

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 10 September 1969.

Words struck out by the Committee 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 Hanan

COMPANIES AMENDMENT

ANALYSIS

Title	4. Application to banks of provisions as to accounts of New Zealand business	
1. Short Title and commencement		5. Application to certain companies of provisions as to accounts of overseas-controlled companies
2. Application of Act to private companies		
3. Accounts of overseas company		

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,
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Companies Amendment Act 1969, and shall be read together with and deemed part of the Companies Act 1955* (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on the 1st day of January 1971.

Struck Out

15 **2. Application of Act to private companies**—(1) Section 354 of the principal Act is hereby amended by repealing subsection (2A) (as inserted by section 3 (1) of the Companies Amendment Act 1960), and substituting the following subsection:

*1957 Reprint, Vol. 2, p. 349

Amendments: 1959, No. 55; 1960, No. 49; 1963, No. 136; 1964, No. 42; 1965, No. 75; 1965, No. 129; 1966, No. 105; 1967, No. 63

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“(2A) Section 133 of this Act (as to documents to be annexed to the annual return) shall not apply to a private company unless at the time when the company’s annual return is required to be made the company—

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“(a) Is indebted to any person in respect of any deposit or loan to which section 48A of this Act applies; or

“(b) Is an overseas-controlled company within the meaning of subsection (3B) of this section.”

(2) The said section 354 is hereby further amended by 10
repealing subsection (3A) (as inserted by section 3 (2) of the Companies Amendment Act 1960), and substituting the following subsections:

“(3A) Notwithstanding anything in subsection (3) of this section, section 163 of this Act (as to the appointment of 15
auditors) shall apply to the annual general meeting of a private company if at the time when the company holds that meeting or otherwise adopts or approves its balance sheet pursuant to this Act the company—

“(a) Is indebted to any person in respect of any deposit or 20
loan to which section 48A of this Act applies; or

“(b) Is an overseas-controlled company within the meaning of subsection (3B) of this section.

“(3B) For the purposes of subsections (2A) and (3A) of this section, the expression “overseas-controlled company” 25
means any company—

“(a) That is a subsidiary of any company or body corporate incorporated outside New Zealand; or

“(b) In which shares are held by any such subsidiary or 30
any company or body corporate incorporated outside New Zealand or any person not ordinarily resident in New Zealand, if those shares, in the aggregate, carry the right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the 35
company.

“(3c) For the purposes of paragraph (b) of subsection (3B) of this section, a person shall be deemed to be ordinarily 40
resident in New Zealand at any time if at that time—

“(a) He is domiciled in New Zealand; or

“(b) He is residing in New Zealand and his usual place of 45
abode is, and has been for the immediately preceding period of 12 months, in New Zealand, whether or not he has been occasionally or temporarily absent from New Zealand during that period.”

(3) Section 3 of the Companies Amendment Act 1960 is hereby amended by repealing subsections (1), (2), and (4).

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2. **Application of Act to private companies**—(1) Section 354 of the principal Act is hereby amended by repealing subsection (2A) (as inserted by section 3 (1) of the Companies Amendment Act 1960), and substituting the following subsection:

“(2A) Section 133 of this Act (as to documents to be annexed to the annual return) shall not apply to a private company unless at the time when the company’s annual return is required to be made the company is a non-exempt private company.”

(2) The said section 354 is hereby further amended by repealing subsection (3A) (as inserted by section 3 (2) of the Companies Amendment Act 1960), and substituting the following subsections:

“(3A) Notwithstanding anything in subsection (3) of this section, section 163 of this Act (as to the appointment of auditors) shall apply to the annual general meeting of a private company if at the time when the company holds that meeting or otherwise adopts or approves its balance sheet pursuant to this Act the company is a non-exempt private company.”

“(3B) For the purposes of subsections (2A) and (3A) of this section, the expression ‘non-exempt private company’ means any private company—

“(a) That is indebted to any person in respect of any deposit or loan to which section 48A of this Act applies; or

“(b) That is a subsidiary of any company or body corporate incorporated outside New Zealand; or

“(c) In which shares are held by any such subsidiary or any company or body corporate incorporated outside New Zealand or any person not ordinarily resident in New Zealand, if those shares, in the aggregate, carry the right to exercise or control the exercise of 25 percent or more of the voting power at any general meeting of the company.”

“(3C) For the purposes of paragraph (c) of subsection (3B) of this section, a person shall be deemed to be ordinarily resident in New Zealand at any time if at that time—

“(a) He is domiciled in New Zealand; or

“(b) He is residing in New Zealand and his usual place of abode is, and has been for the immediately preceding period of 12 months, in New Zealand, whether or not he has been occasionally or temporarily absent from New Zealand during that period.”

(3) Section 3 of the Companies Amendment Act 1960 is hereby amended by repealing subsections (1), (2), and (4).

3. Accounts of overseas company—(1) Section 402 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) Every overseas company to which this section applies shall also, in every calendar year, make out a separate balance sheet and profit and loss account of its business, operations, or undertaking conducted in or from New Zealand, in all respects as if such business, operations, or undertaking were conducted by a company formed and registered under this Act, and deliver copies of those accounts to the Registrar.

“(3) Every copy of any accounts or document delivered to the Registrar under subsection (1) or subsection (2) of this section shall be certified as correct by two directors of the overseas company or, in the case of accounts made out under subsection (2) of this section, by a person authorised in writing by the overseas company in that behalf.

“(4) Every copy of any separate accounts delivered to the Registrar under subsection (2) of this section shall be accompanied by or have endorsed on it a statement by **(auditors)** a person qualified for appointment as an auditor of companies under this Act setting out in respect of the said balance sheet and profit and loss account the matters required to be stated by paragraphs (a) to (d) of subsection (1) of section 166 of this Act. (Such auditors shall be persons qualified for appointment as auditors of companies under this Act.) Section 468 of this Act shall apply with respect to any such person as if he were a person employed by the company as auditor.

“(5) Where it is shown to the satisfaction of the Registrar that the accounts of an overseas company required to be made out under subsection (1) of this section have been prepared in accordance with, and conform to, the law in force in that behalf in the place in which the overseas company is incorporated or constituted, and that the provisions of such law relating to the preparation and contents of such accounts are substantially the same as those of this Act, he may, in writing, exempt the overseas company from the requirements of the said subsection (1). Where any such exemption is granted the overseas company shall instead deliver to the Registrar copies of its accounts conforming to the law of the place of its incorporation or constitution, duly certified as correct by two directors of the company.

“(6) Where the Registrar is satisfied that the accounts of an overseas company of which copies are duly delivered to him pursuant to subsection (1) of this section also comply with the requirements of subsection (2) of this section, he may, in writing, exempt the overseas company from its obligation to deliver to him copies of the separate accounts referred to in the said subsection (2), subject to the condition that there is delivered to him the *(auditors)* statement referred to in subsection (4) of this section in respect of the business, operations, or undertaking conducted in or from New Zealand.

“(7) The Registrar may require any overseas company to deliver to him an additional copy of every document required to be delivered under this section.

“(8) If any document required to be delivered to the Registrar under this section is not written in the English language, there shall be annexed to it a certified translation thereof.”

(2) Section 470 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

“(g) For the purpose of giving full effect to section 402 of this Act so far as that section relates to the accounts of any business, operations, or undertaking conducted in or from New Zealand by an overseas company, alter the requirements of this Act as to the matters to be stated in a company’s balance sheet and profit and loss account, and in particular the requirements of the Eighth Schedule to this Act; and define assets, liabilities, investments, and any other matter for that purpose.”

4. Application to banks of provisions as to accounts of New Zealand business—Section 458 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Subsections (2), (3), (4), (7), and (8) of section 402, and paragraph (g) of subsection (1) of section 470, of this Act (which were enacted by section 3 of the Companies Amendment Act 1969) shall apply with respect to every bank, as defined in subsection (1) of this section, that is incorporated outside New Zealand as if references in those subsections and in that paragraph to an overseas company were references to a bank.”

5. Application to certain companies of provisions as to accounts of overseas-controlled companies—(1) The Minister may from time to time, by notice in the *Gazette*, apply, with such modifications (if any) as may be specified in the notice, the provisions of subsections (2A) and (3A) to (3C) of section 354 of the principal Act (as enacted by section 2 of this Act), so far as those provisions relate to (overseas controlled companies, to any specified company or class or classes of companies,) non-exempt private companies of the kinds referred to in paragraphs (b) and (c) of subsection (3B) of the said section 354, to any specified private company or class or classes of private companies, being a company or companies which in his opinion are in fact controlled directly or indirectly by any one or more companies or bodies corporate incorporated or constituted outside New Zealand or persons not ordinarily resident in New Zealand, whether such control is exercised by means of beneficial share ownership or debenture ownership or by means of contracts, agreements, or arrangements of any kind whatsoever, and whether or not such contracts, agreements, or arrangements are legally enforceable.

(2) Without limiting the generality of subsection (1) of this section, where 25 percent or more of the shares in any private company are held in trust, whether directly or indirectly, for the benefit of any one or more companies or bodies corporate incorporated or constituted outside New Zealand or persons not ordinarily resident in New Zealand, the first-mentioned company shall be deemed to be controlled by a company incorporated outside New Zealand.

(3) Every notice published in the *Gazette* under this section shall have effect according to its tenor, and may from time to time in like manner be varied or revoked.

(4) For the purposes of this section, the Minister may from time to time, by notice in writing given to any private company or to any person being a director, shareholder, or debenture holder of any such company, require the company or person to furnish to him such information as the Minister thinks fit in respect of facts that in the Minister's opinion may provide evidence as to whether the company is or is not controlled, directly or indirectly, by companies or bodies corporate incorporated or constituted outside New Zealand or persons not ordinarily resident in New Zealand.

(5) Every company or person who fails to comply with any requirement of the Minister under subsection (4) of this section commits an offence against the principal Act and shall be liable to a fine not exceeding \$1,000.

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- 5 6. Exemption of certain companies—(1) The provisions of subsections (2A) and (3A) to (3C) of section 354 of the principal Act (so far as those provisions require non-exempt private companies to comply with sections 133 and 163 of the principal Act), and the provisions of section 402 of the principal Act and of section 5 of this Act, shall not apply to any private company or overseas company in respect of which it is shown to the satisfaction of the Registrar that—
- 10 (a) It is engaged exclusively in promoting commerce, art, science, religion, charity, or any other object useful to the community, and applies its profits, if any, or other income in promoting its objects, and prohibits the payment of any dividend to its members; or
- 15 (b) It has been registered solely for the purpose of protecting its name in New Zealand and is not otherwise carrying on business in New Zealand.
- 20 (2) Notwithstanding anything in paragraph (b) of subsection (1) of this section, a company of the kind referred to in that paragraph shall be deemed for the purposes of section 31 and Part XV of the principal Act to be a company carrying on business in New Zealand.