

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 21 February 1989

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 single rule, or with single rule before first line and after last line.

Right Hon. Geoffrey Palmer

**CORPORATIONS (INVESTIGATION AND
MANAGEMENT)**

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A BILL INTITULED

An Act to enable the Registrar of Companies to determine whether corporations are at risk, to enable action to be taken in relation to such corporations in appropriate cases, and to repeal the Companies Special Investigations Act 1958 5

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

1. **Short Title**—This Act may be cited as the Corporations (Investigation and Management) Act (~~1988~~) 1989.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

5 “Corporation” means a body of persons, whether incorporated or not, and whether incorporated or established in New Zealand or elsewhere:

“Court” means the High Court:

“Document” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

10 (a) Any writing on any material:

(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

15 (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) Any book, map, plan, graph, or drawing:

20 (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

“Information” includes data, documents, and forecasts:

“Minister” means the Minister of Justice:

25 “Person” includes a body of persons whether incorporated or not:

“Registrar” means the Registrar of Companies and includes a Deputy Registrar:

30 “Subsidiary” means a subsidiary within the meaning of section 158 of the Companies Act 1955.

(2) For the purposes of this Act, a person is an “associated person” of a corporation if—

35 (a) That person directly or indirectly controls the management of the corporation; or

(b) That person owns directly or indirectly 20 percent or more in nominal value of the equity share capital as defined in section 158 of the Companies Act 1955 of the corporation; or

40 (c) The corporation directly or indirectly controls that person; or

(d) The corporation owns directly or indirectly 20 percent or more of the equity share capital as defined in section 158 of the Companies Act 1955 of that person.

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(3) For the purposes of this Act, where a body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, carries on business in New Zealand the provisions of this Act shall apply in respect of that business as if it were carried on by a separate person.

New

(2A) For the purposes of Part I of this Act an “associated person” of a corporation also includes a person who is substantially indebted to the corporation.

(3) Where a body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, carries on business or has assets in New Zealand, the provisions of this Act shall apply in respect of that business or those assets as if the business were carried on, or the assets were held, by a separate person.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Application of Act—This Act applies to any corporation—

(a) That is, or may be, operating fraudulently or recklessly(:) ;

(b) To ^{or} which it is desirable that this Act should apply—

(i) For the purpose of preserving the interests of the corporation’s *(shareholders)* members or creditors; or

(ii) For the purpose of protecting any beneficiary under any trust administered by the corporation; or

(iii) For any other reason in the public interest,— if those *(shareholders)* members or creditors or beneficiaries or the public interest cannot be adequately protected under the Companies Act 1955 or in any other lawful way.

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5. Application to specified institutions within meaning of Reserve Bank of New Zealand Act 1964—Notwithstanding anything in **section 4** of this Act, this Act shall not apply to any corporation that is a specified institution within the meaning of section 38k of the Reserve Bank of New Zealand Act 1964 if the Reserve Bank has given notice in writing to the Minister that the Reserve Bank is contemplating the exercise of the powers conferred by that Act.

6. General objects of Act—(1) The general objects of this Act are—

- (a) To confer powers on the Registrar of Companies to obtain information concerning, and to investigate the affairs of, corporations to which this Act applies (*or may apply*);
- (b) In the case of a corporation that is, or may be, operating fraudulently or recklessly, to limit or prevent—
 - (i) The risk of further deterioration of the financial affairs of that corporation; and
 - (ii) The carrying out, or the effects of, any fraudulent act or activity;
- (c) In the case of a corporation referred to in **section 4 (b)** of this Act, to preserve the interests of its (*shareholders*) members or creditors or beneficiaries or the public interest;
- (d) To provide for the affairs of corporations to which this Act applies to be dealt with in a more orderly and expeditious way.

(2) The powers conferred on the Governor-General, the Minister, the Securities Commission, and the Registrar shall be exercised in accordance with the general objects of this Act.

7. Meaning of “operating fraudulently or recklessly”—For the purposes of this Act, a corporation is operating fraudulently or recklessly if—

- (a) It contracts debts which the officers of the corporation did not, at the time the debts were contracted, honestly believe on reasonable grounds the corporation would be able to pay when they fell due for payment as well as all its other debts (including future and contingent debts); or

- (b) It carries on any business or operates in a reckless manner; or
- (c) It carries on any business or operates with intent to defraud its creditors or members or the creditors or members of any other person, or for any other fraudulent purpose. 5

Cf. 1955, No. 63, s. 320

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8. No obligation on Registrar to supervise—Nothing in this Act shall be regarded as imposing on the Registrar, or any other person, any duty or obligation to supervise the affairs of any corporation, or to apply or operate any system of supervision of any class of corporations or of corporations generally. 10

New

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8. No obligation on Registrar to supervise—Nothing in this Act shall be regarded as imposing on the Registrar, or any other person, any duty or obligation—

- (a) To supervise the affairs of any corporation; or
- (b) To apply or operate any system of supervision of any class of corporations or of corporations generally; or 20
- (c) To exercise any power conferred by this Act in respect of any particular corporation.

8A. Consultation in respect of specified institutions—

(1) “Specified institution” means, for the purposes of this section, a specified institution within the meaning of section 38K of the Reserve Bank of New Zealand Act 1964. 25

(2) The Registrar shall consult with the Reserve Bank before—

- (a) Giving a written notice requiring any specified institution to supply any information under **section 9** of this Act: 30
- (b) Appointing any person to carry out an investigation of the affairs of any specified institution under **section 19** of this Act:
- (c) Giving a written notice to any specified institution that it is considered to be a corporation at risk. 35

New

(3) The Securities Commission shall consult with the Reserve Bank before making a recommendation to the Minister under section 37 of this Act in respect of any specified institution.

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PART I

SUPPLY OF INFORMATION BY, AND INVESTIGATION OF AFFAIRS OF, CORPORATIONS

Power to request information

9. Registrar of Companies may require corporation or associated person to supply information—(1) *(For the purposes of this Part of this Act,)* The Registrar may, by notice in writing to any corporation or any associated person of a corporation, require that corporation or associated person to supply to the Registrar such information relating to the business, operation, or management of that corporation for such periods and in such form as may be specified in the notice.

(2) Every corporation and every associated person commits an offence against this Act if, without lawful justification or excuse, it—

- 20 (a) Fails to comply in any respect with any of the provisions of this section, or with any of the requirements of the Registrar under this section or **section 10** of this Act; or
- (b) Supplies any information which it is required to supply under this section which is false or misleading in a material particular.

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Cf. 1964, No. 134, s. 38L (1), (6); 1986, No. 131, s. 10

10. Requirement that information be audited—The Registrar may, by notice in writing to a corporation or an associated person of a corporation, require any information which that corporation or associated person is required to supply pursuant to **section 9** of this Act to be audited by an auditor approved by the Registrar.

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Cf. 1964, No. 134, s. 38L (3); 1986, No. 131, s. 10

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11. Disclosure of information to Registrar by trustees—Every person who holds, or at any time has held,

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office as a trustee for the holders of any securities issued by a corporation shall disclose to the Registrar information relating to the affairs of that corporation obtained in the course of carrying out the duties of trustee if, in the opinion of that person,— 5

- (a) The corporation is insolvent or is likely to become insolvent or is in serious financial difficulties; or
- (b) The corporation has failed to comply, or is likely to fail to comply, in a significant respect, with the provisions of the trust deed; or 10
- (c) The disclosure of the information is likely to assist, or be relevant to, the exercise of powers under this Act.

Cf. 1964, No. 134, s. 38M (3); 1986, No. 131, s. 10

12. Trustee to inform corporation of intention to disclose—Every trustee shall, before disclosing any information to the Registrar under section 11 of this Act, inform the corporation of that trustee's intention to disclose information and the nature of that information. 15

Cf. 1964, No. 134, s. 38M (5); 1986, No. 131, s. 10 20

New

11. Disclosure of information to Registrar by trustees or statutory supervisors—Every person who holds, or at any time has held, office under the Securities Act 1978 as a trustee or statutory supervisor for the holders of any securities issued by a corporation shall disclose to the Registrar information relating to the affairs of that corporation obtained in the course of holding that office if, in the opinion of that person,— 25

- (a) The corporation is insolvent or is likely to become insolvent or is in serious financial difficulties; or 30
- (b) The corporation has breached, or is likely to breach, in a significant respect,—
 - (i) The terms of the trust deed or deed of participation; or
 - (ii) The terms of the offer of the securities; or 35

New

(c) The disclosure of the information is likely to assist, or be relevant to, the exercise of powers under this Act.

Cf. 1964, No. 134, s. 38M (3); 1986, No. 131, s. 10

5 **12. Trustee or statutory supervisor to inform corporation of intention to disclose**—Every trustee or statutory supervisor shall, before disclosing any information to the Registrar under **section 11** of this Act, take reasonable steps to inform the corporation of the intention to disclose
10 information and the nature of that information.

Cf. 1964, No. 134, s. 38M (5); 1986, No. 131, s. 10

13. Disclosure of information to Registrar by auditors—Every person who holds, or at any time has held, office as auditor of a corporation, or of an associated person of
15 a corporation, pursuant to any enactment shall disclose to the Registrar, if requested to do so by the Registrar by notice in writing, information relating to the affairs of that corporation obtained in the course of *(carrying out the duties of auditor)*
holding that office, in such form as may be specified in the
20 notice.

Cf. 1964, No. 134, s. 38M (1); 1986, No. 131, s. 10

14. Registrar to inform corporation of intention to request information from auditor—The Registrar shall, before requesting an auditor to disclose information pursuant
25 to **section 13** of this Act, take reasonable steps to inform the corporation of the Registrar's intention to do so and the nature of the information sought.

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15. No proceedings to lie against trustee or auditor arising from disclosure under this Part—(1) No civil, criminal, or disciplinary proceedings shall lie against any trustee or auditor arising from the disclosure in good faith of information to the Registrar pursuant to **section 11** or **section 13** of this Act.

35 (2) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of any trustee or auditor

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shall make any order against or do any act in relation to that person in respect of such disclosure.

New

15. Protection of trustees, statutory supervisors, and auditors—(1) No civil, criminal, or disciplinary proceedings shall lie against any trustee, statutory supervisor, or auditor arising from the disclosure in good faith of information to the Registrar pursuant to **section 11** or **section 13** of this Act. 5

(2) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any trustee, statutory supervisor, or auditor shall make any order against, or do any act in relation to, that person in respect of the fact of such disclosure. 10

(3) No information received by the Registrar pursuant to **section 11** or **section 13** of this Act shall be admissible as evidence in any proceedings against the trustee, statutory supervisor, or auditor concerned. 15

(4) Nothing in **subsection (3)** of this section shall limit the admissibility of any information obtained in any other way. 20

Cf. 1964, No. 134, s. 38M (2), (4); 1986, No. 131, s. 10

16. Terms of notices—(1) Information required to be supplied, pursuant to **section 9** or **section 13** of this Act, by a corporation or an associated person or an auditor shall be supplied to the Registrar at such time and at such place as may be specified in the notice. 25

(2) A notice given pursuant to **section 9** or **section 13** of this Act may, by a subsequent notice, be revoked, varied, or amended by the Registrar.

Cf. 1964, No. 134, s. 38L (4), (5); 1986, No. 131, s. 10 30

Powers to obtain information and documents

17. Powers to obtain information and documents—
(1) Where the Registrar is satisfied—

(a) That any information supplied to the Registrar by a corporation or an associated person pursuant to this 35

Part of this Act is false or misleading in a material particular; or

5 (b) That a corporation or an associated person has failed to comply with any requirement to supply information pursuant to **section 9** of this Act—

the Registrar may,—

10 (c) By notice in writing to that corporation or associated person, require that corporation or associated person to supply to the Registrar, within the time specified in the notice, such information relating to the business, operation, and management of that corporation as may be specified in the notice; or

15 (d) Appoint in writing any person to enter upon and search any premises and inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that corporation in the possession of, or under the control of, any person and, where necessary, require the reproduction in usable form of any information recorded or stored in those documents.

20 (2) Every person commits an offence against this Act who, without lawful justification or excuse, hinders, obstructs, or delays, in the conduct of any inspection pursuant to this section, any person duly authorised to make the inspection.

25 (3) A corporation or an associated person commits an offence against this Act if, without lawful justification or excuse,—

(a) It fails to comply with any requirement of the Registrar under **subsection (1) (c)** of this section; or

30 (b) It supplies any information required to be supplied pursuant to **subsection (1) (c)** of this section that is false or misleading in a material particular.

Cf. 1964, No. 134, s. 38N (1), (9), (10); 1986, No. 131, s. 10

18. Requirements on entering and searching premises—(1) No person appointed pursuant to **section 17 (1) (d)** of this Act shall enter upon and search any premises, or inspect, remove, or take copies of any documents, or extracts from documents, in the possession of, or under the control of, any person, or require the reproduction in usable form of any information recorded or stored in any documents, unless—

40 (a) The occupier of the premises or the person who has possession of the documents agrees; or

(b) That person obtains a warrant under **section 24** of this Act.

(2) Every person authorised to enter upon and search any premises pursuant to a warrant obtained under **section 24** of this

Act shall, on first entering those premises, and, if requested, at any subsequent time, produce—

- (a) Evidence of that person's authority to enter the premises; and
- (b) Evidence of that person's identity. 5

Cf. 1964, No. 134, s. 38N (2), (7); 1986, No. 131, s. 10

Investigations

19. Investigation of affairs of corporation—Where (*the Registrar is satisfied that*) it is necessary or desirable for the purpose of determining whether to exercise the powers conferred under **Part II** or **Part III** of this Act that an investigation of the affairs of any corporation should be carried out, the Registrar may appoint in writing any person to carry out an investigation of the affairs of that corporation. 10

Cf. 1964, No. 134, s. 38o (1); 1986, No. 131, s. 10 15

20. Offence to hinder investigation, etc.—(1) Every person commits an offence against this Act who, without lawful justification or excuse,—

- (a) Hinders, obstructs, or delays in the conduct of an investigation, any person appointed under **section 19** of this Act to carry out that investigation; or 20
- (b) Refuses to answer any question put to him or her by any such person; or
- (c) Supplies any information required to be supplied pursuant to **section 21 (1)** of this Act which is false or misleading in a material particular. 25

(2) A corporation commits an offence against this Act if, without lawful justification or excuse,—

- (a) It fails to comply with any requirement of a person appointed under **section 19** of this Act to carry out an investigation; or 30
- (b) It supplies any information required to be supplied pursuant to **section 21 (1)** of this Act which is false or misleading in a material particular.

(3) A statement made by any person in answer to any question put by a person appointed under **section 19** of this Act to carry out an investigation of the affairs of a corporation shall not be admissible in criminal proceedings against the maker of the statement. 35

Cf. 1964, No. 134, s. 38o (11), (12), (13); 1986, No. 131, s. 10 40

21. Powers of person appointed to carry out investigation—(1) Any person appointed under **section 19** of this Act may, for the purposes of carrying out an investigation of the affairs of a corporation,—

5 (a) By notice in writing, require that corporation or any officer or employee of that corporation or any associated person or any other person to—

(i) Supply any information relating to the business, operation, and management of the corporation:

10 (ii) Produce for inspection any documents of, or relating to, the business, operation, and management of that corporation in the custody, or under the control, of that corporation, officer, employee, or person:

15 (iii) Where necessary, reproduce in usable form any information recorded or stored in such documents:

(b) Take copies of any documents produced for inspection under **paragraph (a)** of this subsection:

20 (c) Require any officer or employee of that corporation, or any associated person, or any other person, to answer any question relating to the business, operation, and management of that corporation.

(2) Subject to **section 22** of this Act, any person appointed under **section 19** of this Act may, for the purposes of carrying out an investigation of the affairs of the corporation, at any time,—

(a) Enter upon and search any premises:

30 (b) Inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that corporation in the possession, or under the control, of any person, and where necessary, require the reproduction in usable form of any information recorded or stored in such documents.

35 Cf. 1964, No. 134, s. 380 (2), (4); 1986, No. 131, s. 10

22. Requirements to be complied with by person carrying out investigation—(1) Any person who exercises any powers conferred by **section 21 (1)** of this Act shall, if requested, produce the instrument of that person's appointment under **section 19** of this Act.

(2) No person who exercises any powers conferred by **section 21 (2)** of this Act shall enter upon and search any premises, or inspect, remove, and take copies of any documents or extracts

from documents, or require the reproduction in usable form of any information recorded or stored in documents, unless—

- (a) The occupier of the premises or the person who has possession of the documents agrees; or
- (b) That person obtains a warrant under **section 24** of this Act. 5
- (3) Every person authorised to enter upon and search any premises pursuant to a warrant obtained under **section 24** of this Act shall on first entering those premises and, if requested, at any subsequent time, produce—
- (a) Evidence of that person's authority to enter the premises; 10
and
- (b) Evidence of that person's identity.

Cf. 1964, No. 134, s. 38o (3), (5), (9); 1986, No. 131, s. 10

Miscellaneous

23. Confidentiality of information—(1) This section 15 applies to—

- (a) Information supplied or disclosed to, or obtained by,—
 - (i) The Registrar under, or for the purposes of, or in connection with the exercise of powers conferred by, this Part of this Act: 20
 - (ii) A person authorised by the Registrar under **section 17** or **section 19** of this Act:
- (b) Information derived from, or based upon, information referred to in **paragraph (a)** of this subsection:
- (c) Information relating to the exercise, or possible exercise, 25
of the powers conferred by this Part of this Act.
- (2) Neither the Registrar, nor any person authorised by the Registrar under **section 17** or **section 19** of this Act, shall publish or disclose any information to which this section applies 30
except—
- (a) With the consent of the person to whom the information relates:
- (b) To the extent that the information is available to the public under any Act other than the Official Information Act 1982, or in a public document: 35
- (c) For the purposes of this Act or in connection with the exercise of powers conferred under this Act:
- (d) In connection with any proceedings for an offence against this Act:
- (e) To any person who the Registrar is satisfied has a proper 40
interest in receiving such information.
- (3) No information to which this section applies shall be published or disclosed pursuant to **paragraph (e)** of **subsection (2)** of

this section unless the Registrar is satisfied that satisfactory provision exists to protect the confidentiality of the information published or disclosed.

5 (4) No person to whom any information to which this section applies is published or disclosed pursuant to **paragraph (c)** of **subsection (2)** of this section shall publish, disclose, or use such information except—

(a) For the purposes of this Act or in connection with the exercise of powers conferred by this Act; and

10 (b) In accordance with such conditions as may be specified by the Registrar.

(5) No person to whom any information to which this section applies is published or disclosed pursuant to **paragraph (a)** or **paragraph (e)** of **subsection (2)** of this section, shall publish, disclose, 15 or use such information unless the publication, disclosure, or use is—

(a) Authorised by the Registrar; or

(b) Necessary or desirable in connection with the exercise of any function or power conferred by any enactment.

20 (6) Every person who contravenes this section commits an offence against this Act.

(7) Nothing in the Official Information Act 1982 or any other Act, other than this Act, applies to information to which this section applies whether or not such information has been 25 published or disclosed to any person pursuant to this section.

Cf. 1964, No. 134, s. 38P; 1986, No. 131, s. 10

24. Procedure for obtaining warrants—(1) Where a Judge of the High Court is satisfied, on application in writing made on oath, that there are reasonable grounds for 30 believing—

(a) That any information supplied to the Registrar by a corporation or an associated person pursuant to this Part of this Act is false or misleading in a material particular; or

35 (b) That a corporation or an associated person has failed to comply with any requirement to supply information pursuant to **section 9** of this Act—

the Judge may issue a warrant, in terms of **section 25** of this Act, to a person appointed pursuant to **section 17 (1) (d)** of this Act.

40 (2) Where a Judge of the High Court is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that it is necessary for the purpose of determining whether to exercise the powers conferred under **Part II** or **Part III** of this Act that an investigation of the affairs of a

corporation should be carried out, that Judge may issue a warrant, in terms of **section 25** of this Act, to a person appointed under **section 19** of this Act.

(3) Every warrant issued under **subsection (1)** of this section shall state whether it is issued under **paragraph (a)** or **paragraph (b)** 5 of that **subsection**.

Cf. 1964, No. 134, ss. 38N (3), (5), 38O (6); 1986, No. 131, s. 10

25. Effect of warrant—(1) Every warrant issued under **section 24** of this Act shall authorise the person named in the 10 warrant, at any time, by force if necessary, to enter upon and search the premises specified in the warrant and inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and 15 management of that corporation in the possession of, or under the control of, any person and, where necessary, require the reproduction in usable form of any information recorded or stored in such documents.

(2) Every such warrant shall continue in force for a period of 1 month or until the purpose for which it was granted has been 20 satisfied, whichever is the lesser.

Cf. 1964, No. 134, ss. 38N (4), (6), 38O (7), (8); 1986, No. 131, s. 10

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26. Effect of proceedings challenging exercise of 25 powers under this Part—Notwithstanding any other provision of any Act or any rule of law, where any person commences any proceedings in any court in respect of the exercise of any powers conferred by this Part, until a final decision in relation to those proceedings is given, the powers so 30 conferred may be, or may continue to be, exercised as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation under this Part by reason of those proceedings.

New

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26. Effect of proceedings—(1) Where any person commences any proceedings in any court in respect of—

New

- (a) The exercise of any powers conferred by this Part of this Act; or
- 5 (b) The discharge of any duty imposed by this Part of this Act,—
- until a final decision in relation to those proceedings is given, the powers or duty may be, or may continue to be, exercised or discharged as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation
- 10 until this Part by reason of those proceedings.
- (2) This section shall apply notwithstanding any other provision of any Act or any rule of law.

Cf. 1964, No. 134, ss. 38N(11), 38O(14); 1986, No. 131, s. 10

15 **27. Effect of final decision that exercise of powers under section 17 unlawful**—In any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by **section 17** of this Act that the exercise of any powers conferred by that section is

20 unlawful, to the extent to which the exercise of those powers is declared unlawful,—

- (a) The Registrar shall ensure that forthwith after the decision of the court is given—
- 25 (i) Any information supplied by the corporation or an associated person pursuant to **section 17 (1) (c)** of this Act, and any record of such information, is destroyed:
- (ii) Any documents, or extracts from documents, obtained pursuant to an inspection made under **section 17 (1) (d)** of this Act are returned to the person
- 30 previously having possession of those documents, or previously having them under his or her control, and any copies of such documents or extracts are destroyed:
- (iii) Any information derived from or based upon
- 35 any such information or documents or extracts is destroyed:
- (b) No information supplied by the corporation or an associated person pursuant to **section 17 (1) (c)** of this Act, and no documents, or extracts from documents,
- 40 obtained pursuant to an inspection made under

section 17 (1) (d) of this Act, and no record of any such information or documents, shall be—

- (i) Admissible in evidence in any proceedings:
- (ii) Used in connection with the exercise of any power conferred by **Part II** or **Part III** of this Act.

5

Cf. 1964, No. 134, s. 38N (12); 1986, No. 131, s. 10

28. Effect of final decision that exercise of powers under sections 19 to 21 unlawful—In any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by **sections 19 to 21** of this Act, that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful—

10

- (a) The Registrar shall ensure that forthwith after the decision of the Court is given—

15

(i) Any information obtained pursuant to **section 21 (1) (a)** of this Act, and any record of such information, is destroyed:

(ii) Any documents produced for inspection pursuant to **section 21 (1) (a)** of this Act are returned to the person previously having possession of the documents, or previously having the documents under his or her control, and any copies of such documents, or extracts from such documents, are destroyed:

20

(iii) Any documents, or extracts from documents, obtained pursuant to an investigation made under **section 21 (2)** of this Act are returned to the person previously having possession of those documents, or previously having them under his or her control, and any copies of such documents or extracts are destroyed:

25

(iv) Any information derived from or based upon such information, documents, or extracts is destroyed:

30

- (b) No information obtained or documents produced for inspection pursuant to **section 21 (1) (a)** of this Act, and no documents, or extracts from documents, obtained pursuant to an investigation made under **section 21 (2)** of this Act, and no record of any such information or documents, shall be—

35

- (i) Admissible as evidence in any proceedings:

40

(ii) Used in connection with the exercise of any power conferred by Part II or Part III of this Act.

Cf. 1964, No. 134, s. 38o (15); 1986, No. 131, s. 10

New

5 **28A. Saving for privileged communications**—Nothing in this Part of this Act shall be taken to require any person who has acted as a solicitor or a barrister for any person to disclose any privileged communication made to him or her in that capacity.

10 Cf. 1955, No. 63, s. 466

PART II

CORPORATIONS AT RISK

29. Registrar may declare corporation to be at risk—

15 (1) Where the Registrar has reasonable grounds to believe that any corporation is, or may be, a corporation to which this Act applies, the Registrar may give written notice to the corporation that it is considered to be a corporation at risk.

(2) Every notice given under subsection (1) of this section shall state the grounds on which it is given.

20 Cf. 1964, No. 134, s. 38Q(1), (2); 1986, No. 131, s. 10

30. Obligation to consult with Registrar—(1) Every corporation to whom a notice is given under section 29 of this Act shall forthwith consult with the Registrar—

25 (a) As to the circumstances of that corporation; and
 (b) As to the methods of resolving the difficulties of that corporation.

30 (2) Every associated person of a corporation to whom a notice has been given under section 29 of this Act, and any officer or employee of any such corporation or associated person, shall, when required to do so by the Registrar by notice in writing to that (*associated*) person, forthwith consult with the Registrar—

35 (a) As to the circumstances of that corporation; and
 (b) As to the methods of resolving the difficulties of that corporation.

Cf. 1964, No. 134, s. 38Q(3), (4); 1986, No. 131, s. 10

31. Power of Registrar to give advice and assistance—

Where the Registrar gives a notice to a corporation under

section 29 of this Act, or gives a notice to an associated person under section 30 (2) of this Act, the Registrar may, from time to time,—

- (a) Give advice to the corporation or associated person concerning its affairs: 5
- (b) Give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that corporation or associated person: 10
- (c) Give advice and assistance in connection with any scheme for resolving the difficulties of that corporation or associated person. 10

Cf. 1964, No. 134, s. 38Q(5); 1986, No. 131, s. 10

32. Power of Registrar to give directions to corporation declared to be at risk—(1) The Registrar may, from time to time, with the prior consent of the Securities Commission, give a direction in writing to any corporation to whom a notice has been given under section 29 of this Act requiring it— 15

- (a) Not to remove from New Zealand, transfer, charge, or otherwise deal with any of its property or funds except with the prior approval of the Registrar and subject to such terms and conditions as the Registrar may specify: 20
 - (b) To place in a trust account any money received for investment: 25
 - (c) To take such other action as is specified in the notice to preserve the interests of the corporation's members and creditors. 30
- (2) The Registrar may, from time to time, with the consent of the Securities Commission, amend any direction. 30

Cf. 1964, No. 134, s. 38Q(8), (9); 1986, No. 131, s. 10

33. Period for which directions may apply—(1) Every direction under section 32 of this Act shall be expressed to apply for a period not exceeding 21 days. 35

- (2) A direction may be revoked at any time by the Registrar. 35

New

(3) Any money placed in a trust account pursuant to section 32 (1) (b) of this Act may, after it has ceased to be subject to a direction, be applied for the purposes for which it was received. 40

New

(4) **Subsection (3)** of this section shall not apply if the corporation has been declared to be subject to statutory management.

5 Cf. 1964, No. 134, s. 38Q(10); 1986, No. 131, s. 10

34. Offence to contravene directions, etc.—(1) Every corporation that acts in contravention of, or fails to comply with, a direction under **section 32** of this Act commits an offence against this Act.

10 (2) Every officer or employee of a corporation who obstructs, hinders, or prevents that corporation giving effect to any direction commits an offence against this Act.

Cf. 1964, No. 134, s. 38Q(11), (12); 1986, No. 131, s. 10

35. Offence to disclose that corporation declared to be at risk, etc.—(1) Subject to **subsection (2)** of this section, every person who discloses that a notice has been given under **section 29** or **section 30 (2)** of this Act commits an offence against this Act.

20 (2) Nothing in **subsection (1)** of this section applies to the disclosure or publication of the fact that a notice has been so given where the disclosure or publication is made—

(a) To any professional or financial adviser of the corporation or associated person to which the notice relates:

25 (b) With the written consent of the Registrar, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital or business undertaking of the corporation or associated person:

30 (c) With the written consent of the Registrar, to any person who has a proper interest in knowing that the notice has been given.

Cf. 1964, No. 134, s. 38Q(14), (15); 1986, No. 131, s. 10

36. Miscellaneous provisions relating to notices—(1) A notice given under **section 29** of this Act to a corporation, or a notice given under **section 30 (2)** of this Act to an associated person, shall be deemed to have been given upon delivery to the head office, registered office, or principal place of business in New Zealand of the corporation or associated person, as the case may be.

(2) A notice given under **section 29** or **section 30 (2)** of this Act may at any time be revoked by the Registrar.

Cf. 1964, No. 134, s. 38Q (6), (7); 1986, No. 131, s. 10

PART III

STATUTORY MANAGEMENT

5

37. Statutory management of corporations and associated persons—(1) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Securities Commission,—

Struck Out

10

(a) Declare that a corporation, or an associated person of that corporation, is subject to statutory management; and

New

(a) Declare that—

(i) Any corporation:

(ii) Any associated person of that corporation,—
is subject to statutory management; and

15

(b) Appoint one or more persons as statutory manager or statutory managers of that corporation or associated person.

20

(2) Where an Order in Council is made under **subsection (1)** of this section, every subsidiary of a corporation declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, shall be subject to statutory management, and the statutory manager or statutory managers so appointed shall be the statutory manager or statutory managers of every such subsidiary.

25

Cf. 1964, No. 134, s. 38R (2), (3); 1986, No. 131, s. 10

38. Grounds on which corporation can be declared to be subject to statutory management—The Securities Commission shall not make a recommendation under **section 37** of this Act in respect of a corporation unless it is satisfied on reasonable grounds—

30

- (a) That the corporation is, or may be, a corporation to which this Act applies; and
- (b) That, in the case of a corporation that is, or may be, operating fraudulently or recklessly, it is desirable that the corporation be declared to be subject to statutory management for the purpose of—
- 5 (i) Limiting or preventing the risk of further deterioration of the financial affairs of the corporation; or
- 10 (ii) Limiting or preventing the carrying out, or the effects of, any fraudulent act or activity; or
- (iii) Enabling the affairs of the corporation to be dealt with in a more orderly or expeditious way:
- (c) That, in the case of a corporation referred to in **section 4 (b)** of this Act, it is desirable that the corporation be declared to be subject to statutory management for the purpose of—
- 15 (i) Preserving the interests of its (*shareholders*) members or creditors or beneficiaries or the public interest; or
- 20 (ii) Enabling the affairs of the corporation to be dealt with in a more orderly or expeditious way.

Struck Out

- 25 (2) The Securities Commission shall, as soon as practicable after the making of an Order in Council declaring a corporation to be subject to statutory management, give written notice to the corporation stating the grounds on which the recommendation was made.

Cf. 1964, No. 134, s. 38R (4), (6); 1986, No. 131, s. 10

- 30 **39. Grounds on which associated person can be declared to be subject to statutory management**—The Securities Commission shall not make a recommendation under **section 37** of this Act in respect of an associated person of a corporation unless it is satisfied on reasonable grounds that—
- 35 (a) An Order in Council could be made in respect of that associated person on any of the grounds specified in **section 38** of this Act; or
- (b) The business and affairs of the corporation are so closely connected with that associated person that the statutory manager or statutory managers would be
- 40 unable to exercise effectively the powers conferred by

this Act in relation to the corporation unless the statutory manager or statutory managers is or are appointed as statutory manager or statutory managers of the associated person.

Struck Out

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(2) The Securities Commission shall, as soon as practicable after the making of an Order in Council declaring an associated person of a corporation to be subject to statutory management, give written notice to the associated person stating the grounds on which the recommendation was made.

10

Cf. 1964, No. 134, s. 38R (5) to (7); 1986, No. 131, s. 10

Powers of statutory manager

40. Considerations affecting exercise of powers by statutory manager—(1) In the exercise of the powers conferred by this Part of this Act, a statutory manager of a corporation shall have regard to—

15

- (a) The need to preserve the interests of members and creditors of the corporation, or, where appropriate, the need to protect the beneficiaries under any trust administered by the corporation or the public interest;
- (b) The need to resolve the difficulties of the corporation;
- (c) As far as practicable, the need to preserve the business or undertaking of the corporation.

20

(2) Every statutory manager of a corporation shall provide the Registrar with such reports as the Registrar may require as to the state of the affairs and business of the corporation.

25

Cf. 1964, No. 134, s. 38T; 1986, No. 131, s. 10

41. Moratorium—(1) Where a corporation is declared under section 37 of this Act to be subject to statutory management, no person shall—

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- (a) Commence or continue any action or other proceedings, including proceedings by way of counterclaim, against that corporation;
- (b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of that corporation;
- (c) Petition or resolve to wind up that corporation;

35

- (d) Foreclose, enter into possession, sell, or appoint a receiver of the property of that corporation, or property in respect of which the corporation has an equity of redemption:
- 5 (e) Exercise or continue any power or rights under, or in pursuance of, any mortgage, charge, debenture, instrument, or other security over the property of that corporation:

New

- 10 (ea) Claim or recover, pursuant to any retention of title clause, hire purchase agreement, mortgage, lease, or security, any property in the possession of the corporation:

- 15 (f) Determine or forfeit any tenancy, distrain for rent, retake or re-enter any premises, or exercise or continue any power or rights under, or in pursuance of, any lease, against that corporation:

(g) Exercise any right of set-off against that corporation.

- 20 (2) Notwithstanding the provisions of **subsection (1)** of this section, an action or proceeding may be commenced or continued against a corporation for the purpose of determining whether any right or liability exists if the leave of the statutory manager or the Court is first obtained.

- 25 (3) Notwithstanding the provisions of **subsection (1)** of this section, a statutory manager of a corporation may waive the application in whole or in part of that subsection (except **paragraph (c)** of that subsection) to any creditor or class of creditors in respect of the whole or part of any claim of, or security held by, that creditor or class of creditors.

- 30 (4) Subject to the provisions of this Act, nothing in **subsection (1)** of this section affects the existence of any security over the property of any corporation or its priority over other debts.

- 35 (5) Nothing in **paragraph (a)** of **subsection (1)** of this section limits or prevents any person commencing or continuing any action or other proceedings, including proceedings by way of counterclaim, against a corporation in respect of any contract entered into, or obligation incurred, by that corporation after the date on which that corporation was declared to be subject to statutory management.

- 40 (6) Nothing in **paragraph (b)** of **subsection (1)** of this section limits or prevents any person issuing any execution, attaching any debt, or otherwise enforcing or seeking to enforce any

judgment or order obtained against a corporation in respect of any contract entered into, or obligation incurred, by that corporation after the date on which that corporation was declared to be subject to statutory management.

Cf. 1964, No. 134, s. 38v; 1986, No. 131, s. 10

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42. Prohibition against removal of assets—(1) Where a corporation is declared to be subject to statutory management, no person shall, except with the consent of the statutory manager, transfer, or remove from New Zealand, any property or assets of the corporation.

10

(2) Any person who, after a corporation is declared to be subject to statutory management, except with the consent of the statutory manager, transfers, or removes from New Zealand, any property or assets of the corporation, commits an offence and is liable on conviction on indictment,—

15

(a) In the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$50,000:

(b) In the case of a corporation, to a fine not exceeding \$250,000.

20

(3) Nothing in subsection (2) of this section shall prevent the issue of an injunction or the making of any order to prevent such property or assets being removed from New Zealand.

Cf. 1964, No. 134, s. 38x; 1986, No. 131, s. 10

43. Statutory manager may suspend payment of money owing—(1) The statutory manager of a corporation may, notwithstanding the terms of any contract, suspend in whole or in part the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person.

25

(2) The suspension by a statutory manager in whole or in part of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person pursuant to subsection (1) of this section shall not constitute a breach or repudiation of any contract entered into by the corporation with any person.

30

35

(3) Nothing in subsection (1) of this section shall authorise the suspension by the statutory manager of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person where the obligation to repay the deposit, or to pay the debt, or to discharge the obligation, was incurred by the corporation or by the statutory manager after

40

the date upon which the corporation became subject to statutory management.

Cf. 1964, No. 134, s. 38y; 1986, No. 131, s. 10

44. Management of corporation to vest in statutory manager—(1) Subject to this Part of this Act, where a corporation is declared to be subject to statutory management, the management of that corporation shall, on and after the date specified in the order, vest in the statutory manager of that corporation.

(2) Where a corporation is declared to be subject to statutory management, it shall not be lawful or competent for any director, manager, or other person to be engaged in the management or conduct of the business of that corporation, or to act as an officer, or as the agent or servant, of the corporation, except with the permission of the statutory manager and so far as that permission extends.

Cf. 1964, No. 134, s. 38z; 1986, No. 131, s. 10

45. Powers of statutory manager—(1) Subject to this Part of this Act, a statutory manager of a corporation shall have all such powers, rights, and authorities as may be necessary to carry out the powers conferred by this Part of this Act.

Struck Out

(2) Without limiting subsection (1) of this section, a statutory manager shall have and may exercise—

(a) In the case of a body corporate, all the powers of the members in general meeting and the board of directors of that body corporate; or

(b) In the case of a corporation other than a body corporate, all the powers exercisable by its governing body.

New

(2) Without limiting subsection (1) of this section, a statutory manager shall have and may exercise—

(a) All powers, rights, and privileges that the corporation has under any contract or otherwise:

(b) In the case of a body corporate, all the powers of the members in general meeting and of the board of directors of that body corporate:

New

(c) In the case of a corporation other than a body corporate, all the powers exercisable by its governing body.

(3) Without limiting **subsection (1)** of this section, a statutory manager of a corporation shall have and may exercise all of the powers conferred on a liquidator of a company by section 312 of the Companies Act 1955 in the same manner as if the statutory manager of the corporation were the liquidator of a company being wound up under that Act, and all the provisions of that section shall apply in respect of the disclaimer of any property of the corporation as if that property was property of a company to which that section applied.

Cf. 1964, No. 134, s. 38AB; 1986, No. 131, s. 10

46. Statutory manager empowered to carry on business of corporation—Subject to this Part of this Act, a statutory manager of a corporation may carry on all or any part of the business of the corporation, and shall have and may exercise, in relation to the corporation, all such powers, rights, and authorities as may be necessary to carry on that business.

Cf. 1964, No. 134, s. 38AC; 1986, No. 131, s. 10

47. Statutory manager empowered to pay creditors and compromise claims—Subject to this Part of this Act, a statutory manager of a corporation shall, for the purposes of carrying on the business of that corporation, have power to—

- (a) Pay any creditor or class of creditors of the corporation in whole or in part:
- (b) Make any compromise or arrangement with any creditor, or person claiming to be a creditor, of the corporation:
- (c) Compromise all calls, debts, and claims subsisting or supposed to subsist between the corporation and any other person, and all questions relating to the assets of the corporation and give a complete or partial discharge in respect thereof.

Cf. 1964, No. 134, s. 38AD; 1986, No. 131, s. 10

48. Termination of contract of agency or service—

(1) The statutory manager of any corporation may, at any time, terminate any contract of service or agency between the corporation and any person who is its servant or agent,

notwithstanding that by law, apart from this Act, the corporation could not have terminated the contract until some future date; and where a contract is terminated under this section the corporation shall be discharged from the further performance of the contract, and from all liabilities for subsequent non-performance of the contract.

(2) After the termination of the contract, the other person may, within 6 months of receiving notice of the termination, apply to the Court for compensation in respect of the contract; and the Court may award such compensation as it considers just and reasonable having regard to the value of the consideration provided by the person, and to all amounts and benefits which the person has received under the contract, and to the conduct of the parties.

15 Cf. 1958, No. 23, s. 5A

49. Power of statutory manager to sell business undertaking of corporation—(1) Subject to this Part of this Act, the statutory manager of a corporation may sell or otherwise dispose of the whole or any part of the business undertaking of the corporation to such person, and upon such terms and conditions, as the statutory manager thinks fit.

(2) Without limiting any other powers of the statutory manager, for the purposes of **subsection (1)** of this section, the statutory manager shall have power to—

25 (a) Form and register a body corporate under the Companies Act 1955 or any other Act:

(b) Subscribe for all or any of the shares of that body corporate:

30 (c) Transfer to that body corporate the whole or any part of the business undertaking of the corporation:

(d) Allot all or any of the shares in that body corporate to any person credited as fully or partly paid, as the case may be, up to the value of the business undertaking transferred to that body corporate pursuant to **paragraph (c)** of this subsection:

35 (e) Sell all or any of the shares of that body corporate or the whole or any part of the business undertaking of that body corporate to such person, and upon such terms and conditions, as the statutory manager thinks fit.

40 (3) The provisions of any agreement requiring any consent, licence, permission, or other authority shall not have any application in respect of any sale pursuant to this section, unless

the Court, on application by any person who would be adversely affected, otherwise orders.

Cf. 1964, No. 134, s. 38AE (1), (2), (4); 1986, No. 131, s. 10

50. Sale of property or assets subject to a security—

- (1) A statutory manager may— 5
- (a) Sell or otherwise dispose of any property or assets of a corporation pursuant to **section 49 (1)** of this Act; or
 - (b) Sell or otherwise dispose of any property or assets of a corporation to any body corporate formed and registered pursuant to **section 49 (2) (a)** of this Act; or 10
 - (c) Sell or otherwise dispose of any shares in, or property or assets of, a body corporate formed and registered pursuant to **section 49 (2) (a)** of this Act— 10
- notwithstanding the existence, or the terms and conditions, of any security over the property or those assets in favour of any other person. 15
- (2) Where the statutory manager of a corporation sells or otherwise disposes of any property or assets of that corporation pursuant to **section 49 (1)** of this Act, being property or assets subject to a fixed charge in favour of any person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets and claims in respect of preferential payments made under section 308 of the Companies Act 1955 (as applied by **section 54** of this Act). 25
- (3) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of that corporation to any body corporate formed and registered pursuant to **section 49 (2) (a)** of this Act, being property or assets subject to a security in favour of any other person, the property or those assets shall continue to be subject to that security. 30
- (4) Where a statutory manager of a corporation sells or otherwise disposes of any shares in a body corporate formed and registered under **section 49 (2) (a)** of this Act, any property or assets of which are subject to a fixed charge in favour of any other person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares. 35 40
- (5) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of a body corporate formed and registered pursuant to **section 49 (2) (a)** of this Act, being property or assets subject to a fixed charge in

favour of any other person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.

5 Cf. 1964, No. 134, s. 38AE (5) to (9); 1986, No. 131, s. 10

51. Statutory manager may petition to wind up corporation—(1) Subject to this Part of this Act, a statutory manager of a corporation may,—

10 (a) In the case of a corporation that may be wound up under the Companies Act 1955, petition under that Act to wind up that corporation:

(b) In the case of a corporation constituted under any other Act, take such steps as are provided for in that Act for the winding up or dissolution of that corporation.

15 (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.

20 (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
25 order.

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

Cf. 1964, No. 134, s. 38AF; 1986, No. 131, s. 10

30 **52. Provisions applying where liabilities included in sale or other disposition of business undertaking of corporation**—Where all or any part of any liability of a corporation is included in the sale or other disposition of the business undertaking of that corporation, or any part of that
35 undertaking, pursuant to **section 49** of this Act—

(a) The corporation shall, as from the date of the sale or other disposition, be relieved from all its obligations in respect of that liability, or that part of the liability; and

40 (b) The person entitled to performance in respect of that liability shall be entitled to enforce performance of that liability, or that part of the liability, against the person to whom the business undertaking is sold or

otherwise disposed of in the same manner and to the same extent as the person entitled to performance in respect of that liability could have enforced performance of that liability against the corporation; and

- (c) The inclusion of part of any such liability shall not relieve the corporation from any obligation in respect of any part of the liability not included in the sale or other disposition.

Cf. 1964, No. 134, s. 38AG; 1986, No. 131, s. 10

53. Power to trace property improperly disposed of—

(1) In any case where, whether before or after the passing of this Act,—

(a) Any property has been acquired by a person in circumstances which cause it to be just and equitable that that person should hold it upon trust for any corporation that has been declared to be subject to statutory management; or

(b) Any property has been improperly disposed of, whether or not the property has become subject to a trust,— the Court may, if it thinks fit, make an order—

(c) That the property be transferred or delivered to the statutory manager:

(d) That any person who acquired or received the property, or his or her administrator, shall pay to the statutory manager a sum not exceeding the value of that property.

(2) For the purpose of giving effect to any such order, the Court may make such further order as it thinks fit.

(3) No order made pursuant to this section shall deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.

(4) Nothing in this section shall restrict the operation of section 309 of the Companies Act 1955.

Cf. 1958, No. 23, s. 23

Struck Out

54. Application of rules relating to voidable preferences, etc.—Sections 309 to 311c, and sections 319 to 321 of the Companies Act 1955 shall apply to a corporation

Struck Out

that is subject to statutory management under this Act in all respects, and with such modifications as may be necessary, as if—

- 5 (a) The corporation were a company that was being wound up under that Act; and
- (b) The statutory manager of the corporation were the liquidator of the company; and
- 10 (c) The date on which the corporation became subject to statutory management were the date of the commencement of the winding-up.

New

54. Application of certain provisions of Companies Act 1955—Sections 308 (except subsection (1) (d)), 309 to 311c, and 319 to 321 of the Companies Act 1955 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—

- 20 (a) The corporation were a company that was being wound up under that Act; and
- (b) The statutory manager of the corporation were the liquidator of the company; and
- 25 (c) The date on which the corporation became subject to statutory management were the date of the commencement of the winding-up.

Miscellaneous

55. Appointment of joint statutory managers, etc.—

(1) Where an Order in Council is made under **section 37** of this Act appointing 2 or more persons as statutory managers of a corporation, the order shall state whether the powers conferred by this Part of this Act shall be exercised by those persons acting together or may be exercised individually.

(2) For the purposes of this Part of this Act, unless the context otherwise requires,—

- 35 (a) References to a statutory manager shall, where 2 or more persons are appointed as statutory managers of a corporation, include references to those statutory managers:

- (b) Where an associated person of a corporation is declared to be subject to statutory management, or a subsidiary of a corporation becomes subject to statutory management under **section 37 (2)** of this Act, that associated person or subsidiary, as the case may be, shall be deemed to be a corporation and references in this Part of this Act to a corporation shall be read as references to that associated person or subsidiary, as the case may be. 5

Cf. 1964, No. 134, s. 38R (11), (12); 1986, No. 131, s. 10 10

56. Termination of appointment of statutory manager—(1) The Minister may terminate the appointment of a statutory manager of a corporation for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister. 15

(2) A statutory manager of a company may resign office by notice in writing to the Minister.

(3) Where the appointment of a statutory manager is terminated under **subsection (1)** of this section, or a statutory manager resigns office, or dies, the Minister may appoint a person to take the place of that statutory manager. 20

(4) Where a statutory manager resigns office, that statutory manager shall continue in office until a successor is appointed.

Cf. 1964, No. 134, s. 38AH; 1986, No. 131, s. 10

57. Statutory manager may apply to Court for directions—(1) A statutory manager of a corporation may apply to the Court for directions concerning the business or property of the corporation, or the management or administration of any such business or property, or the exercise of any powers under this Part of this Act. 25 30

(2) On any application under **subsection (1)** of this section, the Court may give directions concerning the business or property of the corporation, or the management or administration of any such business or property, or the exercise of any powers under this Part of this Act, and every person shall be bound by any such directions. 35

Cf. 1964, No. 134, s. 38AI; 1986, No. 131, s. 10

58. Court may confer additional powers on statutory manager—The statutory manager of a corporation shall have, in addition to the powers conferred on him or her by this Act, such other powers (if any) in respect of the corporation as the 40

Court, on application by the statutory manager, thinks fit to confer.

Cf. 1958, No. 23, s. 8

59. Advisory committees—

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Struck Out

(1) Where an Order in Council is made under **section 37** of this Act, the Minister may appoint an advisory committee to advise the statutory manager on the exercise of the powers conferred by this Part of this Act.

10

New

(1) Where an Order in Council is made under **section 37** of this Act, the Minister may, by notice in the *Gazette*, appoint an advisory committee in relation to the statutory management of any corporation to which the order
15 relates.

(1A) The functions of any such advisory committee shall be—

- (a) To advise the statutory manager on the conduct of the statutory management, including the exercise of the powers conferred by this Part of this Act;
20 (b) To do all such other things as may be specified by the Minister from time to time by notice in the *Gazette*.

(2) The members of an advisory committee shall be appointed for such period as may be specified in the notice of appointment.

25 (3) The Minister may extend the term of appointment of any member of an advisory committee.

(4) The Minister may appoint a person to be an additional member of an advisory committee.

30 (5) The Minister may terminate the appointment of a member of an advisory committee for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.

(6) A member of an advisory committee may resign office by notice in writing to the Minister.

35 (7) Where a member of an advisory committee resigns, that member shall continue in office until a successor is appointed.

Cf. 1964, No. 134, s. 38s; 1986, No. 131, s. 10

60. Prior winding-up or receivership to cease—

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

(a) The winding up or receivership of that 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.

(2) Where the statutory management of any subsidiary or associated person referred to in **subsection (1)** of this section is terminated, the liquidation or receivership of that subsidiary or associated person shall, unless the Order in Council terminating the statutory management otherwise provides, and subject to such terms and conditions as the order may specify, revive as if it had not ceased by reason of this section.

(3) Where any liquidation or receivership revives pursuant to **subsection (2)** of this section, the person specified in the order as such shall be the liquidator or receiver of that subsidiary or associated person for the time being.

61. Termination of statutory management—(1) The Governor-General may, by Order in Council, declare that—

(a) Any corporation:

(b) Any associated person of a corporation:

(c) Any subsidiary of a corporation—

subject to statutory management, shall cease to be subject to statutory management on a date specified in the order.

(2) Any corporation, or associated person of a corporation, or subsidiary of a corporation shall cease to be subject to statutory management if a winding-up order is made in respect of that corporation, or associated person, or subsidiary, as the case may be, on the petition of the statutory manager.

(3) Where an order is made pursuant to **subsection (1)** of this section, or a winding-up order is made pursuant to **subsection (2)** of this section, in respect of any person,—

(a) That person shall cease to be subject to statutory management on the specified date; and

(b) The appointment of any statutory manager appointed in respect of that person shall terminate on the specified date; and

(c) The appointment of any person as a member of an advisory committee under **section 59** of this Act in

relation to the statutory management of that person shall terminate on the specified date.

(4) For the purposes of **subsection (3)** of this section, “specified date” means,—

5 (a) In any case where an Order in Council has been made pursuant to **subsection (1)** of this section, the date specified in the order:

(b) In any case where a winding-up order has been made pursuant to **subsection (2)** of this section, the date of the winding-up order.

10 (5) Where an Order in Council is made under **subsection (1)** of this section declaring that a corporation shall cease to be subject to statutory management,—

15 (a) Every subsidiary of that corporation, except any subsidiary specified in the order, shall cease to be subject to statutory management on the same date as that specified as the date upon which the corporation ceases to be subject to statutory management:

20 (b) The appointment of any person appointed as a statutory manager of every such subsidiary shall terminate on the date referred to in **paragraph (a)** of this subsection:

25 (c) The appointment of any person appointed as a member of an advisory committee under **section 59** of this Act in relation to the statutory management of that subsidiary shall terminate on the date referred to in **paragraph (a)** of this subsection.

Cf. 1964, No. 134, s. 38A; 1986, No. 131, s. 10

PART IV

GENERAL

30 **62. Indemnity**—(1) The Securities Commission, the Registrar, every statutory manager of a corporation, every member of an advisory committee, and every person appointed under **section 17** or **section 19** of this Act shall be indemnified by the Crown in respect of any liability relating to the exercise, or

35 purported exercise, or omission to exercise, any power conferred by this Act unless it is shown that the exercise, or purported exercise, or omission to exercise, the power was in bad faith.

(2) Any money required for the purposes of this section shall

40 be paid out of the Public Account without further appropriation than this section.

(3) The indemnity conferred by **subsection (1)** of this section extends to legal costs incurred in defending a proceeding.

New

(4) No reference in this section to a liability relating to any omission to exercise any power shall limit the provisions of section 8 of this Act.

63. Corporation not entitled to be consulted about exercise of powers—Except as otherwise provided in this Act, no corporation to which this Act applies, and no director or other officer of any such corporation, shall be entitled to be consulted or informed as to the exercise or possible exercise of any of the powers conferred by this Act. 5 10

64. Expenses of statutory management—All costs, charges, and expenses properly incurred by a statutory manager in the exercise of the manager's functions and powers under this Act (including such remuneration as may be approved by the Minister) shall be payable out of the property of the corporation in respect of which the statutory manager is appointed in priority to all other claims. 15

Cf. 1964, No. 134, s. 38AL; 1986, No. 131, s. 10

65. Advances to statutory managers and members of advisory committees—(1) With the consent of the Minister of Finance, there may be advanced, out of money in the Consolidated Account appropriated by Parliament for the purpose, to a statutory manager of a corporation or a member of an advisory committee, such amounts as the Minister may approve in respect of costs, charges, and expenses (including remuneration) due to, or incurred by, that person. 20 25

(2) All money so advanced to that person shall be refunded to the Crown out of money payable to that person, and the Crown shall have all the rights of the person to whom the advance was made to receive and recover any such money. All money so refunded to the Crown shall be credited upon receipt to the Consolidated Account. 30

Cf. 1958, No. 23, s. 30

66. Duty to deliver books and property to statutory manager—(1) It shall be the duty of all persons having possession and control of any books or records or documents or other property belonging to any corporation subject to statutory management, forthwith after it becomes subject to 35

statutory management, to deliver or yield up possession of those books, records, documents, or other property to the statutory manager in respect of the corporation.

5 (2) If any person fails for 7 days to comply with the requirements of **subsection (1)** of this section, that person commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000 and to a further fine not exceeding \$100 for every day after the expiration of those 7 days during which the offence has continued.

10 (3) If any person fails to comply with the requirements of **subsection (1)** of this section, the statutory manager may, at any time, certify the failure to the Court (whether or not an offence has been committed under **subsection (2)** of this section), and the Court may inquire into the matter and, after hearing any
15 witnesses who may be produced against, or by, or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender in like manner as if the offender had been guilty of contempt of Court.

20 (4) It shall not be a defence to any proceedings under this section that the person in possession or control of any property is, or was, a trustee of the property for the corporation, or entitled to a lien or other charge over the property, or was a receiver or manager of the property.

25 (5) The rights of any person who, in accordance with this section, delivers any property to the statutory manager in respect of the corporation shall continue, while the management continues, as if the person had not so delivered the property; and on the termination of the management,
30 subject to the provisions of this Act and unless the Court otherwise orders, the property shall be returned to the person who delivered it or to someone who derives a right to possession of the property from that person. The provisions of this subsection shall apply whether the person who delivers the
35 property is a receiver or manager, or a person entitled to a lien or charge in respect of the property, or any other person having any rights in respect thereof.

Cf. 1958, No. 23, s. 9

67. Offence to destroy, alter, or conceal records—

40 (1) Every director, officer, servant, or agent of any corporation subject to statutory management, or any other person, commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000, who—

- (a) With intent to defeat the purposes of this Act, (*destroys or alters*) destroys, alters, or conceals any book, document, or record of any such person, or sends or attempts to send out of New Zealand any such book, document, or record; or 5
- (b) Fails or refuses to answer to the best of that person's knowledge and ability any question which that person may be asked by the statutory manager in relation to any such book or document or record or any property, or wilfully gives a false answer to any such question. 10

(2) If, in any prosecution for an offence alleged to have been committed against this section, it is proved that the person charged with the offence has (*destroyed or altered*) destroyed, altered, or concealed any book, document, or record, or has 15 sent or attempted to send out of New Zealand any such book, document, or record, the onus of proving that in so doing that person had not acted in contravention of this section shall lie on that person.

Cf. 1958, No. 23, s. 28 20

68. Duty to report offences—If it appears to any statutory manager appointed in respect of a corporation under this Act that any person has been guilty of any offence in relation to that corporation, the statutory manager shall report the matter to the Solicitor-General. 25

Cf. 1958, No. 23, s. 29

69. Penalties for offences—Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable on conviction on indictment,— 30

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$10,000;
- (b) In the case of a corporation, to a fine not exceeding \$25,000. 35

70. Application of Companies Act 1955—(1) Except as provided in this Act and in **subsections (2) to (4)** 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 40 that is a company within the meaning of section 2 of that Act.

(2) Nothing in sections 41, 130 to 135, 152 to 162 and Part VII of the Companies Act 1955 shall apply to a company that is subject to statutory management.

5 (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 one member.

(4) Nothing in any enactment shall require a corporation that is subject to statutory management, or a statutory manager, to
10 file any annual or other return.

Struck Out

(5) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Securities Commission, declare
15 that any other provisions of any enactment shall not apply to a corporation that is subject to statutory management.

Cf. 1958, No. 23, ss. 13, 21

71. Proof of transactions—(1) The presentation to any Registrar of Deeds or District Land Registrar or any other
20 person charged with the keeping of any books or registers of any instrument transferring or otherwise disposing of any property or assets of a corporation subject to statutory management, or any shares in or property or assets of any body corporate incorporated pursuant to **section 49 (2) (a)** of this
25 Act,—

- (a) Executed or purporting to be executed by or on behalf of that corporation or body corporate, as the case may be; and
- 30 (b) Containing a recital that the transfer or other disposition of the property or assets of the corporation or body corporate, as the case may be, is made pursuant to **section 49** of this Act—

shall, in the absence of evidence to the contrary, be sufficient proof that the transfer or other disposition is made under the
35 authority of that section.

(2) The presentation to any Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers of a certificate signed by the statutory manager that the amount secured by a charge over any
40 property or assets of a corporation subject to statutory management, or any body corporate formed and registered

pursuant to **section 49 (2) (a)** of this Act, as the case may be, has been paid shall, in the absence of evidence to the contrary, be sufficient proof that the amount secured by the charge has been repaid.

Cf. 1964, No. 134, s. 38AE (10), (11); 1986, No. 131, s. 10 5

72. Repeal of Companies Special Investigations Act 1958—The Acts specified in the Schedule to this Act are hereby consequentially repealed.

73. Savings—(1) Notwithstanding the repeal, by **section 72** of this Act, of the Companies Special Investigations Act 1958,— 10

(a) Any company to which that Act applied immediately before its repeal shall remain subject to that Act, and the provisions of that Act shall continue to apply to that company in all respects as if they had not been repealed: 15

(b) Any receiver and manager appointed in respect of any such company shall continue to have, in respect of that company, the same powers and functions that he or she had before the repeal of that Act. 20

New

(2) This section shall apply unless an Order in Council has been made in respect of the company pursuant to **section 74** of this Act.

74. Procedure for applying this Act to company to which Companies Special Investigations Act 1958 applies—(1) The Governor-General may, by Order in Council,— 25

(a) Declare that any company which is subject to receivership under the Companies Special Investigations Act 1958 shall become subject to statutory management under this Act: 30

(b) Provide such transitional provisions as are necessary or desirable for giving effect to any such declaration.

(2) Where any such Order in Council is made, the following provisions shall apply on and after the date of commencement of the order: 35

(a) The Companies Special Investigations Act 1958 shall cease to apply to the company; and

New

- 5 (b) Any person who holds office as a receiver and manager of the company under the Companies Special Investigations Act 1958 shall be deemed to have been appointed as statutory manager of the company under this Act; and
- (c) Any such person shall have in respect of the company all the powers, rights, authorities, and privileges conferred by this Act on a statutory manager;
- 10 (d) Any advisory committee appointed under section 26 of the Companies Special Investigations Act 1958 shall be deemed to have been appointed under this Act;
- (e) All the provisions of this Act shall apply in respect of the company, except for the following provisions;
- 15 (i) Section 37 (1) (which enables an associated person of a corporation to be declared to be subject to statutory management);
- 20 (ii) Section 37 (2) (which provides that every subsidiary of a corporation declared to be subject to statutory management shall also be subject to statutory management).

Section 72

SCHEDULE

ENACTMENTS REPEALED

- 1958, No. 23—The Companies Special Investigations Act 1958 (R.S. Vol. 6, p. 59).
1959, No. 88—The Companies Special Investigations Amendment Act 1959 (R.S. Vol. 6, p. 78).
1963, No. 34—The Companies Special Investigations Amendment Act 1963 (R.S. Vol. 6, p. 79).
1980, No. 89—The Companies Special Investigations Amendment Act 1980.