

# Companies Amendment Act (No 2) 2004

Public Act 2004 No 24  
Date of assent 14 April 2004

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Companies Amendment Act (No 2) 2004.
- (2) In this Act, the Companies Act 1993 is called “the principal Act”.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Interpretation**

Section 2(3)(b) of the principal Act is amended by omitting the word “capital”, and substituting the word “capital”.

**4 Redemption at option of shareholder**

Section 74(1)(c) of the principal Act is amended by omitting the word “sum”, and substituting the word “consideration”.

**5 Company must satisfy solvency test**

Section 77(6) of the principal Act is amended—

- (a) by inserting in the definition of assets, after the expression “section 76”, the words “or section 107(1)(e)” ; and
- (b) by inserting in the definition of **liabilities**, after the expression “section 76”, the words “or section 107(1)(e)”.

## **6 Company to satisfy solvency test**

- (1) Section 108(5)(a) of the principal Act is amended by inserting, after the words “at any time”, the words “under section 76 or section 107(1)(e)”.
- (2) Section 108(5)(b) of the principal Act is amended by omitting the words “the financial assistance”, and substituting the words “financial assistance under section 76 or section 107(1)(e)”.

## **7 Management review by shareholders**

- (1) Section 109(2) of the principal Act is amended by omitting the words “subsection (3) of this section”, and substituting the words “subsections (2A) and (3)”.
- (2) Section 109 of the principal Act is amended by inserting, after subsection (2), the following subsection:  
“(2A) The provisions of Schedule 1 govern proceedings at a meeting of shareholders at which a resolution under this section is passed except to the extent that the constitution of the company provides for matters that are expressed in that schedule to be subject to the constitution of the company.”

## **8 Major transactions**

- (1) Section 129(2) of the principal Act is amended by inserting in paragraph (c) of the definition of **major transaction**, after the word “liabilities”, the words “, including contingent liabilities,”.
- (2) Section 129 of the principal Act is amended by inserting, after subsection (2A), the following subsection:  
“(2B) In assessing the value of any contingent liability for the purposes of paragraph (c) of the definition of **major transaction** in subsection (2), the directors—
  - “(a) must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
  - “(b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
  - “(c) may take account of—
    - “(i) the likelihood of the contingency occurring; and

“(ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.”

**9 New section 193A inserted**

The principal Act is amended by inserting, after section 193, the following section:

**“193A Rectification or correction of address for service**

“(1) This section applies if the address for service of a company is rectified or corrected under section 360A or section 360B.

“(2) The rectification or correction takes effect at the time that the rectification or correction is made to the New Zealand register.”

**10 Appointment of auditors**

Section 196 of the principal Act is amended by inserting, after subsection (3), the following subsections:

“(3A) An auditor may resign at any time by giving written notice to the board of the company, and the company must, as soon as practicable, notify its shareholders of the auditor’s resignation.

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

**11 Auditor not seeking reappointment**

(1) The heading to section 203 of the principal Act is amended by adding the words “or resigning”.

(2) Section 203 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) If an auditor gives the board of a company written notice that he or she does not wish to be reappointed or of his or her resignation, the board must, if requested to do so by that auditor,—

“(a) distribute, as soon as practicable, to all shareholders, at the expense of the company, a written statement of the auditor’s reasons for his or her wish not to be reappointed or for his or her resignation; or

“(b) permit the auditor or his or her representative to explain at a shareholders’ meeting the reasons for his or her wish not to be reappointed or for his or her resignation.”

## **12 Sending of annual report to shareholders**

- (1) Section 209(1) of the principal Act is amended by omitting the words “Subject to subsection (2) of this section”, and substituting the words “Subject to section 212”.
- (2) Section 209(2) of the principal Act is repealed.

## **13 New section 210 substituted**

The principal Act is amended by repealing section 210, and substituting the following section:

### **“210 Information for shareholders who elect not to receive annual report**

- “(1) A shareholder of a company who has elected under section 212 not to receive an annual report may, by written notice to the company, elect to be sent each year in place of the annual report any or all of the following documents, and the board of the company must cause those documents to be sent to the shareholder each year:
- “(a) financial statements (including any group financial statements) and any auditor’s report required under Part 11:
  - “(b) summary financial statements, if any.
- “(2) The board of a company must cause the documents referred to in subsection (3) to be sent to a shareholder of the company who has elected under section 212 not to receive an annual report if the shareholder—
- “(a) has not made any election under subsection (1); or
  - “(b) has made an election under subsection (1)(b) to receive summary financial statements, but the company has not produced any summary financial statements.
- “(3) The documents required to be sent under subsection (2) are financial statements (including any group financial statements) and any auditor’s report required under Part 11.

- “(4) Any documents required to be sent under subsection (1) or subsection (2) must be sent not less than 20 working days before the annual meeting of shareholders.
- “(5) The financial statements and group financial statements required by this section to be sent to a shareholder must be for the most recently completed accounting period and must be completed and signed in accordance with section 10 or section 13 of the Financial Reporting Act 1993, as the case may be.
- “(6) Any summary financial statements must give a true and fair summary of the matters to which they relate and must comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993).
- “(7) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).”

#### **14 Inspection of company records by shareholders**

Section 216(1)(b) of the principal Act is amended by inserting, after the words “financial statements,”, the words “summary financial statements (if any),”.

#### **15 Grounds for removal from register**

- (1) Section 318(1) of the principal Act is amended by adding the word “; or”, and also by adding the following paragraph:
- “(f) the company has failed to pay the fee prescribed by regulations for the application for registration of the company under section 12.”
- (2) Section 318 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) The Registrar must remove a company from the New Zealand register under subsection (1)(f) if—
- “(a) the Registrar has complied with section 319; and
  - “(b) the fee prescribed by regulations for the application for registration of the company under section 12 has not been paid in full to the Registrar within 20 working days after the date of the notice given under section 319.”

**16 Notice of intention to remove where company has ceased to carry on business**

- (1) The heading to section 319 of the principal Act is amended by adding the words “or application fee not paid”.
- (2) Section 319(1) of the principal Act is amended by inserting, after the expression “section 318(1)(b)”, the words “or (f)”.
- (3) Section 319(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:  
“(ab) if section 318(1)(f) applies, state that, unless the fee prescribed by regulations for the application for registration of the company under section 12 is paid in full to the Registrar within 20 working days after the date of the notice, the company will be removed from the New Zealand register; and”.
- (4) Section 319(2)(b) of the principal Act is amended by inserting, before the words “state that,”, the words “if section 318(1)(b) applies,”.
- (5) Section 319(3)(c) of the principal Act is amended by inserting, before the words “the date by which”, the words “if section 318(1)(b) applies,”.

**17 Notice of intention to remove in other cases**

- (1) Section 320(1) of the principal Act is amended by inserting, after the expression “section 318(1)(c)”, the words “or (d)”.
- (2) Section 320 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:  
“(2) If a company is to be removed from the register under section 318(1)(e), the liquidator must give public notice of the matters set out in subsection (4).”

**18 Objection to removal from register**

Section 321 of the principal Act is amended by adding the following subsection:

- “(3) An objection to the removal of a company from the New Zealand register cannot be made under this section if the ground for removal is that specified in section 318(1)(f).”

**19 New section 339A inserted**

The principal Act is amended by inserting, after section 339, the following section:

**“339A Rectification or correction of name or address of person authorised to accept service**

- “(1) This section applies if the name or address of a person resident or incorporated in New Zealand who is authorised to accept service in New Zealand of documents on behalf of an overseas company is rectified or corrected under section 360A or section 360B.
- “(2) The rectification or correction takes effect at the time that the rectification or correction is made to the overseas register.”

**20 New sections 360A and 360B inserted**

The principal Act is amended by inserting, after section 360, the following sections:

**“360A Rectification or correction of New Zealand register and overseas register**

- “(1) The Registrar may,—
- “(a) on the application of any person, rectify the New Zealand register or the overseas register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the New Zealand register or the overseas register; or
  - “(b) if it appears to the Registrar that any particulars have been incorrectly entered in the New Zealand register or the overseas register due to a clerical error by the Registrar, correct those particulars.
- “(2) Before the Registrar rectifies the New Zealand register or the overseas register under subsection (1)(a), the Registrar must—
- “(a) give written notice to the company or overseas company that an application has been made to rectify the New Zealand register or the overseas register in relation to that company or overseas company (including details of that application); and
  - “(b) give public notice setting out—
    - “(i) the name of the applicant; and
    - “(ii) the name of the company or overseas company; and

- “(iii) the reasons for and details of the changes sought to be made to the New Zealand register or the overseas register; and
  - “(iv) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 20 working days after the date of the notice.
- “(3) Any person may deliver to the Registrar, not later than the date specified in accordance with subsection (2)(b)(iv), a written objection to a proposed rectification of the New Zealand register or the overseas register, and the Registrar must give a copy of the objection to the applicant.
- “(4) The Registrar must not rectify the New Zealand register or the overseas register if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that the objection has been withdrawn.

#### **“360B Powers of Court**

- “(1) If an objection to a proposed rectification is received by the Registrar under section 360A(3), the applicant for the rectification of the New Zealand register or the overseas register may apply to the Court for an order for rectification.
- “(2) If an application for an order is made under subsection (1),—
- “(a) the applicant must, as soon as practicable, serve notice of the application on the Registrar; and
  - “(b) the Registrar may appear and be heard in relation to the application.
- “(3) On an application for an order under subsection (1), the Court may, if it is satisfied that any information has been wrongly entered in, or omitted from, the New Zealand register or the overseas register, make an order that the New Zealand register or the overseas register be rectified.”

#### **21 Penalties that may be imposed on directors in cases of failure by board or company to comply with Act**

- (1) Section 374(2) of the principal Act is amended by inserting, after paragraph (16), the following paragraph:

“(16A) section 196(3B) (which relates to the notification of the resignation of an auditor):”.

- (2) Section 374(2) of the principal Act is amended by omitting from paragraph (22) the expression “210(2)”, and substituting the expression “210(7)”.

**22 Schedule 1 amended**

- (1) Clause 9(4) of Schedule 1 of the principal Act is amended by omitting the words “the board may”, and substituting the words “the board must”.

- (2) Clause 9 of Schedule 1 of the principal Act is amended by repealing subclause (6), and substituting the following subclause:

“(6) The board is not required to include in or with the notice given by the board—

“(a) any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or

“(b) any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).”

**23 Schedule 2 amended**

Schedule 2 of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

“(da) section 49 (which relates to the consideration for the issue of options and convertible securities):”.

**24 Schedule 6 amended**

Schedule 6 of the principal Act is amended by adding the following paragraph:

“(o) change the registered office or address for service of the company.”

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2004 No 24

**Companies Amendment Act (No 2) 2004**

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6 April 2004

**Legislative history**

Divided from Business Law Reform Bill (Bill  
56-2), third reading

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