

HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Tuesday, 14 September 1993

COMPANIES (ANCILLARY PROVISIONS) BILL

*Proposed Amendments*

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

*Clause 1:* To omit subclause (2) (lines 6 to 8 on page 8), and substitute the following subclause:

(2) Except as provided in sections 113 (2), 171 (2), and 201 of this Act, this Act shall come into force on the 1st day of July 1994.

*Clause 3: Subclause (1):* To insert after the expression "subsection (2)" (line 17 on page 8), the expression "and subsection (3)".

To omit the expression "1st day of January 1994" (line 19 on page 8), and substitute the expression "1st day of July 1994".

*Subclause (2):* To omit the expression "31st day of December 1993" (lines 7 and 8 on page 9), and substitute the expression "30th day of June 1994".

*Clause 4:* To add as subclause (3) (after line 41 on page 12), the following subclause:

(3) Section 2 of the principal Act is hereby amended by adding the following subsection:

"(6) For the purposes of subsection (5) of this section, a company within the meaning of section 2 of the Companies Act 1993 is related to another company if, were it a company within the meaning of subsection (1) of this section, it would be related to that other company."

*New clause inserted:* To insert as clause 10A (after line 16 on page 20), the following clause:

**10A. Requirements with respect to memorandum—**

Section 14 (1) of the principal Act is hereby amended by inserting after the word "word", the words "or Tapui (Limited) as the last words".

*Clause 15: New section 31A:* To omit subsection (2) (lines 6 to 10 on page 24), and substitute the following subsection:

"(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 1993; or

“(c) That is identical or almost identical to a name that the Registrar has already reserved under this Act or the Companies Act 1993 and that is still available for registration; or

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

*Clause 23: New section 90: Subsection (3):* To insert after the expression “subsection (1)” (line 20 on page 30), the expression “or subsection (2)”.

*Subsection (6):* To omit the word “Where” (line 4 on page 31), and substitute the words “Subject to subsection (1) of this section, where”.

*New clause inserted:* To insert as clause 27A (after line 3 on page 33), the following clause:

**27A. Extended meaning of “subsidiary”**—The principal Act is hereby amended by inserting, after section 158, the following section:

“158A. For the purposes of this Act, a company within the meaning of section 2 of the Companies Act 1993 is also 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.

*Clause 29: New clause 180:* To omit from paragraphs (b) and (c) of subsection (1) the expression “251A” (line 26 on page 33 and line 5 on page 34).

To omit the cross-heading “*Self-interest Transactions*” (line 25 on page 39), and substitute the following cross-heading:

“*Transactions Involving Self-interest*”

*New sections 197 and 197A:* To omit these sections (lines 6 to 23 on page 43), and substitute the following section:

**197. Interested director may vote**—(1) Subject to the memorandum and articles 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.

*New section 198:* To omit subsection (2) (lines 21 to 27 on page 44), and substitute the following subsection:

“(2) A director of a company may, unless prohibited by the board, disclose information to—

“(a) A person whose interests the director represents; or

“(b) A person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director’s powers and duties and, if the director discloses the information, the director must give to the board

written notice of the name of the person to whom it is disclosed.

*New section 204: Subsection (2):* To omit the words “or insurance effected” (line 36 on page 65).

*Subsection (4):* To insert after the word “being” (line 18 on page 66), the words “criminal liability or”.

*Subsection (5):* To insert in paragraph (a), after the word “liability” (line 26 on page 66), the words “, not being criminal liability,”.

To omit from paragraph (b) the word “liability” (line 30 on page 66), and substitute the words “liability; or”.

To add (after line 30 on page 66), the following paragraph:

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

*Subsection (10):* To omit this subsection (lines 17 to 21 on page 67).

*Clause 35: (PART VA: AMALGAMATIONS)*

*New section 209B:* To omit paragraphs (g) and (h) (lines 2 to 5 on page 72).

*New section 209C: Subsection (3):* To add to paragraph (d) (line 20 on page 73), the words “if it has one”.

To insert in paragraph (e) after the word “constitution” (line 22 on page 73), the words “if it has one”.

*New section 209D: Subsection (1):* To insert in paragraph (b) (i) after the word “company” (line 26 on page 74), the words “, other than the amalgamated company,”.

*New section 209E:* To insert in paragraph (c) after the word “company” (line 2 on page 76), the words “, if any”.

To insert as paragraph (ca) (after line 2 on page 76), the following paragraph:

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

*New section 209G:* To omit paragraph (h) (lines 1 to 7 on page 78), and substitute the following paragraph:

“(h) Any provisions of the amalgamation proposal that provide for the conversion of rights and interests (including any rights and interests in any shares in the capital of the companies) of the members of the amalgamating companies have effect according to their tenor.

*(PART VB: COMPROMISES WITH CREDITORS)*

*New section 209K:* To add to subsection (2) (line 19 on page 80), the words “or such other information as may be specified to enable the creditor or member to propose a compromise”.

*Clause 37: (PART VC: ENFORCEMENT)*

*New section 209P:* To insert in subsection (1) after the word “Act” (line 31 on page 89), the words “or the Financial Reporting Act 1993”.

*New section 209Q: Subsection (1):* To omit the expression “subsections (2) and” (line 16 on page 91), and substitute the word “subsection”.

*New section 209R:* To omit this section (lines 22 to 36 on page 92), and substitute the following section:

**“209R. Costs of derivative action to be met by company—**The Court shall, on the application of the member or director to whom leave was granted under **section 209a** 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 209r** 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.

*New section 209t:* To omit subsection (2) (lines 32 to 35 on page 93).

*New section 209v:* To insert after the word “Act” (line 36 on page 95), the words “or the Financial Reporting Act 1993”.

*New section 209x:* To insert after the word “Act” (line 6 on page 96) the words “or the Financial Reporting Act 1993”.

*Clause 38: (PART VI: LIQUIDATIONS)*

*New section 210:* To omit the words “Part of this” (line 26 on page 98).

To insert (after line 27 on page 98), the following definitions:

“‘Charge’ includes a right or interest in relation to property owned by a company, by virtue of which a creditor of the company is entitled to claim payment in priority to creditors entitled to be paid under **section 266** of this Act; but does not include a charging order issued by a court in favour of a judgment creditor:

“‘Creditor’ means a person who, in a liquidation, would be entitled to claim in accordance with **section 257** of this Act that a debt is owing to that person by the company; but does not include a secured creditor:

To add as subsection (2) (after line 7 on page 99), the following subsection:

“(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.

*New section 211:* To omit subsection (3) (lines 24 to 31 on page 99), and substitute the following subsection:

“(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 section inserted:* To insert as section 211AA (after line 6 on page 100), the following section:

**“211AA. Liquidators to act jointly unless otherwise stated—**Where 2 or more persons are appointed as liquidators of a company, those persons must act jointly unless the special resolution of members or the resolution of the board of the

company or the order of the Court appointing the liquidators states that the liquidators may exercise their powers individually.

*New section 211A: Subsection (2):* To omit this subsection (lines 24 to 32 on page 100), and substitute the following subsections:

“(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 216 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 211c (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 211 of this Act, within 14 days of the liquidator’s appointment; or

“(b) In the case of a liquidator appointed under paragraph (c) of subsection (2) of section 211 of this Act, within 42 days of the liquidator’s appointment; or

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

*Subsection (5):* To insert after the word “must” (line 5 on page 101), the word “forthwith”.

*New section 211c:* To omit subsection (2) (lines 23 to 25 on page 102), and substitute the following subsection:

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

“(a) If paragraph (b) of section 216 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 216 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.

*New section 214:* To omit this section (lines 2 to 5 on page 105), and substitute the following section:

“214. **Completion of liquidation**—The liquidation of a company is completed when the liquidator—

“(a) Complies with section 218 (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 218 (2) (a) of this Act; or

“(ii) A copy of any order made by the Court under section 218 (2) (b) of this Act together with any documents required to comply with the order,—

as the case may be.

*New section 214B: Subsection (2):* To omit the word “personal” (lines 17 and 21 on page 106).

To add as subsection (5) (after line 35 on page 106), the following subsection:

“(5) Nothing in this section limits or affects **section 246** of this Act.

*New section 214c: Subsections (1) and (2):* To omit these subsections (lines 37 to 41 on page 106 and lines 2 to 11 on page 107), and substitute the following subsections:

“(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.

*Subsection (3):* To omit from paragraph (a) the word “personal” (line 13 on page 107).

*New section 215: Subsection (1):* To omit the expression “**subsection (2)** of this section” (lines 26 and 27 on page 111), and substitute the expression “**section 215A** of this Act.”.

*Subsection (2):* To omit this subsection (lines 3 to 5 on page 112).

*New section inserted:* To insert as section 215A (after line 5 on page 112), the following section:

“**215A. 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 259** 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 211 (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 distribution to creditors of the company,—

the Official Assignee shall not be required, without the consent of the Minister of Justice, to carry out any duty or exercise any power in connection with the liquidation if, to do so, would or would be likely to involve incurring any expense.

*New section 216: Subsection (2):* To omit paragraphs (b) and (c) (lines 6 to 21 on page 113), and substitute the 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 member, 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 member to require the liquidator to call a meeting of creditors under section 268 of this Act; and

To insert as subsection (2A) after line (30 on page 113), the following subsection:

“(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 211 of this Act, 7 days after the liquidator’s appointment; or

“(b) In the case of a liquidator appointed under paragraph (c) of subsection (2) of section 211 of this Act, 35 days after the liquidator’s appointment; or

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

*Subsections (3) and (4):* To omit the expression “(c)” (line 34 on page 113 and line 3 on page 114), and substitute the expression “(b)”.

*New section 217:* To omit this section (lines 10 to 31 on page 114), and substitute the following section:

“217. **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 of the company, to be inspected by—

“(i) Any liquidation committee appointed under section 269 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 member; 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.

*New section 218:* To omit from subsection (1) the words “the liquidation is completed” (line 18 on page 115), and substitute the words “completing his or her duties in relation to the liquidation”.

To omit from paragraph (a) the words “known creditor” (line 20 on page 115), and substitute the words “creditor whose claim has been admitted”.

To insert in paragraph (a) (iii) before the word “grounds” (line 32 on page 115), the word “applicable”.

*New section 221:* To insert in paragraph (c) of subsection (3) after the word “liquidator” (line 2 on page 120), the words “or by a barrister or solicitor acting on behalf of the liquidator”.

*New section 222A:* To omit subsection (3) (lines 23 to 27 on page 121), and substitute the following subsection:

“(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 211 of this Act if—

“(a) The board of the company passed a resolution of the kind referred to in section 211A (6) of this Act; and

“(b) Section 211B of this Act does not apply in relation to the company.

*New section 222c:* To insert in subsections (1) and (3), after the word “liquidator” (line 37 on page 121 and line 2 on page 122), the words “or a barrister or solicitor acting on behalf of the liquidator”.

*New section 222d: Subsection (2):* To insert after the word “liquidator” (line 12 on page 122), the words “or a barrister or solicitor acting on behalf of the liquidator”.

To add as subsections (3) and (4) (after line 18 on page 122), the following subsections:

“(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 199I of this Act.

*New section 223:* To omit from subsection (1) the expression “section 222” (line 21 on page 122), and substitute the expression “section 222d”.

*New section 224:* To add as subsection (2) (after line 22 on page 123), the following subsection:

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

*New section 225:* To insert in subsection (3A) after the word “notice” (line 6 on page 124), the words “in writing”.

*New section 231:* To insert in paragraphs (a) and (b) of subsection (1) after the word “The” (lines 9 and 10 on page 128), the word “retail”.

*New section 234:* To omit paragraph (e) of subsection (1) (lines 29 and 30 on page 130), and substitute the following paragraph:

“(e) A person who is, or is deemed to be, subject to a compulsory treatment order made under Part II of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

*New section 237:* To insert as subsection (7A) (after line 18 on page 133), the following subsection:

“(7A) A liquidator appointed under subsection (7) of this section must, within 14 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.

*New section 246:* To omit from paragraph (c) of subsection (4) the word “company” (line 18 on page 145), and substitute the words:



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

*New section 248:* To omit from subsection (5) the expression “subsection (1)” (line 34 on page 146), and substitute the expression “subsection (1) (a) and subsection (4)”, and to omit the words “that subsection” (line 36 on page 146), and substitute the words “subsection (1) of this section”.

*New section 251: Subsection (1):* To omit paragraph (c) (lines 6 to 8 on page 148), and substitute the following paragraph:

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

*Subsection (3):* To omit this subsection (lines 29 and 30 on page 149), and substitute the following subsection:

“(3) Nothing in the Land Transfer Act 1952 restricts the  
operation of this section or sections 246 to 250 of this Act.

*New section 251A:* To omit this section (lines 33 to 37 on page 149 and lines 1 to 29 on page 150), and substitute the following section:

“251A. **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.

*New section 252:* To insert after the word “director” (lines 7 and 13 on page 152), the words “of the company”.

*New section 253:* To insert after the word “director” (lines 17 and 24 on page 154), the words “of the company”.

*New section 254:* To omit paragraph (a) of subsection (1) (lines 26 to 36 on page 155), 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 151 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

*New section 258: Subsection (3):* To omit the word “may” (line 16 on page 161), and substitute the word “must”.

To insert as subsections (3A) and (3B) (after line 19 on page 161), the following subsections:

“(3A) If a liquidator rejects a claim, whether in whole or in part, he or she must forthwith give notice in writing of the rejection to the creditor.

“(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.

*New section 259:* To insert as subsection (1A) (after line 4 on page 162), the following subsection:

“(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.

*Subsection (2):* To insert after the word “may” (line 7 on page 162), the words “, unless the liquidator has accepted a valuation and claim by the secured creditor under subsection (5) of this section,”.

*Subsection (6):* To insert after the word “may” (line 9 on page 163), the words “unless the secured creditor has realised the property,”.

*Subsection (7):* To omit this subsection (lines 11 to 14 on page 163), and substitute the following subsection:

“(7) The liquidator may at any time, by notice in writing, require a secured creditor, within 28 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.

*Subsection (9):* To insert after the word “section” (line 22 on page 163), the words “or who is taken as having surrendered the charge under subsection (8) of this section”.

*New section 263:* To omit subsection (2) (lines 25 to 31 on page 166), and substitute the following subsection:

“(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.

*New section 270A:* To omit from paragraph (f) of subsection (3) the word “for” (line 26 on page 174), and substitute the words “used for the transmission of documents by facsimile at”.

*(PART VIA: REMOVAL FROM THE REGISTER)*

*New section 272:* To omit from subsection (1) the expression “subsection (3) of” (line 12 on page 175).

*New section 277A:* To omit from subsection (5) the word “The” (line 36 on page 183), and substitute the words “Subject to any order of the Court, the”.

*Clause 48A: New section 460: Subsection (1):* To omit paragraph (d) (lines 25 and 26 on page 194), and substitute the following paragraph:

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

*Subsection (2):* To omit this subsection (lines 29 and 30 on page 194), and substitute the following subsection:

“(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.

*New section 460A:* To omit paragraph (c) (lines 5 to 7 on page 195), and substitute the following paragraph:

“(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 head office or principal place of business.

*New section 460B:* To omit the word “For” (line 8 on page 195), and substitute the words “Subject to subsection (2) of this section,”.

To omit paragraph (d) (lines 28 to 34 on page 195), and substitute the following paragraph:

“(d) In proving service of a document on a company by facsimile machine it is sufficient to prove that the document was properly transmitted by facsimile machine to the company concerned.

To add as subsection (2) (after line 34 on page 195), the following subsection:

“(2) A document is not to be deemed to have been served or sent or delivered to a company if it is proved that, through no fault on the part of the company, the document was not received within the time specified.

*Clause 61: New section 16:* To omit from *subsection (1)* the words “and Fisheries” (lines 1 and 2 on page 203).

*Clause 63:* To insert before the word “shall” (line 6 on page 204), the words “of that Act”.

*New clause inserted:* To insert as *clause 63A* (after line 12 on page 204), the following clause:

**63A. Agricultural and Pastoral Societies Amendment Act 1912 amended—**(1) The proviso to section 2 (2) of the Agricultural and Pastoral Societies Amendment Act 1912 is hereby amended by omitting the words “and Fisheries”.

(2) Section 3 (1) of the Agricultural and Pastoral Societies Amendment Act 1912 is hereby amended by omitting the words “and Fisheries”.

*Clause 71:* To insert before the words “shall” (line 41 on page 209), the words “of that Act”.

*Clause 76:* To insert before the word “applies” (line 24 on page 212), the words “of that Act”.

*Clause 88:* To insert before the word “applies” (line 17 on page 219), the words “of that Act”.

*Clause 93:* To insert before the word “shall” (line 5 on page 223), the words “of that Act”.

*New cross-heading and clauses inserted:* To insert as *clauses 93A to 93D* (after line 10 on page 223), the following cross-heading and clauses:

*Insolvency*

**93A. Sections to be read with Insolvency Act 1967—**This section and the next 3 succeeding sections shall be read together with and deemed part of the Insolvency Act 1967\* (in those sections referred to as the principal Act).

\*R.S. Vol. 18, p. 289  
Amendments: 1987, No. 146; 1990, No. 7

**93B. Prohibition on bankrupt entering business—**(1) Section (62) (1) (a) of the principal Act is hereby amended by omitting the words “, or become a director of”.

(2) Section 62 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Nothing in this section restricts the provisions of **section 199AB** of the Companies Act 1955 or **section 127** of the Companies Act 1993.”

**93C. Summary offences—**(1) Section 128 (1) (a) of the principal Act is hereby amended by omitting the expression “62, 111,” and substituting the expression “111”.

(2) Section 128 (3) (a) of the principal Act (as added by section 2 of the Insolvency Amendment Act 1972) is hereby amended by omitting the expression “or section 62”.

**93D. New section inserted—**The principal Act is hereby amended by inserting, after section 128, the following section:

**“128A. Offences by undischarged bankrupts in relation to management of companies—**(1) Every person who is adjudged bankrupt and who—

“(a) Acts as a director of a company; or

“(b) Fails without reasonable cause to comply with section 62 of this Act,—

commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,000.

“(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, an information in respect of an offence against paragraph (a) or paragraph (b) of subsection (1) of this section may be laid at any time within 2 years after the date of the offence.”

*Clauses 97, 97A, and 98:* To omit these clauses and the cross-heading above clause 97 (lines 40 to 42 on page 225, page 226, and lines 1 to 32 on page 227).

*Clause 112:* To insert before the word “applies” (line 40 on page 232), the words “of that Act”.

*Clause 113:* To add (after line 10 on page 233), the following subclause:

(2) **Section 115** of this Act shall come into force on the 28th day after the date on which this Act receives the Royal assent.

*Clause 117:* To omit the expression “1st day of January 1994” (line 12 on page 240), and substitute the expression “1st day of July 1994”.

*Clause 118:* To omit from the definition of the term “application for reregistration” the words “Part II of the Companies Act 1990” (lines 16 and 17 on page 240), and substitute the words “this Part of this Act”.

To omit from the definition of the term “transition period” the expressions “1st day of January 1994” and “31st day of December 1996” (lines 12, 13, and 14 on page 241), and substitute the expressions “1st day of July 1994” and “30th day of June 1997”.

*Clause 130:* To omit the expression “1st day of January 1994” (lines 18 and 19 on page 261), and substitute the expression “1st day of July 1994”.

*Clause 134:* To omit paragraph (f) of subclause (1) (lines 33 and 34 on page 268), and substitute the following paragraph:

(f) A person who is, or is deemed to be, subject to a compulsory treatment order made under Part II of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

*Clause 168:* To insert in paragraphs (a) and (b) of subclause (1) after the word “The” (lines 13 and 14 on page 295), the word “retail”.

*Clause 171:* To add (after line 19 on page 296), the following subclause:

(2) **Section 171A** of this Act shall come into force on the 28th day after the date on which this Act receives the Royal assent.

*New clause inserted:* To insert as clause 171AA (after line 19 on page 298), the following clause:

**171AA. Deed by corporation—**Section 5 of the principal Act is hereby amended by adding the following subsection:

“(5) Nothing in subsection (1) (a) of this section applies to a company within the meaning of the Companies Act 1993.”

*New clause inserted:* To insert as clause 173B (after line 15 on page 311), the following clause:

**173B. New Part inserted**—The principal Act is hereby amended by inserting, after Part XVI, the following Part:

“PART XVI<sup>A</sup>

“DEBENTURES ISSUED BY COMPANIES

“151A. **Interpretation**—In this Part of this Act, ‘company’ means—

“(a) A company within the meaning of section 2 of the Companies Act 1955:

“(b) A company within the meaning of section 2 of the Companies Act 1990.

“151B. **Perpetual debentures**—Notwithstanding any rule of equity, a condition contained in any debentures or in any deed for securing any debentures, issued or executed by a company, whether before or after the commencement of this section, is not invalid by reason only that the debentures are thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Cf. 1955, No. 63, s. 97

“151C. **Power to reissue redeemed debentures in certain cases**—(1) Where either before or after the commencement of this section a company has redeemed any debentures previously issued, then—

“(a) Unless any provision to the contrary, whether express or implied, is contained in the case of a company within the meaning of section 2 of the Companies Act 1955, in the articles of the company, or in the case of a company within the meaning of section 2 of the Companies Act 1990, in the constitution of the company, as the case may be, or in any contract entered into by the company; or

“(b) Unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled,—

the company shall have, and shall be deemed always to have had, power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place.

“(2) On a reissue of redeemed debentures the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

“(3) Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit while the debentures remained so deposited.

“(4) The reissue of a debenture or the issue of another debenture in its place under this section, whether the reissue or issue was made before or after the commencement of this

section, shall be treated as the issue of a new debenture for the purposes of stamp duty, if any, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued.

**“151D. Specific performance of contracts to subscribe for debentures—**A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.”

Cf. 1955, No. 63, s. 100

*Clause 191:* To omit from subclause (2) the expression “1st day of January 1994” (line 27 on page 311), and substitute the expression “1st day of July 1994”.

*Clause 192: New section 121A:* To omit subsection (3) (lines 1 to 3 on page 312).

*New section 121o:* To omit from subsection (4) the expression “sections 169 to 171” (line 28 on page 322), and substitute the expression “sections 333 and 333o”.

*Clause 195:* To omit from subclause (1) the expression “31st day of December 1996” (line 5 on page 323), and substitute the expression “30th day of June 1997”.

To omit from subclause (2) the words “that Act” (lines 10 and 14 on page 323), and substitute the words “the Companies Act 1955”.

*Clause 196:* To omit the expression “1st day of January 1994” (line 20 on page 323), and substitute the expression “1st day of July 1994”.

*Clause 201:* To omit the expression “31st day of December 1996” (lines 15 and 16 on page 325), and substitute the expression “30th day of June 1997”.

#### FIRST SCHEDULE

To omit from the item relating to subsection (7) of section 147 the expression “(5A)”, and substitute the expression “(5)”.

#### SECOND SCHEDULE (NEW SCHEDULE 8A)

*Clause 2: Subclause (1):* To omit the word “given”, and substitute the word “sent”, and omit the words “10 working”, and substitute the number “7”.

*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 or creditors, not being a meeting held for the purposes of section 209m 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 or creditors held for the purposes of section 209M of this Act, a resolution is adopted if a majority in number representing 75 percent in value of the creditors or class of creditors voting in person or by proxy vote in favour of the resolution.

(3) A creditor chairing the meeting does not have a casting vote.

*(NEW SCHEDULE 8C)*

*Clause 1:* To omit from paragraph (c), the words “, subject to the approval of the Audit Office”.

*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”.

*SEVENTH SCHEDULE*

To add:

Enactment Amended	Amendment
1991, No. 69—The Resource Management Act 1991	By omitting from the definition of the term “company lease” in section 2 (1) the words “Part I of the Companies Amendment Act 1964”, and substituting the words “section 121A of the Land Transfer Act 1952”.

**EXPLANATORY NOTE**

This Supplementary Order Paper amends the Companies (Ancillary Provisions) Bill 1991.

The amendments fall into 3 categories:

- (a) Amendments that are the same as the amendments to the Companies Bill;
- (b) Amendments changing commencement dates from 1 January 1994 to 1 July 1994;
- (c) Amendments of a technical or drafting nature.