

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Wednesday, 13 September 1989

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL

Proposed Amendments

Hon. W. P. JEFFRIES, in Committee, to move the following amendments:

Clause 29: To omit clause 29 (lines 16 to 25 on page 15), and substitute the following clause:

29. Registration of charges created by companies—

Section 102 of the principal Act is hereby amended by repealing subsection (1) (including the proviso), and substituting the following subsections:

“(1) Where a company creates any charge to which this section applies, it shall be the duty of the company within the time prescribed by subsection (3) of this section to cause a copy of the instrument by which the charge is created or evidenced to be delivered to the Registrar for registration in the manner required by this Act. Every copy shall be accompanied by a certificate in the prescribed form by an officer of the company or its solicitor as to the execution of the instrument, verifying the copy as a true copy, and containing such other particulars relating to the charge as shall be prescribed.

“(1A) If the instrument by which the charge is created or evidenced is registered under any other Act the requirements of subsection (1) of this section are complied with if, within the time prescribed, there is delivered to the Registrar for registration, a certificate in the prescribed form by an officer of the company or its solicitor containing such particulars relating to the charge as shall be prescribed.”

(2) Section 102 of the principal act is hereby amended by repealing subsection (7) and substituting the following subsection:

“(7) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall for the purposes of this section be sufficient if there are delivered to or received by the Registrar within 30 days, or 3 months, as the case may be, after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, a copy of the deed containing the charge, or, if there is no such deed, a copy of one of the debentures of the series, in either case accompanied by a certificate in the prescribed form by an officer of the company or its solicitor as to the execution of the deed, or the giving of the debenture, as the case may be, verifying the copy as a true copy, and containing such other particulars relating to the charge as shall be prescribed:

“Provided that where more than one issue is made of debentures in the series, there shall be sent to the Registrar, for entry in the register, particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.”

(3) This section shall come into force on the 1st day of April 1990.

Clause 30: To omit clause 30 (lines 26 to 32 on page 15) and substitute the following clauses:

30. Duty of company to register charges on property acquired—(1) The principal Act is hereby amended by repealing section 104 and substituting the following section:

“104. (1) Where a company acquires property that is subject to a charge that would, if it had been created by the company after the acquisition of the property, have been required to be registered under this Part of this Act, the company shall within 30 days, or if the property is situated and the charge was created outside New Zealand, within 3 months, after the acquisition is completed, deliver to the Registrar for registration a copy of the instrument by which the charge was created or evidenced accompanied by a certificate in the prescribed form by an officer of the company or its solicitor as to the date of acquisition of the property, verifying the copy as a true copy, and containing such other particulars relating to the charge as shall be prescribed.

“(2) If the instrument by which the charge is created or evidenced has been already registered with the Registrar, or is registered under any other Act, the requirements of subsection (1) of this section are complied with if, within 30 days, or 3 months, as the case may be, there is delivered to the Registrar for registration a certificate in the prescribed form by an officer of the company or its solicitor containing such particulars relating to the charge as shall be prescribed.

“(3) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine of \$100 unless it is proved to the satisfaction of the Court that a copy of the instrument required to be registered was not obtainable by the company.”

(2) This section shall come into force on the 1st day of April 1990.

30A. Register of charges to be kept by Registrar—(1) Section 105 of the principal Act (as amended by section 9 of the Companies Amendment Act 1975) is hereby amended by repealing subsection (2) and substituting the following subsection:

“(2) The Registrar shall give a certificate in the prescribed form under his or her hand of the registration of any charge registered pursuant to this Act specifying the amount secured by the charge and such other particulars relating to the charge as may be prescribed. The certificate shall be conclusive evidence that the requirements of this Part of this Act as to registration have been complied with.”

(2) Section 9 of the Companies Amendment Act 1975 is hereby consequentially repealed.

(3) This section shall come into force on the 1st day of April 1990.

Clause 31: To omit clause 31 (lines 33 to 37 on page 15 and lines 1 and 2 on page 16) and substitute the following clauses:

31. Entries of satisfaction and release of property from charge—(1) Section 107 (1) of the principal Act is hereby amended by omitting the words “, and where he enters any such memorandum he shall furnish the company with a copy thereof.”.

(2) Section 107 of the principal Act is hereby amended by inserting after subsection (1) the following subsection:

“(1A) Every memorandum shall be in such form as shall be prescribed and may be incorporated as part of the register of charges kept under section 105 of this Act.”

(3) This section shall come into force on the 1st day of April 1990.

31AA. Form of certificates—(1) The principal Act is hereby amended by inserting after section 108 the following section:

“108A. For the purposes of sections 102 and 104 of this Act a single form of certificate may be prescribed that is adaptable for use under either of those sections.”

(2) This section shall come into force on the 1st day of April 1990.

EXPLANATORY NOTE

Clauses 29 to 31: Clauses 29, 30, and 31 have been redrafted and new clauses 30A and 31AA added to the Bill. The new clause 30A amends section 105 (2) of the principal Act relating to the form of the certificate of registration of a charge. The new clause 31AA authorises the use of a single form of certificate which can be adapted to meet the requirements of either section 102 or section 104 of the principal Act.

The purpose of these clauses is to simplify the procedure for the registration of company charges. Having regard to the forms that it is proposed to use in the registration process it is necessary to replace the original clauses of the Bill.

