

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 8 December 1982.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*Hon. Mr McLay*

## COMPANIES AMENDMENT

### ANALYSIS

Title	6. Trustee may be registered as a member
1. Short Title and commencement	7. Annual return to be made by a company having a share capital
2. Interpretation	8. Annual return to be made by company not having a share capital
3. Application of premiums received on issue of shares	9. Balance sheet and certain other documents to be filed
4. New sections inserted	10. Directors
64A. Interpretation	11. Secretary
64B. Section 64 not to apply to premiums on shares issued pursuant to scheme of acquisition	12. Prohibition of loans to directors
64C. Section 64 not to apply to premiums on shares issued in certain group reconstructions	13. Register of directors' shareholdings, etc.
64D. Retrospective relief in certain cases	14. Register of directors and secretaries
64E. Balance sheet to disclose origin of sums not required to be transferred to share premium account	15. Powers of liquidator to examine persons
5. Vesting shares or debentures of deceased holder without requiring probate or letters of administration	16. Voidable preference
	17. Application of Act to private companies
	18. Prohibition of certain persons being sole director or secretary
	19. Power to alter tables and forms, and requirements as to accounts
	20. Consequential amendment to Eighth Schedule
	21. Transitional provisions

### A BILL INTITULED

#### **An Act to amend the Companies Act 1955**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Companies Amendment Act 1982, and shall be read together with and deemed part of the Companies Act 1955\* (hereinafter referred to as the principal Act).

\*Reprinted 1977, Vol. 4, p. 2933  
Amendments: 1978, No. 45; 1980, No. 43; 1981, No. 61

(2) Except as provided in sections 3 (2), 4 (2), 7 (9), 8 (7), 8A (3), 9 (2), 17 (4), and 20 (2) of this Act, this Act shall come into force on the day on which it receives the Governor-General's assent.

*Struck Out*

5

**2. Interpretation**—Section 2 of the principal Act is hereby amended by repealing the definition of the term “director”, and substituting the following definition:

“ ‘Director’ includes:

“(a) Any person occupying the position of director, by whatever name called; and

“(b) A person in accordance with whose directions or instructions the persons occupying the position of directors of a company are accustomed to act.”.

15

*New*

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “director”, and substituting the following definition:

“ ‘Director’ includes—

20

“(a) Any person occupying the position of director by whatever name called; and

“(b) A person in accordance with whose directions or instructions the persons occupying the position of directors of a company are accustomed to act.”.

25

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

“(2) No person shall for the purposes of this Act be a person in accordance with whose directions or instructions the directors of a company are accustomed to act, by reason only that the directors of the company act on advice given by him in a professional capacity.”

30

**3. Application of premiums received on issue of shares**—(1) The principal Act is hereby amended by repealing section 64, and substituting the following section:

35

“64. (1) For the purposes of this Act, a company issues shares at a premium if—

“(a) The company issues shares for cash and the amount paid or payable in respect of each share so issued exceeds the nominal value of each share issued; or

5 “(b) The company issues shares for a consideration other than cash (or partly for cash and partly for a consideration other than cash) and the value of the consideration in respect of each share so issued, whether or not expressed in or ascertainable from any contract relating to the issue of those shares, exceeds the nominal value of *(the share)* each share issued.

10 “(2) For the purposes of this Act, where a company issues shares at a premium—

15 “(a) In a case to which subsection (1) (a) of this section applies, the amount of the premium on each share is the amount by which the amount paid or payable in respect of each share exceeds the nominal value of each share:

20 “(b) In any case to which subsection (1) (b) of this section applies where shares are issued for a consideration other than cash, the value of the premium on each share is the amount by which the value of the consideration provided or liable to be provided as allocated in respect of each share in accordance with an estimate of value to be made by the directors of the company, exceeds the nominal value of each share:

25 “(c) In any case to which subsection (1) (b) of this section applies where shares are issued for a consideration partly for cash and partly for a consideration other than cash, the value of the premium is the amount by which the aggregate of such cash paid or payable and the value of such consideration provided or to be provided as allocated in respect of each share in accordance with an estimate of value to be made by the directors of the company, exceeds the nominal value of each share.

30 “(3) Except as provided in sections 64B to 64D of this Act, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called ‘the share premium account’, and the provisions of this Act relating to the reduction of share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

“(4) The share premium account may, notwithstanding anything in subsection (3) of this section, be applied by the company—

“(a) In paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares; or 5

*New*

“(aa) In paying up in full unpaid or partly paid up shares issued to members of the company; or
---

“(b) In writing off— 10

“(i) The preliminary expenses of the company; or

“(ii) The expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company; or 15

“(c) In providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company.

“(5) Where a company has before the commencement of this Act issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Act: 20

“Provided that any part of the premiums which has been so applied that it does not at the commencement of this Act form an identifiable part of the company’s reserves within the meaning of the Eighth Schedule to this Act shall be disregarded in determining the sum to be included in the share premium account.” 25

(2) This section shall come into force on the 1st day of January 1983. 30

**4. New sections inserted**—(1) The principal Act is hereby amended by inserting, after section 64, the following sections:

“64A. **Interpretation**—For the purposes of sections 64B to 64D of this Act— 35

“‘Equity shares’ means the shares comprised in the equity share capital of a company within the meaning of section 158 (5) of this Act:

“‘Issuing company’ means a company which issues shares in consideration for the acquisition of shares in, or the undertaking of, another company: 40

“ ‘Merged company’ means a company in respect of which an issuing company issues shares:

“ ‘Scheme of acquisition’ means—

*Struck Out*

5 “(a) A takeover scheme as defined by section 2 (1) of the Companies Amendment Act 1963:

*New*

10 “(a) A takeover offer as defined by section 2 (1) of the Companies Amendment Act 1963 which is made in accordance with Part I of that Act or which, by virtue of section 3 (a) of that Act, is not required to be made in accordance with Part I of that Act:

15 “(b) An arrangement sanctioned by the Court pursuant to section 205 of this Act:

“(c) A sale or arrangement of the whole or part of the business or property of a company to which section 278 of this Act applies:

20 “ ‘Undertaking’ means the whole of a business and all property, rights, and interests relating to that business.

“**64B. Section 64 not to apply to premiums on shares issued pursuant to scheme of acquisition**—Nothing in section 64 (3) of this Act shall apply to the issue of shares at a premium by an issuing company pursuant to a scheme of acquisition whereby the shares are issued as fully paid up in consideration for either—

30 “(a) The transfer or issue to the issuing company of shares in a merged company, or the cancellation of shares in a merged company, which results in the issuing company acquiring (together with any shares already held by it or any subsidiaries of the issuing company) 90 percent or more of the nominal value of the issued equity shares in the merged company; or

35 “(b) The transfer or sale to the issuing company of the whole of the undertaking of the merged company.

**“64C. Section 64 not to apply to premiums on shares issued in certain group reconstructions—**(1) This section applies to the issue by an issuing company which is a wholly owned subsidiary of its holding company of shares to—

“(a) That holding company; or

“(b) A wholly owned subsidiary of that holding company—

in consideration for the transfer to the issuing company of shares in any other subsidiary of that holding company.

“(2) Where an issuing company issues shares to which this section applies at a premium, nothing in section 64 (3) of this Act shall require the issuing company to transfer to the share premium account any sum greater than the amount by which the value of the shares in the subsidiary transferred to the issuing company as shown in the accounting records of the company transferring the shares immediately before the transfer, exceeds the nominal value of the shares issued by the issuing company.

“(3) For the purposes of this section, a company shall be deemed to be a wholly owned subsidiary of another if it has no members except that other and that other’s wholly owned subsidiaries and its or their nominees.

**“64D. Retrospective relief in certain cases—**(1) This section applies to the issue by an issuing company of shares at a premium at any time before the 22nd day of October 1981 in consideration for the transfer or issue to the issuing company of shares or the cancellation of shares in another company which was, or, on the allotment of the shares issued, became a subsidiary of the issuing company where no part of the (premium) premiums on such shares was transferred to the

issuing company’s share premium account in accordance with or for the purpose of complying with section 64 of this Act as in force immediately before the 1st day of January 1983.

“(2) Section 64 of this Act as in force immediately before the 1st day of January 1983 shall be deemed never to have applied to the issue of shares at a premium by an issuing company to which this section applies.

“(3) Nothing in paragraph 16 (5) of the Eighth Schedule to this Act shall be taken as ever having affected the payment or declaration of any dividend by any company.”

**“64E. Balance sheet to disclose origin of sums not required to be transferred to share premium account—**Where a company issues shares at a premium but, by virtue

of section 64B of this Act, is not required to transfer a sum equal to the aggregate amount or value of the premiums on those shares to a share premium account, and that sum is included or shown in any reserve or retained profits of the company in its balance sheet, that balance sheet shall state, whether by note or otherwise, the amount, origin, and nature of that sum.”

(2) This section shall come into force on the 1st day of January 1983.

10 **5. Vesting shares or debentures of deceased holder without requiring probate or letters of administration—**

(1) Section 86 (1) of the principal Act (as amended by section 5 of the Companies Amendment Act 1980) is hereby amended by omitting the expression “\$4,000” in both places where it occurs, and substituting in each case the expression “\$6,000”.

(2) Section 5 of the Companies Amendment Act 1980 is hereby consequentially repealed.

20 **6. Trustee may be registered as a member—**The principal Act is hereby amended by inserting, after section 125, the following section:

“125A. (1) Notwithstanding section 125 of this Act, a trustee, executor, or administrator of the estate of a deceased person registered in a register or branch register of a company as the holder of a share in that company shall be entitled to be registered as the holder of that share as trustee, executor, or administrator of that estate.

30 “(2) The liability of a trustee, executor, or administrator registered pursuant to subsection (1) of this section shall, in respect of such share, not exceed the value of any other assets which, at the time when any demand is made for the satisfaction of any such liability, are held by that trustee, executor, or administrator upon the same trusts as are applicable to such share.

40 “(3) Notwithstanding section 125 of this Act, a trustee, executor, or administrator of the estate of a deceased person beneficially entitled to a share in a company, being a share registered in a register or branch register of that company, shall, with the consent of the company and the registered holder of that share, be entitled to be registered as the holder of that share as trustee, executor, or administrator of that estate.

“(4) The liability of a trustee, executor, or administrator registered pursuant to subsection (3) of this section, shall, in respect of such share, not exceed the value of any other assets which, at the time when any demand is made for the satisfaction of any such liability, are held by that trustee, executor, or administrator upon the same trusts as are applicable to such share. 5

*Struck Out*

“(5) A share in a company registered in a register or branch register and held by a trustee in respect of a particular trust may, with the consent of the company, be entered in the register or branch register in such a way as to identify that share as being held in respect of that trust. 10

*New*

“(5) A share registered pursuant to subsection (1) or subsection (3) of this section in a register or branch register and held by a trustee in respect of a particular trust, may, with consent of the company, be entered in the register or branch register in such a way as to identify that share as being held in respect of that trust. 15  
20

“(6) The registration of a trustee, executor, or administrator pursuant to this section shall not constitute notice of a trust.

“(7) For the purposes of this section ‘trust’ extends to the duties of a personal representative, and ‘trustee’ has a corresponding meaning.” 25

*New*

**6A. Assignee of bankrupt may be registered as a member**—The principal Act is hereby amended by inserting, after section 125A (as inserted by section 6 of this Act) the following section: 30

“125B. (1) Notwithstanding section 125 of this Act the Assignee of the property of a bankrupt registered in a register or branch register of a company as the holder of a share in that company shall be entitled to be registered as the holder of that share as the Assignee of the property of the bankrupt. 35

“(2) The liability of the Assignee registered pursuant to subsection (1) of this section shall, in respect of such share,



not exceed the value of any other 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.

“(3) Notwithstanding section 125 of this Act the Assignee  
5 of the property of a bankrupt beneficially entitled to a share in a company, being a share registered in a register or branch register of that company, shall, with the consent of the company and the registered holder of that share, be entitled to be registered as the holder of that share as the Assignee of  
10 the property of the bankrupt.

“(4) The liability of the Assignee of the property of a bankrupt registered pursuant to subsection (3) of this section, shall in respect of such share, not exceed the value of any other property of the bankrupt which, at the time when any  
15 demand is made for the satisfaction of any such liability, is vested in the Assignee.

“(5) For the purposes of this section, ‘Assignee’ means the Assignee in whom the property of a bankrupt is vested pursuant to the Insolvency Act 1967.”

---

20 **7. Annual return to be made by a company having a share capital**—(1) Section 130 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 13 (1) of the Companies Amendment Act 1975), and substituting the following subsection:

25 “(1) Every company having a share capital shall, in accordance with this section, make a return containing the particulars hereinafter referred to.”

(2) Section 130 of the principal Act is hereby amended by inserting, after subsection (1) (as inserted by subsection (1) of  
30 this section), the following subsections:

“(1A) For the purposes of determining when a company shall file a return under this section, the Registrar shall allocate a number to each company registered under this Act, whether before or after the commencement of this Act. The  
35 last numeral of the number so allocated shall determine the month of each year during which the company is required, in accordance with this section, to file a return.

*Struck Out*

“(1B) The month of the year corresponding with the last numeral of the number allocated pursuant to subsection (1A) of this section shall be as follows:

<i>Month</i>	<i>Numeral</i>	<i>Month</i>	<i>Numeral</i>	
February ...	1	July ...	6	
March ...	2	August ...	7	
April ...	3	September ...	8	
May ...	4	October ...	9	
June ...	5	November ...	0.	10

*New*

“(1B) The month of the year corresponding with the last numeral of the number allocated pursuant to subsection (1A) of this section shall be as follows:

<i>Month</i>	<i>Numeral</i>	<i>Month</i>	<i>Numeral</i>	
February ...	2	July ...	7	15
March ...	3	August ...	8	
April ...	4	September ...	9	
May ...	5	October... ..	0	
June ...	6	November ...	1	20

“(1C) Each company to which this section applies shall in each year make a return during the month corresponding with the last numeral of the number allocated to that company:

“Provided that a company need not make a return under this section in the calendar year of its incorporation. 25

*New*

“(1CA) Notwithstanding subsection (1C) of this section, a subsidiary may, with the prior approval of the Registrar, make a return during the month in which its holding company is required to make a return under this section. 30

“(1D) Where, pursuant to the transfer of any register or records relating to any company from the office of any District Registrar to any other such office, a new number is allocated to that company, the last numeral of the number so allocated shall be the same numeral as the last numeral of the number allocated pursuant to subsection (1A) of this section.” 35

(3) Section 130 (2) of the principal Act is hereby amended by repealing paragraph (e) (including the proviso) (as inserted by section 13 (3) of the Companies Amendment Act 1975), and substituting the following paragraph:

5 “(e) All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of the directors and secretaries of a company:”

(4) Section 130 (2) of the principal Act is hereby amended by adding the following paragraphs:

15 “(g) Except where paragraph (h) of this subsection applies, the date of the last annual general meeting held by the company: or

20 “(h) In the case of a private company which has avoided the need for an annual general meeting by doing everything required to be done at that meeting by entry in its minute book under section 362 (2) of this Act, the date on which the last thing required to be done at that meeting was done under the said section 362 (2):

25 “(i) In the case of a company to which section 354 (3) of this Act applies and which has passed a resolution under that subsection at any annual general meeting of the company, or (where the company avoids the need for an annual general meeting by doing everything required to be done at that meeting by entry in its minute book under section 362 (2) of this Act), the resolution has been passed by entry in the minute book of the company being a resolution that no auditor be appointed,—

30 “(i) The text and date of the resolution; and  
35 “(ii) A certificate (signed by both a director and the secretary of the company or any chartered accountant or solicitor authorised in that behalf)

that the text and date are correct.”

(5) Section 130 of the principal Act is hereby amended by

40 inserting, after subsection (2), the following subsection:  
“(2A) Every return shall be dated as at a day within the month during which the company is required to file the return and the information required to be contained therein shall (unless otherwise provided by this Act) be compiled as at that  
45 date.”

(6) Section 130 (4) of the principal Act is hereby amended by inserting, after the words “date of the return or” where those words first occur, the words “(in the case of a company which is not a private company)”.

(7) Section 130 (7) of the principal Act is hereby amended 5 by omitting the words “expressions ‘director’ and”, and substituting the word “expression”.

(8) Section 13 (1) and (3) of the Companies Amendment Act 1975 are hereby consequentially repealed.

(9) Subsections (1) to (6) and subsection (8) of this section 10 shall come into force on the 1st day of January 1984.

**8. Annual return to be made by company not having a share capital**—(1) Section 131 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 14 (1) of the Companies Amendment Act 1975), and 15 substituting the following subsection:

“(1) Every company not having a share capital shall in accordance with this section make a return containing the particulars hereinafter referred to.”

(2) Section 131 of the principal Act is hereby amended by 20 inserting, after subsection (1), the following subsections:

“(1A) For the purposes of determining when a company to which this section applies shall file a return, the Registrar shall allocate a number to each company registered under this Act, whether before or after the commencement of this Act. 25 The last numeral of the number so allocated shall determine the month of each year during which the company is required in accordance with this section to file a return.

*Struck Out*

“(1B) The month of the year corresponding with the last 30 numeral of the number allocated pursuant to subsection (1A) of this section shall be as follows:

<i>Month</i>	<i>Numeral</i>	<i>Month</i>	<i>Numeral</i>
February ...	1	July ...	6
March ...	2	August ...	7
April ...	3	September ...	8
May ...	4	October ...	9
June ...	5	November ...	0.

*New*

“(1B) The month of the year corresponding with the last numeral of the number allocated pursuant to subsection (1A) of this section shall be as follows:

5	Month		Numeral	Month		Numeral
	February	...	2	July	...	7
	March	...	3	August	...	8
	April	...	4	September	...	9
	May	...	5	October...	...	0
10	June	...	6	November	...	1

“(1C) Each company to which this section applies shall in each year make a return during the month corresponding with the last numeral of the number allocated to that company:

- 15 “Provided that a company need not make a return under this subsection in the calendar year of its incorporation.

*New*

20 “(1CA) Notwithstanding subsection (1C) of this section, a subsidiary may, with the prior approval of the Registrar, make a return during the month in which its holding company is required to make a return under this section.

25 “(1D) Where, pursuant to the transfer of any register or records relating to any company from the office of any District Registrar to any other such office, a new number is allocated to that company, the last numeral of the number so allocated shall be the same numeral as the last numeral of the number allocated pursuant to subsection (1A) of this section.”

30 (3) Section 131 (2) of the principal Act is hereby amended by repealing paragraph (d) (including the proviso) (as inserted by section 14 (2) of the Companies Amendment Act 1975), and substituting the following paragraphs:

35 “(d) All such particulars with respect to the persons who at the date of the return are the directors of the company and any person who at that date is the secretary of the company as are by this Act required to be contained with respect to directors and the secretary respectively in the register of directors and secretaries of a company:

40 “(e) The date of the last annual general meeting held by the company.”

(4) Section 131 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Every return shall be dated as at a day within the month during which the company is required to file the return and the information required to be contained therein shall (unless otherwise provided by this Act) be compiled as at that date.” 5

(5) Section 131 (4) of the principal Act is hereby amended by omitting the words “expressions ‘directors’ and”, and substituting the word “expression”. 10

(6) Section 14 of the Companies Amendment Act 1975 is hereby consequentially repealed.

(7) Subsections (1) to (4) and subsection (6) of this section shall come into force on the 1st day of January 1984.

*New*

15

**8A. Time for completion of annual return—**(1) The principal Act is hereby amended by repealing section 132 (as substituted by section 15 of the Companies Amendment Act 1975), and substituting the following section:

“132. (1) Each annual return of a company required to be made under section 130 or section 131 of this Act shall be completed, signed by both a director and the secretary of the company or any chartered accountant or solicitor authorised in that behalf, and delivered to the Registrar by the company within the time prescribed by section 130 or section 131 of this Act, as the case may be; and the Registrar shall register the same. 20 25

“(2) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine. For the purposes of this subsection the expression ‘officer’ shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act and any chartered accountant or solicitor authorised as aforesaid.” 30

(2) Section 15 of the Companies Amendment Act 1975 is hereby consequentially repealed. 35

(3) This section shall come into force on the 1st day of January 1984.

**9. Balance sheet and certain other documents to be filed—**(1) The principal Act is hereby amended by repealing section 133, and substituting the following section: 40

“133. (1) Where a balance sheet is laid before a company in general meeting pursuant to section 152 of this Act, the company shall, within 30 days after the meeting, deliver to the Registrar—

5 “(a) A copy, certified both by a director and by the secretary of the company to be a true copy, of that balance sheet (including every document required by law to be annexed to that balance sheet); and

10 “(b) A copy, certified as aforesaid, of the report of the auditors on, and of the report of the directors accompanying, each such balance sheet,—

and where any such balance sheet or document required by law to be annexed thereto is in a foreign language, there shall be annexed to that balance sheet a translation in English of  
15 the balance sheet or document certified in the prescribed manner to be a correct translation.

“ (2) If any such balance sheet as aforesaid or document required by law to be annexed thereto did not comply with the requirements of the law, as in force at the date of the  
20 auditors’ report, with respect to the form of balance sheets or documents aforesaid, as the case may be, there shall be made such additions to and corrections in the copy as would have been required to be made in the balance sheet or document in order to make it comply with the said requirements, and the  
25 fact that the copy has been so amended shall be stated thereon.

“ (3) If a company fails to comply with this section, the company and every officer of the company who is in default shall be liable to a default fine. For the purpose of this  
30 subsection the expression ‘officer’ shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.”

(2) This section shall come into force on the 1st day of January 1984.

35 **10. Directors**—The principal Act is hereby amended by repealing section 180, and substituting the following section:

“180. (1) Every company shall have at least 2 directors.

*Struck Out*

40 “(2) A body corporate shall not be capable of being appointed or holding office as a director of a company.”

*New*

“(2) The following shall not be capable of being appointed or holding office as a director of a company, namely,—

“(a) A body corporate:

“(b) A person who has not attained the age of 18 years.”

5

**11. Secretary**—Section 181 of the principal Act is hereby amended by adding the following subsection:

“(3) A body corporate shall not be capable of being appointed or holding office as a secretary of a company, or as an assistant or deputy secretary of a company, or of being authorised generally or specially in that behalf by the directors.”

10

**12. Prohibition of loans to directors**—Section 190 (1) of the principal Act is hereby amended by repealing paragraph (a) of the proviso.

15

**13. Register of directors' shareholdings, etc.**—(1) Section 195 (1) of the principal Act is hereby amended by omitting the expression “(not being its holding company)”.

(2) Section 195 (11) of the principal Act is hereby amended by repealing paragraph (a).

20

**14. Register of directors and secretaries**—(1) Section 200 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) The said register shall contain the following particulars with respect to each director, that is to say, his present Christian name and surname, any former Christian name or surname, his usual residential address, his nationality, and his business occupation, if any, or, if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships:

25

30

“Provided that this subsection shall not apply to any directorships held by a director in companies of which the company is the wholly owned subsidiary, or which are the wholly owned subsidiaries either of the company or of another company of which the company is the wholly owned subsidiary, and for the purposes of this proviso—

35



“(a) The expression ‘company’ shall include any body corporate incorporated in New Zealand; and

“(b) A body corporate shall be deemed to be the wholly owned subsidiary of another if it has no members except that other and that other’s wholly owned subsidiary and its or their nominees.

“(3) The said register shall contain the following particulars with respect to the secretary or, where there are joint secretaries, with respect to each of them, that is to say, his present Christian name and surname, any former Christian name and surname, and his usual residential address:

“Provided that, where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the said particulars.”

(2) Section 200 (9) (a) of the principal Act is hereby amended by omitting the words “a director and”, and substituting the word “an”.

**15. Powers of liquidator to examine persons**—Section 262A (5) of the principal Act (as enacted by section 19 of the Companies Amendment Act 1980) is hereby amended by omitting the words “(to) an order made under”.

**16. Voidable preference**—Section 309 of the principal Act (as substituted by section 24 (1) of the Companies Amendment Act 1980) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) In the case of a voluntary winding up, every conveyance or transfer of property, every security or charge given over any property, every obligation incurred, every payment made (including any payment made in pursuance of a judgment or order of a Court), by any company unable to pay its debts as they become due from its own money, shall be voidable as against the liquidator, if—

“(a) It is in favour of any creditor or any person in trust for any creditor; and

“(b) The making, suffering, paying, or incurring of the same occurs within 1 month before the commencement of the winding up of the company.”

*New*

“Provided that nothing in this subsection shall apply to any such transaction or any such payment in respect of any liability incurred or accruing due, during or after the said period.”

**17. Application of Act to private companies—**

(1) Section 354 of the principal Act is hereby amended by repealing subsection (2A) (as substituted by section 2 (1) of the Companies Amendment Act 1969), and substituting the following subsection:

“(2A) Section 133 of this Act (as to the filing of the balance sheet and other documents) shall not apply to a private company unless at the time when the balance sheet of the company is required to be laid before the company in general meeting the company is a non-exempt private company.”

(2) Section 354 (3) of the principal Act (as substituted by section 2 (1) of the Companies Amendment Act 1976) is hereby amended by repealing paragraph (b).

(3) Section 2 (1) of the Companies Amendment Act 1969 is hereby consequentially repealed.

(4) This section shall come into force on the 1st day of January 1984.

**18. Prohibition of certain persons being sole director or secretary—**

The principal Act is hereby amended by repealing section 355, and substituting the following section:

“355. No private company shall have as secretary a person who is the sole director of the company.”

**19. Power to alter tables and forms, and requirements as to accounts—**

Section 470 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) No alteration made under this section in Table A or the Second Schedule to this Act shall affect any company registered before the alteration, or shall repeal, as respects that company, any portion of that Table or Schedule.”

**20. Consequential amendment to Eighth Schedule—**

(1) The Eighth Schedule to the principal Act is hereby amended by omitting from paragraph 16 (5) the words “(for that or any other purpose)”.

(2) This section shall come into force on the 1st day of January 1983.

**21. Transitional provisions—**(1) The appointment of a body corporate appointed or holding office as a director or secretary of a company immediately before the commencement of section 10 of this Act shall, notwithstanding section 10 of this Act, terminate *(on the date 6 months after the*

*the*

commencement of section 10 of this Act) with the close of the 30th day of June 1983 unless it is a term of the appointment that it shall terminate on an earlier date.

*New*

5 (1A) The appointment of a body corporate appointed or holding office as a director of a company immediately before the 22nd day of October 1982 and having its liability in respect of any debt or liability of the company unlimited under this Act, shall, notwithstanding section 10 of this Act,  
10 terminate with the close of the 31st day of December 1983 unless it is a term of the appointment that it shall terminate on an earlier date.

(2) The termination of the appointment of a body corporate appointed or holding office as a director or  
15 secretary of a company by virtue of subsection (1) of this section shall operate to discharge the body corporate and the company of which it is a director or secretary from performance of any obligations remaining to be performed under any contract or agreement or otherwise relating to that  
20 appointment.

*Struck Out*

(3) Notwithstanding section 12 of this Act, paragraph (a) of the proviso to section 190 (1) of the principal Act shall continue to apply to a body corporate to which subsection (1)  
25 of this section applies.

*New*

(3) Notwithstanding section 12 of this Act, paragraph (a) of the proviso to section 190 (1) of the principal Act (as originally enacted) shall continue to apply to a body  
30 corporate to which subsection (1) or subsection (1A) of this section applies.

(3A) Notwithstanding section 18 of this Act, paragraphs (b) and (c) of section 355 of the principal Act (as originally enacted) shall continue to apply to a body corporate to which  
35 subsection (1) or subsection (1A) of this section applies.

(4) Section 309 (1A) of the principal Act shall not apply to any conveyance or transfer of property, or to any security or charge given over any property, or to any obligation incurred, or to any payment made (including any payment made in pursuance of a judgment or order of a Court) by a company before the commencement of section 16 of this Act. 5