



Companies Amendment Act 2016

Public Act 2016 No 57
Date of assent 17 October 2016
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Companies Amendment Act 2016.
- 2 Commencement**
This Act comes into force on 1 March 2017.

3 Principal Act

This Act amends the Companies Act 1993 (the **principal Act**).

4 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

association, in Parts 15 and 16 and in Schedule 11, includes—

- (a) a body corporate (other than a company, an overseas company, or a body corporate that may be put into liquidation under or in accordance with the Act under which it is incorporated or registered); and
- (b) a partnership; and
- (c) an unincorporated body of persons

5 Section 235 amended (Interpretation)

(1) In section 235, definition of **company**, paragraph (c), delete “that may be put into liquidation under section 17A of the Judicature Act 1908”.

(2) In section 235, definition of **company**, after paragraph (c), insert:

(d) any other body corporate to which this Part applies under any enactment

(3) In section 235, insert in its appropriate alphabetical order:

shareholder includes, in relation to an association, members of the association or persons that the court determines as being justly entitled to surplus assets of the association after the satisfaction of the claims of all of the creditors

6 Section 240 amended (Interpretation)

After section 240(1), insert:

(1A) In this Part, **company** means—

- (a) a company within the meaning of section 2;
- (b) an overseas company to which this Part applies (*see* section 342);
- (c) an association (*see* section 240B);
- (d) any other body corporate to which this Part applies under any other enactment.

7 New section 240B inserted (Liquidation of associations)

After section 240A, insert:

240B Liquidation of associations

An association may be put into liquidation under this Part, and this Part applies to an association, subject to the modifications and exclusions set out in Schedule 11.

8 New Schedule 11 inserted

After Schedule 10, insert the Schedule 11 set out in the Schedule of this Act.

*Consequential amendments***9 Amendments to Crown Entities Act 2004**

- (1) This section amends the Crown Entities Act 2004.
- (2) In the heading to section 177, replace “**Judicature Act 1908**” with “**Companies Act 1993**”.
- (3) In section 177, replace “sections 17A to 17E of the Judicature Act 1908 apply” with “section 240B of the Companies Act 1993 applies”.

10 Amendments to Customs and Excise Act 1996

- (1) This section amends the Customs and Excise Act 1996.
- (2) In section 101(3), delete “, and Schedule 7 of,”.
- (3) In section 101(5), replace “section 17B of the Judicature Act 1908” with “the requirements of section 312 of the Companies Act 1993 (as applied by section 240B of that Act)”.

Schedule
New Schedule 11 inserted

s 8

Schedule 11
Liquidation of associations

s 240B

1 Modified application of Part 16 to associations

- (1) Part 16 applies to the liquidation of an association with the following modifications and exclusions:
- (a) section 241(2)(a), (b), (c)(v), (va), (vii), and (viii), and (d) does not apply;
 - (b) clause 2 applies instead of section 241(4);
 - (c) clauses 3 and 4 apply instead of sections 287 and 288(1) and (2);
 - (d) clause 5 applies instead of section 268;
 - (e) references in that Part to section 241(4), 268, 287, or 288(1) or (2) (or to a provision of any of those sections) must be taken as references to the relevant replacement clause or clauses under paragraphs (b) to (d) (or to the relevant replacement provision);
 - (f) section 257(1)(a)(ii)(C) and (1)(a)(iii) does not apply;
 - (g) all other necessary modifications must be made.
- (2) A document may be served on an association for the purposes of this schedule and Part 16 as follows:
- (a) by delivery to a director, a principal officer, or the secretary of the association; or
 - (b) by leaving it at the association's principal place of business in New Zealand; or
 - (c) in the case of a document in any legal proceedings, by a method set out in paragraph (a) or (b) or by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings.

Compare: 1908 No 89 s 17B

2 Grounds for appointment of liquidator

The court may appoint a liquidator of an association under section 241 if the court is satisfied that—

- (a) the association is dissolved, has ceased to carry on business, or is carrying on business solely for the purpose of terminating its affairs; or
- (b) the association is unable to pay its debts; or

(c) it is just and equitable that the association be put into liquidation.

Compare: 1908 No 89 s 17A(4)

3 Meaning of inability to pay debts

(1) Unless the contrary is proved, and subject to clause 4 and section 288(3) to (5), an association is presumed to be unable to pay its debts if—

(a) the association has failed to comply with a demand in respect of a debt owed by the association that is made in accordance with subclause (2); or

(b) all of the following apply:

(i) a proceeding has been commenced against a member of the association for the payment of a debt owed by the association or the member in that capacity; and

(ii) notice of the proceeding has been served on the association; and

(iii) within 10 days after the notice was served on it, the association has not paid or secured the debt, or otherwise compounded with the creditor, had the proceeding stayed, or indemnified the member for the amount of any judgment debt plus costs; or

(c) execution issued against the association, a member of the association in that capacity, or a person authorised to be sued on behalf of the association in respect of a judgment debt has been returned unsatisfied in whole or in part.

(2) A demand under subclause (1)(a) must—

(a) be in respect of a debt that is due that is not less than the prescribed amount; and

(b) be in writing; and

(c) be served on the association; and

(d) require the association to pay or secure the debt, or otherwise compound with the creditor to the reasonable satisfaction of the creditor within 15 working days after the date of service of the demand or any longer period that the court orders.

Compare: 1908 No 89 s 17C

4 Evidence of inability to pay debts

(1) On an application to the court for an order that an association be put into liquidation, evidence of failure to comply with a demand under clause 3 is not admissible as evidence that an association is unable to pay the debts unless the application is made within 30 working days after the last date for compliance with the demand.

(2) Clause 3(2) does not limit proof by other means that an association is unable to pay its debts.

5 Power of liquidator to enforce liability of contributors

The liquidator may enforce a liability of a person to pay or contribute to—

- (a) any debt or liability of an association; or
- (b) any amount for the adjustment of the rights of members of the association among themselves.

Legislative history

14 September 2016

Divided from Judicature Modernisation Bill (Bill 178–2) as
Bill 178–3J

11 October 2016

Third reading

17 October 2016

Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.