Reprint

as at 29 February 2008

Companies Amendment Act (No 2) 2006

Public Act 2006 No 62
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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered by the Ministry of Economic Development.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies Amendment Act (No 2) 2006.

2 Commencement

(1) Sections 4(3), 5 to 13, 16, and 17, and the Schedule come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Section 2(1): section 16(3) brought into force, on 29 February 2008, by clause 2 of the Companies Amendment Act (No 2) 2006 Commencement Order (No 2) 2007 (SR 2007/370).

Section 2(1): sections 11 and 12brought into force, on 1 September 2007, by clause 2(2) of the Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Section 2(1): sections 4(3), 5 to 10, 13, 16(1) and (2) and 17 and the Schedule brought into force, on 18 June 2007, by clause 2(1) of the Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

3 Principal Act amended

This Act amends the Companies Act 1993.

4 Interpretation

(1) Section 2(1) is amended by repealing the definition of **exempt company** and substituting the following definition:

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

(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.

(3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

"**annual report** —

"(a) means a report prepared under section 208; and

"(b) does not include a concise annual report

"**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".

5 Qualifications of directors

(1) Section 151(2) is amended by inserting the following paragraph before paragraph (f):

"(eb) a person who is prohibited from 1 or more of the following under an order made, or a notice given, under a law of a prescribed country, State, or territory outside New Zealand:

"(i) being a director of an overseas company:
"(ii) being a promoter of an overseas company:
"(iii) being concerned or taking part in the management of an overseas company:".

(2) If, immediately before the commencement of this section, a person is a director of a company and is subject to an order or notice of a kind referred to in section 151(2)(eb) of the principal Act (as inserted by this section), the person is not disqualified from being a director of that company under that paragraph by reason of that order or notice.

6 New section 196A inserted

The following section is inserted after section 196:

"**196A Auditor is not required to audit financial statements of non-active company**

If, by virtue of section 10A of the Financial Reporting Act 1993, the directors of a company are not required to comply with section 10 of that Act in respect of an accounting period, the auditor of the company is not required to audit financial statements of the company for that period".

7 New sections 209 to 209B substituted

Section 209 is repealed and the following sections are substituted:

"**209 Obligation to make annual report available to shareholders**

"(1) The board of a company must send to every shareholder of the company, not less than 20 working days before the date fixed for holding the annual meeting of shareholders,—
"(a) a copy of the annual report; or
"(b) a notice containing the statements specified in subsection (3).

"(2) Subsection (1) is subject to section 212.

"(3) The notice referred to in subsection (1)(b) must contain—
"(a) a statement to the effect that the shareholder has a right to receive from the company, free of charge, a copy of the annual report if the shareholder, within 15 working

days of receiving the notice, makes a request to the company to receive a copy of the annual report; and

"(b) a statement to the effect that the shareholder may obtain a copy of the annual report by electronic means; and

"(c) a statement as to how the shareholder may obtain a copy of the annual report by electronic means (for example, from a specified website address); and

"(d) a statement as to whether the board of the company has prepared, in relation to the same accounting period as the annual report, a concise annual report and, if so, a statement—

"(i) to the effect that the shareholder has a right to receive from the company, free of charge, a copy of the concise annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the concise annual report; and

"(ii) to the effect that the shareholder may obtain a copy of the concise annual report by electronic means; and

"(iii) as to how the shareholder may obtain a copy of the concise annual report by electronic means (for example, from a specified website address).

"(4) The notice referred to in subsection (1)(b) may be accompanied by any additional information or documentation that the board of the company thinks fit.

"(5) For the purposes of this section and sections 209A and 209B, every concise annual report for a company must, in relation to an accounting period, include,—

"(a) in relation to a company that has, on the balance date of the company, no subsidiaries,—

"(i) financial statements for the accounting period and any auditor's report on those financial statements required under Part 11; or

"(ii) summary financial statements for the accounting period:

"(b) in relation to a company that has, on the balance date of the company, 1 or more subsidiaries,—

"(i) group financial statements for the accounting period and any auditor's report on those group financial statements required under Part 11; or

"(ii) summary financial statements for the accounting period prepared in relation to the group comprising the company and its subsidiaries.

"(6) For the purposes of subsection (5),—

"(a) financial statements must be completed and signed in accordance with section 10 of the Financial Reporting Act 1993:

"(b) group financial statements must be completed and signed in accordance with section 13 of the Financial Reporting Act 1993:

"(c) summary financial statements must give a true and fair view of the matters to which they relate and comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993).

"(7) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

"**209A Board must send copy of annual report or concise annual report on request**

"(1) If the board of a company has sent a notice to a shareholder under section 209(1)(b) and the shareholder, within 15 working days of receiving that notice, makes a request to the company to receive a copy of the annual report, the board of the company must, as soon as practicable, send to the shareholder, free of charge, a copy of that annual report.

"(2) If a shareholder makes a request under subsection (1),—

"(a) the request must be treated as a request by the shareholder to send to the shareholder each year a copy of the annual report under section 209(1)(a); and

"(b) the board of the company must send to the shareholder each year a copy of the annual report under section 209(1)(a) until the shareholder revokes the request by notice to the company.

"(3) Subsection (4) applies if—

"(a) the board of a company has sent a notice to a shareholder under section 209(1)(b); and

"(b) that notice states that the board has prepared a concise annual report; and

"(c) the shareholder, within 15 working days of receiving that notice, makes a request to the company to receive a copy of the concise annual report.

"(4) The board of the company must send to the shareholder a copy of the concise annual report, free of charge, as soon as practicable after receiving the request.

"(5) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).

"**209B Annual report and concise annual report made available by electronic means**

"(1) If the board of a company has sent a notice to a shareholder under section 209(1)(b), the board must ensure that—

"(a) a copy of the annual report is available in the manner described in the notice under section 209(3)(c) at all reasonable times during the period beginning on the date the notice is sent and ending on the date the board acts under section 209(1) in relation to the next accounting period; and

"(b) the manner described in the notice under section 209(3)(c) allows a copy of the annual report to be readily accessible so as to be usable for subsequent reference.

"(2) If the board of a company has sent a notice to a shareholder under section 209(1)(b) and that notice states that the board has prepared a concise annual report, the board must—

"(a) ensure that a copy of the concise annual report is available in the manner described in the notice under section 209(3)(d)(iii) at all reasonable times during the period beginning on the date the notice is sent and ending on the date the board acts under section 209(1) in relation to the next accounting period; and

"(b) ensure that the manner described in the notice under section 209(3)(d)(iii) allows a copy of the concise an-

nual report to be readily accessible so as to be usable for subsequent reference.

"(3) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2)."

8 Section 210 repealed

Section 210 is repealed.

9 New section 211A inserted

The following section is inserted after section 211:

"**211A Obligations to prepare and make available annual reports or financial statements do not apply to nonactive companies**

If, under section 10A of the Financial Reporting Act 1993, the directors of a company are not required to comply with section 10 of that Act in respect of an accounting period, the board of the company is not required to—

"(a) prepare an annual report under section 208 in respect of that accounting period; or

"(b) send or make available under sections 209 to 209B any annual report, notice, or other document in respect of that accounting period."

10 Shareholders may elect not to receive documents

(1) Section 212 is amended by omitting "Subject to section 210, a" and substituting "A".

(2) Section 212 is amended by adding the following subsection as subsection (2):

"(2) However, if a shareholder of a company purports to waive the right to receive both a copy of the annual report and a notice under section 209(1)(b),—

"(a) the purported waiver is invalid; and

"(b) the board of the company must, in accordance with section 209(1), send to the shareholder a copy of the annual report or a notice under section 209(1)(b)."

11 New section 332A inserted

The following section is inserted after section 332:

"**332A Registrar may approve use of different form**

"(1) The Registrar may, on the application of any person, approve the use, by the overseas company or companies that the Registrar may specify, of a form for the purposes of this Part that is different from that prescribed.

"(2) The Registrar may at any time revoke, in whole or in part, any approval given under subsection (1).

"(3) An application, notice, or other document given to the Registrar by an overseas company must be treated as having been given in the prescribed form if the Registrar has approved the use of the form by the overseas company under this section."

12 New section 343A inserted

The following section is inserted after section 343:

"**343A Overseas company not required to provide information, notice, or document in certain circumstances**

An overseas company is not required to give information, notice of information, or a copy of a document to the Registrar under this Part if—

"(a) the overseas company is incorporated in a prescribed country, State, or territory outside New Zealand; and

"(b) the information or a copy of the document has been given to, or is held by, a body or person in that country, State, or territory whose functions correspond to those of the Registrar; and

"(c) the information or document is of a class that is prescribed for the purposes of this section."

13 Penalties that may be imposed on directors in cases of failure by board or company to comply with Act

Section 374(2) is amended by repealing paragraphs (21) and (22) and substituting the following paragraphs:

"(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):".

14 Court may disqualify directors

Section 383(1) is amended by inserting the following paragraph after paragraph (c):

"(ca) a person has been prohibited in a country, State, or territory outside New Zealand from carrying on activities that the Court is satisfied are substantially similar to being a director or promoter of or being concerned or taking part in the management of a body corporate; or".

15 Regulations

(1) Section 395 is amended by inserting the following paragraphs after paragraph (c):

"(ca) prescribing countries, States, or territories outside New Zealand for the purposes of section 151(2)(eb):

"(cb) prescribing requirements for the preparation of concise annual reports:

"(cc) prescribing countries, States, or territories outside New Zealand for the purposes of section 343A:

"(cd) prescribing classes of information or documents for the purposes of section 343A:".

(2) Section 395 is amended by adding the following subsection as subsection (2):

"(2) Different forms for the purposes of this Act may be prescribed for different classes of persons."

16 Consequential amendments to Securities Markets Act 1988

(1) This section amends the Securities Markets Act 1988.

(2) *[Repealed]*

(3) Section 35F(2)(a) (as substituted by the Securities Markets Amendment Act 2006) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

"(ii) the notice sent under that section; and".

(4) Subsection (2) is repealed when subsection (3) comes into force.

Section 16(2): repealed, on 29 February 2008, by section 16(4).

17 Other consequential amendments

The enactments specified in the Schedule are amended in the manner set out in that Schedule.

Schedule

s 17

Consequential amendments

Co-operative Companies Act 1996 (1996 No 24)

Section 29(j) and (k): repeal and substitute:

"(j) the reference in section 209(1) to 20 working days must be construed as a reference to 10 working days:

"(k) except in the case of a shareholder, other than a transacting shareholder, who gives notice in writing to the company that the shareholder wishes to be sent copies of the annual reports of the company under section 209, the reference in that section to every shareholder must be construed as a reference to every transacting shareholder:".

Heading to section 32: omit "**and 210**" and substitute "**to 209B**".

Section 32: omit "and 210" and substitute "to 209B".

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 71(5): omit "210" and substitute "209B".

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Section 153(4): omit "210" and substitute "209B".

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2 About this eprint
3 List of amendments incorporated in this eprint (most recent first)

Notes

1 General

This is an eprint of the Companies Amendment Act (No 2) 2006. It incorporates all the amendments to the Companies Amendment Act (No 2) 2006 as at 29 February 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Companies Amendment Act (No 2) 2006 Commencement Order (No 2) 2007 (SR 2007/370)