No. 274

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 14 September 1993

COMPANIES BILL

Proposed Amendments

Hon. D. A. M. GRAHAM, in Committee, to move the following amendments:

Clause 1: To omit the expression "1st day of July 1993" (line 22 on page 6), and substitute the expression "1st day of July 1994".

PART I

PRELIMINARY

Clause 2: To omit the definitions of the terms "applicable financial reporting standard" and "balance date" (lines 13 to 24 on page 7), and substitute the following definition:

"Balance date" has the meaning set out in **section 7** of the Financial Reporting Act **1993**:

To add to the definition of the term "charge" (line 6 on page 8), the words "; but does not include a charge under a charging order issued by a court in favour of a judgment creditor".

To insert in paragraph (b) of the definition of the term "company", after the word "under" (line 14 on page 8), the words "this Act in accordance with".

To omit the definitions of the terms "financial statements" and "group financial statements" (lines 32 to 36 on page 9), and substitute the following definitions:

"Financial statements" has the meaning set out in **section 8** of the Financial Reporting Act **1993**:

"Group financial statements" has the meaning set out in **section 9** of the Financial Reporting Act **1993**:

To insert as subclause (2A) (after line 39 on page 13), the following subclause:

(2A) For the purposes of **subsection (2)** of this section, a company within the meaning of section 2 of the Companies Act

(a) Must have regard to—

(i) The most recent financial statements of the company that comply with **section 10** of the Financial Reporting Act **1993**; and

(ii) All other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, including its contingent liabilities:

Subclause (3): To omit paragraph (a) (lines 2 to 19 on page 16), and substitute the following paragraph:

(a) Must have regard to—

(i) Financial statements that comply with **section 10** of the Financial Reporting Act **1993** and that are prepared as if the amalgamation had become effective; and

(ii) All other circumstances that the directors know or ought to know would affect, or may affect, the value of the amalgamated company's assets and the value of its liabilities, including contingent liabilities:

Subclause (4): To omit this subclause (lines 22 to 24 on page 16), and substitute the following subclause:

(4) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of—

(a) The likelihood of the contingency occurring; and

(b) Any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

New clauses inserted: To insert as *clauses 4A* to *4D* (after line 24 on page 16), the following clauses:

4A. Meaning of "holding company" and "subsidiary"—

(1) For the purposes of this Act, a company is a subsidiary of another company if, but only if,—

(a) That other company—

(i) Controls the composition of the board of the company; or

(ii) Is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company; or

(iii) Holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(iv) Is entitled to receive more than one-half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or

(b) The company is a subsidiary of a company that is that other company's subsidiary.

(2) For the purposes of this Act, a company is another company's holding company, if, but only if, that other company is its subsidiary.

(3) In this section and **sections 4C** and **4D** of this Act the expression "company" includes a body corporate.

Cf. Section 46, Corporations Act 1989 (Aust.)

4B. Extended meaning of "subsidiary"—For the purposes of this Act, a company within the meaning of section 2 of the Companies Act 1955 is a subsidiary of another company if, were it a company within the meaning of **section 2** of this Act, it would be a subsidiary of that other company.

4C. "Control" defined—For the purposes of **section 4A** of this Act, without limiting the circumstances in which the composition of a company's board is to be taken to be controlled by another company, the composition of the board is to be taken to be so controlled if the other company, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all the directors of the company, or such number of directors as together hold a majority of the voting rights at meetings of the board of the company, and for this purpose, the other company is to be taken as having power to make such an appointment if—

(a) A person cannot be appointed as a director of the company without the exercise by the other company of such a power in the person's favour; or

(b) A person's appointment as a director of the company follows necessarily from the person being a director or other officer of the other company.

Cf. Section 47, Corporations Act 1989 (Aust.)

4D. Certain matters to be disregarded—In determining whether a company is a subsidiary of another company—

(a) Shares held or a power exercisable by that other company in a fiduciary capacity are not to be treated as held or exercisable by it:

(b) Subject to **paragraphs (c)** and **(d)** of this section, shares held or a power exercisable—

(i) By a person as a nominee for that other company, except where that other company is concerned only in a fiduciary capacity; or

(ii) By, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity,—

are to be treated as held or exercisable by that other company:

(c) Shares held or a power exercisable by a person under the provisions of debentures of the company or of a trust deed for securing an issue of debentures shall be disregarded:

(d) Shares held or a power exercisable by, or by a nominee for, that other company or its subsidiary (not being held or exercisable in the manner described in **paragraph (c)** of this section) are not to be treated as held or exercisable by that other company if—

PART II

INCORPORATION

Clause 8: To omit from subclause (2) (c) the words "held by" (line 16 on page 22), and substitute the words "to be issued to".

Clause 9: To omit from paragraph (b) the words "in the prescribed form" (line 23 on page 22).

PART III

COMPANY NAMES

Clause 18A: To insert, after the word "Limited" (line 19 on page 26), the words "or the words 'Tāpui (Limited)' ".

Clause 19: To omit subclause (2) (lines 25 to 29 on page 26), and substitute the following subclause:

(2) The Registrar must not reserve a name—

(a) The use of which would contravene an enactment; or

(b) That is identical or almost identical to the name of another company or another company under the Companies Act 1955; or

(c) That is identical or almost identical to a name that the Registrar has already reserved under this Act or the Companies Act 1955 and that is still available for registration; or

(d) That, in the opinion of the Registrar, is offensive.

PART IV

COMPANY CONSTITUTION

Clause 26: To omit the expression "(1)" (line 18 on page 31).

Clause 26C: To insert in subclause (2), before the words "the shareholders" (line 21 on page 32), the words "but subject to **section 49** of this Act (which relates to the reduction of shareholders' liability),".

Clause 26D: To insert in subclause (1), after the expression "**paragraph (d)**" (line 37 on page 32), the words "or **paragraph (e)**", and to omit the expression "**(1)**" (line 38 on page 32).

Clause 26E: To insert in subclause (2), after the word "section" (line 33 on page 33), the words ", together with a copy of the constitution as altered,".

PART V

SHARES

Clause 28: Subclause (1): To insert, after the word "vote" (line 5 on page 35) the words "on a poll".

Subclause (2): To add (line 20 on page 35), the words "or in accordance with the terms on which the share is issued under **section 35** of this Act".

Clause 29: To omit this clause (lines 21 to 28 on page 35), and substitute the following clause:

29. Types of shares—(1) Subject to the constitution of the company, different classes of shares may be issued in a company.

(2) Without limiting **subsection (1)** of this section, shares in a company may—

(a) Be redeemable; or
(b) Confer preferential rights to distributions of capital or income; or
(c) Confer special, limited, or conditional voting rights; or
(d) Not confer voting rights.

Clause 33: To omit this clause (lines 13 to 22 on page 36), and substitute the following clause:

33. Contracts for issue of shares—A contract or deed under which a company is or may be required to issue shares whether on the exercise of an option or on the conversion of securities or otherwise is an illegal contract for the purposes of the Illegal Contracts Act 1970 unless the board—
(a) Is entitled to issue the shares; and
(b) Has complied with **section 40** or **section 41A** of this Act.

Clause 34: To omit from paragraph (a) the words "held by that shareholder of those shareholders" (lines 15 and 16 on page 37), and substitute the words "specified in the application as being the number of shares to be issued to that person or those persons".

Clause 36: To insert in subclause (1) after the word "under" (line 28 on page 37), the expression "**section 34 (b)** or".

Clause 37: To omit from subclause (1) the words "the constitution of the company does not permit the issue of the shares by the board" (lines 8 to 10 on page 38), and substitute the words "shares cannot be issued by reason of any limitation or restriction in the company's constitution".

Clause 40: Subclause (1): To omit paragraph (d) (lines 29 to 32 on page 39), and substitute the following paragraph:

(d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

Subclause (2): To omit paragraph (e) (lines 9 to 12 on page 40), and substitute the following paragraph:

(e) If the shares are to be issued other than for cash stating that, in their opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

Subclause (3): To omit paragraph (b) (lines 17 to 22 on page 40), and substitute the following paragraph:

(b) Resolve that, in its opinion, the present cash value of the consideration is—
(i) Fair and reasonable to the company and to all existing shareholders; and
(ii) Not less than the amount to be credited in respect of the shares.

To insert as subclause (7A) (after line 5 on page 41), the following subclause:

(7A) Nothing in this section applies to the issue of shares in a company on—

(a) The conversion of any convertible securities; or

(b) The exercise of any option to acquire shares in the company.

New clause inserted: To insert as clause 41A (after line 31 on page 41), the following clause:

41A. Consideration in relation to issue of options and convertible securities—(1) Before the board of a company issues any securities that are convertible into shares in the company or any options to acquire shares in the company, the board must—

(a) Decide the consideration for which the convertible securities or options, and, in either case, the shares will be issued and the terms on which they will be issued; and

(b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

(c) Resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options, and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and

(d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

(2) The directors who vote in favour of a resolution required by **subsection (1)** of this section must sign a certificate—

(a) Stating the consideration for, and the terms of, the issue of the convertible securities or options, and, in either case, the shares; and

(b) Describing the consideration in sufficient detail to identify it; and

(c) Where a present cash value has been determined in accordance with **subsection (1) (b)** of this section, stating that value and the basis for assessing it; and

(d) Stating that, in their opinion, the consideration for and terms of issue of the convertible securities or options, and in either case, the shares are fair and reasonable to the company and to all existing shareholders; and

(e) If the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

(3) The Board must deliver a copy of a certificate that complies with **subsection (2)** of this section to the Registrar for registration within 10 working days after it is given.

(4) For the purposes of this section, shares that are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the

provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

(5) A director who fails to comply with **subsection (2)** of this section commits an offence and is liable on conviction to the penalty set out in **section 320 (1)** of this Act.

(6) If the Board of a company fails to comply with **subsection (3)** of this section, every director of the company commits an offence and is liable, on conviction, to the penalty set out in **section 321 (2)** of this Act.

Clause 42: To insert, after the word "person" (line 1 on page 42), the words "or an agent of that person authorised in writing".

Clause 43: To omit the word "registered" (line 4 on page 42), and substitute the word "entered".

Clause 44: Subclause (3): To omit the words "reasonable grounds cease to exist for believing" (line 11 on page 43), and substitute the words "the board ceases to be satisfied on reasonable grounds".

Subclause (4): To omit this subclause (lines 15 to 29 on page 43), and substitute the following subclause:

(4) In applying the solvency test for the purposes of this section and **section 48** of this Act,—

(a) "Debts" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the constitution as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation; and

(b) "Liabilities" includes the amount that would be required, if the company were to be removed from the New Zealand register after the distribution, to repay all fixed preferential amounts payable by the company to shareholders, at that time, or on earlier redemption (except where such fixed preferential amounts are expressed in the constitution as being subject to the power of directors to make distributions); but, subject to **paragraph (a)** of this subsection, does not include dividends payable in the future.

Clause 45: To omit the words "unless the amount of the dividend is "in the same proportion as the amount paid to the company in respect of the shares bears to the total consideration for which the shares were issued" (lines 40 and 41 on page 43 and lines 1 to 3 on page 44), and substitute the words "unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under the constitution of the company or under the terms of issue of the share".

Clause 46: To insert, after the word "shares" (line 30 on page 44), the words ", wholly or partly,".

(c) shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and

To omit paragraph (c) (lines 4 to 7 on page 45).

Clause 47: To omit paragraph (b) of subclause (2) (line 23 on page 45), and substitute the following paragraph:

(b) To be available to all shareholders or all shareholders of the same class on the same terms.

To omit from subclause (3) the words " will satisfy, or is satisfying," (line 26 on page 45), and substitute the word "satisfies".

To add after subclause (3) (after line 26 on page 45), the following subclauses:

(4) Subject to **subsection (5)** of this section, a discount accepted by a shareholder under a discount scheme approved under this section is not a distribution for the purposes of this Act.

(5) Where—

(a) A discount is accepted by a shareholder under a scheme approved or continued by the board; and

(b) At the time the scheme was approved or the discount was offered, the board ceased to be satisfied on reasonable grounds that the company would satisfy the solvency test—

the provisions of **section 48** of this Act shall apply in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorised.

Clause 48: To omit subclause (2) (lines 15 to 28 on page 46), and substitute the following subclauses:

(2) If, in relation to a distribution made to shareholders,—

(a) The procedure set out in **section 44** or **section 58A** or **section 61A** of this Act, as the case may be, has not been followed; or

(b) Reasonable grounds for believing that the company would satisfy the solvency test in accordance with **section 44** or **section 58A** or **section 61A** of this Act, as the case may be, did not exist at the time the certificate was signed—

a director who—

(c) Failed to take reasonable steps to ensure the procedure was followed; or

(d) Signed the certificate, as the case may be,—

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.

(2A) If, by virtue of **section 44 (3)** or **section 58A (3)** or **section 61A (3)** of this Act, as the case may be, a distribution is deemed not to have been authorised, a director who—

(a) Ceased after authorisation but before the making of the distribution to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made; and

(b) Failed to take reasonable steps to prevent the distribution being made,—

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.

(2B) If, by virtue of **section 47 (5)** of this Act, a distribution is deemed not to have been authorised, a director who failed to take reasonable steps to prevent the distribution being made is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from shareholders.

Clause 49: Subclause (1): To omit the words "or redeem shares issued by it" (line 1 on page 47), and substitute the words "shares issued by it or redeem shares under **section 58** of this Act, as the case may be,".

Subclause (2): To omit the words "or redeemed shares" (lines 10 and 11 on page 47), and substitute the words "shares or redeemed shares under **section 58** of this Act, as the case may be,".

Subclause (3): To insert after the word "distribution" (line 27 on page 47), the words "by the amalgamated company to that shareholder, whether or not that shareholder becomes a shareholder of the amalgamated company".

Clause 50: Subclause (1): To omit the word "and" (line 36 on page 47), and substitute the expression ", **section 86**, and **sections**".

Subclause (2): To omit the number "**52**" (line 3 on page 48), and substitute the number "**51**".

To add (after line 4 on page 48), the following subclauses:

(3) Within 10 working days of the purchase or acquisition of the shares, the board of the company must ensure that notice in the prescribed form of the purchase or acquisition is delivered to the Registrar for registration.

(4) If the board of a company fails to comply with **subsection (3)** of this section, every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (2)** of this Act.

Clause 51: To insert in subclause (2) after the expression "section 52" (line 10 on page 48), the expression "or **section 54A** or **section 54C**".

Clause 52: Subclause (1): To omit the words "An offer to acquire the shares must be—" (lines 25 and 26 on page 48), and substitute the words "The board of a company may make an offer to acquire shares issued by the company if the offer is—".

To omit from subparagraph (ii) of paragraph (b) the word "Is" (line 9 on page 49), and substitute the words "That is".

To insert as subclause (1A) (after line 11 on page 49), the following subclause:

(1A) Where an offer is made in accordance with **subsection (1) (a)** of this section—

(a) The offer may also permit the company to acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and

(a) The board ceases to be satisfied that the acquisition in question is in the best interests of the company; or

(b) The board ceases to be satisfied that the terms of the offer and the consideration offered for the shares are fair and reasonable to the company; or

Clause 53: Subclause (3A): To omit this subclause (lines 3 to 13 on page 51), and substitute the following subclause:

(3A) A board must not make an offer under **section 52 (1) (b) (ii)** of this Act if, after the passing of a resolution under **subsection (1)** of this section and before the making of the offer to acquire the shares, the board ceases to be satisfied that—

(a) The acquisition is of benefit to the remaining shareholders; or

(b) The terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.

Subclause (5): To omit the words "and not more than 30 working days" (lines 18 and 19 on page 51), and substitute the words "working days and not more than 12 months".

Subclause (5A): To insert, after the word "shares" (line 26 on page 51), the words "quoted on the Exchange".

Clause 54: To insert as paragraph (ab) (after line 13 on page 52), the following paragraph:

(ab) The nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and

New clauses inserted: To insert as *clauses 54A to 54C* (after line 19 on page 52), the following clauses:

54A. Stock exchange acquisitions subject to prior notice to shareholders—(1) The board of a company may make offers on a stock exchange to all shareholders to acquire shares only if it has previously resolved—

(a) To acquire, by means of offers on a stock exchange to all shareholders, not more than a specified number of shares; and

(b) That the acquisition is in the best interests of the company and its shareholders; and

(c) That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and its shareholders; or

(d) That it is not aware of any information that will not be disclosed to shareholders—

(i) Which is material to an assessment of the value of the shares; and

(ii) As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

(2) The resolution must set out in full the reasons for the directors' conclusions.

(3) The directors who vote in favour of a resolution required by **subsection (1)** of this section must sign a certificate as to the matters set out in that subsection and may combine it with the certificate required by section 44 of this Act.

(4) A board must not make an offer under **subsection (1)** of this section if the number of shares to be acquired together with any shares already acquired would exceed the maximum number of shares the board has resolved to acquire under that subsection.

(5) A board must not make an offer under **subsection (1)** of this section if, after the passing of a resolution under that subsection and before the making of the offer to acquire the shares,—

(a) The board ceases to be satisfied that the acquisition is in the best interests of the company and its shareholders; or

(b) The board ceases to be satisfied that the terms of the offer and the consideration offered for the shares are fair and reasonable to the company and its shareholders; or

(c) The board becomes aware of any information that will not be disclosed to shareholders—

(i) Which is material to an assessment of the value of the shares; or

(ii) As a result of which the terms of the offer and consideration offered for the shares would be unfair to shareholders accepting the offer.

(6) Before an offer is made pursuant to a resolution under **subsection (1)** of this section, the company must send to each shareholder a disclosure document that complies with **section 54B** of this Act.

(7) The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.

(8) A shareholder or the company may apply to the Court for an order restraining the proposed acquisition on the grounds that—

(a) It is not in the best interests of the company or the shareholders; or

(b) The terms of the offer and, if it is disclosed, the consideration offered for the shares are not fair and reasonable to the company or the shareholders.

(9) Every director who fails to comply with **subsection (3)** of this section commits an offence and is liable on conviction to the penalty set out in **section 320 (1)** of this Act.

(10) If the board of a company fails to comply with **subsection (5)** of this section every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (1)** of this Act.

54B. Disclosure document—(1) For the purposes of **section 54A** of this Act, a disclosure document is a document that sets out—

(a) The maximum number of shares that the board has resolved to acquire under **section 54A (1)** of this Act; and

(b) The nature and terms of the offer; and

(c) The nature and extent of any relevant interest of any

(2) Nothing in **subsection (1)** of this section requires the disclosure of the consideration the board proposes to offer to acquire the shares.

54C. Stock exchange acquisitions not subject to prior notice to shareholders—(1) The board of a company may acquire shares on a stock exchange from its shareholders if the following conditions are satisfied:

(a) That, prior to the acquisition, the board of the company has resolved—

(i) That the acquisition in question is in the best interests of the company and the shareholders; and

(ii) That the terms of and consideration for the acquisition are fair and reasonable to the company; and

(iii) That it is not aware of any information that is not available to shareholders—

(A) That is material to an assessment of the value of the shares; and

(B) As a result of which the terms of and consideration for the acquisition are unfair to shareholders from whom any shares are acquired; and

(b) That the number of shares acquired together with any other shares acquired under this section in the preceding 12 months does not exceed 5 percent of the shares in the same class as at the date 12 months prior to the acquisition of the shares.

(2) Within 10 working days after the shares are acquired, the company must send to each shareholder a notice containing the following particulars:

(a) The class of shares acquired:

(b) The number of shares acquired:

(c) The consideration paid or payable for the shares acquired:

(d) The identity of the seller and, if the seller was not the beneficial owner, the identity of the beneficial owner, if known to the company.

(3) If a company fails to comply with **subsection (2)** of this section—

(a) The company commits an offence and is liable on conviction to the penalty set out in **section 320 (1)** of this Act; and

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (1)** of this Act.

Clause 58: Subclause (2): To omit the words "Unless the shareholders in general meeting otherwise agree, a company must not exercise an option to acquire" (lines 11 and 12 on page 55), and substitute the words "Unless the shareholders of the company otherwise agree, a company must not redeem".

Subclause (4): To omit the word "may" (line 27 on page 55), and substitute the word "must".

To omit subclause (b) (lines 34 to 41 on page 55), and substitute the following subclause:

(6) A company must not exercise an option to redeem shares under **subsection (1)** of this section if, after the passing of a resolution under that subsection and before the exercise of the option to redeem the shares, the board ceases to be satisfied that—

(a) The redemption of the shares is in the best interests of the company; or

(b) The consideration for the exercise of the option is fair and reasonable to the company.

Clause 58A: To omit from subclause (3) the words "reasonable grounds cease to exist for believing" (lines 15 and 16 on page 56), and substitute the words "the board ceases to be satisfied on reasonable grounds".

Clause 58B: To omit subclause (4) lines 39 and 40 on page 56 and lines 2 to 8 on page 57), and substitute the following subclause:

(4) A company must not exercise an option to redeem shares under **section 58 (1) (b) (ii)** of this Act if, after the passing of a resolution under **subsection (1)** of this section and before the option is exercised, the board ceases to be satisfied that—

(a) The redemption of the shares is of benefit to the remaining shareholders; or

(b) The consideration for the redemption of the shares is fair or reasonable to the remaining shareholders.

Clause 59: Subclause (1): To omit paragraph (c) (lines 25 to 28 on page 58), and substitute the following paragraph:

(c) From the date of redemption the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

Subclauses (2) and (3): To omit these subclauses (lines 29 to 37 on page 58), and substitute the following subclause:

(2) A redemption under this section—

(a) Is not a distribution for the purposes of **sections 44** and **45** of this Act; but

(b) Is deemed to be a distribution for the purposes of **subsections (1)** and **(3)** of **section 48** of this Act.

Clause 60: Subclause (1): To omit paragraph (c) (lines 4 to 6 on page 59), and substitute the following paragraph:

(c) From that date the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

Subclause (2) and (3): To omit these subclauses (lines 7 to 15 on page 59), and substitute the following subclause:

"(2) A redemption under this section—

"(a) Is not a distribution for the purposes of **sections 44** and **45** of this Act; but

"(b) Is deemed to be a distribution for the purposes of **subsections (1)** and **(3)** of **section 48** of this Act.

Clause 61: Subclause (1): To omit the words "or by a subsidiary"

or

"(c) The financial assistance is given in accordance with **section 63A** of this Act."

Subclause (2): To omit the expression "**(b)**" (line 17 on page 61).

Subclause (5): To omit this subclause (lines 30 to 38 on page 61), and substitute the following subclause:

(5) A company must not give financial assistance under **subsection (1)** of this section if, after the passing of a resolution under **subsection (2)** of this section and before the assistance is given, the board ceases to be satisfied that—

(a) The giving of the assistance is in the best interests of the company; or

(b) The terms and conditions under which the assistance is proposed are fair and reasonable to the company.

Clause 61A: Subclause (3): To omit the words "and before the financial assistance is given, reasonable grounds ceased to exist for believing" (lines 16 and 17 on page 62), and substitute the words "the board ceases to be satisfied on reasonable grounds".

To omit subclause (6) (lines 27 to 33 on page 62), and substitute the following subclause:

(6) In applying the solvency test for the purposes of this section,—

"Assets" excludes all amounts of financial assistance given by the company at any time in the form of loans; and

"Liabilities" includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance.

Clause 62: Subclauses (1) and (4): To omit the expression "**(ii)**" (line 35 on page 62, and line 21 on page 63).

Subclause (3A): To omit this subclause (lines 10 to 19 on page 63) and substitute the following subclause:

(3A) A company must not give financial assistance under **section 61 (1) (b)** of this Act if, after the passing of a resolution under **subsection (1)** of this section and before the financial assistance is given, the board ceases to be satisfied that—

(a) The giving of the financial assistance is of benefit to those shareholders not receiving the assistance; or

(b) The terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving it.

Subclause (5): To omit the words "and not more than 30 working days" (lines 24 and 25 on page 63), and substitute the words "working days and not more than 12 months".

New clause inserted: To insert as *clause 63A* (after line 22 on page 64), the following clause:

63A. Financial assistance not exceeding 5 percent of shareholders funds—(1) Financial assistance may be given under **section 61 (1) (c)** of this Act, only if—

(a) The amount of the financial assistance, together with any other financial assistance given by the company

pursuant to this paragraph, repayment of which remains outstanding, would not exceed 5 percent of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with **section 10** of the Financial Reporting Act **1993**, and the company receives fair value in connection with the assistance; and

(b) Within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:

(i) The class and number of shares in respect of which the financial assistance has been provided:

(ii) The consideration paid or payable for the shares in respect of which the financial assistance has been provided:

(iii) The identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner:

(iv) The nature and, if quantifiable, the amount of the financial assistance.

(2) If a company fails to comply with **subsection (1) (b)** of this section—

(a) The company commits an offence and is liable on conviction to the penalty set out in **section 320 (1)** of this Act; and

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (1)** of this Act.

Clause 64: To omit from the marginal note the word "**Enforcability**" (line 23 on page 64), and substitute the word "**Enforceability**".

To insert, after the expression "**section 63**" (line 24 on page 64), the expression "or **section 63A**".

Clause 66: To insert as subclause (4A) (after line 37 on page 65), the following subclause:

(4A) Where a company on reregistration under this Act in accordance with **Part IV** of the Companies (Ancillary Provisions) Act **1993** held shares in another company and was a subsidiary of that other company—

(a) The company may, notwithstanding **subsection (1)** of this section, continue to hold those shares; but

(b) The exercise of any voting rights attaching to those shares shall be of no effect.

Clause 68: Subclause (4): To insert after the expression "**subsection (2)**" (line 34 on page 67), the words "and, if applicable, **subsection (3)**".

To omit from paragraph (b) the words "its approval" (line 5 on page 68), and substitute the words "the resolution being passed".

(a) The board resolves, within 30 working days of such date as may be specified for the purpose in the Order in Council approving the system, to refuse or delay registration of the transfer, and the resolution sets out in full the reasons for doing so; and

(b) Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and

(c) The Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated.

(2) Subject to **subsection (1)** of this section, if a company fails to enter or cause to be entered the name of the transferee on the share register on a transfer of shares under a system approved under section 7 of the Securities Transfer Act 1991,—

(a) The company commits an offence and is liable on conviction to the penalty set out in **section 320 (1)** of this Act; and

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (1)** of this Act.

Clause 70: Subclause (1): To omit this subclause (lines 27 to 30 on page 68), and substitute the following subclause:

(1) A company must maintain a share register that records the shares issued by the company and states—

(a) Whether, under the constitution of the company or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

(b) Where any document that contains the restrictions or limitations may be inspected.

Clause 78: Subclause (3): To insert after the expression "**subsection (1)**" (line 15 on page 73), the expression "or **subsection (2)**".

Subclause (6): To omit the word "Where" (line 38 on page 73), and substitute the words "Subject to **subsection (1)** of this section, where".

PART VI

SHAREHOLDERS AND THEIR RIGHTS AND OBLIGATIONS

Clause 79: To omit from paragraph (a) the word "registered" (line 25 on page 74), and substitute the words "whose name is entered".

To add (after line 30 on page 74), the following paragraph:

(c) Until the person's name is entered in the share register, a person who is entitled to have that person's name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company.

Clause 80A: To omit from subclauses (3) and (5) the words "pursuant to" (lines 38 and 39 on page 76 and lines 12 and 13 on page 77), and substitute the words "in accordance with".

Clause 80B: Subclause (1): To insert in subparagraph (ii) of paragraph (b), after the word "under" (line 37 on page 77), the words "this Act in accordance with".

To omit from paragraph (c) the words "under Part IV of the Companies (Ancillary Provisions) Act **1992** or change or registration

under the Companies Act 1955" (lines 5 to 8 on page 78), and substitute the words ", or change of registration".

Subclause (5): To insert in paragraphs (b) and (c), after the word "under" (line 34 on page 78 and line 2 on page 79), the words "this Act in accordance with".

Clause 81: To omit subclause (1) (lines 32 to 38 on page 79), and substitute the following subclause:

(1) The liability of the personal representative of the estate of a deceased person, who is registered as the holder of a share comprised in the estate, does not, in respect of that share, exceed the proportional amount available from the assets of the estate, after satisfaction of prior claims, for distribution among creditors of the estate, being assets which, at the time when any demand is made for the satisfaction of the liability, are held by that personal representative on the same trusts as apply to that share.

Clause 82: To omit subclause (1) (lines 3 to 9 on page 80), and substitute the following subclause:

(1) The liability of the assignee of the property of a bankrupt, who is registered as the holder of a share which is comprised in the property of the bankrupt, does not, in respect of that share, exceed the proportional amount available from the property of the estate of the bankrupt, after satisfaction of prior claims, for distribution among creditors of the estate, being property of the bankrupt which, at the time when demand is made for the satisfaction of the liability, is vested in the assignee.

Clause 85: To omit from subclause (1) (b) the word "transition" (line 20 on page 82), and substitute the word "transaction".

Clause 86: Subclause (1): To omit from paragraph (c) the expression "**54**" (line 38 on page 82), and substitute the expression "**54C**".

To omit paragraph (e) (lines 4 to 7 on page 83), and substitute the following paragraph:

(e) Financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with **sections 61** to **63A** of this Act:

Subclause (4): To omit this subclause (lines 18 to 23 on page 83), and substitute the following subclauses:

(4) For the purposes of this section, no agreement or concurrence of the entitled persons is valid or enforceable unless the agreement or concurrence is in writing.

(5) An agreement or concurrence may be—

(a) A separate agreement to, or concurrence in, the particular exercise of the power referred to; or

(b) An agreement to, or concurrence in, the exercise of the power generally or from time to time.

(6) An entitled person may at any time, by notice in writing to the company, withdraw from any agreement or concurrence referred to in **subsection (5) (b)** of this section and any such notice shall have effect accordingly.

set out in **section 321 (1)** of this Act.

Clause 86A: Subclause (3): To omit the words "reasonable grounds cease to exist for believing" (lines 34 and 35 on page 83), and substitute the words "the board ceases to be satisfied on reasonable grounds".

To insert as subclause (4A) (after line 40 on page 83), the following subclause:

(4A) In applying the solvency test for the purposes of **section 86 (1) (e)** of this Act—

(a) "Assets" excludes all amounts of financial assistance given by the company at any time in the form of loans; and

(b) "Liabilities" includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of the financial assistance.

Clause 89: To insert in subclause (2) (d) after the word "Arrange" (line 25 on page 86), the words ", before taking the action concerned,".

To omit from subclause (2) (e) the word "Given" (line 29 on page 86), and substitute the word "Give".

Clause 90: Subclauses (3) and (4): To omit the word "shareholders" (lines 4 and 10 on page 87), and substitute the words "a shareholder".

Clause 98: To omit from subclause (1) the expression "**3**" (line 3 on page 92), and substitute the expression "**(1A)**".

Clause 100: To omit this clause (lines 31 to 35 on page 92 and lines 1 to 13 on page 93), and substitute the following clause:

100. Resolution in lieu of meeting—(1) Subject to **subsections (2)** and **(3)** of this section, a resolution in writing signed by not less than 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.

(2) A resolution in writing that—

(a) Relates to a matter that is required by this Act or by the constitution to be decided at a meeting of the shareholders of a company; and

(b) Is signed by the shareholders specified in **subsection (3)** of this section—

is made in accordance with this Act or the constitution of the company.

(3) For the purposes of **subsection (2) (b)** of this section, the shareholders are,—

(a) In the case of a resolution under **section 186 (2)** of this Act, all the shareholders who are entitled to vote on the resolution:

(b) In any other case, the shareholders referred to in **subsection (1)** of this section.

(4) It shall not be necessary for a company to hold an annual meeting of shareholders under **section 98** of this Act if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with **subsections (2)** and **(3)** of this section.

(5) Within 5 working days of a resolution being passed under this section, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed.

(6) A resolution may be signed under **subsection (1)** or **subsection (2)** of this section without any prior notice being given to shareholders.

(7) If a company fails to comply with **subsection (5)** of this section—

(a) The company commits an offence and is liable on conviction to the penalty set out in **section 320 (1)** of this Act:

(b) Every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (1)** of this Act.

Clause 103: To omit from subclause (4) the number "20" (line 36 on page 94), and substitute the number "30".

PART VII

DIRECTORS AND THEIR POWERS AND DUTIES

Clause 104: Subclause (1): To omit from paragraphs (b) and (c) the expression "**260A**" (lines 14 and 28 on page 96).

Subclause (2): To insert after the word "deemed" (line 5 on page 97), the words ", in relation to the exercise of the power or any consideration concerning its exercise,".

Subclause (3): To insert after the word "deemed" (line 14 on page 97), the words "in relation to making any such decision".

To omit the cross-heading "*Self-interest Transactions*" (line 13 on page 103), and substitute the following cross heading:

Transactions Involving Self-interest

Clause 120: To omit from the marginal note the word 'Affect" (line 10 on page 106), and substitute the word "Effect".

Clauses 122 and 122A: To omit these clauses (lines 4 to 21 on page 107), and substitute the following clause:

122. Interested director may vote—Subject to the constitution of the company, a director of a company who is interested in a transaction entered into, or to be entered into, by the company, may—

(a) Vote on a matter relating to the transaction; and

(b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and

(c) Sign a document relating to the transaction on behalf of the company; and

(d) Do any other thing in his or her capacity as a director in relation to the transaction—

as if the director were not interested in the transaction.

Clause 123: To omit subclause (2) (lines 20 to 26 on page 108), and substitute the following subclause:

(2) A director of a company may, unless [illegible]

disclosed must be entered in the interests register.

Clause 124: To omit from subclause (1) the words "pursuant to" (line 3 on page 113), and substitute the words "under this Act in accordance with".

Clause 134: To omit this clause (lines 1 to 21 on page 120), and substitute the following clause:

134. Notice of change of directors—(1) The board of a company must ensure that notice in the prescribed form of—

(a) A change in the directors of a company, whether as the result of a director ceasing to hold office or the appointment of a new director, or both; or

(b) A change in the name or the residential address of a director of a company—

is delivered to the Registrar for registration.

(2) A notice under **subsection (1)** of this section must—

(a) Specify the date of the change; and

(b) Include the full name and residential address of every person who is a director of the company from the date of the notice; and

(c) In the case of the appointment of a new director, have attached the form of consent and certificate required pursuant to **section 128** of this Act; and

(d) Be delivered to the Registrar within 20 working days of—

(i) The change occurring, in the case of the appointment or resignation of a director; or

(ii) The company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address of a director.

(3) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in **section 321 (2)** of this Act.

Clause 137: Subclause (2): To omit the words "or insurance effected" (line 9 on page 124).

Subclause (4): To insert after the word "being" (line 28 on page 124), the words "criminal liability or".

Subclause (5): To insert in paragraph (a), after the word "liability" (line 36 on page 124), the words ", not being criminal liability,".

To omit from paragraph (b) the word "liability" (line 40 on page 124), and substitute the words "liability; or".

To add (after line 40 on page 124), the following paragraph:

(c) Costs incurred by that director or employee in defending any criminal proceedings in which he or she is acquitted.

Subclause (10): To omit this subclause (lines 27 to 31 on page 125).

PART VIII

ENFORCEMENT

Clause 138: To insert in subclause (1), after the word "Act" (line 9 on page 126), the words "or the Financial Reporting Act **1993**".

Clause 139: Subclause (1): To omit the expression "**subsections (2)** and" (line 31 on page 127), and substitute the word "**subsection**".

Clause 140: To omit this clause (lines 35 to 41 on page 128 and lines 1 to 8 on page 129), and substitute the following clause:

140. Costs of derivative action to be met by company—The Court shall, on the application of the shareholder or director to whom leave was granted under **section 139** of this Act to bring or intervene in the proceedings, order that the whole or part of the reasonable costs of bringing or intervening in the proceedings, including any costs relating to any settlement, compromise, or discontinuance approved under **section 142** of this Act, must be met by the company unless the Court considers that it would be unjust or inequitable for the company to bear those costs.

Clause 141: To omit from paragraph (d) the words "its subsidiary" (line 25 on page 129), and substitute the words "the related company".

Clause 142: To omit subclause (2) (lines 6 to 9 on page 130).

Clause 144: To insert after the word "Act" (line 11 on page 132), the words "or the Financial Reporting Act **1993**".

Clause 146: To insert after the word "Act" (line 22 on page 132), the words "or the Financial Reporting Act **1993**".

Clause 149: To omit paragraphs (e), (ea), and (f) of subclause (1) (lines 18 to 23 on page 134), and substitute the following paragraphs:

(e) **Section 53** (which relates to special offers to acquire shares):
(f) **Section 54A** (which relates to stock exchange acquisitions subject to prior notice to shareholders):
(g) **Section 54C** (which relates to stock exchange acquisitions not subject to prior notice to shareholders):
(h) **Section 61** (which relates to the provision of financial assistance by a company to acquire its own shares):
(i) **Section 62** (which relates to special financial assistance):
(j) **Section 63A** (which relates to financial assistance not exceeding 5 percent of shareholders' funds):
(k) **Section 95** (which relates to the alteration of shareholder rights):
(l) **Section 107** (which relates to major transactions).

Clause 151: To omit this clause (lines 20 to 35 on page 136 and lines 1 to 25 on page 137), and substitute the following clause:

151. Information for shareholders—(1) A shareholder may at any time make a written request to a company for information held by the company.

(2) The request must specify the information sought in sufficient detail to enable it to be identified.

(3) Within 10 working days of receiving a request under **subsection (1)** of this section, the company must either—

(a) Provide the information; or
(b) Agree to provide the information within a specified period; or
(c) Agree to provide the information within a specified period

may refuse to provide information if—

(a) The disclosure of the information would or would be likely to prejudice the commercial position of the company; or

(b) The disclosure of the information would or would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or

(c) The request for the information is frivolous or vexatious.

(5) If the company requires the shareholder to pay a charge for the information, the shareholder may withdraw the request, and is deemed to have done so unless, within 10 working days of receiving notification of the charge, the shareholder informs the company—

(a) That the shareholder will pay the charge; or

(b) That the shareholder considers the charge to be unreasonable.

(6) The Court may, on the application of a person who has made a request for information, if it is satisfied that—

(a) The period specified for providing the information is unreasonable; or

(b) The charge set by the company is unreasonable,—

as the case may be, make an order requiring the company to supply the information within such time or on payment of such charge as the Court thinks fit.

(7) The Court may, on the application of a person who has made a request for information, if it is satisfied that—

(a) The company does not have sufficient reason to refuse to supply the information; or

(b) The company has sufficient reason to refuse to supply the information but that other reasons exist that outweigh the refusal,—

the Court may make an order requiring the company to supply the information.

(8) Where the Court makes an order under **subsection (7)** of this section, it may specify the use that may be made of the information and the persons to whom it may be disclosed.

(9) On an application for an order under this section, the Court may make such order for the payment of costs as it thinks fit.

PART IX

ADMINISTRATION OF COMPANIES

New cross-heading: To omit the cross-heading "*Service of Documents on Companies*" (line 11 on page 147), and substitute the following cross-heading:

"*Address for Service*"

Clause 168: To omit from subclause (1) the expression "**(2)**" (line 7 on page 148), and substitute the expression "**(3)**".

Clauses 169 to 171: To omit these clauses (lines 14 to 35 on page 149 and page 150).

PART X

ACCOUNTS AND AUDIT

To omit the heading to Part X (line 2 on page 151), and substitute the heading "ACCOUNTING RECORDS AND AUDIT".

Clause 171A: To omit this clause (lines 5 to 8 on page 151).

Clause 172: To omit paragraphs (c) and (ca) of subclause (1) (lines 22 to 33 on page 151), and substitute the following paragraph:

> (c) Will enable the directors to ensure that the financial statements of the company comply with **section 10** of the Financial Reporting Act **1993** and any group financial statements comply with **section 13** of that Act; and

Clause 173: To omit subparagraphs (ii) and (iii) of paragraph (a) of subclause (2) (lines 6 to 17 on page 153), and substitute the following subparagraph:

> (ii) Will enable the preparation in accordance with the Financial Reporting Act **1993** of the company's financial statements and any group financial statements and any other document required by this Act:

Clauses 174 to 185A: To omit these clauses and the cross-heading above *clause 174* (lines 33 to 37 on page 153, and pages 154 to 165).

Clause 186: To omit from paragraph (b) of subclause (3) the word "general" (line 31 on page 167).

Clause 186A: To omit paragraph (a) (lines 2 to 5 on page 169), and substitute the following paragraph:

> (a) If the auditor is appointed at a meeting of the company, by the company at the meeting or in such manner as the company determines at the meeting:

Clause 190: Subclause (2): To omit this subclause (lines 1 to 3 on page 171), and substitute the following subclause:

> (2) If the directors do not appoint an auditor under **subsection (1)** of this section, the company must appoint the first auditor at a meeting of the company.

To add as subclause (4) (after line 9 on page 171), the following subclause:

> (4) Nothing in **subsection (3)** of this section applies to a company referred to in **section 186 (3)** of this Act.

Clause 193: Subclauses (2) and (3): To omit these subclauses (lines 2 to 28 on page 173), and substitute the following subclause:

> (2) The auditor's report must state the matters required to be stated in an auditor's report under the Financial Reporting Act **1993**.

Clause 195: To add as subclause (2) (after line 24 on page 174), the

Clause 196B: To omit paragraphs (a) to (c) of subclause (1) (lines 17 to 32 on page 177), and substitute the following paragraphs:

(a) Financial statements for the most recently completed accounting period completed and signed in accordance with **section 10** of the Financial Reporting Act **1993** and any group financial statements for the most recently completed accounting period completed and signed in accordance with **section 13** of that Act; and

(b) Any auditor's report on those financial statements and any group financial statements required under **Part X** of this Act.

Clause 197: Subclause (1): To omit paragraph (b) (lines 12 to 24 on page 178), and substitute the following paragraph:

(b) Include financial statements for the accounting period completed and signed in accordance with **section 10** of the Financial Reporting Act **1993** and any group financial statements for the accounting period completed and signed in accordance with **section 13** of that Act; and

To omit from paragraph (j) the word "paid" (lines 12 and 14 on page 179), and substitute the word "payable".

New subclause inserted: To insert as *subclause (1A)* (after line 19 on page 179), the following subclause:

(1A) A company that is required to include group financial statements in its annual report must include, in relation to its subsidiaries, the information specified in **paragraphs (d)** to **(j)** of **subsection (1)** of this section.

Clause 198: To omit this clause (lines 23 to 41 on page 179 and lines 1 to 24 on page 180).

Clause 199: Subclause (1): To omit the expression "**(7)**" (line 7 on page 182), and substitute the expression "**(8)**".

Subclause (3): To omit the word "account" (line 15 on page 182), and substitute the word "accountant".

PART XII

AMALGAMATIONS

Clause 205: To omit paragraph (f) of subclause (1) (lines 36 and 37 on page 185).

Clause 206: Subclause (3): To add to paragraph (c) (line 38 on page 188), the words ", if it has one".

Subclause (6): To omit the word "and" where it first appears (line 3 on page 190), and substitute the word "an".

Clause 207: Subclause (1): To omit from paragraph (b) (i) the word "subsidiary" (line 13 on page 190), and substitute the words "company, other than the amalgamated company,".

Subclause (2): To insert after the word "company" (line 33 on page 190), the words ", if it has one,", and after the word "cancelled" (line 36 on page 190), the words ", if it has one".

Subclause (6): To omit the expression "**(4)**" (line 14 on page 191), and substitute the expression "**(5)**".

Clause 208: To omit from paragraph (b) the expression "**(4)**" (line 23 on page 191), and substitute the expression "**(5)**".

To insert in paragraph (c), after the word "company" (line 27 on page 191), the words ", if it has one".

To insert as paragraph (ca) (after line 27 on page 191), the following paragraph:

(ca) If the amalgamated company is a new company or the amalgamation proposal provides for a change of the name of the amalgamated company, a copy of the notice reserving the name of the company; and

Clause 210: To omit paragraph (h) (lines 22 to 25 on page 193), and substitute the following paragraph:

(h) Any provisions of the amalgamation proposal that provide for the conversion of shares or rights of shareholders in the amalgamating companies have effect according to their tenor.

PART XIII

COMPROMISES WITH CREDITORS

Clause 214: To add to *subclause (2)* (line 9 on page 196), the words "or such other information as may be specified to enable the creditor or shareholder to propose a compromise".

PART XIV

LIQUIDATIONS

Clause 219: To omit the words "Part of this" (line 26 on page 204).

To insert (after line 27 on page 204), the following definition:

"Creditor" means a person who, in a liquidation, would be entitled to claim in accordance with **section 266** of this Act that a debt is owing to that person by the company; but does not include a secured creditor:

To add as subclause (2) (after line 7 on page 205), the following subclause:

(2) For the purposes of this Act, the power to appoint a liquidator of a company includes the power to appoint 2 or more persons as liquidators of a company.

Clause 220: Subclause (3): To omit this subclause (lines 24 to 31 on page 205), and substitute the following subclause:

(3) An Official Assignee may be appointed liquidator of a company only—

(a) If the special resolution passed in accordance with **paragraph (a)** of **subsection (2)** of this section is passed by reason of the Official Assignee exercising voting rights attaching to shares in the company of—

(i) A person who has been adjudged bankrupt; or

(ii) Another company of which the Official Assignee is liquidator; or

(b) By the Court.

New clause inserted: To insert as clause 220AA (after line 4 on page

Clause 220A: Subclause (1): To omit the expression "**(4)**" (line 7 on page 206), and substitute the expression "**(6)**".

Subclause (2): To omit this subclause (lines 21 to 28 on page 206), and substitute the following subclauses:

(2) Notice in writing of a meeting of creditors must be given to every known creditor and,—

(a) If **paragraph (b)** of **subsection (2)** of **section 225** of this Act applies, must be given together with the report and notice referred to in that paragraph; and

(b) If the liquidator receives a notice under **section 220C (1) (b) (iii)** of this Act requiring a meeting of creditors to be called, must be given forthwith after receiving the notice.

(2A) Public notice of the meeting of creditors must also be given by the liquidator not less than 5 working days before the date of the meeting.

(2B) Subject to **subsection (2) (b)** of this section, a meeting of creditors must be held,—

(a) In the case of a liquidator appointed under **paragraph (a)** or **paragraph (b)** of **subsection (2)** of **section 220** of this Act, within 10 working days of the liquidator's appointment; or

(b) In the case of a liquidator appointed under **paragraph (c)** of **subsection (2)** of **section 220** of this Act, within 30 working days of the liquidator's appointment; or

(c) In either case, within such longer period as the Court may allow.

Subclause (5): To insert after the word "must" (line 40 on page 206), the word "forthwith".

Clause 220B: To omit the expression "**section 220 (4)**" (line 23 on page 207), and substitute the expression "**220A (6)**".

To omit the expression "**(2)**" (line 35 on page 207), and substitute the expression "**(1)**".

Clause 220C: To omit subclause (2) (lines 19 to 21 on page 208), and substitute the following subclause:

(2) Notice under **subsection (1) (b)** of this section must be given to every know creditor—

(a) If **paragraph (b)** of **subsection (2)** of **section 225** of this Act applies, together with the report and notice referred to in that paragraph; or

(b) If **paragraph (b)** of **subsection (2)** of **section 225** of this Act is not applicable, at the time the liquidator would have been required to send the report and notice referred to in that paragraph if it were applicable.

Clause 223: To omit this clause (lines 2 to 5 on page 211), and substitute the following clause:

223. Completion of liquidation—The liquidation of a company is completed when the liquidator—

(a) Complies with **section 227 (1) (b)** of this Act; or

(b) Delivers to the Registrar for registration—

(i) A copy of any order made by the Court under **section 227 (2) (a)** of this Act; or

(ii) A copy of any order made by the Court under **section 227 (2) (b)** of this Act together with any documents required to comply with the order—

as the case may be.

Clause 223B: Subclause (2): To omit the word "personal" (lines 17 and 21 on page 212).

To add as subclause (5) (after line 35 on page 212), the following subclause:

(5) Noting in this section limits or affects **section 255** of this Act.

Clause 223C: Subclauses (1) and (2): To omit these subclauses (lines 37 to 40 on page 212 and lines 1 to 13 on page 213), and substitute the following subclauses:

(1) Subject to **subsection (6)** of this section, where—

(a) Property of a company is taken in an execution process; and

(b) Before completion of the execution process the officer charged with the execution process receives notice that a liquidator of the company has been appointed—

he or she must, on being required by the liquidator to do so, deliver or transfer the property and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the property, as the case may be, to the liquidator.

(2) The costs of the execution process are a first charge on any property or money delivered or transferred to the liquidator under **subsection (1)** of this section and the liquidator may sell all or some of the property to satisfy that charge.

Subclause (3): To omit from paragraph (a) the word "Personal" (line 15 on page 213)

Clause 224: Subclause (1): To omit the expression "**subsection (2)** of this section" (lines 16 and 17 on page 214), and substitute the expression "**section 224A** of this Act,".

Subclause (2): To omit this subclause (lines 27 to 30 on page 214).

New clause inserted: To insert as clause 224A (after line 30 on page 214), the following clause:

224A. Liquidator not required to act in certain cases—Notwithstanding any other provisions of this Part of this Act,—

(a) Except where the charge is surrendered or taken to be surrendered or redeemed under **section 268** of this Act, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge:

(b) Where—

(i) A company is put into liquidation under **section 220 (2) (c)** of this Act; and

(ii) The Official Assignee is the liquidator of the company; and

(iii) The company has no assets available for

following paragraph:

(b) Within the applicable period referred to in **subsection (2A)** of this section—

(i) Prepare a list of every known creditor of the company; and

(ii) Prepare and send to every known creditor, every shareholder, and the Registrar for registration,—

(A) A report containing a statement of the company's affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and

(B) A notice explaining the right of a creditor or shareholder to require the liquidator to call a meeting of creditors under **section 277** of this Act; and

To insert as subclause (2A) (after line 14 on page 216), the following subclause:

(2A) For the purposes of **subsection (2) (b)** of this section "applicable period" means,—

(a) In the case of a liquidator appointed under **paragraph (a)** or **paragraph (b)** of **subsection (2)** of **section 220** of this Act, 5 working days after the liquidator's appointment; or

(b) In the case of a liquidator appointed under **paragraph (c)** of **subsection (2)** of **section 220** of this Act, 25 working days after the liquidator's appointment; or

(c) In either case, such longer period as the Court may allow.

Subclauses (3) and (4): To omit the expression "**(c)**" (lines 18 and 24 on page 216), and substitute the expression "**(b)**".

Clause 226: To omit this clause (lines 31 to 40 on page 216 and lines 1 to 12 on page 217), and substitute the following clause:

226. Duties in relation to accounts—(1) Subject to **subsection (2)** of this section, the liquidator of a company must—

(a) Keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records in the company, to be inspected by—

(i) Any liquidation committee appointed under **section 277** of this Act, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and

(ii) If the Court so orders, a creditor or shareholder; and

(b) Retain the accounts and records of the liquidation and of the company for not less than 1 year after completion of the liquidation.

(2) The Registrar may, whether before or after the completion of the liquidation,—

(a) Authorise the disposal of any accounts and records; and

(b) Require accounts or records to be retained for longer than 1 year after the completion of the liquidation.

Clause 227: To omit from subclause (1) the words "the liquidation is completed" (line 30 on page 217), and substitute the words "completing his or her duties in relation to the liquidation".

To omit from paragraph (a) the words "known creditor" (line 32 on page 217), and substitute the words "creditor whose claim has been admitted".

To insert in paragraph (a) (iii) before the word "grounds" (line 12 on page 218), the word "applicable".

Clause 230: To insert in paragraph (c) of subclause (3), after the word "liquidator" (line 13 on page 222), the words "or by a barrister or solicitor acting on behalf of the liquidator".

Clause 231A: To omit subclause (3) (lines 33 to 37 on page 223), and substitute the following subclause:

(3) Nothing in this section applies to a company that was put into liquidation pursuant to **paragraph (a)** or **paragraph (b)** of **subsection (2)** of **section 220** of this Act if—

(a) The board of the company passed a resolution of the kind referred to in **section 220A (6)** of this Act; and

(b) **Section 220B** of this Act does not apply in relation to the company.

Clause 231C: To insert in subclauses (1) and (3), after the word "liquidator" (lines 9 and 14 on page 224), the words "or a barrister or solicitor acting on behalf of the liquidator".

Clause 231D: Subclause (2): To insert after the word "liquidator" (line 24 on page 224), the words "or a barrister of solicitor acting on behalf of the liquidator".

To add as subclauses (3) and (4) (after line 29 on page 224), the following subclauses:

(3) Where a person is examined under **subsection (2) (a)** of this section—

(a) The examination must be recorded in writing; and

(b) The person examined must sign the record.

(4) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under this Part of this Act or **section 328** of this Act.

Clause 232: To omit from subclause (1) the expression "**section 231**" (line 32 on page 224), and substitute the expression "**section 231D**".

Clause 233: To add as subclause (2) (after line 25 on page 226), the following subclause:

(2) A call made under **subsection (1) (a)** of this section must be made in writing.

Clause 234: To insert in subclause (3A), after the word "notice" (line 9 on page 227), the words "in writing".

Clause 236: To omit from paragraph (c) of subclause (2) the word "of" (line 32 on page 228), and substitute the word "to".

Clause 237: To insert in subclause (2), after the word "liable" (line 19 on page 229), the words "on conviction".

Clause 240: To insert in paragraphs (a) and (b) of subclause (1), after the word "The" (lines 11 and 12 on page 231), the word "retail".

Clause 246: To insert as subclause (6B) (after line 30 on page 236), the following subclause:

(6B) A liquidator appointed under **subsection (6A)** of this section must, within 10 working days of being appointed or being notified of his or her appointment, deliver a notice of his or her appointment to the Registrar for registration.

Clause 247: To omit from subclause (1) the words "committee of inspection" (line 2 on page 237), and substitute the words "liquidation committee".

Clause 255: To omit from paragraph (c) of subclause (4) the word "company" (line 11 on page 248), and substitute the words

"company—
unless that other person knew that that was the intent or purpose of the company."

Clause 257: To omit from subclause (5) the expression "**subsection (1)**" (line 34 on page 249), and substitute the expression "**subsection (1) (a)** and **subsection (4)**", and to omit the words "that subsection" (line 36 on page 249), and substitute the words "**subsection (1)** of this section".

Clause 259: To omit from paragraph (f) the words "a declaration or" (lines 37 and 38 on page 251), and substitute the word "an".

Clause 260: Subclause (1): To omit the words "a declaration or" (lines 2 and 3 on page 252), and substitute the word "an".

To omit paragraph (c) (lines 8 to 10 on page 252), and substitute the following paragraph:

(c) Without knowledge of the circumstances under which the property was acquired from the company.

Subclause (1A): To omit the words "a declaration or" (line 12 on page 252), and substitute the word "an".

Subclause (3): To omit this subclause (lines 32 and 33 on page 252), and substitute the following subclause:

(3) Nothing in the Land Transfer Act 1952 restricts the operation of this section or **sections 255** to **259** of this Act.

Clause 260A: To omit this clause (lines 36 to 38 on page 252 and lines 1 to 31 on page 253), and substitute the following clause:

260A. Transactions at undervalue—(1) Where—

(a) A transaction was entered into by a company within the specified period; and

(b) The value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and

(c) When the transaction was entered into, the company—

(i) Was unable to pay its due debts; or

(ii) Was engaged, or about to engage, in business for which its financial resources were unreasonably small; or

(iii) Incurred an obligation knowing that the company would not be able to perform the obligation when required to do so; and

(d) When the transaction was entered into, the other party to the transaction knew or ought to have known of the

matter referred to in **subparagraph (i)** or **subparagraph (ii)** or **subparagraph (iii)**, as the case may be, of **paragraph (c)** of this subsection—

the liquidator may recover from any other party to the transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company.

(2) Where—

(a) A transaction was entered into by a company within the specified period; and

(b) The value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and

(c) The company became unable to pay its due debts as a result of the transaction; and

(d) When the transaction was entered into, the other party to the transaction knew or ought to have known that the company would become unable to pay its due debts as a result of the transaction—

the liquidator may recover from any other party to the transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company.

(3) For the purposes of this section,—

(a) "Transaction" includes the giving of a guarantee by a company:

(b) "Specified period" means—

(i) The period of a year before the commencement of the liquidation; and

(ii) In the case of a company that was put into liquidation by the Court, the period of a year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which the order of the Court was made.

Clause 261: To insert after the word "director" (lines 7, 13, 27, and 34 on page 255), the words "of the company".

Clause 262: To insert after the word "director" (lines 12 and 19 on page 257), the words "of the company".

Clause 263: To omit paragraph (a) of subclause (1) (lines 22 to 32 on page 258), and substitute the following paragraph:

(a) A company that is in liquidation and is unable to pay all its debts has failed to comply with—

(i) **Section 172** of this Act (which relates to the keeping of accounting records); or

(ii) **Section 10** of the Financial Reporting Act **1993** (which relates to the preparation of financial statements); and

(3B) The costs of making a claim under **subsection (1)** of this section or producing a document under **subsection (2)** of this section must be met by the creditor making the claim.

Clause 268: To insert as subclause (1A) (after line 33 on page 264), the following subclause:

(1A) A secured creditor may exercise the power referred to in **paragraph (a)** of **subsection (1)** of this section whether or not the secured creditor has exercised the power referred to in **paragraph (b)** of that subsection.

Subclause (2): To insert after the word "may" (line 36 on page 264), the words ", unless the liquidator has accepted a valuation and claim by the secured creditor under **subsection (5)** of this section,".

Subclause (6): To insert after the word "may" (line 37 on page 265), the words "unless the secured creditor has realised the property".

Subclause (7): To omit this subclause (lines 39 to 41 on page 265 and lines 1 and 2 on page 266), and substitute the following subclause:

(7) The liquidator may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to—

(a) Elect which of the powers referred to in **subsection (1)** of this section the creditor wishes to exercise; and

(b) If the creditor elects to exercise the power referred to in **paragraph (b)** or **paragraph (c)** of that subsection, exercise the power within that period.

Subclause (9): To insert after the word "section" (line 11 on page 266), the words "or who is taken as having surrendered a charge under **subsection (8)** of this section".

Clause 272: To omit subclause (2) (lines 15 to 21 on page 269), and substitute the following subclause:

(2) For the purposes of **subsection (1)** of this section, the present value of a debt is to be determined by deducting from the amount of the debt interest at the prescribed rate (within the meaning of section 87 (3) of the Judicature Act 1908) for the period from the date on which the company is put into liquidation to the date when the debt is due.

Clause 279A: To omit this clause and the cross-heading above the clause (lines 12 to 41 on page 276 and lines 1 to 19 on page 277).

PART XV

REMOVAL FROM THE NEW ZEALAND REGISTER

Clause 281: To omit from subclause (1) the expression "**subsection (3)** of" (line 31 on page 277).

Clause 284: To omit from subclause (1) the expression "(ba)," (line 26 on page 283).

Clause 286A: To omit from subclause (5) the word "The" (line 28 on page 286), and substitute the words "Subject to any order of the Court, the".

PART XVI

OVERSEAS COMPANIES

Clause 289A: To omit the words "in New Zealand" (line 20 on page 294).

Clause 294: To omit from subclause (6) the expression "**subsections (1) and (2)**" (lines 26 and 27 on page 297), and substitute the expression "**subsection (1) or subsection (2)**".

Clauses 295 to 296B: To omit these clauses (line 34 on page 297, page 298, lines 1 to 18 on page 299, lines 24 to 38 on page 300, and lines 1 to 29 on page 301).

Clause 298: To insert in subclause (2), after the word "not" (line 13 on page 302), the words "the overseas company".

To omit from paragraphs (a), (b), and (c) of subclause (2) the words "The overseas company" (lines 14, 16, and 20 on page 302).

To omit from paragraph (d) of subclause (2) the word "It" (line 24 on page 302).

PART XVII

TRANSFER OF REGISTRATION

Clause 304B: To omit from paragraph (a) of subclause (1) the word "compiled" (line 8 on page 306), and substitute the word "complied".

PART XVIII

REGISTRAR OF COMPANIES

Clause 308: Subclause (1): To insert in paragraph (a) after the word "under" (line 23 on page 310), the words "this Act in accordance with".

Subclauses (2) and (3): To omit these subclauses (lines 29 to 32 on page 310), and substitute the following subclauses:

> (2) The New Zealand register may be divided into different parts which may be kept in such places in New Zealand as the Registrar determines from time to time.
>
> (3) The overseas register must be kept at such place in New Zealand as the Registrar determines from time to time.

Clause 310: Subclause (1): To insert in paragraphs (b) and (c) before the word "document" (lines 30 and 33 on page 313), the word "registered".

Subclause (2): To omit from paragraph (b) the words "pursuant to" (line 5 on page 314), and substitute the words "under this Act in accordance with".

To insert in paragraphs (d) and (e), before the word "document" (lines 11 and 14 on page 314), the word "registered".

Subclause (3): To insert in paragraphs (a) and (b), before the word "document" (lines 18 and 19 on page 314), the word "registered".

Subclause (4): To insert before the word "document" (line 25 on page 314), the word "registered".

Subclause (5): To insert before the word "document" (line 34 on page 314), the word "registered".

To omit from subparagraph (iii) of paragraph (a) of subclause (1) the words "under this Act" (line 14 on page 316), and substitute the words "against this Act or the Financial Reporting Act **1993**".

Clause 313: To omit subclause (1) (lines 10 to 20 on page 318), and substitute the following subclause:

(1) A person authorised by the Registrar for the purpose of **section 312** of this Act who has—

(a) Obtained a document or information in the course of making an inspection under that section; or

(b) Prepared a report in relation to an inspection under that section—

must, if directed to do so by the Registrar, give the document, information, or report to—

(c) The Minister of Justice; or

(d) The Secretary for Justice; or

(e) Any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or

(f) A liquidator for the purposes of the liquidation of a company; or

(g) Any person authorised by the Registrar to receive the document, information, or report for the purposes of detecting offences against any Act.

Clause 314: To add to the marginal note the words "**and Privacy Act 1993**".

Subclause (2): To insert after the words "Official Information Act 1982" (line 26 on page 319), the words "or the Privacy Act 1993".

PART XIX

OFFENCES AND PENALTIES

Clause 320: Subclause (1): To insert after paragraph (a) (after line 20 on page 322), the following paragraph:

(ab) **Section 41A (5)** (which relates to the consideration for which convertible securities, options, and shares are issued):

To insert after paragraph (da) (after line 29 on page 322), the following paragraphs:

(dab) **Section 54A (9)** (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):

(dac) **Section 54C (3) (a)** (which relates to stock exchange acquisitions of a company's own shares without prior notice to shareholders):

To insert after paragraph (fa) (after line 15 on page 323), the following paragraph:

(fab) **Section 63A (2) (a)** (which relates to the provision of financial assistance not exceeding 5 percent of shareholders' funds):

To insert after paragraph (h) (after line 18 on page 323), the following paragraph:

(haa) **Section 68A (2) (a)** (which relates to the transfer of shares under an approved system):

To insert after paragraph (hb) (after line 22 on page 323), the following paragraph:

(hc) **Section 100 (7) (a)** (which relates to resolutions in lieu of meetings):

Subclause (2): To omit from **paragraph (t)** the expression "**(2)**" (line 21 on page 325), and substitute the expression "**(4)**".

Clause 321: Subclause (1): To insert after paragraph (ab) (after line 33 on page 326), the following paragraphs:

(abb) **Section 54A (10)** (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):

(abc) **Section 54C (3) (b)** (which relates to stock exchange acquisitions of a company's own shares without prior notice to shareholders):

To insert after paragraph (ad) (after line 3 on page 327), the following paragraph:

(ae) **Section 63A (2) (b)** (which relates to the provision of financial assistance not exceeding 5 percent of shareholders' funds):

To insert after paragraph (b) (after line 6 on page 327), the following paragraph:

(baa) **Section 68A (2) (b)** (which relates to the transfer of shares under an approved system):

To insert after paragraph (ba) (after line 8 on page 327), the following paragraphs:

(bab) **Section 86 (8)** (which relates to unanimous assent to certain types of action):

(bac) **Section 100 (7) (b)** (which relates to resolutions in lieu of meetings):

(bad) **Section 163 (6)** (which relates to a requirement to change a company's registered office):

Subclause (2): To insert after paragraph (ca) (after line 30 on page 327), the following paragraphs:

(cb) **Section 41A (6)** (which relates to the consideration for which convertible securities, options, and shares are issued):

(cc) **Section 50 (4)** (which relates to the acquisition by a company of its own shares):

To omit paragraph (i) (lines 11 and 12 on page 328).

To omit paragraphs (l) and (m) (lines 17 to 20 on page 328).

To omit paragraph (mb) (lines 24 to 26 on page 328).

To insert after paragraph (n) (after line 28 on page 328), the following paragraph:

(na) **Section 195 (2)** (which relates to the attendance of auditors at meetings of shareholders):

To omit from subparagraph (ii) the words ", or third party" (line 15 on page 335).

To insert as paragraph (ca) (after line 15 on page 335), the following paragraph:

(ca) A judgment has been obtained in an action under Part I of the Securities Amendment Act 1988 against a person as an insider (within the meaning of that Part of that Act); or

To omit the word "of", in the second place where it appears (line 18 on page 335), and substitute the words "or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of,".

To insert as subclause (4A) (after line 43 on page 335), the following subclause:

(4A) The Registrar of the Court must, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar must give notice in the *Gazette* of the name of the person against whom the order is made.

To add as subclause (6) (after line 3 on page 336), the following subclause:

(7) In this section, "company" includes an overseas company.

PART XX

MISCELLANEOUS

New clauses inserted: To insert as *clauses 332* to *333D* (after line 13 on page 340) the following clauses:

332. Service of documents on companies in legal proceedings—(1) A document, including a writ, summons, notice, or order, in any legal proceedings may be served on a company as follows:

(a) By delivery to a person named as a director of the company on the New Zealand register; or

(b) By delivery to an employee of the company at the company's head office or principal place of business; or

(c) By leaving it at the company's registered office or address for service; or

(d) By serving it in accordance with any directions as to service given by the court having jurisdiction in the proceeding; or

(e) In accordance with an agreement made with the company.

(2) The methods of service specified in **subsection (1)** of this section are the only methods by which a document in legal proceedings may be served on a company in New Zealand.

333. Service of other documents on companies—A document, other than a document in any legal proceedings, may be served on a company as follows:

(a) By any of the methods set out in **paragraph (a)** or **paragraph (b)** or **paragraph (c)** or **paragraph (e)** of **subsection (1)** of **section 332** of this Act; or

(b) By posting it to the company's registered office or address for service or delivering it to a box at a document exchange which the company is using at the time; or

(c) By sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the company's registered office or address for service or its head office or principal place of business.

333A. Service of documents on overseas companies in legal proceedings—(1) A document, including a writ, summons, notice, or order, in any legal proceedings may be served on an overseas company in New Zealand as follows:

(a) By delivery to a person named in the overseas register as a director of the overseas company and who is resident in New Zealand; or

(b) By delivery to a person named in the overseas register as being authorised to accept service in New Zealand of documents on behalf of the overseas company; or

(c) By delivery to an employee of the overseas company at the overseas company's place of business in New Zealand or, if the overseas company has more than 1 place of business in New Zealand, at the overseas company's principal place of business in New Zealand; or

(d) By serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or

(e) In accordance with an agreement made with the overseas company.

(2) The methods of service specified in **subsection (1)** of this section are the only methods by which a document in legal proceedings may be served on an overseas company in New Zealand.

333B. Service of other documents on overseas companies—A document, other than a document in any legal proceedings, may be served on an overseas company as follows:

(a) By any of the methods set out in **paragraph (a)** or **paragraph (b)** or **paragraph (c)** or **paragraph (e)** of **subsection (1)** of **section 333A** of this Act; or

(b) By posting it to the address of the overseas company's principal place of business in New Zealand or delivering it to a box at a document exchange which the overseas company is then using at the time; or

(c) By sending it by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal place of business in New Zealand of the overseas company.

333C. Service of documents on shareholders and creditors—(1) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a

(2) A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in **section 333** or **section 333B**, as the case may be, of this Act.

(3) A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be—

(a) Delivered to a person who is a principal officer of the body corporate; or

(b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or

(c) Delivered in such manner as the Court directs; or

(d) Delivered in accordance with an agreement made with the body corporate; or

(e) Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or

(f) Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

(4) Where a liquidator sends documents—

(a) To the last known address of a shareholder or creditor who is a natural person; or

(b) To the address for service of a shareholder or creditor that is a company—

and the documents are returned unclaimed 3 consecutive times, the liquidator need not send further documents to the shareholder or creditor until the shareholder or creditor gives notice to the company of its new address.

333D. Additional provisions relating to service—(1) Subject to **subsection (2)** of this section, for the purposes of **sections 332** to **333C** of this Act,—

(a) If a document is to be served by delivery to a natural person, service must be made—

(i) By handing the document to the person; or

(ii) If the person refuses to accept the document, by bringing it to the attention of, and leaving it in a place accessible to, the person:

(b) A document posted or delivered to a document exchange is deemed to be received 5 working days, or any shorter period as the Court may determine in a particular case, after it is posted or delivered:

(c) A document sent by facsimile machine is deemed to have been received on the working day following the day on which it was sent:

(d) In proving service of a document by post or by delivery to a document exchange, it is sufficient to prove that—

(i) The document was properly addressed; and

(ii) All postal or delivery charges were paid; and

(iii) The document was posted or was delivered to the document exchange:

(e) In proving service of a document by facsimile machine it is sufficient to prove that the document was properly transmitted by facsimile machine to the person concerned.

(2) A document is not to be deemed to have been served or sent or delivered to a person if the person proves that, through no fault on the person's part, the document was not received within the time specified.

Clause 335: To omit from subparagraph (i) of paragraph (a) the words "the form" (line 22 on page 343), and substitute the word "forms".

To omit from subparagraph (ii) of paragraph (a) the words "The form" (line 24 on page 343), and substitute the word "Forms".

To omit paragraph (c) (lines 28 and 29 on page 343), and substitute the following paragraph:

(c) Regulating, in a manner not inconsistent with this Act, the conduct of liquidations:

New clause added: To add as clause 337 (after line 15 on page 344), the following clause:

337. Securities Transfer Act 1991 amended—Section 9 (5) of the Securities Transfer Act 1991 is hereby amended by inserting, after paragraph (a), the following paragraph:

"(ab) **Section 68** of the Companies Act **1993**:".

SCHEDULES

SECOND SCHEDULE

Clause 3: Subclause (1): To omit the word "given", and substitute the word "sent".

Subclause (2): To insert in paragraph (b), after the word "any", the word "special".

Clause 5: To omit from paragraph (b) of subclause (3) the words "present or their proxies", and substitute the words "or their proxies present".

Clause 6: Subclause (6): To insert after the word "present", the words "in person or by proxy".

Subclause (7): To omit the word "The", and substitute the words "Subject to the constitution of the company, the".

To add, as subclause (8), the following subclause:

(8) For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of a company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

Clause 10: To omit this clause, and substitute the following clause:

10. Shareholder proposals—(1) A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is

the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

(4) If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

(5) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

(6) The board is not required to include in or with the notice given by the board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.

(7) Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

THIRD SCHEDULE

To omit paragraph (a), and substitute the following paragraph:

(a) **Section 20 (1) (c)** (which relates to the change of company names):

To insert after paragraph (h), the following paragraphs:

(haa) **Section 54A** (which relates to stock exchange acquisitions subject to prior notice to shareholders):

(hab) **Section 54C** (which relates to stock exchange acquisitions not subject to prior notice to shareholders):

To insert after paragraph (j), the following paragraph:

(ja) **Section 63A** (which relates to financial assistance not exceeding 5 percent of shareholders funds):

FOURTH SCHEDULE

Clause 1: Subclause (1): To omit this subclause, and substitute the following subclauses:

(1) The directors may elect one of their number as chairperson of the board.

(1A) The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.

Clause 2: To omit from subclause (2) the word "given", and substitute the word "sent".

SCHEDULE 4A

To insert after paragraph (a) the following paragraphs:

(ab) The address for service of the company:

(ac) The postal address of the company:

To insert after paragraph (b), the following paragraph:

(ba) If any records are not kept at the company's registered office under **section 164 (1)** of this Act, details of those records and of the place or places where they are kept:

Paragraph (f): To omit from subparagraph (ii) (C) and (D) and from subparagraph (iv) (C) and (D) the words "pursuant to", and substitute the words "under this Act in accordance with".

To insert after paragraph (f) the following paragraph:

(fa) A statement whether, at any time,—

(i) Since the last annual return; or

(ii) In the case of the first annual return of a company registered under this Act, since the date of registration; or

(iii) In the case of the first annual return of a company reregistered under this Act in accordance with **Part IV** of the Companies (Ancillary Provisions) Act **1992** that was not required to file an annual return under the Companies Act 1955, since the date of incorporation under that Act; or

(iv) In the case of the first annual return of a company reregistered under this Act in accordance with **Part IV** of the Companies (Ancillary Provisions) Act **1992** that was required to file an annual return under the Companies Act 1955, since the date of that return,—

section 16 or **section 16A** of the Financial Reporting Act **1993** applied to the company or the company was a specified company within the meaning of **section 2** of the Takeovers Act **1993**:

Paragraph (h): To omit this paragraph, and substitute the following paragraph:

(h) The date of the last annual meeting of the company held under this Act or, if the company avoided the need for an annual meeting by doing everything required to be done at that meeting by passing a resolution under **section 100** of this Act, the date on which the resolution was passed:

Paragraph (i): To omit the words "pursuant to", and substitute the words "under this Act in accordance with".

To add the following Note:

For the purpose of **paragraph (fa)** of this Schedule, a statement whether or not a company was at any material time a specified company within the meaning of **section 2** of the Takeovers Act **1993** does not have to be included in the annual return unless a takeovers code has been approved by Order in Council under **section 16** of the Takeovers Act **1993** and is in force.

FIFTH SCHEDULE

Clause 2: Subclause (1): To omit the word "given", and substitute the word "sent", and omit the number "10", and substitute the number "5".

Subclause (3): To omit this subclause, and substitute the following subclause:

(3) An irregularity in or a failure to receive a notice of meeting of creditors does not invalidate anything done by a meeting of creditors if—

(a) The irregularity or failure is not material; or

(b) All the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or

(c) All such creditors agree to waive the irregularity or failure.

To insert after subclause (3), the following subclauses:

(3A) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.

(3B) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.

Clause 4: To omit this clause, and substitute the following clause:

4. Voting—(1) At any meeting of creditors or a class of creditors, not being a meeting held for the purposes of **section 216** of this Act, a resolution is adopted if a majority in number and value of the creditors or the class of creditors voting in person or by proxy vote in favour of the resolution.

(2) At any meeting of creditors or a class of creditors held for the purposes of **section 216** of this Act, a resolution is adopted if a majority in number representing 75

Clause 3A: To omit the expression "**section 218c**", and substitute the expression "**section 218 (c)**".

Clause 4: To insert after paragraph (d), the following paragraph:

(e) Excise duty payable by the company under Part IVA of the Customs Act 1966—

To add the words "or to the Collector of Customs, as the case may require".

NINTH SCHEDULE

To omit from clause 1 (f) the expression "**Section 223**", and substitute the expression "**Section 227**", and to omit the expression "**paragraph (c)**", and substitute the expression "**subsection (1) (a) (ii) (C)**".

EXPLANATORY NOTE

This Supplementary Order Paper amends the Companies Bill 1990.

The amendment to *clause 1* provides for a commencement date of 1 July 1994.

There are several amendments to *subclause (1)* of *clause 2*.

With the exception of the changes to the definitions of the terms "charge" and "company", the amendments result from proposed changes to the Financial Reporting Bill *1991* which will contain the reporting obligations of companies.

The amendment to the term "charge" excludes a charge that arises under a charging order in favour of a judgment creditor.

The amendment to the definition of the term "company" makes it clear that existing companies will be registered under the new Act but in accordance with what will become the Companies Reregistration Act 1993.

The new *subclause (2A)* includes companies under the Companies Act 1955 within the term "related company".

There are several amendments to *clause 4*.

The first requires directors, in determining whether a company's assets exceed its liabilities for the purposes of the solvency test, to have regard to circumstances the directors know or ought to know affect or may affect the value of its assets or liabilities including contingent liabilities. *Clause 4* of the Bill, as drafted, requires directors to have regard to circumstances that affect or may affect the value of the company's assets and liabilities whether or not the directors are aware of those circumstances.

The second provides that, in determining the value of contingent liabilities, account may also be taken of claims the company is entitled to make that can reasonably be expected to reduce the value of the liability.

The present clause only permits account to be taken of the likelihood of a contingency occurring.

The other amendments result from proposed changes to the Financial Reporting Bill *1991*.

The new *clauses 4A* to *4D* define the terms "holding company" and "subsidiary". Except for *clause 4B*, they are the same as *clauses 178* to *180* of the Bill. *Clause 4B* includes within the term "subsidiary" companies under the Companies Act 1955.

The amendment to *clause 8* removes an inconsistency in the terminology used to refer to shares to be issued to a shareholder on registration of a company and referred to in the application for registration.

The amendment to *clause 9* removes the requirement to prescribe a form of certificate of incorporation. No form of certificate of incorporation is prescribed under the Companies Act 1955.

The new *clause 18A* will enable companies to be incorporated with the Maori equivalent "Tāpui" of the word "Limited" if it is used in conjunction with the word "Limited".

There are 2 amendments to *clause 19*.

The first adds to the grounds on which the Registrar must refuse to reserve a name, reference to a name that is identical or almost identical to a name that has already been reserved under the Bill or under the Companies Act 1955.

The second omits from *subclause (2) (b)* the reference to a name that is identical or almost identical to the name of a body corporate other than a

company, and substitutes a reference to a name that is identical or almost identical to the name of a company incorporated under the Companies Act 1955.

Under the clause as drafted, the Registrar of Companies would be required to compile and maintain a database of the names of all bodies corporate, whether companies or not, and ensure that the name of a proposed company was not identical or almost identical with the name of any such body.

In view of the practical problems this would cause, it is proposed that the Registrar refuse name reservation where the name is identical or almost identical to the name of a company incorporated under the Bill or under the Companies Act 1955.

The amendment to *clause 26C* makes it clear that the power to alter a company's constitution is subject to *clause 49*. That clause provides that if the effect of the alteration is to reduce or cancel the liability of a shareholder, *clause 44* must be complied with as if the reduction or cancellation was a distribution.

The amendment to *clause 26D* will allow a single document to be substituted for a constitution referred to in *clause 26 (e)*.

The amendment to *clause 26E (2)* will require a copy of the constitution altered by the Court to be delivered to the Registrar for registration together with the order of the Court.

There are 2 amendments to *clause 28*. *Clause 28* specifies certain rights that attach to shares. The first amendment makes it clear that the right attaching to a share in a company to one vote at a meeting of the company arises on a poll.

The second amendment makes it clear that the rights attaching to shares may be altered in accordance with the terms of issue as well as by the constitution. As drafted, the clause permits the rights attaching to shares to be altered only by the constitution.

The new *clause 29* is intended to remove any doubt that, subject only to a company's constitution, different classes of shares may be issued. *Clause 29* of the Bill implies that the issue of any class of shares requires specific authorisation in the constitution. This is not intended.

Clause 33 has been recast so that it applies in relation to any contract or deed that requires a company to issue shares whether on the exercise of an option or on the conversion of securities or otherwise.

The amendment to *clause 34* removes an inconsistency in the terminology used to describe the requirement to issue shares on registration.

Clause 36 requires the board of a company to file a notice of the issue of shares under *clause 35* of the Bill.

The amendment to the clause adds a reference to an issue of shares following an amalgamation.

The amendment to *clause 37* makes it clear that the board's power to issue shares with shareholder approval exists where the constitution limits or restricts the issue of shares and not, as the clause provides, to cases where the constitution prevents the issue.

There are a number of amendments to *clause 40*.

Except for the new *subclause (7A)*, they are principally of a drafting nature.

The new *subclause (7A)* provides that the clause does not apply to the issue of shares on conversion of convertible securities or on the exercise of options.

The proposed new *clause 41A* sets out requirements that must be complied with by the board of a company before convertible securities or options are issued.

The amendment to *clause 42* will permit an authorised agent of a shareholder to consent, on behalf of the shareholder, to an increase in the liability of the shareholder or the imposition of additional liability on the shareholder. The clause as drafted requires the shareholder's consent.

The amendment to *clause 43* removes an inconsistency in terminology. Other clauses in the Bill refer to the "entry" of particulars on a company's share register rather than registration.

There are a number of amendments to *clause 44*.

The amendment to *subclause (3)* provides that a distribution is unauthorised if, after its authorisation and before it is made, the board ceases to be satisfied on

The amendment to *clause 46* makes it clear that shares may be issued by a company in partial satisfaction of the payment of dividends.

There are 3 amendments to *clause 47*. The first will enable discounts to be offered to particular classes of shareholders.

The second makes it clear that a discount scheme may not be approved or continued in effect unless the company satisfies the solvency test.

The third provides that a discount under an approved scheme is not a distribution but will enable the amount of a discount to be recovered under *clause 48* as if it were a distribution that had not been authorised if the solvency test is not satisfied.

The amendment to *clause 48* is intended to clarify the basis for recovery of distributions to shareholders from directors.

There are 3 amendments to *clause 49*. The amendments to *subclauses (1)* and *(2)* limit the application of the clause in the case of redemptions to redemptions at the option of the company.

The amendment to *subclause (3)* makes it clear that the national distribution that results from a reduction of a shareholder's liability to an amalgamating company is to be treated as a distribution by the amalgamated company.

There are a number of amendments to *clause 50*. The first adds a reference to *clause 86* in *subclause (1)*. Shares may be acquired or redeemed under *clause 86* with the consent of all entitled persons. The second corrects an error. The remaining amendments require notice of the acquisition of a company's own shares to be given to the Registrar.

The amendment to *clause 51* provides for share repurchases on the stock exchange in accordance with the procedures set out in the proposed new *clauses 54A* and *54C*.

There are a number of amendments to *clause 52*. The amendments to *subclause (1)* are minor drafting changes.

The new *subclause (1A)* will enable a company to acquire additional shares to the extent that some shareholders do not accept the offer or accept it in part only.

The 10 percent limitation on share repurchases contained in *subclause (2)* is removed.

Subclause (5A) is altered to prohibit repurchases where the board ceases to be satisfied on reasonable grounds that the repurchase is in the best interests of the company or that the terms and consideration are fair and reasonable. As drafted, repurchases would be prohibited if the repurchase ceased to be in the best interests of the company or if the terms and consideration cease to be fair and reasonable.

Similar amendments are made to *clauses 53, 54A, 58, 58B, 61,* and *62* of the Bill.

The amendment to *clause 53 (5)* extends the period in which a selective repurchase offer may be made from between 10 and 30 working days after the sending of a disclosure document to shareholders to a period of between 10 working days and 12 months.

There is a minor drafting clarification to *subclause (5A)*.

The amendment to *clause 54* requires the nature and extent of any director's interest in the shares to be disclosed.

New *clauses 54A* to *54C* relate to sharemarket repurchases of a company's own shares.

The new *clause 54A* will enable a company to make offers to acquire its own shares subject to board approval and prior notice to shareholders.

The new *clause 54B* sets out the form of the disclosure document that must be sent to shareholders.

The new *clause 54C* will allow a company to acquire its own shares subject to board approval but without prior notice to shareholders. *Clause 54C* will apply to acquisitions that do not result from an offer process initiated by the company itself.

Notice of any acquisitions must be given to shareholders within 10 working days.

The amendment to *clause 58 (2)* removes the reference to a general meeting of shareholders. The Bill does not make separate provision for general meetings.

The amendment to *subclause (4)* makes it mandatory for the directors' resolution under *subclause (3)* to contain the grounds relied on in support.

The amendments to *clause 59* reinstate the clause as it was in the Bill as introduced.

Clause 59 relates to the redemption of shares at the option of shareholders.

The Select Committee recommended that on redemption any former shareholder should rank behind creditors but ahead of other shareholders and that compliance with the solvency test should be required.

In the clause in the Bill as introduced a former shareholder would have ranked as an unsecured creditor for the amount payable on redemption and compliance with the solvency test was not required.

It is also proposed, in line with the clause in the Bill as introduced, that the redemption should not be treated as a distribution except for the purposes of recovery from a shareholder under *clause 48 (1)*.

The amendments to *clause 60* (which relates to redemptions of shares on a fixed date) are the same as the amendments to *clause 59*.

There are 2 principal changes to *clause 61*.

The first removes the prohibition against providing financial assistance in connection with the purchase of shares in a subsidiary.

The second is a rearrangement of the way in which financial assistance may be given in connection with the purchase of a company's own shares.

The first is with the consent of all shareholders (the present *clause 61 (1) (b) (i)*).

The second is in accordance with *clause 62* (the present *clause 61 (1) (b) (ii)*).

The third is under the proposed new *clause 63A* (where the financial assistance must not exceed 5 percent of shareholders' funds with notice to be given to shareholders within 10 working days of the financial assistance being provided).

The new *clause 63A* procedure is similar to that which is currently provided for in *clause 61 (1) (a)*.

The new *clause 61A (6)* makes it clear that for the purpose of applying the solvency test in connection with the giving of financial assistance to purchase a company's own shares, "assets" excludes all loans made by the company at any time to provide financial assistance to acquire shares and "liabilities" includes all outstanding liabilities incurred at any time to provide the assistance.

The amendment to *clause 62 (5)* extends the period in which the financial assistance must be given from between 10 and 30 working days after a disclosure document is given to shareholders to a period of between 10 working days and 12 months.

The new *clause 63A* authorises a company to give financial assistance in connection with the purchase of its own shares if the aggregate amount of assistance given under the clause does not exceed 5 percent of shareholders' funds and the company receives fair value.

Where financial assistance is given under the clause, the company must give notice to all shareholders within 10 working days.

The amendment to *clause 64* is consequential.

The amendment to *clause 66* provides that where, on reregistration, a company already holds shares in its holding company, the company may continue to hold the shares but not exercise voting rights.

The first amendment to *subclause (4)* of *clause 68* makes it clear that the requirement to register the name of the transferee is subject to compliance with *subclause (3)* if that subclause applies.

In paragraph (b) the reference to approval of the resolution is altered to refer to the passing of the resolution.

The new *clause 68A* relates to the transfer of shares under a system approved under section 7 of the Securities Transfer Act 1991 and makes it clear that the board may, in such a case, refuse or delay registration of the transfer.

The amendment to *clause 70* makes it clear that the obligation to state any restrictions or limitations on the transfer of shares in the company's share register applies only to restrictions or limitations on transfer that arise under the company's constitution or by the terms of issue.

The amendments to *clause 78* are of a drafting nature.

The amendment to *paragraph (a)* of *clause 79* is of a drafting nature. The new *paragraph (c)* includes, in the definition of the term "shareholder", a person who is entitled to be registered as a shareholder in a registered amalgamation proposal.

The amendments to *clauses 80A* and *80B* correct inconsistencies in terminology.

The amendment to *clause 81* makes it clear that the liability, as a shareholder, of the personal representative of the estate of a deceased shareholder is limited

The amendment to *subclause (1) (e)* makes it clear that consent may be given to the giving of financial assistance in connection with the purchase of shares in a company's holding company as well as the company itself.

The new *subclauses (4)* to *(7)* will allow agreement to be given generally in relation to the exercise of the powers referred to in the clause but with the right to withdraw on notice to the company. Under the clause, as drafted, a separate agreement is required to any particular exercise of a power.

The amendment to *clause 86A* makes it clear that in applying the solvency test in connection with giving financial assistance to purchase shares, "assets" excludes loans made by the company at any time to provide financial assistance to acquire shares, and "liabilities" includes outstanding liabilities incurred at any time to provide such assistance.

The amendment is the same as the amendment to *clause 61A*.

The amendments to *clause 89* are of a drafting nature.

The amendment to *clause 90* is of a drafting nature to ensure consistency in terminology.

The amendment to *clause 98* corrects a cross-reference.

The new *clause 100* alters the provisions relating to resolutions in lieu of meetings. A resolution may be passed in lieu of a meeting if it is signed by not less than 75 percent of shareholders entitled to vote and who hold not less than 75 percent of the votes entitled to be cast on the resolution. This is similar to the position that applies under section 363 (1) of the Companies Act 1955.

The clause, as drafted, would require the resolution to be signed only by 75 percent of shareholders entitled to vote.

The new clause will allow a company to avoid having to hold an annual meeting if everything required to be done at the meeting is done by means of a resolution signed in the same manner. This is similar to the position that applies under section 362 (2) of the Companies Act 1955.

Notice of any such resolution must be given to those shareholders who did not sign the resolution.

The amendment to *clause 103* extends the date referred to in *subclause (4)* for determining shareholders entitled to receive notice of meetings from 20 working days to 30 working days before the meeting.

The amendment to *subclause (1)* of *clause 104* omits the reference to *clause 260A*. That clause does not relate expressly to directors.

The amendments to *subclauses (2)* and *(3)* make it clear that a shareholder is only to be treated as a director in relation to the specific exercise of the power and not as a director for all purposes.

The amendment to *clause 120* corrects an error in the marginal note.

The proposed new *clause 122* replaces *clauses 122* and *122A* as reported back from the Select Committee and is the same as the original *clause 122* in the Bill as introduced.

Clause 122 as reported back from the Select Committee would permit a director to vote on a matter relating to a transaction in which he or she has an interest only if authorised by the constitution.

Clause 122A would allow certain other actions by a director with an interest in a transaction unless the constitution provides otherwise.

The proposed new clause will allow directors to vote and take other action in relation to transactions in which they have personal or financial interests unless prevented by the constitution.

Small companies with a single director would otherwise be required to have a constitution.

The amendment to *clause 123* extends *subclause (2)* to enable information to be disclosed to a person whose interests a director represents.

The amendment to *clause 124* is of a drafting nature to ensure consistency in terminology.

The new *clause 134* differs from the existing clause in 2 respects.

The first is that the date of the change in directors must be included in the notice to the Registrar.

The second is that the period of 20 working days within which notice must be given to the Registrar runs, in the case of the death of a director, from the time the company became aware of the director's death and, in the case of a change of a director's name or residential address, from the time the company became aware of the change.

The amendments to *clause 137* will permit a company to insure directors for any costs incurred in defending criminal proceedings that result in an acquittal.

The amendment to *clause 138* will allow injunctions to be granted against a company or a director where the contravention relates to the Financial Reporting Bill *1991*.

The amendment to *clause 139* is of a drafting nature.

The new *clause 140* requires the Court to order that the costs of a derivative action must be paid by the company unless the Court considers that it would be unjust or inequitable for the company to have to meet those costs.

The existing clause only confers a discretion to award costs against the company.

The amendment to *clause 141* corrects a drafting error.

The amendment to *clause 142* omits *subclause (2)* relating to costs in derivative actions that are settled. The power to award such costs is contained in the proposed new *clause 140*.

The amendment to *clause 144* will allow orders to be made in actions by shareholders against directors of a company requiring action to be taken under the Financial Reporting Bill *1991*.

The amendment to *clause 146* will allow orders to be made in actions by shareholders against the board requiring compliance with the Financial Reporting Bill *1991*.

The amendments to *clause 149* are of a drafting nature and ensure that the clause refers specifically to clauses in the Bill that provide for share repurchase and the giving of financial assistance in connection with the purchase of a company's own shares.

The new *clause 151* differs from the existing clause in 2 respects.

The first is that the clause specifies grounds on which a company may refuse to supply information. These grounds are that—

(a) The disclosure of the information will prejudice the commercial position of the company; or

(b) The disclosure of the information will prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or

(c) The request is frivolous or vexatious.

A company is not limited to these grounds in refusing to supply information.

The second is that the Court may order the company to supply the information if it is satisfied that—

(a) The company does not have reason to refuse to supply; or

(b) The company has reason to refuse to supply but other reasons exist that outweight that refusal.

The amendment to *clause 168* corrects a drafting error.

It is proposed to relocate *clauses 169, 169A*, and *171* (which relate to the service of documents on companies) in *Part XX* of the Bill together with other provisions relating to service.

The cross-heading above *clause 167* is accordingly altered.

The omission of *clause 171A* results from the proposed changes to the Financial Reporting Bill *1991*.

The financial reporting obligations of companies will be contained in that Bill.

The amendments to *clauses 172 and 173* and the omission of *clauses 174 to 185A* result from the proposed changes to the Financial Reporting Bill *1991*.

The amendment to *clause 186* omits the reference to the term "general" in relation to meetings of companies. The bill does not use the term "general meeting".

The amendment to *clause 186A* also omits the reference to the term "general" in relation to meetings.

The new *subclause (2)* of *clause 190* omits the reference to the term "general" in relation to meetings.

The proposed new *subclause (4)* makes it clear that the exemption in *subclause (3)* from the requirement to appoint the first auditor does not apply to the companies referred to in *clause 186 (3)*, that is, companies that are overseas owned or controlled or that are issuers to which the Financial Reporting Bill *1991* applies.

The amendment to *clause 193* results from the proposed changes to the Financial Reporting Bill *1991*.

The amendment to *paragraph (j)* of *subclause (1)* will require the amounts payable to the company's auditor by way of audit fees and fees for other services to be disclosed instead of the amounts actually paid.

The new *subclause (1A)* will require the information specified in *paragraphs (d)* to *(j)* of *subclause (1)* to be disclosed in the annual report for subsidiaries that are part of a group.

It is proposed to omit *clause 198* (which relates to the service of documents on shareholders) and relocate the clause in *Part XX* of the Bill with other provisions relating to service.

The amendments to *clause 199* correct drafting errors.

The amendment to *clause 205* omits *paragraph (f)* of *subclause (1)*. *Paragraph (f)* requires an amalgamation proposal to contain a copy of the amalgamated company's constitution, if it has one.

Under *clause 206* of the Bill, the board of each amalgamating company is required to send to all shareholders a summary of the principal provisions of any constitution the amalgamated company may have and a statement that a copy of the constitution will be supplied on request. *Paragraph (f)* is therefore unnecessary.

There are 2 amendments to *clause 206*.

The first makes it clear that the obligation to send a copy of the constitution arises only where the amalgamated company has one.

The second corrects a drafting error in *subclause (6)*.

There are a number of amendments to *clause 207*.

The amendments to *subclauses (1)* and *(6)* correct drafting errors.

The amendment to *subclause (2)* makes it clear that an amalgamated company is not required to have a constitution.

There are 3 amendments to *clause 208*.

The first corrects a cross-reference in *paragraph (b)*.

The second makes it clear that the amalgamation does not have to be approved under the constitution of an amalgamating company if the company does not have a constitution.

The third adds a requirement for a copy of a notice of name reservation to be delivered to the Registrar.

The amendment to *clause 210* is intended to clarify the intent of *paragraph (h)*.

The amendment to *clause 214* will enable the Court to direct a company to make information available to a creditor or shareholder who applies for leave to assist the creditor or shareholder in proposing a compromise.

There are a number of amendments to *clause 219*.

The first ensures that the definitions of the terms referred to apply to the Bill as a whole and not only to *Part XIV*.

The second defines the term "creditor" to mean a person who is entitled to claim under *clause 266* of the Bill but excludes a secured creditor.

The third amendment makes it clear that 2 or more persons may be appointed as liquidators of a company.

The amendment to *clause 220* will enable the Official Assignee to be appointed liquidator by reason of exercising voting rights attaching to shares in the company held by another company of which the Official Assignee is liquidator.

The new *clause 220AA* provides that where 2 or more persons are appointed liquidators they must act jointly unless they are authorised to act individually by the terms of their appointment.

There are a number of amendments to *clause 220A*.

The amendment to *subclause (1)* corrects an incorrect cross-reference.

The proposed new *subclause (2)* requires the notice of a meeting of creditors to be in writing and takes account of the fact that the liquidator may not have to comply with *clause 225 (2) (b)* of the Bill.

The proposed new *subclause (2A)* will require liquidators to give public notice of creditors' meetings under the clause.

The proposed new *subclause (2B)* provides for the meeting of creditors to be held within 10 working days of the liquidator's appointment where the liquidator was appointed by the shareholders of the company or the board, and within 30 working days of appointment, where the liquidator was appointed by the Court, or within such further period as the Court may allow.

The amendment to *subclause (5)* requires the application to the Court to appoint a replacement liquidator to be made forthwith.

The amendments to *clause 220B* correct 2 incorrect cross-references.

The amendment to *clause 220c* takes account of the fact that *clause 225 (2) (b)* may not apply to a liquidator.

The proposed new *clause 223* corrects an omission in the Bill as to when liquidation is completed in a case where the Court makes an order under *clause 227* exempting a liquidator from compliance with the clause or modifying its application.

In a case where the liquidator is exempted from compliance with *clause 227*, the liquidation is completed when a copy of the order of the Court is delivered for registration and, in a case where the application of *clause 227* is modified, the liquidation is completed when a copy of the order together with any documents required to comply with it are delivered for registration.

There are 2 amendments to *clause 223B*.

The first extends *subclause (2)* to all types of property. The existing subclause, which protects persons who purchase property in good faith in an execution process, is limited to personal property.

The second makes it clear that the clause does not limit or affect *clause 255*. An execution that is completed may still be subject to avoidance under that clause.

The amendments to *clause 223c* will extend the application of the clause to all kinds of property. At present the clause applies only to personal property.

Subclause (1) is also extended to require a person carrying out an execution process to pay to the liquidator any amount paid to that person for the purpose of avoiding a sale of property in the execution process.

The amendments to *clause 224* result from recasting *subclause (2)* of that clause as a separate *clause 224A*.

The new *clause 224A* incorporates the present *subclause (2)* of *clause 224* but makes it clear that a liquidator may, but is not required to, exercise the liquidator's duties and functions in relation to property subject to a charge.

The new clause will also allow the Official Assignee acting as liquidator of an insolvent company to take no action in the liquidation that would incur expense without the consent of the Minister of Justice.

The purpose of the amendments to *clause 225* is to require a liquidator to comply with the obligations presently set out in *paragraphs (b)* and *(c)* of *subclause (2)* within a single period, which period will depend on whether the liquidator was appointed by the shareholders or the board or by the Court.

The applicable periods relate to the holding of meetings of creditors under *clause 220A* and address concerns that under the existing clause up to 40 working days could elapse before notice of a meeting was sent to creditors.

Clause 226 has been recast to allow the Registrar to authorise the disposal of accounts and records of the liquidation of a company and of the company itself either before or after the completion of the liquidation.

There are 3 amendments to *clause 227*.

The first removes any inconsistency with *clause 225* of the Bill, which states when a liquidation is completed.

The second will require the sending of the final report and other documents only to creditors whose claims have been admitted.

The third amendment requires the summary of grounds for objecting to removal from the register to be a summary of only the applicable grounds.

The amendment to *clause 230* will enable the examination to be conducted by a barrister or solicitor on behalf of the liquidator.

The amendment to *clause 231A* corrects an incorrect cross-reference in *subclause (3)* and also makes it clear that the clause will not apply to a company that was put into liquidation where the directors have passed a resolution as to solvency and *clause 220B* of the Bill does not apply.

The amendment to *clause 231c* is consequential on the amendment to *clause 230*.

Except for the amendment to *subclause (2) (a)*, which is consequential, the amendments to *clause 231D* will require a record to be made of any examination under the clause and will permit that record to be produced in evidence in proceedings under *Part XIV* of the Bill and under *clause 328* (which relates to prohibiting persons from acting as directors).

The amendment to *clause 232* alters a cross-reference.

The amendment to *clause 233* will require calls on shares by a liquidator to be

Mental Health (Compulsory Assessment and Treatment) Act 1992.

The amendment to *clause 246* requires a liquidator appointed by the Court under *subclause (6A)* to give notice of appointment to the Registrar. The Court may appoint a liquidator under *subclause (6A)* where a vacancy occurs in the office of liquidator or where the Official Assignee has appointed a liquidator.

The amendment to *clause 255* qualifies *subclause (4)*. That subclause provides that in determining whether a transaction took place in the ordinary course of business no account is to be taken of any intent or purpose on the part of the company to prefer a particular creditor. The object of the provision was to overcome Australian decisions to the effect that a transaction is not in the ordinary course of business if such was a company's intent or purpose.

The present *subclause (4)* goes too far and would require the company's intent or purpose to be disregarded irrespective of the creditor's own knowledge.

It is accordingly proposed to limit the provision so that it applies only if the creditor did not know of the company's intent or purpose. If the creditor knew what was intended the transaction can be treated as not having occurred in the ordinary course of business.

The amendment to *subclause (5)* of *clause 257* ensures that the subclause also applies for the purposes of *subclause (4)*.

The amendment to *clause 259* omits the reference to the term "declaration" in *paragraph (f)*. The clause provides only for the making of orders.

There are a number of amendments to *clause 260*.

The first is to the same effect as the amendment to *clause 259*.

The second recasts *paragraph (c)* of *subclause (1)*.

The third amendment is also to the same effect as the amendment to *clause 259*.

The new *subclause (3)* makes it clear that the Land Transfer Act 1952 does not affect *clauses 255* to *259* or *clause 260* of the Bill.

The proposed new *clause 260A* is the same as the existing clause except in one respect. Under the existing clause the liquidator may recover against the other party to the transaction if, when the transaction was entered into, the company was insolvent or was engaged in business for which its financial resources were inadequate or incurred an obligation that it knew it would be unable to perform or if, as a result of the transaction, the company became insolvent.

Under the new clause the liquidator will be unable to recover unless the other party knew or ought to have known of the relevant matter.

The amendments to *clauses 261* and *262* are drafting clarifications.

The amendment to *clause 263* results from changes to the Financial Reporting Bill *1991*.

The amendment to *subclause (3)* of *clause 267* imposes an obligation on a liquidator either to admit or reject a claim as soon as practicable whereas the present subclause provides only that the claim may be admitted or rejected.

The new *subclause (3A)* requires the liquidator to give notice in writing of the rejection of a claim to the creditor.

The new *subclause (3B)* provides that the costs of making a claim or producing a document in support of a claim to the liquidator must be met by the creditor.

There are a number of amendments to *clause 268*.

The new *subclause (1A)* provides that a secured creditor may realise the secured property even though the secured creditor has valued the security.

The amendment to *subclause (2)* provides that a secured creditor who realises secured property will not be entitled to claim as an unsecured creditor if the liquidator has accepted a valuation and claim by that secured creditor.

The amendment to *subclause (6)* makes it clear that the liquidator, after accepting a valuation and claim by a secured creditor, is not required to redeem the security if the secured creditor has already realised the secured property.

The new *subclause (7)* is recast to make it clear that the liquidator may only require a secured creditor to exercise one of the powers referred to in *subclause (1)*. As drafted, the provision could have been treated as giving the liquidator power to direct the secured creditor to exercise a particular power. That was not intended.

The amendment to *subclause (9)* will enable a secured creditor who is deemed to have surrendered a charge to withdraw the surrender and rely on the charge in the same way as a secured creditor who surrendered a charge under *subclause (1) (c)*.

Subclause (2) of *clause 272*, as drafted, is expressed to apply only where the liquidator pays a claim in respect of a debt due at a future date. The subclause

has accordingly been recast so that it applies to determine the present value of the debt for the purpose of the claim under *subclause (1)*.

It is proposed to relocate *clause 279A* (which relates to the service of documents on creditors) in *Part XX* of the Bill together with other provisions relating to service.

The amendment to *clause 281* makes it clear that the obligation of the Registrar to remove a company from the register is subject to other provisions of the clause.

The amendment to *clause 284* omits an incorrect cross-reference from *subclause (1)*.

The amendment to *subclause (5)* of *clause 286A* makes the restriction on the Crown's right to disclaim subject to any order of the Court.

The amendment to *clause 289A* makes it clear that a failure by an overseas company to comply with *clause 288* or *clause 289* does not affect the validity of any transaction entered into by the overseas company whether in New Zealand or elsewhere.

The amendment to *subclause (6)* of *clause 294* makes it clear that a contravention of either *subclause (1)* or *subclause (2)* is an offence.

It is proposed to omit *clauses 295* to *296B*.

Clause 295 sets out the financial reporting requirements for overseas companies. These requirements are now contained in the Financial Reporting Bill *1991*.

Clauses 296, 296A, and *296B* relate to service of documents on overseas companies. These provisions have been relocated in *Part XX* with other provisions relating to service.

The amendments to *subclause (2)* of *clause 298* are of a drafting nature.

The amendment to *clause 304B* corrects a drafting error.

The amendment to *subclause (1)* of *clause 308* is of a drafting nature.

Subclauses (2) and *(3)* have been recast to provide for the Registrar to determine the location of the New Zealand register and the overseas register.

Except for the amendment to *subclause (2) (b)* of *clause 310*, which is of a drafting nature, the amendments to *clause 310* limit the application of the clause to registered documents.

There are 2 amendments to *clause 311*.

The amendment to *subclause (2)* is to ensure consistency in terminology.

The amendment is *subclause (3)* alters a cross-reference.

The amendment to *clause 312* will enable the inspection powers to be exercised for the purposes of the Financial Reporting Bill *1991*.

The amendments to *clauses 313* and *314* take account of the enactment of the Privacy Act 1993 and align these clauses with the proposed new *sections 9B* and *9C* of the Companies Act 1955 as reported back to the House by the Justice and Law Reform Select Committee in the Companies (Ancillary Provisions) Bill *1991*.

The amendments to *clauses 320* and *321* are consequential on other changes to the Bill.

The amendments to *clause 328* will align the clause with the proposed new *section 199I* of the Companies Act 1955 as reported back to the House in the Companies (Ancillary Provisions) Bill *1991*.

The proposed new *clauses 322* to *333D* relate to the service of documents under the Bill. It is proposed that all provisions relating to service be in the one place rather than in different Parts of the Bill as they are at present.

Clause 332 (which relates to the service of documents on companies in legal proceedings) is the same as *clause 169* except for 2 amendments.

The first omits *paragraph (d)* of *subclause (1)*, and substitutes a new paragraph which will allow service of a document in legal proceedings in accordance with any directions for service given by a court. This will include service in the manner provided for in the existing paragraph.

The second recasts *subclause (2)* without altering its effect.

Rule 198 (2) of the High Court Rules provides that the methods of service on corporations specified in rule 198 (1) are in addition to any other modes of service provided for by any Act unless such other modes of service are expressed to be exclusive.

Subclause (2), in stating that the methods of service in *subclause (1)* are the only methods of serving documents in legal proceedings on companies provides, in

shareholders and creditors) is substantially the same as *clause 279A* extended to apply to shareholders as well as creditors.

The new *clause 333D* contains additional provisions relating to service in particular cases.

The amendments to *paragraph (a)* of *clause 335* are of a drafting nature.

The new *paragraph (c)* widens the power to make regulations in relation to the conduct of liquidations.

The new *clause 337* amends the Securities Transfer Act 1991.

There are a number of amendments to the *Second* Schedule (which relates to proceedings at meetings of shareholders).

The amendment to *subclause (1)* of *clause 3* is of a drafting nature.

The amendment to *subclause (2)* will require notice to be given to shareholders of the text only of special resolutions.

The amendment to *clause 5* is of a drafting nature.

The amendment to *subclause (6)* of *clause 6* is of a drafting nature.

The amendment to *subclause (7)* will allow a company's constitution to confer power on the chairperson of a meeting to exercise a casting vote.

The proposed new *subclause (8)* makes it clear that the instrument appointing a proxy confers power to demand or join in demanding a poll. This provision is to the same effect as section 141 (2) of the Companies Act 1955.

The purpose of the new *clause 10* is to enable companies to send to shareholders, at the same time, the annual report, notice of meeting, and notice of any shareholder proposal. This is a matter of particular concern to large companies.

The present clause would, in many cases, require separate mailings to shareholders resulting in substantial compliance costs.

The new clause provides, in effect, that if notice of the shareholder proposal is received at least 30 working days before the meeting, the board must meet the costs of distribution to shareholders. In other cases, the costs must be met by the proposing shareholder.

Except for the new *paragraph (a)*, the amendments to the *Third* Schedule are consequential on the proposed new *clauses 54A, 54C,* and *63A*.

The new *paragraph (a)* refers to *clause 20 (1) (c)* of the Bill instead of *clause 19 (1)* which is incorrect.

The amendment to clause 1 of the *Fourth* Schedule removes the requirement for the directors to fix the term of office of the chairperson of the board.

The amendment to *clause 2* is of a drafting nature.

Except for a number of amendments of a drafting nature, the amendments to *Schedule 4A* add to the information that must be contained in a company's annual return.

The following additional information will be required to be disclosed:

(a) The company's address for service:

(b) The company's postal address:

(c) If records are kept under *clause 164* at a place other than the company's registered office, the location of that place and details of the records kept there:

(d) A statement as to whether since the last annual return *clause 16* or *clause 16A* of the Financial Reporting Bill *1991* has applied to the company (those clauses require companies that are issuers of securities to the public or are overseas owned or controlled to file financial statements):

(e) A statement as to whether the company was a specified company for the purposes of the Takeovers Bill *1991*:

(f) If the company avoided the need for an annual meeting by doing everything required to be done at the meeting by passing a resolution in lieu of the meeting under *clause 100* of the Bill, the date on which the resolution was passed.

There are a number of amendments to the *Fifth* Schedule.

The amendments to *subclause (1)* of *clause 2* make a drafting change and reduce the number of days' notice of a meeting from 10 to 5.

The new *subclause (3)* of *clause 2* extends the provision to apply to non-receipt of notices of meeting.

The new *subclauses (3A)* and *(3B)* relate to adjournments.

The new *clause 4* replaces the existing clause relating to voting at creditors' meetings.

Except in the case of resolutions under *clause 216* of the Bill (which relates to compromises), a resolution will be passed if approved by a majority in number and value of creditors voting in person or by proxy.

In the case of resolutions under *clause 216*, a resolution will be passed if approved by a majority in number and 75 percent in value of creditors voting in person or by proxy.

This is currently the position under rule 113 of the Companies (Winding Up) Rules 1956 and section 205 of the Companies Act 1955, respectively.

Clause 4 in the Bill, as presently drafted, requires approval by a majority in number of creditors voting who hold, in aggregate, in excess of 50 percent of the value of debts owned to all creditors.

The amendment to *clause 8* makes the power of creditors to regulate the procedure at meetings subject to any regulations made under the Bill as well as to the provisions of the *Fifth* Schedule.

The principal amendment to the *Seventh* Schedule (which specifies the preferential claims payable in a liquidation) is the addition to *clause 4* of excise duty payable under Part IVA of the Customs Act 1966.

The amendment to the *Ninth* Schedule alters a cross-reference.