



ANALYSIS

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1971-72, No. 5

An Act to amend the Companies Act 1970

(8 March 1972)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and Commencement - (1) This Act may be cited as the Companies Amendment Act 1971-72 and shall be read with and deemed part of the Companies Act 1970 (hereinafter referred to as the principal Act).

(2) This Act shall be deemed to have come into force as the first day of April 1971.

2. Companies Act 1955 to apply to the Cook Islands - Section 2 of the principal Act is hereby amended by -

- (a) Inserting the word "and" after the words "Companies Amendment Act 1966", and before the words "the Companies Amendment Act 1967";
- and
- (b) Omitting the words "and the Companies Amendment Act 1969"

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3. Unregistered charges to be void in certain cases
Paragraph (a) of section 17 of the principal Act is hereby amended by omitting the word "January" and substituting the word "April"

4. Provisions of Part VI not applicable to the Cook Islands - Paragraph (a) of section 21 of the principal Act is hereby amended by omitting the words "Subsections (4) and", and substituting the word "Subsection".

5. Amendments to Part VI applicable to the Cook Islands - Section 24 of the principal Act is hereby amended by inserting after paragraph (e) and before paragraph (f) a new paragraph as follows:

"(ee) Omit from subsection (4) of section 274 the words "or section 226 of the Companies Act 1933".

6. Part X not applicable to the Cook Islands - Part 1 of the New Zealand Act as substituted by section 29 of the principal Act is hereby amended by -

- (a) Omitting the word "six" from subsection (1) and substituting the word "fifteen" and
- (b) Adding the following new subsections:-
 - "(4) All property, real and personal (including things in action), and all other rights belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.
 - (5) All liabilities of a company registered pursuant to this Part of this Act in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company at the date of its registration shall on registration be deemed to continue as the liabilities of the company as incorporated under this Act.
 - (6) All actions and other legal proceedings which at the time of the registration of a company pursuant to this Part of this Act are pending by or against the company or any officer or member thereof, may be continued in the same manner as if the registration had not taken place.
 - (7) (a) Without affecting the generality of the foregoing provisions of this Part of this Act every charge -
 - (i) created by any company prior to the date of the company's registration under this Part of this Act; and

- (ii) subsisting at the date of the company's registration under this Part of this Act; and
- (iii) to which section 102 of the New Zealand Act as applied in the Cook Islands would have applied if the company were incorporated under the provisions of this Act other than this Part and the charge were created after the commencement of this Act; and
- (iv) duly registered in accordance with any law in force relating to the registration of that charge in the place where the company was incorporated at the date of its registration under this Part of this Act -

shall, on the registration of the company under this Part of this Act, continue in full force and effect against the company as incorporated under this Part of this Act as if the charge were registered under section 102 of the New Zealand Act as applied in the Cook Islands.

(b) Every company registered pursuant to this part of this Act shall, in respect of every charge referred to in paragraph (a) of this subsection, deliver to the Registrar on or before the 31st day of March 1972, or such later date as the Registrar may in any particular case allow, a certified copy of every instrument creating or evidencing every such charge.

(c) On receipt of the certified copy as aforesaid the Registrar shall, without requiring the payment of any fee, register, and issue a certificate in respect of the said charge.

(d) Registration of any charge referred to in paragraph (a) of this subsection may be effected by the Registrar on the application of any person interested therein.

(e) If default is made in complying with paragraph (b) of this subsection, the company and every officer of the company who is in default shall be liable to a fine of one hundred dollars unless it is proved to the satisfaction of the Court that a certified copy of the instrument was not obtainable by the company.

(8) Where an order has been made for winding up a company registered in pursuance of this Part of this Act, no action or proceeding shall be commenced or proceeded with against the

companies or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose."

(9) The shares of a company registered pursuant to this Part of this Act shall be deemed to be paid by the shareholders to the extent that the shares of the company were paid immediately prior to its registration pursuant to this Part of this Act, and the liability of the shareholders for payment of the shares of the company on registration pursuant to this Part of this Act shall be determined accordingly.

7. Provisions of Part XII not applicable to the Cook Islands - Section 31 of the principal Act is hereby repealed and the following section substituted:-

"31. (1) Subsection (4) of section 397 of Part XII of the New Zealand Act shall not be applicable to the Cook Islands and the following subsection shall be substituted:-

"(4) Overseas companies which have established a place of business within the Cook Islands before the date of the commencement of this Act shall, within twelve months from the commencement of this Act, deliver to the Registrar for registration the documents and particulars specified in subsection (1) of this section".

(2) Subsection of (2) of section 412 of Part XII of the New Zealand Act shall not be applicable to the Cook Islands.

8. Amendments to Part XVI applicable to the Cook Islands - Paragraph (a) of section 40 of the principal Act is hereby amended by omitting the number "465" and substituting the number "456".

9. Amendments to Schedules of the Companies Amendment Act 1963 applicable to the Cook Islands - Paragraph (f) of section 44 of the principal Act is hereby amended by omitting the words "paragraph (e)" and substituting the words "paragraph (i)".

This Act is administered in the Justice Department.