property referred to in subsection (1) may act as the agent of the grantor only
(a) with the approval of the Court; or
(b) with the written consent of the liquidator or the Official Assignee, as the case may be.
3. A receiver who, under subsection (2), is not the agent of the grantor does not, by reason only of that fact, become the agent of any person by whom or in whose interests the receiver was appointed.

4. A debt or liability incurred by a grantor through the acts of a receiver who is acting as the agent of the grantor in accordance with subsection (2) is not a cost, charge or expense of the liquidation or the administration of the bankrupt's estate.

104AO Liabilities of a receiver

1. A receiver is personally liable
   (a) on any contract entered into by the receiver in the exercise of any of the receiver's powers; and
   (b) for wages or salary that, during the receivership, accrue under any contract of employment relating to the property in receivership unless,
      (i) notice of the termination of the contract of employment is lawfully given within 14 days after the date of the receiver's appointment; or
      (ii) in the case of a contract of employment with any director of a corporate grantor, the receiver has expressly confirmed the contract.

2. The terms of any contract referred to in subsection (1)(a) may exclude or limit the personal liability of a receiver other than a receiver appointed by the Court.

3. If
   (a) a grantor continues to use, possess or occupy property in receivership under an agreement subsisting at the date of the receiver's appointment; and
   (b) the legal title to the property is not vested in the grantor

   the receiver is personally liable, to the extent specified in subsection (4), for rent and any other payments becoming due under the agreement.
(4) A receiver’s liability under subsection (3) is limited to that portion of the rent or other payments which accrue in the period commencing seven days after the date of the receiver’s appointment and ending on
(a) the date on which the receivership ends; or
(b) the date on which the grantor ceases to use, possess or occupy the property;
whichever is the earlier; but the Court may further limit or excuse the liability of the receiver.

(5) Nothing in subsections (3) or (4)
(a) is to be taken as an adoption by the receiver of any agreement referred to in subsection (3); or
(b) renders the receiver liable to perform any other obligation under the agreement.

(6) The receiver is entitled to an indemnity out of the property in receivership in respect of any personal liability under this section.

(7) Nothing in this section
(a) limits any other right of indemnity to which a receiver may be entitled; or
(b) limits a receiver’s liability on any contract entered into without authority; or
(c) confers on a receiver any right to an indemnity in respect of liability on any contract entered into without authority.

104AP Relief from liability

(1) The Court may relieve a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership if satisfied
(a) that the liability was incurred solely by reason of a defect in the appointment of the receiver or in the instrument, writing or order of the Court by or under which the receiver was appointed; and
(b) that the receiver acted honestly and reasonably and ought, in the circumstances, fairly to be excused.
(2) To the extent that a receiver is relieved from personal liability under subsection (1), every person in whose interests the receiver was appointed shall be liable, unless the Court orders otherwise.

(3) In exercising the powers conferred by this section, the Court may give such directions and impose such terms and conditions and apportion any liability as it sees fit.

104AQ Court supervision of receiver

(1) On the application of the receiver, the Court may give directions in relation to any matter arising in connection with the performance of the functions of the receiver.

(2) On the application of the receiver, the grantor, or any creditor of the grantor or any other person claiming, through the grantor, an interest in the property in receivership, or any liquidator of a grantor that is a company, or the Official Assignee administering the estate of a grantor who has been adjudged bankrupt, the Court may

(a) in respect of any period, review or fix the remuneration of the receiver at a level which is reasonable in the circumstances;

(b) to the extent that an amount retained by the receiver as remuneration is found by the Court to be unreasonable in the circumstances, order the receiver to refund the amount;

(c) declare whether or not the receiver was validly appointed in respect of all or any part of any property or validly entered into possession or assumed control of any property.

(3) The powers given by subsections (1) and (2) are in addition to any other powers the Court may exercise in its jurisdiction relating to receivers under this Act, any other Act or in its inherent jurisdiction, and may be exercised in relation to any matter occurring either before or after the commencement of this section and whether or not the receiver has ceased to act as receiver when the application is made.
(4) Subject to subsection (5), a receiver who has
  (a) obtained a direction of the Court with respect to
      a matter connected with the exercise of the
      powers or functions of the receiver; and
  (b) acted in accordance with the direction;
      is entitled to rely on having so acted as a defence to
      any claim in respect of anything done or not done in
      accordance with the direction.

(5) The Court may order that, by reason of the
    circumstances in which a direction is obtained under
    subsection (1), the receiver shall not have the
    protection given by subsection (4).

104AR Court may determine or limit receivership

(1) On the application of a grantor or any liquidator of a
    grantor that is a company, or the Official Assignee
    administering the estate of a grantor who has been
    adjudged bankrupt, the Court may, on the ground
    that the purpose of the receivership has been fulfilled
    so far as possible or that the circumstances no longer
    justify the continuation of the receivership
    (a) order that the receiver shall cease to act as such
        as from a specified date, and prohibit the
        appointment of any other receiver in respect of
        the property in receivership; or
    (b) order that the receiver shall, as from a specified
        date, act only in respect of specified assets
        forming part of the property in receivership.

(2) Except as otherwise ordered by the Court, a copy of
    any application made under this section shall be
    served on the receiver not less than eight days before
    the hearing of the application, and the receiver may
    appear and be heard at the hearing.

(3) An order under subsection (1) may be made on such
    terms and conditions as the Court sees fit.

(4) In making an order under subsection (1), the Court
    may prohibit any person in whose interests the
    receiver was appointed from taking possession or
    assuming control of all or any of the property in
    receivership.

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(5) Except as permitted by subsection (4), no order under this section affects any mortgage over the property in respect of which the order is made.

(6) The Court may rescind or amend an order made under this section on the application of any person who applied for or is affected by the order.

104AS Enforcement of a receiver’s duties

(1) In this section “failure to comply” means a failure of a receiver to comply with any relevant duty arising
(a) under the instrument or the writing or the order of the Court by or under which the receiver was appointed; or
(b) under this or any other Act or rule of law or rules of court; or
(c) under any order or direction of the Court other than an order so to comply made under this section;
and “comply”, “compliance” and “failed to comply” have corresponding meanings.

(2) An application for an order under this section may be made by:
(a) a receiver;
(b) a person seeking appointment as a receiver;
(c) the grantor, or any person with an interest in the property in receivership or any creditor of the grantor;
(d) a liquidator appointed in respect of any property of a grantor that is a company;
(e) the President of the New Zealand Society of Accountants;
(f) the President of the New Zealand Law Society;
(g) an Official Assignee.

(3) No application may be made to the Court by any person other than a receiver in respect of any failure to comply unless notice of the failure to comply has been served on the receiver not less than eight days before the date of the application and, as at the date
of the application, there is a continuing failure to comply.

(4) In respect of any failure to comply, the Court may
   (a) relieve the receiver of the duty to comply, wholly or in part; or
   (b) without prejudice to any other remedy which may be available in respect of any breach of duty by the receiver, order the receiver to comply to the extent specified in the order.

(5) The Court may, in respect of a person who fails to comply with an order made under subsection (4)(b), or is or becomes disqualified under section 104AD [Persons qualified to be receivers] to become or remain a receiver
   (a) remove the receiver from office; or
   (b) order that the person may be appointed and act or may continue to act as a receiver, notwithstanding the provisions of section 104AD.

(6) Where it is shown to the satisfaction of the Court that a person is unfit to act as a receiver by reason of
   (a) persistent failures to comply within the meaning of this section; or
   (b) the seriousness of any failure to comply;
the Court shall make in respect of that person a prohibition order having such duration not exceeding five years as the Court thinks fit.

(7) For so long as a prohibition order under subsection (6) remains in force in respect of any person, that person shall not
   (a) act as a receiver in any current or other receivership; or
   (b) act as a liquidator in any current or other liquidation.

(8) Evidence that, on two or more occasions within the preceding five years, while a person was acting as a receiver or as a liquidator
   (a) the Court has made
       (i) an order to comply under this section; or
(ii) an order to comply under section 221
[Enforcement of a liquidator's duties] of
the Companies Act [ ],
in respect of the same person; or
(b) an application for
(i) an order to comply under this section; or
(ii) an order to comply under section 221 of
the Companies Act [ ];
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 within the
meaning of this section.

(9) In making any order under this section the Court
may if it sees fit
(a) make an order extending any time for
compliance;
(b) impose any term or condition;
(c) order that the receiver reimburse the applicant's
reasonable legal costs on a solicitor and client
basis;
(d) at any time dismiss an application for any order
on the ground that it has been made without
reasonable cause;
(e) order that the applicant reimburse the receiver's
reasonable legal costs on a solicitor and client
basis;
(f) make any other ancillary order.

(10) All proceedings relating to any application for an
order under this section shall be served on the
Official Assignee for New Zealand who shall keep a
copy of the proceedings on a public file indexed by
reference to the name of the receiver concerned.

104AT Preservation of the property in receivership

When making any order which removes or has the effect of
removing a receiver from office, the Court shall make such
orders as are appropriate for the preservation of the property in receivership and may require the receiver to make available any accounts, records or other information necessary for that purpose.

104AU Refusal of essential services prohibited

(1) For the purposes of this section an “essential service” means:
   (a) the supply of gas;
   (b) the supply of electricity;
   (c) the supply of water;
   (d) telecommunication services;
   (e) any other prescribed service.

(2) For the purposes of this section “telecommunication services” means the conveyance from one device to another by any line, radio frequency or other medium of any sign, signal, impulse, writing, image, sound, instruction, information or intelligence of any nature, whether or not for the information of any person using the device.

(3) Nothing in any other Act or in any contract entitles a supplier of an essential service to:
   (a) refuse to supply the service to a receiver or to the owner of the property in receivership by reason of the grantor’s default in paying any charges due for the service in respect of any period before the date of the appointment of the receiver; or
   (b) make it a condition of the further supply of the service to a receiver or to the owner of the property in receivership that payment be made of any outstanding charges due for the service in respect of any period before the date of the appointment of the receiver.

(4) A supplier of an essential service may make it a condition of the supply of the service to the grantor during the period of a receivership that the receiver shall personally guarantee the payment of charges to be incurred for the supply.
104AV Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing that any service is an essential service for the purposes of section 104AU [Refusal of essential services prohibited];

(b) providing for such other matters as are contemplated by or necessary for giving full effect to this Part and for its due administration.
The Law Commission received the reference on Company Law on 5 September 1986. It set up an informal committee to assist it, comprising P B Baines, J A Farmer QC, Professor J H Farrar, T N McFadgen, M C Walls and P G Watts.

A discussion paper on company law was published in November 1987 and more than 60 responses were received by October 1988. Many of the responses were lengthy and scholarly and produced at considerable effort and cost.

The Law Commission helped sponsor a number of seminars throughout the country on insolvency law reform after it became apparent that the Department of Justice was unlikely to complete its review before this report was due for publication. In addition, the Commission sought the views of the New Zealand Society of Accountants on the preliminary report of the Australian Law Reform Commission on insolvency law. A very detailed and helpful submission was subsequently presented by the Society.
We greatly appreciate the assistance we have had from busy people who are experts in the fields of company law and practice. It has demonstrated to us a widespread support for substantial reform. We owe a special debt of gratitude to Peter Blanchard, Francis Dawson, John Farrar, Stephen Franks, Rob Thompson and Peter Watts.

Richard Clarke and David Goddard drafted the Companies Act, except for the liquidation provisions and the Property Law Amendment Act which were prepared in the Law Commission. We were most fortunate in our drafters, not only for their skill but also for their patience, industry and helpfulness throughout. Our report owes much to them.

We are also very grateful to the following people and organisations for their written submissions:

AMP
Auckland District Law Society, Companies and Commerce Sub-committee
Australia-NZ Business Council Ltd
Beck, A
Bell Gully Buddle Weir, Auckland
Benjamin, M M
Berryman, W W
Bloomer, P H E
BP NZ Ltd
Bradbury, J
Brixton, H J
Buttle Wilson Ltd
Coopers & Lybrand, Auckland
Coote, M
Deloitte Haskins & Sells
Economic Development Commission
Edge, R O
Fay, Richwhite & Company Ltd
Fennessy, K E
Fletcher Challenge Ltd
Hammond, Professor R G
Heath, P R
Inland Revenue Department
Institute of Directors
Johnson, C P
KPMG Peat Marwick, Christchurch
Land, J
Listed Companies Association
McCaw Lewis Chapman
McElroy Morrison, Auckland
Malloy, M D
National Mutual Life Nominees Ltd
NZ Bankers’ Association
NZ Business Roundtable
NZ Financial Services Association (Inc)
NZ Institute of Patent Attorneys
NZ Insurance Corporation Ltd
NZI Share Registry Services Ltd
NZ Law Society
NZ Manufacturers Federation Inc
NZ Society of Accountants
NZ Wool Board
Nicholson Gribbin, Auckland
Palmer, C J
Paterson, Professor R G
Pegler, C
Perkins Hargreaves Ltd
Peterson, K
Price Waterhouse, Auckland
Quigg, D J
South Pacific Merchant Finance Ltd
St John, R
Sullivan, B M
Tait, C
The Life Offices’ Association of NZ Inc
The Treasury
In addition, many people assisted us with information and suggestions throughout the project, answered our questions and criticised our drafts. We do not try to name them all, but should like to record the contributions made by:

Amigo, W
Arnott, J A
Barker, P
Calhoun, D C
Clapshaw, P F
Davidson, N D
Darvell, R P
Dugan, R
Dukeson, S
Dyall, G
Familton, K R
Francis, D L
Gault, The Hon. Mr Justice
Greville, T P
Harmer, R W
Heath, P R
Hennessy, P
Jewell, V
Laing, T E
Lusk, J O
Martin, N
Mortlock, S G
McCabe, P T
McCormack, K F P
McInnes, R D
McKenzie, P D
Those named in this appendix have helped us greatly but
should not necessarily be taken as being in agreement with the
Report. As usual, the Report represents the views of the Law
Commission and the Commission alone is responsible for it.
APPENDIX B

Comparative Table of Sections  —  1955 Companies Act and Draft Act

As the draft Act is so different from the 1955 Act, it is not possible to produce a succinct comparative table which is exhaustive and authoritative. The following table is included as an aid and a guide only. It takes the 1955 Act sections and provides a cross reference to any section in the draft Act which deals with the same subject matter, whether or not the policy in the draft act is the same. If the right hand column contains no reference then the new Act may be taken to have no equivalent provision to that of the 1955 Act section recorded in the left hand column.

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PART VI [Winding up]

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