

COMPANIES ACT 1993

1993, No 105

[CCH note: No 46 of 2014 contains the following transitional provisions, effective on a date to be appointed by the Governor-General by Order in Council, or 1 May 2015:

“25 TRANSITIONAL PROVISION RELATING TO REQUIREMENT FOR 1 OR MORE DIRECTORS TO LIVE IN NEW ZEALAND, ETC

25(1) Before the close of the 180th day after the commencement of this section, section 10(d)(i) and (ii) of the principal Act do not apply to a company incorporated before the commencement of this section.

25(2) A company incorporated before the commencement of this section that does not comply with the requirements in section 10(d)(i) or (ii) of the principal Act must, before the close of the 180th day after the commencement of this section, do the following in order to comply with those requirements:

(a) arrange for a director who complies with the requirements in section 10(d)(i) or (ii) of the principal Act; and

(b) in the manner required by the Registrar, notify the Registrar of the following:

(i) that a director complies with the requirements in section 10(d)(i) or (ii) of the principal Act; and

(ii) the information required under section 12(2)(b)(i) to (iii) in relation to that director.

25(3) If a company fails to comply with subsection (2), the company does not comply with section 10 of the principal Act (see section 318(1)(aaa) of the principal Act).

26 TRANSITIONAL PROVISION RELATING TO DIRECTORS' DATE AND PLACE OF BIRTH INFORMATION AND COMPANY'S ULTIMATE HOLDING COMPANY INFORMATION

26(1) A company incorporated before the commencement of this section must provide the Registrar with the following information (at the time and in the manner required by the Registrar):

(a) the date and place of birth of each director; and

(b) the company's ultimate holding company information.

26(2) If a company fails to comply with subsection (1),—

(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2) of the principal Act; and

(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of the principal Act.

26(3) Sections 373(2), 374(2), and 375 to 380 of the principal Act apply as if this section were a section of the principal Act.”]

[CCH note: No 46 of 2014 contains the following transitional provisions, effective 3 July 2014:

“29 TRANSITIONAL PROVISION RELATING TO AMENDMENTS TO PART 13 OF PRINCIPAL ACT

29(1) An amalgamation proposal involving 1 or more code companies that has been approved by the boards of all amalgamating companies in accordance with section 221(1) of the principal Act before the commencement of section 28 of this Act is to be continued as if section 28 of this Act had not been enacted, except if the amalgamation takes effect on or after the 180th day after the commencement of section 28 of this Act.

29(2) Section 28 of this Act applies to both—

(a) an amalgamation described in subsection (1) that takes effect on or after the 180th day after the commencement of section 28; and

(b) any other amalgamation proposal that has not been approved by the boards of all companies in accordance with section 221(1) of the principal Act before the commencement of section 28.

29(3) In this section, **takes effect**, in respect of an amalgamation, means the date when the amalgamation takes effect in accordance with sections 224 and 225 of the principal Act.”]

[CCH note: No 46 of 2014 contains the following transitional provisions, effective 3 July 2014:

“34 TRANSITIONAL PROVISION RELATING TO AMENDMENTS TO PART 15 OF PRINCIPAL ACT

34(1) An application for an order under section 236(1) of the principal Act that has been made before the commencement of section 30 of this Act is to be continued and determined as if section 30 of this Act had not been enacted.

34(2) Section 236A of the principal Act, as inserted by section 30 of this Act, applies to any application for an order under section 236(1) of the principal Act that is made after the commencement of section 30 of this Act.”]

[CCH note: No 102 of 2013 contains the following transitional provisions, effective 1 April 2014 (LI 2014/52, cl 3(1)):

“44 TRANSITIONAL PROVISION

44(1) The Companies Act 1993, as amended by sections 24 to 43, applies to a company or an overseas company in relation to accounting periods that commence on or after the commencement of this section.

44(2) The Companies Act 1993 and the Financial Reporting Act 1993 (and the regulations and order referred to in section 54(2) and (3)), as in force before the commencement of this section, continue to apply to a company or an overseas company in relation to accounting periods that commenced before the

commencement of this section as if this Act and the Financial Reporting Act 2013 had not been enacted.

44(3) Unless the context otherwise requires, a reference to financial statements or group financial statements in the Companies Act 1993 (other than sections 200 to 207O) includes financial statements or group financial statements prepared under the Financial Reporting Act

1993 (whether under section 55 of the Financial Reporting Act 2013 or otherwise).

44(4) This section is subject to sections 55 and 56 of the Financial Reporting Act 2013 (which require issuers, on a transitional basis, to continue complying with the Financial Reporting Act 1993 and provide transitional rules for FMC reporting entities.)”]

An Act to reform the law relating to companies, and, in particular,—

- (a) to reaffirm the value of the company as a means of achieving economic and social benefits through the aggregation of capital for productive purposes, the spreading of economic risk, and the taking of business risks; and
- (b) to provide basic and adaptable requirements for the incorporation, organisation, and operation of companies; and
- (c) to define the relationships between companies and their directors, shareholders, and creditors; and
- (d) to encourage efficient and responsible management of companies by allowing directors a wide discretion in matters of business judgment while at the same time providing protection for shareholders and creditors against the abuse of management power; and
- (e) to provide straightforward and fair procedures for realising and distributing the assets of insolvent companies

[28 September 1993]

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

SECTION 1 SHORT TITLE AND COMMENCEMENT

- 1(1) [Short title] This Act may be cited as the Companies Act 1993.
- 1(2) [Commencement] This Act shall come into force on 1 July 1994.

PART 1 — PRELIMINARY

SECTION 2 INTERPRETATION

2(1) [Definitions] In this Act, unless the context otherwise requires,—

accounting period, in relation to a company, means a year ending on a balance date of the company and, if as a result of the date of the registration of the company or a change of the balance date of the company, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period

address for service in relation to a company, means the company’s address for service adopted in accordance with section 192

annual meeting means a meeting required to be held by section 120

annual report—

- (a) means a report prepared under section 208; and
- (b) does not include a concise annual report

History

Definition of “annual report” inserted by No 62 of 2006, s 4(3), effective 18 June 2007.

applicable auditing and assurance standard has the same meaning as in section 5 of the Financial Reporting Act 2013

History

Definition of “applicable auditing and assurance standard” inserted by No 102 of 2013, s 24(6), effective 1 April 2014 (LI 2014/52, cl 3(1)).

applicable financial reporting standard has the same meaning as in section 5 of the Financial Reporting Act 2013

History

Definition of “applicable financial reporting standard” inserted by No 102 of 2013, s 24(6), effective 1 April 2014 (LI 2014/52, cl 3(1)).

balance date, in relation to a company or an overseas company, has the same meaning as in section 41 of the Financial Reporting Act 2013

History

Definition of “balance date” replaced by No 102 of 2013, s 24(1), effective 1 April 2014 (LI 2014/52, cl 3(1)). Former definition read:

“**balance date** has the meaning set out in section 7 of the Financial Reporting Act 1993”.

board and board of directors have the meanings set out in section 127

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 313; but does not include a charge under a charging order issued by a court in favour of a judgment creditor

class has the meaning set out in section 116

code company has the meaning set out in section 2(1) of the Takeovers Act 1993

History

Definition of "code company" inserted by No 46 of 2014, s 27, effective 3 July 2014.

company means—

- (a) a company registered under Part 2;
- (b) a company reregistered under this Act in accordance with the Companies Reregistration Act 1993

concise annual report, in relation to a company and an accounting period, means a report on the affairs of the company during that period that is prepared in accordance with the requirements prescribed in regulations made under this Act

History

Definition of "concise annual report" inserted by No 62 of 2006, s 4(3), effective 18 June 2007.

constitution means a document referred to in section 29

control interest has the meaning set out in sections 365B to 365E

History

Definition of "control interest" inserted by No 46 of 2014, s 36, effective 1 May 2015 (LI 2014/273).

court means the High Court of New Zealand

designated settlement system has the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989

History

Definition of "designated settlement system" inserted by No 53 of 2009, s 16, effective 24 November 2009.

director has the meaning set out in section 126

distribution, in relation to a distribution by a company to a shareholder, means—

- (a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the shareholder; or
- (b) the incurring of a debt to or for the benefit of the shareholder—

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means

dividend has the meaning set out in section 53

document means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and material subsequently derived from information so recorded or stored; and
- (c) a book, graph, or drawing; and

- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

enforcement country means a country, State, or territory outside New Zealand prescribed for the purposes of section 10(d)

History

Definition of "enforcement country" inserted by No 46 of 2014, s 8, effective 1 May 2015 (LI 2014/273).

entitled person, in relation to a company, means—

- (a) a shareholder; and
- (b) a person upon whom the constitution confers any of the rights and powers of a shareholder

exempt company (*repealed*)

History

Definition of "exempt company" repealed by No 102 of 2013, s 24(2), effective 1 April 2014 (LI 2014/52, cl 3(1)). Former definition read:

"**exempt company** has the meaning set out in section 6A of the Financial Reporting Act 1993

[CCH note: The definition of "exempt company" in s 2(1) of the Companies Act 1993 was repealed and substituted by s 4(1) of the Companies Amendment Act (No 2) 2006 (No 62 of 2006). The amendment Act also contained a transitional provision in s 4(2) dealing with the accounting periods to which the amendment made by s 4(1) applies. Section 4(2) is reproduced below:

(2) Subsection (1) applies in respect of—

(a) Accounting periods that have not ended at the commencement of that subsection; and

(b) Accounting periods that commence after the commencement of that subsection.]"

Definition of "exempt company" replaced by No 62 of 2006, s 4(1), effective 22 November 2006. Former definition read:

"**Exempt company** has the meaning set out in section 2 of the Financial Reporting Act 1993."

Definition of "exempt company" inserted by No 115 of 1996, s 2, effective 2 September 1996.

existing company means a body corporate registered or deemed to be registered under Part 2 or Part 10 of the Companies Act 1955, or under the Companies Act 1933, the Companies Act 1908, the Companies Act 1903, the Companies Act 1882, or the Joint Stock Companies Act 1860

financial markets participant has the same meaning as in section 4 of the Financial Markets Authority Act 2011

History

Definition of "financial markets participant" inserted by No 5 of 2011, s 82 and sch 3, pt 1, effective 1 May 2011.

financial product has the same meaning as in section 7 of the Financial Markets Conduct Act 2013

History

Definition of "financial product" inserted by No 70 of 2013, s 150 and sch, effective 1 December 2014 (LI 2014/325).

financial statements has the same meaning as in section 6 of the Financial Reporting Act 2013

History

Definition of "financial statements" replaced by No 102 of 2013, s 24(3), effective 1 April 2014 (LI 2014/52, cl 3(1)). Former definition read:

"financial statements has the meaning set out in section 8 of the Financial Reporting Act 1993".

FMA means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011

History

Definition of "FMA" inserted by No 5 of 2011, s 82 and sch 3, pt 1, effective 1 May 2011.

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

History

Definition of "generally accepted accounting practice" inserted by No 102 of 2013, s 24(6), effective 1 April 2014.

group financial statements has the same meaning as in section 7 of the Financial Reporting Act 2013

History

Definition of "group financial statements" replaced by No 102 of 2013, s 24(4), effective 1 April 2014 (LI 2014/52, cl 3(1)). Former definition read:

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

group of companies (*repealed*)

History

Definition of "group of companies" repealed by No 102 of 2013, s 24(5), effective 1 April 2014 (LI 2014/52, cl 3(1)). Former definition read:

"group of companies has the meaning set out in section 2 of the Financial Reporting Act 1993".

holding company has the meaning set out in section 5

interest group has the meaning set out in section 116

interested, in relation to a director, has the meaning set out in section 139

interests register means the register kept under section 189(1)(c)

licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

History

Definition of "licensed insurer" inserted by No 111 of 2010, s 241 and sch 3, pt 2, effective 1 February 2011 (SR 2010/446).

licensed market has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

History

Definition of "licensed market" inserted by No 70 of 2013, s 150 and sch, effective 1 December 2014 (LI 2014/325).

Sec 2(1)

limited partnership has the meaning set out in section 6 of the Limited Partnerships Act 2008

History

Definition of "limited partnership" inserted by No 46 of 2014, s 8, effective 1 May 2015 (LI 2014/273).

listed issuer has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

History

Definition of "listed issuer" inserted by No 70 of 2013, s 150 and sch, effective 1 December 2014 (LI 2014/325).

major transaction has the meaning set out in section 129(2)

New Zealand register means the register of companies incorporated in New Zealand kept pursuant to section 360(1)(a)

ordinary resolution has the meaning set out in section 105(2)

overseas company means a body corporate that is incorporated outside New Zealand

overseas limited partnership has the meaning set out in section 4 of the Limited Partnerships Act 2008

History

Definition of "overseas limited partnership" inserted by No 46 of 2014, s 8, effective 1 May 2015 (LI 2014/273).

overseas register means the register of bodies corporate that are incorporated outside New Zealand kept pursuant to section 360(1)(b)

personal representative, in relation to an individual, means the executor, administrator or trustee of the estate of that individual

pre-emptive rights means the rights conferred on shareholders under section 45

prescribed form means a form prescribed by regulations made under this Act that contains, or has attached to it, such information or documents as those regulations may require

property means property of every kind whether tangible or intangible, real or personal, corporeal or incorporeal, and includes rights, interests, and claims of every kind in relation to property however they arise

receiver has the same meaning as in section 2(1) of the Receiverships Act 1993

History

Definition of "receiver" inserted by No 56 of 2006, s 4(1), effective 1 November 2007 (Companies Amendment Act 2006 Commencement Order SR 2007/297).

records means the documents required to be kept by a company under section 189(1)

redeemable has the meaning set out in section 68

registered office has the meaning set out in section 186

Registrar means the Registrar of Companies appointed in accordance with section 357(1)

related company has the meaning set out in subsection (3)

relative, in relation to any person, means—

- (a) any parent, child, brother, or sister of that person; or
- (b) any spouse, civil union partner, or de facto partner of that person; or
- (ba) any parent, child, brother, or sister of a spouse, civil union partner, or de facto partner of that person; or
- (c) a nominee or trustee for any of those persons

History

Definition of “relative” amended by No 3 of 2005, s 7 and sch 1, by replacing para (a) and (b) and inserting para (ba); effective 26 April 2005. Former para (a) and (b) read:

“(a) Any parent or spouse or child or brother or sister of that person; or

(b) Any parent or child or brother or sister of a spouse of that person; or”.

relevant interest has the meaning set out in section 146

secured creditor, in relation to a company, means a person entitled to a charge on or over property owned by that company

securities (*repealed*)

History

Definition of “securities” repealed by No 70 of 2013, s 150 and sch, effective 1 December 2014 (LI 2014/325). Former definition read:

“securities has the same meaning as in the Securities Act 1978”

share has the meaning set out in section 35

share register means the share register required to be kept under section 87

shareholder has the meaning set out in section 96

solvency test has the meaning set out in section 4

special meeting means a meeting called in accordance with section 121

special resolution means a resolution approved by a majority of 75% or, if a higher majority is required by the constitution, that higher majority, of the votes of those shareholders entitled to vote and voting on the question

spouse, in relation to a person (A), includes a person with whom A has a de facto relationship (whether that person is of the same or a different sex) and a civil union partner

History

Definition of “spouse” inserted by No 56 of 2006, s 4(2), effective 1 November 2007 (Companies Amendment Act 2006 Commencement Order SR 2007/297).

Spouse (*repealed*)

History

Definition of “spouse” repealed by No 3 of 2005, s 7 and sch 1, effective 26 April 2005. Former definition read:

“‘Spouse’, in relation to a person, includes a person with whom that person has a relationship in the nature of marriage.”

stock exchange means—

- (a) a licensed market; or
- (b) a financial product market that is authorised to operate in an overseas jurisdiction in accordance with the laws of that jurisdiction

[CCH note: LI 2014/326, Sch 1, cl 30(2)(a), provides that during the transitional period (No 69 of 2014, sch 4) the definition of **stock exchange** in s 2(1) must be treated as including, in respect of any action, event, or circumstance that occurred before commencement, a registered market within the meaning of s 2(1) of the Securities Markets Act 1988 as in force immediately before commencement.]

History

Definition of “stock exchange” inserted by No 70 of 2013, s 150 and sch, effective 1 December 2014 (LI 2014/325).

subsidiary has the meaning set out in section 5

Surplus assets means the assets of a company remaining after the payment of creditors’ claims and available for distribution in accordance with section 313 prior to its removal from the New Zealand register

ultimate holding company, in relation to a company, means a body corporate that—

- (a) is a holding company of the company; and
- (b) is itself not a subsidiary of any body corporate

History

Definition of “ultimate holding company” inserted by No 46 of 2014, s 8, effective 1 May 2015 (LI 2014/273).

ultimate holding company information has the meaning set out in section 94A

History

Definition of “ultimate holding company information” inserted by No 46 of 2014, s 8, effective 1 May 2015 (LI 2014/273).

working day means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Labour Day, and Waitangi Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and
- (c) if 1 January in any year falls on a Friday, the following Monday; and
- (d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

History

Definition of “working day” amended by No 19 of 2013, s 8 and sch 1, pt 2, by inserting para (ab); effective 1 January 2014.

SECTION 4 MEANING OF SOLVENCY TEST

4(1) [Criteria] For the purposes of this Act, a company satisfies the solvency test if—

- (a) the company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the company's assets is greater than the value of its liabilities including contingent liabilities.

4(2) [Matters requiring consideration] Without limiting sections 52 and 55(3), in determining for the purposes of this Act (other than sections 221 and 222 which relate to amalgamations) whether the value of a company's assets is greater than the value of its liabilities, including contingent liabilities, the directors—

- (a) must have regard to—
 - (i) the most recent financial statements of the company that are prepared under this Act or any other enactment (if any); and
 - (ia) the accounting records of the company; 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;
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

History

S 4(2) amended by No 102 of 2013, s 25(1), by replacing para (a)(i) with para (a)(i) and (ia); effective 1 April 2014 (LI 2014/52, cl 3(1)). Former para (a)(i) read:

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

4(3) [Amalgamated companies] Without limiting sections 221 and 222, in determining for the purposes of those sections whether the value of the amalgamated company's assets will be greater than the value of its liabilities, including contingent liabilities, the directors of each amalgamating company—

- (a) must have regard to—
 - (i) the most recent financial statements of each amalgamating company that are prepared under this Act or any other enactment (if any); and
 - (ia) the accounting records of the amalgamating company; 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;
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

History

S 4(3) amended by No 102 of 2013, s 25(2), by replacing para (a)(i) with para (a)(i) and (ia); effective 1 April 2014 (LI 2014/52, cl 3(1)). Former para (a)(i) read:

prepared as if the amalgamation had become effective; and”.

“(i) financial statements that comply with section 10 of the Financial Reporting Act 1993 and that are

4(4) [Contingent liabilities] 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.

SECTION 5 MEANING OF HOLDING COMPANY AND SUBSIDIARY

5(1) [“Subsidiary”] 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.

5(2) [“Holding company”] For the purposes of this Act, a company is another company's **holding company**, if, but only if, that other company is its subsidiary.

5(3) [Bodies corporate included] In this section and sections 7 and 8, the expression **company** includes a body corporate.

Compare: Corporations Act 1989 s 46 (Aust)

SECTION 6 EXTENDED MEANING OF SUBSIDIARY (repealed)**History**

S 6 repealed by No 111 of 2013, s 5, effective 5 December 2013. Former s 6 read:

“SECTION 6 EXTENDED MEANING OF SUBSIDIARY

6 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.”

SECTION 7 CONTROL DEFINED

7 For the purposes of section 5, 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

367A(2) [Application of Official Information Act 1982] The Official Information Act 1982 does not apply to director information.

367A(3) [Interpretation] In this section, **director information** means a director's date and place of birth.

Compare: 2008 No 1 s 115

History

S 367A inserted by No 46 of 2014, s 18, effective 1 May 2015 (LI 2014/273).

SECTION 368 APPEALS FROM DECISIONS UNDER SECTION 367

368(1) [Power to apply where aggrieved] A person who is aggrieved by a refusal to disclose a document, information, or report under section 367 may appeal to the court within 15 working days after being notified of that refusal, or within such further time as the court may allow.

368(2) [Court's powers] On hearing the appeal, the court may confirm the refusal, or give such directions, or make such determination in the matter as the court thinks fit.

Compare: 1955 No 63 s 9BA

SECTION 369 INSPECTOR'S REPORT ADMISSIBLE IN LIQUIDATION PROCEEDINGS

369 Notwithstanding any other Act or rule of law, a report prepared by a person in relation to an inspection carried out by him or her under section 365, or in relation to a disclosure under section 365F, 365G, or 365H, is admissible in evidence at the hearing of an application to the court to appoint a liquidator.

History

S 369 amended by No 46 of 2014, s 51, by inserting “, or in relation to a disclosure under section 365F, 365G, or 365H,” after “section 365”; effective 1 May 2015 (LI 2014/273).

SECTION 370 APPEALS FROM REGISTRAR'S DECISIONS

370(1) [Power to apply where aggrieved] A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the court within 15 working days after the date of notification of the act or decision, or within such further time as the court may allow.

370(2) [Court's powers] On hearing the appeal, the court may approve the Registrar's act or decision or may give such directions or make such determination in the matter as the court thinks fit.

Compare: 1955 No 63 s 9B(1), (2); 1973 No 13 s 5

SECTION 371 EXERCISE OF POWERS UNDER SECTION 365, 365F, 365G, OR 365H NOT AFFECTED BY APPEAL

371(1) [Effect of appeals on powers and duties] Subject to subsection (2), but notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 365, 365F, 365G, or 365H, until a decision on the appeal or application is given,—

- (a) the Registrar, or that person, may continue to exercise the powers under that section as if no such appeal or application had been made; and

- (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.

History

S 371(1) amended by No 46 of 2014, s 52(2), by inserting “, 365F, 365G, or 365H” after “section 365”; effective 1 May 2015 (LI 2014/273).

371(2) [Destruction and admissibility of documents] If the appeal or application is allowed or granted, as the case may be,—

- (a) the Registrar must ensure that, forthwith after the decision of the court is given, any copy of a document taken or retained by the Registrar, or by a person authorised by the Registrar in respect of that act or decision, is destroyed; and
- (b) no information acquired under that section in relation to that act or decision is admissible in evidence in any proceedings unless the court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

Compare: 1955 No 63 s 9B(4); 1973 No 13 s 5; 1977 No 94 s 3

History

S 371 heading amended by No 46 of 2014, s 52(1), by inserting “, 365F, 365G, or 365H” after “section 365”; effective 1 May 2015 (LI 2014/273).

SECTION 371A SHARING OF INFORMATION WITH FINANCIAL MARKETS AUTHORITY

371A(1) [Registrar may supply information or documents to the FMA] The Registrar may provide to the FMA any information, or a copy of any document, that the Registrar—

- (a) holds in relation to the exercise or performance of the Registrar's functions, powers, or duties; and
- (b) considers may assist the FMA in the exercise or performance of the FMA's functions, powers, or duties under this Act or any other enactment.

371A(2) [Registrar may use any information or document] The Registrar may use any information, or a copy of any document, provided to him or her by the FMA under section 30 of the Financial Markets Authority Act 2011 in the Registrar's exercise or performance of the Registrar's functions, powers, or duties.

371A(3) [Definition of Registrar's functions, powers or duties] In this section, **Registrar's functions, powers, or duties** means his or her functions, powers, or duties under this Act or any other enactment (including functions, powers, or duties as the Registrar under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Markets Conduct Act 2013).

History

S 371A(3) amended by No 70 of 2013, s 150 and sch, by replacing “Securities Act 1978” with “Financial Markets Conduct Act 2013”; effective 1 December 2014 (LI 2014/325).

371A(4) [Section applies despite anything to the contrary] This section applies despite anything to the contrary in any contract, deed, or document.

371A(5) [Privacy Act 1993 not limited] Nothing in this section limits the Privacy Act 1993.

History

S 371A inserted by No 5 of 2011, s 82 and sch 3, pt 1, effective 1 May 2011.

SECTION 372 FEES

372(1) [Regulations] The Governor-General may from time to time, by Order in Council, make regulations prescribing—

- (a) fees or other amounts payable to the Registrar in respect of the performance of functions and the exercise of powers under this Act;
- (b) amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by this Act;
- (c) fees or other amounts payable to the Registrar in respect of any other matter under this Act.

372(2) [Power to refuse if unpaid] The Registrar may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.

372(3) [Regulations may allow waiver of payment] Any Order in Council made under subsection (1) may authorise the Registrar to waive, in whole or in part and on such conditions as may be prescribed, payment of any amount referred to in paragraph (b) of that subsection.

372(3A) [Remittance of name reservation fee] If the Registrar declines to reserve a name or revokes the reservation of a name under section 22, the Registrar may remit the fee payable in respect of a subsequent application on behalf of the company to reserve a name.

History

S 372(3A) inserted by No 6 of 1994, s 45, effective 1 July 1994.

372(3B) [No fee where name change required] If the Registrar, under section 24(1), requires a company to change its name, no fee is payable in respect of an application for the reservation of a name or an application to change the name of the company.

History

S 372(3B) inserted by No 6 of 1994, s 45, effective 1 July 1994.

372(4) [Fees recoverable as debt to Crown] Any fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Crown.

Compare: 1955 No 63 s 8; 1973 No 13 s 3; 1975 No 137 s 4

PART 21 — OFFENCES AND PENALTIES**SECTION 373 PENALTY FOR FAILURE TO COMPLY WITH ACT**

373(1) [\$5,000 fine] A person convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$5,000:

- (1) section 25(5)(a) (which relates to the use of a company name):
- (2) section 47(7) (which relates to the consideration for which shares are issued):
- (3) section 49(5) (which relates to the consideration for which convertible financial products, options, and shares are issued):
- (4) section 52(5) (which relates to distributions to shareholders):
- (5) section 60(7) (which relates to offers to shareholders to acquire shares):
- (6) section 61(9) (which relates to the procedure for making a certain type of offer to shareholders):
- (7) section 61(10)(a) (which relates to the procedure for making a certain type of offer to shareholders):
- (8) section 63(9) (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):
- (8A) Section 63(10)(a) (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):
- (9) section 65(3)(a) (which relates to stock exchange acquisitions of a company's own shares without prior notice to shareholders):
- (10) section 69(6) (which relates to the redemption of shares at the option of a company):
- (11) section 70(4) (which relates to the requirement for a company to satisfy the solvency test on the redemption of shares):
- (12) section 71(8) (which relates to special redemptions of shares):
- (13) section 71(9)(a) (which relates to special redemptions of shares):
- (14) section 76(7) (which relates to offers of financial assistance to acquire shares):
- (15) section 77(4) (which relates to the requirement to satisfy the solvency test):
- (16) section 78(8) (which relates to offers of financial assistance in certain cases):
- (17) section 78(9)(a) (which relates to offers of financial assistance in certain cases):
- (18) section 80(2)(a) (which relates to the provision of financial assistance not exceeding 5% of shareholders' funds):
- (19) section 83(5)(a) (which relates to statements of shareholders' rights):
- (20) section 84(6)(a) (which relates to the transfer of shares):
- (21) section 85(2)(a) (which relates to the transfer of shares under an approved system):
- (22) section 95(7)(a) (which relates to share certificates):
- (23) section 108(6) (which relates to the requirement to satisfy the solvency test):
- (24) section 122(7)(a) (which relates to resolutions in lieu of meetings):

- (c) section 377 (which relates to false statements):
- (d) section 378 (which relates to the fraudulent use or destruction of property):
- (e) section 379 (which relates to falsifying records):
- (f) section 380 (which relates to carrying on business fraudulently or dishonestly incurring debt):
- (g) section 382(4) (which relates to persons prohibited from managing companies):
- (h) section 383(6) (which relates to acting as a director of a company while prohibited by the court):
- (i) section 385(9) (which relates to acting as a director of a company or taking part in the management of a company while prohibited by the Registrar or the FMA):
- (j) section 386A(2) (which relates to acting as a director of a phoenix company).

History

S 373(4) amended by No 46 of 2014, s 58 and sch 2, by (i) inserting para (aaa); and (ii) replacing in para (h) "383(5)" with "383(6)"; effective 11 September 2014 (LI 2014/273).

S 373(4) amended by No 46 of 2014, s 5, by inserting in para (f) "or dishonestly incurring debt" after "fraudulently"; effective 3 July 2014.

S 373(4) amended by No 5 of 2011, s 82 and sch 3, pt 1, by inserting in para (i) "or the FMA" after "Registrar"; effective 1 May 2011.

S 373(4) amended by No 56 of 2006, s 39(2), by inserting para (j); effective 1 November 2007 (Companies Amendment Act 2006 Commencement Order (SR 2007/297)).

SECTION 374 PENALTIES THAT MAY BE IMPOSED ON DIRECTORS IN CASES OF FAILURE BY BOARD OR COMPANY TO COMPLY WITH ACT

374(1) [\$5,000 fine] A director of a company who is convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$5,000:

- (a) section 25(5)(b) (which relates to the use of a company name):
- (b) section 61(10)(b) (which relates to the procedure for making a certain type of offer to shareholders):
- (c) section 63(10)(b) (which relates to stock exchange acquisitions of a company's own shares subject to prior notice to shareholders):
- (d) section 65(3)(b) (which relates to stock exchange acquisitions of a company's own shares without prior notice to shareholders):
- (e) section 71(9)(b) (which relates to special redemptions of shares):
- (f) section 78(9)(b) (which relates to offers of financial assistance in certain cases):
- (g) section 80(2)(b) (which relates to the provision of financial assistance not exceeding 5% of shareholders' funds):
- (h) section 83(5)(b) (which relates to statements of shareholders' rights):
- (i) section 84(6)(b) (which relates to the transfer of shares):
- (j) section 85(2)(b) (which relates to the transfer of shares under an approved system):
- (k) section 95(7)(b) (which relates to share certificates):

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- (l) section 107(8) (which relates to unanimous assent to certain types of action):
- (m) section 122(7)(b) (which relates to resolutions in lieu of meetings):
- (n) section 188(6) (which relates to a requirement to change a company's registered office):
- (o) section 218(2)(b) (which relates to the obligation to provide copies of documents).

History

S 374(1) amended by No 46 of 2014, s 58 and sch 2, by inserting in para (c) "(b)" after "63(10)"; effective 11 September 2014 (LI 2014/273).

374(2) [\$10,000 fine] A director of a company who is convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$10,000:

- (1) *(repealed)*
- (2) section 32(4) (which relates to the adoption and alteration of a constitution):
- (3) section 33(6) (which relates to a new form of constitution):
- (4) section 43(2) (which relates to the obligation of the board to deliver a notice of the issue of shares):
- (5) section 44(6) (which relates to the issue of shares with the approval of shareholders):
- (6) section 47(9) (which relates to the consideration for which shares are issued):
- (7) section 49(6) (which relates to the consideration for which convertible financial products, options, and shares are issued):
- (8) section 58(4) (which relates to the acquisition by a company of its own shares):
- (9) section 87(4)(b) (which relates to the obligation to keep a share register):
- (10) section 88(5)(b) (which relates to the place where the share register must be kept):
- (10A) section 94B(3) (which relates to the obligation to give notice of a change in ultimate holding company information):
- (11) section 159(3) (which relates to the obligation to give notice of a change of directors):
- (12) section 176(4) (which relates to alterations to the constitution of a company by the court):
- (13) section 189(5)(b) (which relates to company records):
- (14) section 190(3) (which relates to the form in which company records are kept):
- (15) section 195(3)(b) (which relates to the place where accounting records must be kept):
- (16) section 207Q(3)(b) (which relates to the appointment of an auditor):
- (16A) *(repealed)*
- (17) section 207R(2)(b) (which relates to the notification of the resignation of an auditor):
- (18) section 207W(2) (which relates to the attendance of auditors at meetings of shareholders):

- (19) section 208(3) (which relates to the duty to prepare an annual report):
- (20) (*repealed*)
- (21) section 209(7) (which relates to the obligation to make the annual report available to shareholders):
- (22) section 209A(5) (which relates to the obligation to send copies of annual reports or concise annual reports to shareholders on request):
- (22A) section 209B(3) (which relates to making annual reports and concise annual reports available by electronic means):
- (23) section 214(10) (which relates to the obligation to file an annual return):
- (24) section 215(2)(b) (which relates to public inspection of company records):
- (25) section 216(2)(b) (which relates to inspection of company records by shareholders):
- (26) section 236(5) (which relates to the approval of arrangements, amalgamations, and compromises by the court):
- (27) section 237(3) (which relates to the power of the court to make additional orders in connection with the approval of an arrangement or amalgamation or compromise):
- (28) section 333(5)(b) (which relates to name reservation by overseas companies):
- (29) section 334(6)(b) (which relates to the registration of overseas companies):
- (30) section 339(2)(b) (which relates to changes in the constitution of an overseas company):
- (31) section 340(6)(b) (which relates to the filing of annual returns by overseas companies):
- (32) section 365G(4) (which relates to the Registrar's powers to require directors to disclose their controllers).

[CCH note: No 46 of 2014, s 58 and sch 2, purports to amend s 374(2), paragraph (20), by replacing "208(2)" with

"208(3)". CCH notes that this paragraph was earlier repealed by No 102 of 2013.]

History

S 374(2) amended by No 46 of 2014, s 58 and sch 2, by (i) replacing in para (5) "44(5)" with "44(6)"; and (ii) inserting in para (17) "(b)" after "207R(2)"; effective 11 September 2014 (LI 2014/273).

S 374(2) amended by No 46 of 2014, s 58 and sch 2, by (i) inserting para (10A); and (ii) inserting para (32)"; effective 1 May 2015 (LI 2014/273).

S 374(2) amended by No 102 of 2013, s 40(1), by replacing para (15)-(20) with para (15)-(19); effective 1 April 2014 (LI 2014/52, cl 3(1)). Former para (15)-(19) read:

"(15) section 194(4) (which relates to the keeping of accounting records):

(16) section 195(3)(b) (which relates to the place where accounting records must be kept):

(16A) section 196(3B) (which relates to the notification of the resignation of an auditor):

(17) section 196(7)(b) (which relates to the appointment of an auditor):

(18) section 206(3) (which relates to access to information by auditors):

(19) section 207(2) (which relates to the attendance of auditors at meetings of shareholders):

(20) section 208(2) (which relates to the duty to prepare an annual report):"

S 374(2) amended by No 70 of 2013, s 150 and sch, by replacing in para (7) "securities" with "financial products"; effective 1 December 2014 (LI 2014/325).

S 374(2) amended by No 62 of 2006, s 13, by repealing para (21) and (22) and replacing them with para (21), (22) and (22A); effective 18 June 2007. Former para (21) and (22) read:

"(21) Section 209(3) (which relates to the duty to send an annual report to shareholders):

(22) Section 210(7) (which relates to the duty to send financial statements to shareholders who elect not to receive an annual report):"

S 374(2) amended by No 24 of 2004, s 21(1) and (2), by (i) inserting para (16A); and (ii) in para (22) replacing "210(2)" with "210(7)"; effective 15 April 2004.

S 374(2)(1) repealed by No 6 of 1994, s 47, effective 1 July 1994. Former para (1) read:

"Section 28(4) (which relates to the adoption of a constitution or alteration to the constitution of a company):"

374(3) [\$50,000 fine] A director of a company who is convicted of an offence against any of the following sections of this Act is liable to a fine not exceeding \$50,000:

- (a) section 194(4) (which relates to the keeping of accounting records):
- (b) section 207G(3) (which relates to the preparation, audit, and registration of financial statements).

History

S 374(3) inserted by No 102 of 2013, s 40(2), effective 1 April 2014 (LI 2014/52, cl 3(1)).

SECTION 375 PROCEEDINGS FOR OFFENCES

375(1) (*repealed*)

History

S 375(1) repealed by No 81 of 2011, s 413 and sch 3, pt 1, effective 1 July 2013 (SR 2013/162). Former s 375(1) read:

"375(1) [Triable summarily] The offences specified in—

(a) Subsections (1), (2), and (3) of section 373 of this Act; and

(b) Section 374 of this Act — are triable summarily."

375(2) (*repealed*)

History

S 375(2) repealed by No 81 of 2011, s 413 and sch 3, pt 1, effective 1 July 2013 (SR 2013/162). Former s 375(2) read:

"375(2) [Triable on indictment] The offences specified in subsection (4) of section 373 of this Act are triable on indictment."

375(3) [Time limit] Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011,—

- (a) a charging document may be filed at any time in respect of an offence against section 373(4); and
- (b) the limitation period in respect of an offence specified in section 373(1) or (2), or section 374 of this Act ends on the date that is 3 years after the date on which the offence was committed.

History

S 375(3) replaced by No 81 of 2011, s 413 and sch 3, pt 1, effective 1 July 2013 (SR 2013/162). Former s 375(3) read:

"375(3) [Time limit] Notwithstanding anything to the contrary in the Summary Proceedings Act 1957, any

information for an offence referred to in subsection (1) of this section may be laid at any time within 3 years after the date of the offence."

375(4) [Other liability unaffected, but no double conviction] Nothing in sections 377 to 380 affects the liability of any person under any other Act, but no person shall be convicted of an offence against any of those sections and a provision of any other Act in respect of the same conduct.

SECTION 376 DEFENCES

376(1) [Defences relating to board's duty] It is a defence to a director charged with an offence in relation to a duty imposed on the board of a company if the director proves that—

- (a) the board took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
- (b) he or she took all reasonable and proper steps to ensure that the board complied with the requirements of this Act; or
- (c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the board complied with the requirements of this Act.

376(2) [Defences relating to company's duty] It is a defence to a director charged with an offence in relation to a duty imposed on the company if the director proves that—

- (a) the company took all reasonable and proper steps to ensure that the requirements of this Act would be complied with; or
- (b) he or she took all reasonable steps to ensure that the company complied with the requirements of this Act; or
- (c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of this Act.

SECTION 377 FALSE STATEMENTS

377(1) [Statements with respect to documents] Every person who, with respect to a document required by or for the purposes of this Act,—

- (a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular—

commits an offence, and is liable on conviction to the penalties set out in section 373(4).

377(2) [Statements relating to company affairs] Every director or employee of a company who makes or furnishes, or authorises or permits the making or furnishing of, a statement or report that relates to the affairs of the company and that is false or misleading in a material particular, to—

- (a) a director, employee, auditor, shareholder, debenture holder, or trustee for debenture holders of the company; or
- (b) a liquidator, liquidation committee, or receiver or manager of property of the company; or
- (c) if the company is a subsidiary, a director, employee, or auditor of its holding company; or
- (d) a stock exchange or an officer of a stock exchange,—

knowing it to be false or misleading, commits an offence, and is liable on conviction to the penalties set out in section 373(4).

Sec 376(1)

377(3) [Interpretation] For the purposes of this section, a person who voted in favour of the making of a statement at a meeting is deemed to have authorised the making of the statement.

Compare: 1955 No 63 s 461; 1980 No 43 s 47

SECTION 378 FRAUDULENT USE OR DESTRUCTION OF PROPERTY

378 Every director, employee, or shareholder of a company who—

- (a) fraudulently takes or applies property of the company for his or her own use or benefit, or for a use or purpose other than the use or purpose of the company, or for the use or benefit of a person other than the company; or
- (b) fraudulently conceals or destroys property of the company—

commits an offence, and is liable on conviction to the penalties set out in section 373(4).

Compare: 1955 No 63 s 461A; 1980 No 43 s 47

History

S 378 amended by No 46 of 2014, s 6, by inserting in para (a) "company", after "use or purpose of the company"; effective 3 July 2014.

SECTION 379 FALSIFICATION OF RECORDS

379(1) [Offences in relation to documents] Every director, employee, or shareholder of a company who, with intent to defraud or deceive a person,—

- (a) destroys, parts with, mutilates, alters, or falsifies, or is a party to the destruction, mutilation, alteration, or falsification of any register, accounting records, book, paper, or other document belonging or relating to the company; or
- (b) makes, or is a party to the making of, a false entry in any register, accounting records, book, paper, or other document belonging or relating to the company—

commits an offence, and is liable on conviction to the penalties set out in section 373(4).

379(2) [Offences in relation to devices for keeping, etc, documents] Every person who, in relation to a mechanical, electronic, or other device used in connection with the keeping or preparation of any register, accounting or other records, index, book, paper, or other document for the purposes of a company or this Act,—

- (a) records or stores in the device, or makes available to a person from the device, matter that he or she knows to be false or misleading in a material particular; or
- (b) with intent to falsify or render misleading any such register, accounting or other records, index, book, paper, or other document, destroys, removes, or falsifies matter recorded or stored in the device, or fails or omits to record or store any matter in the device—

commits an offence, and is liable on conviction to the penalties set out in section 373(4).

Compare: 1955 No 63 s 461C; 1980 No 43 s 47

SECTION 380 CARRYING ON BUSINESS FRAUDULENTLY OR DISHONESTLY INCURRING DEBT

380(1) [Carrying on business fraudulently] Every person who is knowingly a party to a company carrying on business with intent to defraud creditors of the company or any other person or for a fraudulent purpose commits an offence and is liable on conviction to the penalties set out in section 373(4).

380(2) [Inducing giving credit; certain dealings with property] Every director of a company who,—

- (a) by false pretences or other fraud induces a person to give credit to the company; or
- (b) with intent to defraud creditors of the company,—
 - (i) gives, transfers, or causes a charge to be given on, property of the company to any person; or
 - (ii) causes property to be given or transferred to any person; or
 - (iii) caused or was a party to execution being levied against property of the company—

commits an offence and is liable on conviction to the penalties set out in section 373(4).

380(3) [Offence] Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4), who, with intent to defraud a creditor or creditors of the company, does any thing that causes material loss to any creditor.

History

S 380(3) inserted by No 56 of 2006, s 33, effective 1 November 2007 (Companies Amendment Act 2006 Commencement Order (SR 2007/297)).

380(4) [Dishonestly incurring debt] Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4) if—

- (a) the company incurs a debt (the **debt**); and
- (b) the company—
 - (i) is insolvent at the time that it incurs the debt; or
 - (ii) becomes insolvent by incurring the debt; or
 - (iii) is insolvent at the time that it incurs debts that include the debt; or
 - (iv) becomes insolvent by incurring debts that include the debt; and
- (c) the director knows, at the time when the company incurs the debt, that the company is insolvent or will become insolvent as a result of incurring the debt or other debts that include the debt; and
- (d) the director's failure to prevent the company incurring the debt is dishonest.

History

S 380(4) inserted by No 46 of 2014, s 7(2), effective 3 July 2014.

Sec 380(1)

380(5) [Interpretation] In subsection (4), **insolvent** means that the company is unable to pay its debts.

History

S 380(5) inserted by No 46 of 2014, s 7(2), effective 3 July 2014.

Compare: 1955 No 63 s 461D; 1980 No 43 s 47

History

S 380 heading amended by No 46 of 2014, s 7(1), by inserting "or dishonestly incurring debt" after "business fraudulently"; effective 3 July 2014.

SECTION 381 IMPROPER USE OF "LIMITED"

381 Any person who, not being incorporated with limited liability, whether alone or with other persons, carries on business under a name or title of which "Limited" or a contraction or imitation of that word is the last word, commits an offence and is liable on conviction to the penalty set out in section 373(2).

Compare: 1955 No 63 s 462

SECTION 382 PERSONS PROHIBITED FROM MANAGING COMPANIES

382(1) [Persons prohibited] Where—

- (a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months); or
- (b) a person has been convicted of an offence under any of sections 377 to 380 or of any crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961,—
- (c) (*repealed*)

that person shall not, during the period of 5 years after the conviction or the judgment, be a director or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a company, unless that person first obtains the leave of the court which may be given on such terms and conditions as the court thinks fit.

History

S 382(1) amended by No 46 of 2014, s 53, by replacing para (a); effective 1 May 2015 (LI 2014/273). Former para (a) read:

"(a) a person has been convicted under any of subparagraphs (g) to (j) of section 373(4) of any offence in connection with the promotion, formation, or management of a company; or"

S 382(1) amended by No 81 of 2011, s 413 and sch 3, pt 1, by replacing in para (a) "on indictment" with "under any of subparagraphs (g) to (j) of section 373(4)"; effective 1 July 2013 (SR 2013/162).

S 382(1) amended by No 46 of 2006, s 25 and sch, by repealing para (c); effective 29 February 2008 (SR 2007/369). Former para (c) read:

"(c) A judgment has been obtained in an action under Part I of the Securities Markets Act 1988 against a person as an insider (within the meaning of that Part of that Act),—"

S 382(1) amended by No 44 of 2002, s 30 and sch, Part 2, by replacing in para (c) "Amendment" with "Markets"; effective 1 December 2002.

382(2) [Applicant's duty to notify Registrar] A person intending to apply for the leave of the court under this section shall give to the Registrar not less than 10 days' notice of that person's intention to apply.

88A(2) [No account taken] However, in determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

History

S 88A inserted by No 32 of 2001, s 23, effective 26 May 2001.

SECTION 89 OTHER ORDERS

89(1) [Appropriate orders] Where, in any proceedings under this Part, the court finds that a person who is a party to the proceedings has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of any of the provisions of Part 2, the court may, whether or not it grants an injunction or makes any other order under this Part, make such order or orders as it thinks appropriate against the person who engaged in the conduct, or any other person who in relation to the contravention did any act referred to in section 81(b) to (f).

89(2) [Contract in contravention] Where a contract is entered into in contravention of this Act, or as the case may be, a contract contains a provision which if given effect to would contravene this Act, the court may, in any proceedings under this Part, or on application made for the purpose by a party to the contract or any person claiming through or under any party to the contract, make an order—

- (a) varying the contract, in such manner as it thinks fit, not being a manner inconsistent with the provisions of this Act;
- (b) cancelling the contract;
- (c) requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract.

89(3) [Covenant in contravention] Where a covenant is given in contravention of this Act, or as the case may be, the enforcement of the terms of a covenant would contravene this Act, the court may, in any proceedings under this Part, or on application made for the purpose by a person who, but for section 28(4) would be bound by or entitled to the benefit of the covenant or any person claiming through or under any such person, make an order—

- (a) varying the covenant, in such manner as it thinks fit, not being a manner inconsistent with the provisions of this Act;
- (b) requiring any person who, but for section 28(4) would be bound by or entitled to the benefit of the covenant to make restitution or pay compensation to any other person who, but for section 28(4) would be bound by or entitled to the benefit of the covenant.

89(4) [Institution, commencement of proceedings] Nothing in subsection (2) or subsection (3) shall prevent any proceedings being instituted or commenced under this Part.

89(5) [Illegal Contracts Act] Nothing in the Illegal Contracts Act 1970 applies to any contract entered into in contravention of this Act or to any contract which contains a provision the giving effect to of which would constitute a contravention of this Act.

89(6) [Enactment of law] Notwithstanding any enactment or rule of law, where a contract is entered into in contravention of this Act by reason that the contract contains a particular provision, or the contract contains a provision which if given effect to would contravene this Act, the enforceability of any other provision of the contract shall not be affected by the existence of that provision.

89(7) [Includes contravention of regulations] In this section, a reference to a contravention of this Act includes a reference to contravening the requirements of any type of regulation under Part 4.

History

S 89(7) inserted by No 70 of 2008, s 16, effective 14 October 2008.

Compare: Trade Practices Act 1974 s 87(1)(a) (Aust)

SECTION 90 CONDUCT BY SERVANTS OR AGENTS

90(1) [Body corporate] Where, in proceedings under this Part in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of the provisions of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within the scope of his actual or apparent authority, had that state of mind.

90(2) [Conduct deemed] Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant, or agent of the body corporate, acting within the scope of his actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, servant or agent—

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

90(3) [Person not a body corporate] Where, in a proceeding under this Part in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, acting within the scope of his actual or apparent authority, had that state of mind.

90(4) [Conduct deemed] Any conduct engaged in on behalf of a person other than a body corporate—

- (a) by a servant or agent of the person acting within the scope of his actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, given within the scope of the actual or apparent authority of the servant or agent—

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

90(5) [State of mind] A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

Compare: Trade Practices Act 1974 s 84 (Aust)

Appeals from determinations of Commission

SECTION 91 APPEALS IN RELATION TO DETERMINATIONS BY COMMISSION

91(1) [Right of appeal] There is a right of appeal to the High Court under this subsection against any determination of the Commission under this Act, other than the following:

- (a) a determination, or any part of a determination, made under section 52P (a section 52P determination) that sets out—
 - (i) how information disclosure regulation or negotiate/arbitrate regulation applies to regulated suppliers; or
 - (ii) the default price-quality path that applies to regulated suppliers;
- (b) an input methodology determination (as defined in section 52Z, and for which a separate appeal right is given under that section).

History

S 91(1) replaced by No 70 of 2008, s 17, effective 14 October 2008. Former s 91(1) read:

“(1) Subject to sections 92 to 95, and to subsection (2),—

(a) There is a right of appeal to the High Court against any determination of the Commission under this Act other than—

- (i) A declaration under section 57F;
- (ii) An authorisation under section 70 or a provisional authorisation under section 71;
- (iii) (repealed)
- (iv) (repealed)

(b) There is a right of appeal to the High Court by way of case stated for the opinion of the Court on a question of law only against—

- (i) An authorisation under section 70 or a provisional authorisation under section 71;
- (ii) (repealed)."

S 91(1) amended by No 82 of 2004, s 10(2) and (3) and s 11(5), by (i) repealing para (a)(iii); (ii) repealing para (b)(ii); and (iii) repealing para (a)(iv); effective 18 October 2004. Former para (a)(iii) and (iv) read:

“(iii) An authorisation under section 57P concerning Transpower's pricing methodology;

(iv) A decision of the Commission whether or not to approve a valuation report under section 57ZB.”

Former para (b)(ii) read:

“(ii) An authorisation under section 57P concerning Transpower's pricing methodology.”

S 91(1) substituted by No 41 of 2001, s 4(1), effective 8 August 2001. Former s 91(1) read:

“(1) Subject to sections 92 to 95, and to subsection (2),—

(a) There is a right of appeal to the High Court against any determination of the Commission under this Act that is not a determination of the Commission under section 70;

(b) There is a right of appeal to the High Court by way of case stated for the opinion of the Court on a question of law only against any determination of the Commission under section 70.”

S 91(1) substituted by No 32 of 2001, s 24(1), effective 26 May 2001. Former s 91(1) read:

“(1) Subject to sections 92 to 95 of this Act, and to subsection (2) of this section, there shall be a right of appeal to the High Court against any determination of the Commission in respect of any matter under this Act.”

S 91(1) amended by No 60 of 1991, s 3(4), by omitting “the Administrative Division of”; effective 15 August 1991.

91(1A) [Appeal against input methodology may not be included] An appeal against a section 52P determination may not include an appeal against all or part of an input methodology, whether on a point of law or any other ground.

History

S 91(1A) inserted by No 70 of 2008, s 17, effective 14 October 2008.

91(1B) [Appeals on questions of law] There is a right of appeal to the High Court on a question of law against any determination of the Commission under this Act (including a determination referred to in subsection (1)).

History

S 91(1B) inserted by No 70 of 2008, s 17, effective 14 October 2008.

91(2) [Time limit] Every such appeal shall be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within such further time as the court may allow.

Compare: 1975 No 113 s 42

SECTION 92 PERSONS ENTITLED TO APPEAL

92 The following persons may exercise the right of appeal pursuant to section 91—

- (a) in the case of an appeal against a determination of the Commission in relation to an application for an authorisation under section 58, the applicant and any person who participated in any conference held by the Commission under section 62 in relation to the authorisation;
- (b) in the case of an appeal against a determination of the Commission revoking or amending an authorisation pursuant to section 65(1) or revoking an authorisation and substituting a further authorisation pursuant to that subsection, the person to whom the authorisation was granted;
- (c) in the case of an appeal against a determination of the Commission under section 66 or section 67 in relation to a notice seeking a clearance or an authorisation, as the case may be,—
 - (i) the person who sought the clearance or the authorisation; and
 - (ii) any person whose assets, or the shares in which, are proposed to be acquired pursuant to the clearance or authorisation; and
 - (iii) any person who participated in any conference held by the Commission under section 69B in relation to the clearance or authorisation;
- (d) in the case of an appeal against a determination made under section 52P, any supplier or consumer (as defined in section 52C) of goods or services to which the determination relates;
- (e) (repealed)

- (f) in the case of an appeal against a determination of a Commissioner under section 74A, any person against whom a cease and desist order was made.

History

S 92 amended by No 70 of 2008, s 18, by replacing para (d) and (e) with para (d); **effective 14 October 2008**. Former para (d) and (e) read:

“(d) In the case of an appeal against a determination of the Commission under section 70 of this Act made on the application of any person who is a supplier of controlled goods or services, the applicant and any person who in the opinion of the Court is a substantial consumer or purchaser of the controlled goods or services to which the determination relates or who represents a substantial group of consumers or purchasers of those goods or services:

(e) In the case of an appeal against a determination of the Commission under section 70 of this Act made by the Commission on its own motion, any person who is a supplier of controlled goods or services to which the

determination relates and any person who in the opinion of the Court is a substantial consumer or purchaser of the controlled goods or services to which the determination relates or who represents a substantial group of consumers or purchasers of those goods or services.”

S 92 amended by No 32 of 2001, s 15(2), by inserting para (f); **effective 1 April 2002** (refer SR 2002/64, cl 2).

S 92(c) substituted by No 41 of 1990, s 33, **effective 1 January 1991**. Former s 92(c) read:

“(c) In the case of an appeal against a determination of the Commission under section 66 or section 67 of this Act in relation to an application for a clearance under either of those sections, any person who is a participant in, or is otherwise a party to, the merger or takeover proposal to which the determination relates.”

SECTION 93 DETERMINATION OF APPEALS

93 In determining an appeal under section 91(1), the court may do any of the following:

- (a) confirm, modify, or reverse the determination or any part of it;
- (b) exercise any of the powers that could have been exercised by the Commission in relation to the matter to which the appeal relates.

Compare: 1975 No 113 s 45(3), (4)

History

S 93 amended by No 70 of 2008, s 19, by replacing the words above para (a); **effective 14 October 2008**. Former words before para (a) read:

“In its determination of any appeal (other than an appeal under section 91(1)(b)), the Court may do any one or more of the following things.”

S 93 amended by No 41 of 2001, s 4(2), by inserting “(other than an appeal under section 91(1)(b))”; **effective 8 August 2001**.

S 93 amended by No 32 of 2001, s 24(2), by inserting “(other than an appeal under section 91(1)(b))”; **effective 26 May 2001**.

SECTION 94 COURT MAY REFER APPEALS BACK FOR RECONSIDERATION

94(1) [Reconsideration] Notwithstanding anything in section 93, the court may, in any case, instead of determining any appeal under that section, direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

94(2) [Advice for Commission] In giving any direction under this section, the court shall—

- (a) advise the Commission of its reasons for doing so; and
- (b) give to the Commission such directions as it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

94(3) [Regard to court's reasons] In reconsidering the matter so referred back, the Commission shall have regard to the court's reasons for giving a direction under subsection (1), and the court's directions under subsection (2).

Compare: 1975 No 113 s 46

SECTION 95 PROVISIONS PENDING DETERMINATION OF APPEAL

95(1) [Status of determination pending appeal] Where an appeal is brought under any provision of this Part against any determination of the Commission, the determination to which the appeal relates shall remain in full force pending the determination of the appeal, unless the court orders to the contrary.

95(2) [No power to stay] However, the court may not stay the application of a determination made under section 52P in respect of which an appeal is brought under section 91(1) or (1B).

History

S 95(2) inserted by No 70 of 2008, s 20, **effective 14 October 2008**.

Compare: 1975 No 113 s 47; 1979 No 140 s 21

SECTION 96 COURT MAY ORDER PROCEEDINGS TO BE HEARD IN PRIVATE

96(1) [Proceedings in private] The court may, in its discretion, order that the hearing or any part of the hearing of any proceedings under this Act shall be held in private.

96(2) [Publication] The court may make an order prohibiting the publication of any report or description of proceedings or any part of proceedings under this Act (whether heard in public or in private); but no order under this subsection shall prohibit the publication of any determination of the court.

Compare: 1975 No 113 s 45(1), (2)

SECTION 97 APPEAL TO COURT OF APPEAL IN CERTAIN CASES

97(1) [Court of Appeal] Notwithstanding anything in any enactment, any party to any appeal before the High Court against any determination of the Commission who is dissatisfied with any decision or order of the court may, with the leave of the court or of the Court of Appeal, appeal to the Court of Appeal; and section 66 of the Judicature Act 1908 shall apply to any such appeal.

History

S 97(1) amended by No 60 of 1991, s 3(4), by omitting “the Administrative Division of” before “the High Court”; **effective 15 August 1991**.

Transitional Provision:

No 60 of 1991, s 8, **effective 15 August 1991**, provides:

“Nothing in section 3 of this Act shall affect any proceedings instituted or commenced in the High Court before the date of the commencement of that section; and all such proceedings may be continued and completed in all respects as if that section has not been enacted.”

97(2) [Determining leave to appeal] In determining whether to grant leave to appeal under this section, the court to which the application for leave is made shall have regard to the following matters:

- (a) whether any question of law or general principle is involved;
- (b) the importance of the issues to the parties;
- (c) the amount of money in issue;
- (d) such other matters as in the particular circumstances the Court thinks fit.

97(3) [Court may impose condition] The court granting leave under this section may in its discretion impose such conditions as it thinks fit, whether as to costs or otherwise.

97(4) (repealed)

History

S 97(4) repealed by No 53 of 2003, s 48(1) and sch 1, Part 2, effective 1 January 2004. Former s 77(4) read:

“(4) The decision of the Court of Appeal on any such appeal shall be final.”

97(5) [Certain appeals on point of law only] An appeal to the Court of Appeal under this section may be made against either of the following only on a point of law:

- (a) a decision or order of the High Court under section 52Z;
- (b) a decision or order of the High Court on an appeal under section 91(1) or (1B) against a determination of the Commission made under section 52P.

History

S 97(5) inserted by No 70 of 2008, s 21, effective 14 October 2008.

PART 7 — MISCELLANEOUS PROVISIONS

SECTION 98 COMMISSION MAY REQUIRE PERSON TO SUPPLY INFORMATION OR DOCUMENTS OR GIVE EVIDENCE

98 Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person—

- (a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
- (b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or
- (c) to appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.

History

S 98 substituted by No 41 of 1990, s 34, effective 1 July 1990. Former s 98 read:

“SECTION 98 POWERS TO OBTAIN INFORMATION, DOCUMENTS, AND EVIDENCE

98(1) Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may by notice in writing served on any person require that person—

- (a) To furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
- (b) To produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or
- (c) To appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice.

98(2) Subject to this section, an officer of the Commission authorised in writing for the purpose may, for the purpose of assisting the Commission to ascertain or establish whether any person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, enter upon and search any premises and inspect, remove and take copies of any documents or extracts therefrom, in the possession of or under the control of any person.

98(3) No officer of the Commission so authorised shall exercise the powers conferred by subsection (2) of this section unless the officer obtains a warrant authorising him to exercise those powers in accordance with subsection (4) of this section.

98(4) Where any judicial officer is satisfied, on application in writing made on oath, that there is

reasonable ground for believing that it is necessary for the purpose of assisting the Commission to ascertain or establish whether any person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an officer of the Commission to exercise the powers conferred by subsection (2) of this section, he may by warrant under his hand, authorise any officer of the Commission to exercise those powers in relation to any premises specified in the warrant.

98(5) Every warrant issued under subsection (4) of this section shall authorise the person named in the warrant at any reasonable time to enter upon and search the premises specified in the warrant and inspect, remove and take copies of any documents or extracts therefrom, in the possession of or under the control of any person.

98(6) Every such warrant shall continue in force until the purpose for which it was granted has been satisfied.

98(7) Every officer of the Commission authorised to enter upon and search any premises pursuant to subsection (2) of this section shall on first entering those premises, and, if requested, at any subsequent time, produce—

- (a) Evidence of his authority to enter the premises; and
- (b) Evidence of his identity.

98(8) The occupier or person in charge of any premises that an authorised officer enters under subsection (2) of this section shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of his powers under that subsection.

98(9) The Commission may exercise any power under this section notwithstanding that any proceedings, whether under Part VI of this Act or otherwise, have been instituted in any Court.

98(10) The Commission, or an officer of the Commission may inspect a document produced in compliance with a notice under this section and may take copies of the document or extracts therefrom.”

SECTION 98A POWER TO SEARCH

98A(1) [Search under warrant] The Commission may, from time to time, authorise an employee of the Commission to search under a warrant issued under subsection (2) any place named in the warrant for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, not being a contravention of section 99A.

98A(2) [Grounds for warrant] An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who is satisfied, on an application made in the manner provided in subpart 3 of Part 4 of that Act by a person who is authorised under subsection (1) that there are reasonable grounds to believe that it is necessary for the purpose of ascertaining whether or not a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act, not being a contravention of section 99A, for an employee of the Commission to search any place may, by warrant, authorise that employee to search a place specified in the warrant.

History

S 98A(2) amended by No 24 of 2012, s 313(2), by replacing "A District Court Judge, Justice, or Community Magistrate, or a Court Registrar (not being a constable) who is satisfied on an application made on oath" with "An issuing officer

(within the meaning of section 3 of the Search and Surveillance Act 2012) who is satisfied, on an application made in the manner provided in subpart 3 of Part 4 of that Act"; effective 1 October 2012 (SR 2012/229).

98A(3) [Search and Surveillance Act 2012 applies] The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications.

History

S 98A(3) replaced by No 24 of 2012, s 313(3), effective 1 October 2012 (SR 2012/229). Former s 98A(3) read:

"98A(3) [Disclosure of previous applications] A person who applies for a warrant shall, having made reasonable inquiries, disclose—

(a) Details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and

(b) The result of the application."

98A(4) [Includes contravention of regulations] In this section, a reference to a contravention of this Act includes a reference to contravening the requirements of any type of regulation under Part 4 of this Act.

History

S 98A(4) amended by No 24 of 2012, s 313(4), by inserting "of this Act" after "Part 4"; effective 1 October 2012 (SR 2012/229).

S 98A(4) inserted by No 70 of 2008, s 22, effective 14 October 2008.

98A(5) [Implied reference to foreign enactment] For the purpose of allowing the Commission to provide, under section 99I, compulsorily acquired information and investigative assistance to a recognised overseas regulator, every reference in this section to a contravention of this Act must be taken to include a reference to a contravention of any foreign enactment that is identified (as required by section 99G(1)(b)) in the co-operation arrangement concerning that recognised overseas regulator.

History

S 98A(5) inserted by No 84 of 2012, s 4, effective 24 October 2012.

History

S 98A inserted by No 41 of 1990, s 34, effective 1 July 1990.

Sec 98A(1)**SECTION 98B POWERS CONFERRED BY WARRANT (repealed)****History**

S 98B repealed by No 24 of 2012, s 313(5), effective 1 October 2012 (SR 2012/229). Former s 98B read:

"SECTION 98B POWERS CONFERRED BY WARRANT

98B(1) [Various powers] A warrant issued under section 98A of this Act authorises the person named in it—

(a) To enter and search the place specified in the warrant on one occasion within 30 days of the date of issue of the warrant at a time that is reasonable in the circumstances;

(b) To use such assistance as is reasonable in the circumstances;

(c) To use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances;

(d) To search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant;

(e) Where necessary, to take copies of documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant;

(f) Where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in usable form, information recorded or stored in a document.

98B(2) [Persons assisting] A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), and (e) of subsection (1) of this section.

98B(3) [Conditions] The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued."

S 98B inserted by No 41 of 1990, s 34, effective 1 July 1990.

SECTION 98C WARRANT TO BE PRODUCED (repealed)**History**

S 98C repealed by No 24 of 2012, s 313(5), effective 1 October 2012 (SR 2012/229). Former s 98C read:

"SECTION 98C WARRANT TO BE PRODUCED

98C A person executing a warrant issued under section 98A of this Act—

(a) Must have the warrant with him or her; and

(b) Must produce it on initial entry and, if requested, at any subsequent time; and

(c) Must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and

(d) Must produce evidence of his or her identity."

S 98C inserted by No 41 of 1990, s 34, effective 1 July 1990.

SECTION 98D OTHER DUTIES OF PERSON WHO EXECUTES A WARRANT (repealed)**History**

S 98D repealed by No 24 of 2012, s 313(5), effective 1 October 2012 (SR 2012/229). Former s 98D read:

"SECTION 98D OTHER DUTIES OF PERSON WHO EXECUTES A WARRANT

98D(1) [Details to be left] A person who executes a warrant issued under section 98A of this Act must, before completing the search, leave in a prominent place at the place searched,—

(a) In the case of a search carried out at a time when the owner or occupier was not present, a written notice stating,—

(i) The date and time when the warrant was executed; and

(ii) The name of the person who executed the warrant; and

(b) In the case of a search where a document or article or thing was removed from the place being searched, a schedule of documents or articles or things that were removed during the search.

98D(2) [Alternative details] If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant—

(a) May, instead of leaving a schedule, leave a notice stating that documents, or articles, or things have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating what documents, articles, or things have been removed; and

(b) Must, within 7 days of the search,—

(i) Deliver a schedule to the owner or occupier; or

(ii) Leave a schedule in a prominent position at the place searched; or

(iii) Send a schedule by mail to the owner or occupier of the place searched.

98D(3) [Schedule of documents removed] Every schedule must state—

(a) The documents, articles, and things that have been removed; and

(b) The location from where they were removed; and

(c) The location where they are being held."

S 98D inserted by No 41 of 1990, s 34, effective 1 July 1990.

Sec 98D

SECTION 98E DUTY TO ASSIST (*repealed*)

History

S 98E repealed by No 24 of 2012, s 313(5), effective 1 October 2012 (SR 2012/229). Former s 98E read:

"SECTION 98E DUTY TO ASSIST

98E The occupier or person in charge of the place that a person authorised pursuant to a warrant issued under

section 98A of this Act enters for the purpose of searching must provide that person with all reasonable facilities and assistance in executing the warrant."

S 98E inserted by No 41 of 1990, s 34, effective 1 July 1990.

SECTION 98F POWER TO INSPECT AND TAKE COPIES OF DOCUMENTS, ETC (*repealed*)

History

S 98F repealed by No 24 of 2012, s 313(5), effective 1 October 2012 (SR 2012/229). Former s 98F read:

"SECTION 98F POWER TO INSPECT AND TAKE COPIES OF DOCUMENTS, ETC

98F The Commission, or any person authorised by the Commission for the purpose, may inspect and take copies

of any documents or extracts from them obtained pursuant to a warrant issued under section 98A of this Act."

S 98F inserted by No 41 of 1990, s 34, effective 1 July 1990.

SECTION 98G COMMISSION MAY EXERCISE POWERS NOTWITHSTANDING OTHER PROCEEDINGS

98G The Commission may exercise any power under sections 98 and 98A notwithstanding that any proceedings, whether under Part 6 or otherwise, have been instituted in any court.

History

S 98G amended by No 24 of 2012, s 313(6), by replacing "to 98F" with "and 98A"; effective 1 October 2012 (SR 2012/229).

S 98G inserted by No 41 of 1990, s 34, effective 1 July 1990.

SECTION 98H SUPPLY OF INFORMATION AND DOCUMENTS IN RELATION TO SECTION 36A

98H(1) [Commission's powers] Where the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act in relation to section 36A, the Commission may by notice in writing served on any person who is ordinarily resident in Australia or who carries on business in Australia, require that person—

- (a) to furnish to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent servant or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
- (b) to produce to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice.

98H(2) [Compliance through Australian Commission] A person who is required to furnish information or a class of information or produce any document or class of documents to the Commission pursuant to this section complies with this section if that person furnishes the information or that class of information or produces the document or that class of documents to the Australian Competition and Consumer Commission in accordance with the Trade Practices Act 1974.

History

S 98H(2) amended by No 113 of 1996, s 8, by substituting "Australian Competition and Consumer Commission" for "Australian Trade Practices Commission"; effective 2 September 1996.

S 98H inserted by No 41 of 1990, s 34, effective 1 July 1990.

SECTION 99 POWERS OF COMMISSION TO TAKE EVIDENCE

99(1) [Admissibility of evidence] For the purposes of carrying out its functions and exercising its powers under this Act, the Commission may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not the same would be otherwise admissible in a court of law.

99(2) [Evidence on oath] The Commission may take evidence on oath and for that purpose a member of the Commission or any employee of the Commission duly appointed for the purpose may administer an oath.

99(3) [Evidence on oath] The Commission may require the evidence referred to in section 98(c) to be given on oath, and for that purpose a member of the Commission or any employee of the Commission duly appointed for the purpose may administer an oath.

History

S 99(3) amended by No 41 of 1990, s 35, by substituting "98(c)" for "98(1)(c)"; effective 1 July 1990.

99(4) [Verification by oath] The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, if the Commission thinks fit, verifying by oath, a written statement.

99(5) [Witness expenses] Where any person has appeared as a witness before the Commission pursuant to a notice in that behalf, or has given evidence before the Commission, whether pursuant to a notice or not, the Commission may, if it thinks fit, order any sum to be paid to that witness on account of his expenses, not exceeding the amount that would be payable to him if his attendance had been as a witness for the Crown in a criminal case in accordance with the regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

History

No 115 of 2004, s 200 and sch 6, requires every reference to "officer of the Commission" to be replaced with "employee of the Commission" wherever occurring; effective 25 January 2005. S 99 has been amended accordingly.

Compare: 1975 No 113 s 13; 1976 No 67 s 8(8)(d)

SECTION 99A COMMISSION MAY RECEIVE INFORMATION AND DOCUMENTS ON BEHALF OF AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

99A(1) [Commission may receive] Where the Australian Competition and Consumer Commission requires any person resident or carrying on business in New Zealand to furnish any information or any class of information or produce any document or class of documents to it pursuant to section 155A of the Trade Practices Act 1974, the information or class of information may be furnished or the document or class of documents may be produced to the Commission for transmission to the Australian Competition and Consumer Commission.

History

S 99A(1) amended by No 113 of 1996, s 9, by substituting "Australian Trade Practices Commission" in two places, "Australian Competition and Consumer Commission" for effective 2 September 1996.

99A(2) [Delivery to Australian Commission] The Commission shall deliver the information or class of information furnished or the document or class of documents produced to it to the Australian Competition and Consumer Commission as soon as practicable.

History

S 99A(2) amended by No 113 of 1996, s 9, by substituting "Australian Trade Practices Commission"; effective 2 September 1996.

99A(3) [Offence] Every person who—

- (a) refuses or fails, without reasonable excuse, to comply with a requirement referred to in subsection (1); or
- (b) in purported compliance with such a requirement, furnishes information or produces a document knowing it to be false or misleading—

commits an offence and is liable on conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.

History

S 99A(3) amended by No 81 of 2011, s 413 and sch 3, pt 1, by omitting "summary" after "liable on"; effective 1 July 2013 (SR 2013/162).

History

S 99A inserted by No 41 of 1990, s 36, effective 1 July 1990.

[CCH note: Sections 99B to 99P not reproduced.]

SECTION 100 POWERS OF COMMISSION TO PROHIBIT DISCLOSURE OF INFORMATION, DOCUMENTS, AND EVIDENCE

100(1) [Confidentiality order] Subject to subsection (2), the Commission may, in relation to any application for, or any notice seeking, any clearance or authorisation under Part 5, or in the course of carrying out any other investigation or inquiry under this Act, make an order prohibiting—

- (a) the publication or communication of any information or document or evidence which is furnished or given or tendered to, or obtained by, the Commission in connection with the operations of the Commission;
- (b) the giving of any evidence involving any such information, document, or evidence.

Sec 99A(1)

100(2) [Period of effect] Any order made by the Commission under subsection (1) may be expressed to have effect for such period as is specified in the order, but no such order shall have effect—

- (a) where that order was made in connection with any application for, or any notice seeking, any clearance or authorisation under Part 5, after the expiry of 20 working days from the date on which the Commission makes a final determination in respect of that application or notice, or, where that application or notice is withdrawn before any such determination is made, after the date on which the application or notice is withdrawn;
- (b) where that order was made in connection with any other investigation or inquiry conducted by the Commission, after the conclusion of that investigation or inquiry.

100(3) [Expiry of order] On the expiry of any order made under subsection (1), the provisions of the Official Information Act 1982 shall apply in respect of any information, document, or evidence that was the subject of that order.

100(4) [Offence provision] Every person who, contrary to any order made by the Commission under subsection (1), publishes or communicates any information or document or evidence commits an offence and is liable, on conviction, to a fine not exceeding \$4,000 in the case of a person not being a body corporate, and \$12,000 in the case of a body corporate.

History

S 100(4) amended by No 81 of 2011, s 413 and sch 3, pt 1, by omitting "summary" after "liable, on"; effective 1 July 2013 (SR 2013/162).

History

S 100 substituted by No 8 of 1987, s 25(1), effective 1 April 1987. Former s 100 read:

"100(1) The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or evidence given to the Commission in connection with the operations of the Commission.

100(2) Every person who publishes or communicates any such information, documents or evidence the

publication or communication of which is prohibited by the Commission under subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$4,000 in the case of a person not being a body corporate, and \$12,000 in the case of a body corporate."

SECTION 100A COMMISSION MAY STATE CASE FOR OPINION OF HIGH COURT

100A(1) [Question of law] The Commission may at any time state a case for the opinion of the court on any question of law arising in any matter before it.

100A(2) [Removal into Court of Appeal] The court may order the removal into the Court of Appeal of any case stated for the opinion of the court under this section.

100A(3) [Opinion to Commission] The court or the Court of Appeal, as the case may be, shall hear and determine the question, and shall remit the case with its opinion to the Commission.

History

S 100A inserted by No 113 of 1996, s 10, effective 2 September 1996.

SECTION 101 NOTICES

101(1) [Sufficiency of notice] Any notice given by the Commission under or for the purposes of this Act shall be sufficiently given if it is in writing under the seal of the Commission or is signed by the chairperson, or by 1 or more of the members of the Commission, or by any person purporting to act by direction of the Commission, and is served in accordance with section 102 on the person or persons primarily concerned therewith or on any person or organisation deemed by the Commission to represent the person or persons primarily concerned therewith.

History

No 115 of 2004, s 200 and sch 6, requires every reference to "Chairman" to be replaced with "chairperson" wherever occurring; effective 25 January 2005. S 101(1) has been amended accordingly.

101(2) [Signed or sealed] All documents purporting to be signed by or on behalf of the Commission or to be sealed with the seal of the Commission shall, in all courts and in all proceedings under this Act, be deemed to have been so signed or sealed with due authority unless the contrary is proved.

Compare: 1975 No 113 s 120A; 1976 No 67 s 37(1)

SECTION 102 SERVICE OF NOTICES

102(1) [Delivering, posting notice] Any notice or other document required or authorised to be served on or given to any person for the purposes of this Act may be served or given by delivering it to that person, or by leaving it at his usual or last known place of residence or business or at the address specified by him in any notice, application, or other document made or given or tendered to the Commission under this Act, or by posting it by letter addressed to him at that place of residence or business or at that address.

102(2) [Registered letter] If any such notice or other document is sent to any person by registered letter, then, unless the contrary is shown, it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post; and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

102(3) [Association or body of persons] Where for any purpose under this Act a notice or document is required to be served on an association or body of persons the notice or document may be served on the secretary, executive officer, manager, or other officer holding a similar position in the association or body; and for the purposes of this Act, service on the association or body shall, unless otherwise directed by the Commission, be deemed to be service on all persons who are members of the association or body or who are represented on the association or body by those members.

Compare: 1975 No 113 s 121(1)-(3)

Sec 101(1)

SECTION 103 OFFENCES

103(1) [Duty of person supplying information] No person shall—

- without reasonable excuse, refuse or fail to comply with a notice under sections 53B(1)(c), 53N, 53ZD, and 98; or
- in purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
- resist, obstruct, or delay an employee of the Commission acting pursuant to a warrant issued under section 98A.

History

S 103(1) amended by No 70 of 2008, s 23, by replacing in para (a) "section 70E or section 98" with "sections 53B(1)(c), 53N, 53ZD, and 98"; effective 14 October 2008. S 103(1) amended by No 32 of 2001, s 27(3), by inserting in para (a) "section 70E or"; effective 26 May 2001.

103(2) [No attempts at deceit, etc] No person shall attempt to deceive or knowingly mislead the Commission in relation to any matter before it.

103(3) [Duty of person appearing] No person, having been required to appear before the Commission pursuant to section 98(c), shall—

- without reasonable excuse, refuse or fail to appear before the Commission to give evidence; or
- refuse to take an oath or make an affirmation as a witness; or
- refuse to answer any question; or
- refuse to produce to the Commission any book or document that that person is required to produce.

103(4) [Offence] Any person who contravenes subsection (1) or subsection (2) or subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.

History

S 103(4) amended by No 81 of 2011, s 413 and sch 3, pt 1, by omitting "summary" after "liable on"; effective 1 July 2013 (SR 2013/162).

103(5) [Commencement of proceedings] Proceedings for an offence against subsection (4) may be commenced within 6 months after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

History

S 103(5) inserted by No 32 of 2001, s 25, effective 26 May 2001.

History

S 103 substituted by No 41 of 1990, s 37, effective 1 July 1990. Former s 103 read:

"SECTION 103 FAILURE TO COMPLY WITH NOTICES, ETC

103(1) No person shall—

- Refuse or fail to comply with a notice under section 98 of this Act; or
- In purported compliance with such a notice, furnish information, or produce a document, or give evidence, knowing it to be false or misleading; or
- Obstruct or hinder an officer of the Commission acting pursuant to section 98(2) of this Act.

103(2) No person having been required to appear before the Commission pursuant to section 98(1)(c) of this Act shall—

(a) Without reasonable excuse refuse or fail to appear before the Commission to give evidence; or

(b) Refuse to take an oath or make an affirmation as a witness; or

(c) Refuse to answer any question put to him; or

(d) Refuse or fail to produce to the Commission any book, or document that he is required to produce.

103(3) Any person who contravenes subsection (1) or subsection (2) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$4,000 in the case of a person not being a body corporate, and \$12,000 in the case of a body corporate."

SECTION 104 DETERMINATIONS OF COMMISSION

104(1) [In writing under seal] Any determination, clearance, authorisation, or decision given by the Commission under or for the purposes of this Act shall be sufficiently given if it is in writing under the seal of the Commission or is signed by 1 or more members of the Commission or by an employee of the Commission authorised for the purpose.

104(2) [Certified true copy] A copy of the determination, clearance, authorisation or decision of the Commission, certified to be a true copy by an employee of the Commission authorised in that behalf to certify copies of determinations, clearances, authorisations or decisions of the Commission, shall be received in all courts as evidence of the determination, clearance, authorisation or decision.

104(3) [Deemed true] A document purporting to be a copy of a determination, clearance, authorisation or decision of the Commission and to be certified to be a true copy in accordance with subsection (2) shall, unless the contrary is established, be deemed to be such a copy and to be so certified.

History

No 115 of 2004, s 200 and sch 6, requires every reference to "officer of the Commission" to be replaced with "employee of the Commission" wherever occurring; effective 25 January 2005. S 104 has been amended accordingly.

Compare: 1975 No 113 s 120A; 1976 No 67 s 37(1)

SECTION 105 RESTRICTION ON DELEGATION

105(1) [Restriction on delegation of powers] The Commission may not delegate its powers to grant, revoke, or vary an authorisation under this Act.

History

S 105(1) amended by No 70 of 2008, s 24(1), by omitting "except in accordance with subsection (2)"; effective 14 October 2008.

105(2) (repealed)**History**

S 105(2) repealed by No 70 of 2008, s 24(2), effective 14 October 2008. Former s 105(2) read:

"105(2) The Commission may delegate to the chief executive or any other employee or employees, or office

holder or holders, of the Commission, or any class of employee or office holder, any of its powers under sections 70 to 74."

105(3) (repealed)**History**

S 105(3) repealed by No 70 of 2008, s 24(2), effective 14 October 2008. Former s 105(3) read:

"105(3) In other respects, section 73 of the Crown Entities Act 2004 applies."

History

S 105 replaced by No 115 of 2004, s 200 and sch 6, effective 25 January 2005. Former s 105 read:

"SECTION 105 DELEGATION BY COMMISSION

105(1) The Commission may, by resolution, delegate to any member any of its powers under this Act or under the Fair Trading Act 1986, other than this power of delegation and its powers to grant, revoke, or vary an authorisation.

[S 105(1) amended by No 113 of 1996, s 11, by inserting "or under the Fair Trading Act 1986"; effective 2 September 1996.

S 105(1) amended by No 41 of 1990, s 38, by omitting "grant a clearance or" before "grant, revoke, or"; effective 1 July 1990.]

105(2) The Commission may, by resolution, delegate to a specified officer of the Commission or to the holder for the time being of a specified office or to the holders of offices of a specified class any of its powers under sections 70 to 74 of this Act.

105(3) Any delegation may be made subject to such conditions and restrictions as the Commission thinks fit, and may be made either generally or in relation to any particular matter or class of matters.

105(4) Subject to any general or special directions given or conditions or restrictions imposed by the Commission, any person to whom any powers or functions are delegated may exercise those powers or functions in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

105(5) Every person purporting to act pursuant to any delegation shall be presumed to be acting in accordance

with the terms of the delegation, in the absence of proof to the contrary.

105(6) The delegation of any power or function shall not prevent the exercise of that power or function by the Commission.

105(7) Until it is revoked or amended, every delegation shall continue in force according to its tenor, notwithstanding the fact that all or any members of the Commission by whom it was made may have ceased to hold office; and in any such case, the delegation shall continue in force as if made by the successor or successors in office of that member or members, as the case may be."

SECTION 106 PROCEEDINGS PRIVILEGED

106(1) [Commission] No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Commission acted without reasonable care or in bad faith.

106(2) [Members, officers, employees of Commission] No proceedings, civil or criminal, lie against any member of the Commission, or any officer or employee of the Commission, or any member of a committee of the Commission, for anything that person may do or say or fail to do or say in the course of the operations of the Commission, unless it is shown that the person acted in bad faith.

History

S 106(2) replaced by No 115 of 2004, s 200 and sch 6, effective 25 January 2005. Former s 106(2) read:

"106(2) No proceedings, civil or criminal, shall lie against any member or associate member of the Commission, or any officer of the Commission, for

anything that person may do or say or fail to do or say in the course of the operations of the Commission, unless it is shown that that person acted in bad faith."

106(3) [Wrongful communication, corruption] Nothing in subsections (1) and (2) applies in respect of proceedings for—

- an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
- the offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
- the offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.

106(3A) [Non-application of s 59(3) of Crown Entities Act 2004] Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown by the Commission that the person acted in bad faith.

History

S 106(3A) inserted by No 115 of 2004, s 200 and sch 6, effective 25 January 2005.

106(3B) [Application of ss 122 to 126 of Crown Entities Act 2004] Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.

History

S 106(3B) inserted by No 115 of 2004, s 200 and sch 6, effective 25 January 2005.

CO-OPERATIVE COMPANIES (FORMS) REGULATIONS 1996

SR 1996/212

Pursuant to section 48 of the Co-operative Companies Act 1996, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATION 1 TITLE AND COMMENCEMENT

1(1) These regulations may be cited as the Co-operative Companies (Forms) Regulations 1996.

1(2) These regulations shall come into force on 1 September 1996.

REGULATION 2 FORMS

2(1) Where a provision of the Co-operative Companies Act 1996 requires a document to be in a prescribed form, the document must—

- (a) be in the appropriate form set out in the Schedule; and
- (b) include such information as is specified in the form; and
- (c) have attached or be accompanied by such documents as are specified in the form.

2(2) Where a document in form 1 or form 2 or form 3 or form 4 or form 5 of the Schedule continues on 2 or more pages, the following heading must appear at the top of those pages:

Name of Company*/
Proposed Company*

*Delete if not applicable

Company No.*/
Name Reservation No.*

History

Reg 2(2) amended by SR 1998/253, reg 2(1), by inserting “or Form 5”; effective 1 October 1998.

Form 2

Application for simultaneous registration as a co-operative company/co-operative dairy company under the Co-operative Companies Act 1996 and as a company under the Companies Act 1993

Sections 7 and 36, Co-operative Companies Act 1996

Document No

(for office use only)

Please note that the information in this form must be either typewritten or printed. It must not be handwritten.

Name of proposed company

Name reservation No

This is an application for registration of the above-named proposed company as a co-operative company*/co-operative dairy company* under the Co-operative Companies Act 1996.

*Delete if not applicable.

This application is made together with an application for registration of the proposed company as a company under the Companies Act 1993.

This application is accompanied by:

1 An application for registration of the company under section 12 of the Companies Act 1993.

(Note: The application for registration of the company under section 12 of the Companies Act 1993 must be in form 1 of Schedule 1 of the Companies Act 1993 Regulations 1994.)

2 A statutory declaration made by each person named as a director in the application for registration of the company under the Companies Act 1993, stating that in the opinion of that person, the company will, upon registration, be a co-operative company within the meaning of the Co-operative Companies Act 1996, and setting out the grounds for that opinion.

Form 2—continued

(Note: A statutory declaration in these terms is required by sections 7(2)(c) and 36 of the Co-operative Companies Act 1996.)

3 A copy of the resolution of such number of persons who consent to become shareholders of the company and who will hold, in aggregate, not less than 75% of the shares to be issued by the company, authorising this application.

(Note: This application must be authorised either by the proposed constitution of the company or by a resolution of such number of persons who consent to become shareholders of the company and who will hold, in aggregate, not less than 75% of the shares to be issued by the company. If the application is authorised by such a resolution, the application must be accompanied by a copy of that resolution. See sections 7(3) and 36 of the Co-operative Companies Act 1996.)

Signature of authorised person:

Name of authorised person:

Date:

Presented by
Postal address

Account No

Telephone

Facsimile

Form 3

Application by existing co-operative company for simultaneous registration as a co-operative company/co-operative dairy company under the Co-operative Companies Act 1996 and reregistration under the Companies Act 1993

Sections 8 and 37, Co-operative Companies Act 1996

Document No

(for office use only)

Please note that the information in this form must be either typewritten or printed. It must not be handwritten.

This form is to be used where the company is—

- (a) *a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949; or*
- (b) *a co-operative company registered under the Co-operative Companies Act 1956; or*
- (c) *a co-operative freezing company registered under the Co-operative Freezing Companies Act 1960; or*
- (d) *a co-operative forestry company registered under the Co-operative Forestry Companies Act 1978—*

and applies to be registered as a co-operative company or as a co-operative dairy company under the Co-operative Companies Act 1996 at the same time as it applies to be reregistered as a company under the Companies Act 1993.

Name of existing co-operative company

Company No

This is an application for registration of the above-named company as a co-operative company*/co-operative dairy company* under the Co-operative Companies Act 1996.

*Delete if not applicable.

Form 3—continued

This application is made together with an application under the Companies Reregistration Act 1993 for the reregistration of the company as a company under the Companies Act 1993.

This application is accompanied by:

- 1 An application for reregistration of the company under the Companies Act 1993.

(Note: The application for reregistration of the company under the Companies Act 1993 must be in form 1 of the Schedule of the Companies Reregistration Regulations 1994.)

- 2 A statutory declaration made by each director of the company stating that, in the opinion of the director, the company is a co-operative company within the meaning of the Co-operative Companies Act 1996, and setting out the grounds for that opinion.

(Note: A statutory declaration in these terms is required by sections 8(2)(c) and 37 of the Co-operative Companies Act 1996.)

- 3 A copy of the special resolution of the company authorising the application.

(Note: A copy of a special resolution of the company authorising the application is required by sections 8(3) and 37 of the Co-operative Companies Act 1996.)

Signature of authorised person:

Name of authorised person:

Date:

Presented by
Postal address

Account No

Telephone

Facsimile

Form 4

Application by company for simultaneous registration as a co-operative company/co-operative dairy company under the Co-operative Companies Act 1996 and reregistration as a company under the Companies Act 1993

Sections 9 and 38, Co-operative Companies Act 1996

Document No

(for office use only)

Please note that the information in this form must be either typewritten or printed. It must not be handwritten.

This form must be used where the company, not being—

- (a) a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949; or
- (b) a co-operative company registered under the Co-operative Companies Act 1956; or
- (c) a co-operative freezing company registered under the Co-operative Freezing Companies Act 1960; or
- (d) a co-operative forestry company registered under the Co-operative Forestry Companies Act 1978,—

applies to be registered as a co-operative company or as a co-operative dairy company under the Co-operative Companies Act 1996 at the same time as it applies to be reregistered as a company under the Companies Act 1993.

Name of company

Company No

This is an application for registration of the above-named company as a co-operative company*/co-operative dairy company* under the Co-operative Companies Act 1996.

*Delete if not applicable.

Form 4—continued

This application is made together with an application under the Companies Reregistration Act 1993 for the reregistration of the company as a company under the Companies Act 1993.

This application is accompanied by:

- 1 An application for reregistration of the company under the Companies Act 1993.
(Note: The application for reregistration of the company under the Companies Act 1993 must be in form 1 of the Schedule of the Companies Reregistration Regulations 1994.)
- 2 A statutory declaration made by each director of the company stating that, in the opinion of the director, the company is a co-operative company within the meaning of the Co-operative Companies Act 1996, and setting out the grounds for that opinion.
(Note: A statutory declaration in these terms is required by sections 9(2)(c) and 38 of the Co-operative Companies Act 1996.)
- 3 A copy of the special resolution of the company authorising the application.
(Note: A copy of a special resolution of the company authorising the application is required by sections 9(3) and 38 of the Co-operative Companies Act 1996.)

Signature of authorised person:

Name of authorised person:

Date:

Presented by
Postal address

Account No

Telephone

Facsimile