

Companies Amendment Bill (No 2)

(Divided from the Judicature Modernisation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Judicature Modernisation Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Senior Courts Bill comprising clauses 1 and 2, Part 1, and Schedules 1A to 4
- District Court Bill comprising Part 2 and Schedules 5 to 7
- Judicial Review Procedure Bill comprising Part 3 and Schedule 8
- Interest on Money Claims Bill comprising Part 4 and Schedules 9AAA, 9AA, and 9
- Electronic Courts and Tribunals Bill comprising Part 5
- Arbitration Amendment Bill comprising subpart 1 of Part 6
- Bills of Exchange Amendment Bill comprising subpart 2 of Part 6
- Building Societies Amendment Bill comprising subpart 3 of Part 6
- Children, Young Persons, and Their Families Amendment Bill comprising subpart 4 of Part 6
- this Bill comprising subpart 5 of Part 6 and Schedule 10
- Contractual Remedies Amendment Bill comprising subpart 6 of Part 6
- Copyright Amendment Bill (No 2) comprising subpart 7 of Part 6
- Courts (Remote Participation) Amendment Bill comprising subpart 8 of Part 6
- Criminal Procedure Amendment Bill comprising subpart 9 of Part 6
- Employment Relations Amendment Bill (No 4) comprising subpart 10 of Part 6
- Family Courts Amendment Bill comprising subpart 11 of Part 6
- Insolvency Amendment Bill comprising subpart 12 of Part 6

- Local Government (Rating) Amendment Bill comprising subpart 13 of Part 6
- Property Law Amendment Bill comprising subpart 14 of Part 6
- Remuneration Authority Amendment Bill (No 2) comprising subpart 14A of Part 6
- Resource Management Amendment Bill comprising subpart 15 of Part 6
- Te Ture Whenua Maori Amendment Bill comprising subpart 16 of Part 6
- Trans-Tasman Proceedings Amendment Bill comprising subpart 17 of Part 6

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Amy Adams

Companies Amendment Bill (No 2)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies Amendment Act **2016**.

2 Commencement

This Act comes into force on **1 March 2017**.

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516 Principal Act

This **Act** amends the Companies Act 1993 (the **principal Act**).

517 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

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association, in Parts 15 and 16 and in **Schedule 10 11**, includes—

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

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518 Section 235 amended (Interpretation)

- (1) In section 235, definition of **company**, paragraph (c), ~~replace delete~~ “that may be put into liquidation under section 17A of the Judicature Act 1908” ~~with “;”~~.

- (2) In section 235, definition of **company**, after paragraph (c), insert:

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(d) any other body corporate to which this Part applies under any enactment

- (3) In section 235, insert in its appropriate alphabetical order:

~~shareholder or persons entitled to surplus assets~~ includes, in relation to an association, members of the association or persons that the court determines as being justly entitled to surplus assets of the association after the satisfaction of the claims of all of the creditors

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519 Section 240 amended (Interpretation)

After section 240(1), insert:

- (1A) In this Part, **company** means—

- (a) a company within the meaning of section 2:
- (b) an overseas company to which this Part applies (*see* section 342):
- (c) an association (*see* **section 240B**):
- (d) any other body corporate to which this Part applies under any other enactment

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520 New section 240B inserted (Liquidation of associations)

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After section 240A, insert:

240B Liquidation of associations

An association may be put into liquidation under this Part, and this Part applies to an association, subject to the modifications and exclusions set out in **Schedule-10 11**.

521 New Schedule-10 11 inserted

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After Schedule-9 10, insert the **Schedule-10 11** set out in **Schedule 10** of this Act.

*Consequential amendments***521A Amendments to Crown Entities Act 2004**

- (1) This section amends the Crown Entities Act 2004. 10
- (2) In the heading to section 177, replace “**Judicature Act 1908**” with “**Part 1 of the Judicature Modernisation Act 2013**”.
- (3) In section 177, replace “sections 17A to 17E of the Judicature Act 1908 apply” with “**section 240B** of the Companies Act 1993 applies”.

521B Amendments to Customs and Excise Act 1996

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- (1) This section amends the Customs and Excise Act 1996.
- (2) In section 101(3), delete “, and Schedule 7 of.”.
- (3) In section 101(5), replace “section 17B of the Judicature Act 1908” with “the requirements of section 312 of the Companies Act 1993 (as applied by **section 240B** of that Act)”. 20

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Schedule 10
New Schedule ~~10~~ 11 inserted

s 521

Schedule ~~10~~ 11
Liquidation of associations

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s 240B

1 Modified application of Part 16 to associations

- (1) Part 16 applies to the liquidation of an association with the following modifications and exclusions:
- (a) section 241(2)(a), (b), (c)(v), (va), (vii), and (viii), and (d) does not apply: 10
 - (b) **clause 2** applies instead of section 241(4):
 - (c) **clauses 3 and 4** apply instead of sections 287 and 288(1) and (2):
 - (d) **clause 5** applies instead of section 268:
 - (e) references in that Part to section 241(4), 268, 287, or 288(1) or (2) (or to a provision of any of those sections) must be taken as references to the relevant replacement clause or clauses under **paragraphs (b) to (d)** (or to the relevant replacement provision): 15
 - (f) section 257(1)(a)(ii)(C) and (1)(a)(iii) does not apply:
 - (g) all other necessary modifications must be made. 20
- (2) A document may be served on an association for the purposes of this schedule and Part 16 as follows:
- (a) by delivery to a director, a principal officer, or the secretary of the association; or
 - (b) by leaving it at the association's principal place of business in New Zealand; or 25
 - (c) in the case of a document in any legal proceedings, by a method set out in **paragraph (a) or (b)** or by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings. 30

Compare: 1908 No 89 s 17B

2 Grounds for appointment of liquidator

The court may appoint a liquidator of an association under section 241 if the court is satisfied that—

- (a) the association is dissolved, has ceased to carry on business, or is carrying on business solely for the purpose of terminating its affairs; or 35

- (b) the association is unable to pay its debts; or
- (c) it is just and equitable that the association be put into liquidation.

Compare: 1908 No 89 s 17A(4)

3 Meaning of inability to pay debts

- (1) Unless the contrary is proved, and subject to **clause 4** and section 288(3) to (5), an association is presumed to be unable to pay its debts if—
- (a) the association has failed to comply with a demand in respect of a debt owed by the association that is made in accordance with **subclause (2)**; or
 - (b) all of the following apply:
 - (i) a proceeding has been commenced against a member of the association for the payment of a debt owed by the association or the member in that capacity; and
 - (ii) notice of the proceeding has been served on the association; and
 - (iii) within 10 days after the notice was served on it, the association has not paid or secured the debt, or otherwise compounded with the creditor, had the proceeding stayed, or indemnified the member for the amount of any judgment debt plus costs; or
 - (c) execution issued against the association, a member of the association in that capacity, or a person authorised to be sued on behalf of the association in respect of a judgment debt has been returned unsatisfied in whole or in part.
- (2) A demand under **subclause (1)(a)** must—
- (a) be in respect of a debt that is due that is not less than the prescribed amount; and
 - (b) be in writing; and
 - (c) be served on the association; and
 - (d) require the association to pay or secure the debt, or otherwise compound with the creditor to the reasonable satisfaction of the creditor within 15 working days after the date of service of the demand or any longer period that the court orders.

Compare: 1908 No 89 s 17C

4 Evidence of inability to pay debts

- (1) On an application to the court for an order that an association be put into liquidation, evidence of failure to comply with a demand under **clause 3** is not admissible as evidence that an association is unable to pay the debts unless the application is made within 30 working days after the last date for compliance with the demand.

(2) **Clause 3(2)** does not limit proof by other means that an association is unable to pay its debts.

5 Power of liquidator to enforce liability of contributors

The liquidator may enforce a liability of a person to pay or contribute to—

- (a) any debt or liability of an association; or
- (b) any amount for the adjustment of the rights of members of the association among themselves.

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Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as
Bill 178–3J