



ANALYSIS

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1993, No. 113

An Act to amend the Corporations (Investigation and Management) Act 1989 *[28 September 1993]*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Corporations (Investigation and Management) Amendment Act 1993, and shall be read together with and deemed part of the Corporations (Investigation and Management) Act 1989 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1994.

2. Sale of property or assets subject to security—Section 51 (2) of the principal Act is hereby amended by omitting the words “section 308 of the Companies Act 1955”, and substituting the words “section 312 of the Companies Act 1993”.

3. Liquidation of corporations—The principal Act is hereby amended by repealing section 52, and substituting the following section:

“52. (1) Subject to this Part of this Act, a statutory manager of a corporation may,—

“(a) In the case of a corporation that may be put into liquidation under the Companies Act 1955 or the Companies Act 1993, apply under either of those Acts to put the corporation into liquidation:

“(b) In the case of a corporation that may be wound up or put into liquidation or dissolved under any other Act, take such steps as are provided for in that Act for the winding up or liquidation or dissolution of that corporation.

“(2) The statutory manager of a corporation, not being a corporation referred to in subsection (1) of this section, may recommend to the Minister that the corporation be wound up.

“(3) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of a statutory manager under subsection (2) of this section, order that the corporation to which the recommendation relates shall be wound up in such manner as may be specified in the order and, in any such case, the corporation shall be wound up in the manner specified in the order.

“(4) Nothing in this section limits or affects any other enactment which provides for the winding up or liquidation or dissolution of any body corporate or any class of body corporate.”

4. Power to trace property improperly disposed of—Section 54 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in this section shall restrict the operation of the Companies Act 1955 or the Companies Act 1993.”

5. Application of certain provisions of Companies Act 1993—The principal Act is hereby amended by repealing section 55, and substituting the following section:

“55. (1) Sections 292 to 301 and 312 of the Companies Act 1993 shall apply to a corporation that is subject to statutory management under this Act in all respects, and with such modifications as may be necessary, as if—

“(a) The corporation was a company in liquidation under that Act; and

“(b) The statutory manager of the corporation was the liquidator of the company; and

“(c) The date on which the corporation became subject to statutory management was the date on which the liquidation commenced.

“(2) Nothing in section 263 of the Companies Act 1993 shall apply to a corporation by reason of the application of section 312 of that Act.”

6. Transitional provisions—Nothing in section 5 of this Act applies to or affects—

(a) A corporation that was subject to statutory management under the principal Act immediately before the commencement of this Act:

(b) Any transaction entered into by a corporation or anything done by any person before the commencement of this Act—

and, in any such case, sections 308 (except subsection (1) (d)), 309 to 311c, and 319 to 321 of the Companies Act 1955, as in force before the commencement of this Act, shall continue to apply to the corporation in all respects, and with such modifications as may be necessary, as if—

(c) The corporation were a company that was being wound up under the Companies Act 1955; and

(d) The statutory manager of the corporation was the liquidator of the company; and

(e) The date on which the corporation became subject to statutory management was the date of the commencement of the winding up.

7. Prior winding up, liquidation, or receivership to cease—Section 61 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where a corporation, or any subsidiary or associated person of a corporation, becomes subject to statutory management, and that corporation, subsidiary, or associated person is already being wound up or is already in liquidation or receivership,—

“(a) The winding up or liquidation or receivership of that corporation, subsidiary, or associated person shall, for so long as it continues to be subject to statutory management, cease; and

“(b) The person appointed as liquidator or receiver shall be discharged.”

8. Termination of statutory management—(1) Section 62 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Any corporation, or associated person of a corporation, or subsidiary of a corporation shall cease to be subject to statutory management if that corporation, or associated person, or subsidiary, as the case may be, is put into liquidation on the application of the statutory manager.”

(2) Section 62 (3) of the principal Act is hereby amended by omitting the words “a winding-up order is made pursuant to subsection (2) of this section, in respect of any person”, and substituting the words “a corporation, or associated person of a corporation, or subsidiary of a corporation, as the case may be, is put into liquidation”.

(3) Section 62 (4) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) In any case where a liquidator is appointed, the date of the liquidator’s appointment.”

9. Application of other Acts—The principal Act is hereby amended by repealing section 71, and substituting the following section:

“71. (1) Except as provided in this Act and in subsections (2) and (3) of this section, all the provisions of the Companies Act 1955 and all rules and regulations under that Act shall, so far as they are applicable, and with the necessary modifications, apply to a corporation that is a company within the meaning of section 2 of that Act and that is subject to statutory management.

“(2) Nothing in sections 41, 130 to 135, and 152 to 167 of the Companies Act 1955 shall apply to a company that is subject to statutory management.

“(3) In the application of section 354 (2) of the Companies Act 1955 to a company that is subject to statutory management, references to 2 members shall be construed as references to 1 member.

“(4) Except as provided in subsection (5) of this section, all the provisions of the Companies Act 1993 and all rules and regulations made under that Act shall, so far as they are applicable and with the necessary modifications, apply to a corporation that is a company within the meaning of section 2 of that Act and that is subject to statutory management.

“(5) Nothing in sections 120, 196 to 210, and 214 of the Companies Act 1993 shall apply to a company that is subject to statutory management.

“(6) Nothing in the Receiverships Act 1993 shall apply to a company that is subject to statutory management.

“(7) Nothing in any enactment other than the Income Tax Act 1976 or the Statistics Act 1975 shall require a corporation that is subject to statutory management or a statutory manager to file any annual or other return.”

This Act is administered in the Department of Justice.
