



## ANALYSIS

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| 1. Title<br>2. Short Title<br>3. Notice that receiver or manager appointed or has ceased to act | 3. Court may determine or limit receivership on application of liquidator |
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1993, No. 1

An Act to amend the Companies Act 1955 of New Zealand (as applied to the Cook Islands by the Companies Act 1970-71)

(18 August 1993)

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

1. Short Title - (1) This Act may be cited as the Companies Amendment Act 1993 and shall be read together with and deemed part of the Companies Act 1955 (an enactment of the General Assembly of New Zealand) as applied in the Cook Islands by the Companies Act 1970-71 (hereinafter referred to as "the principal Act").

2. Notice that receiver or manager appointed or has ceased to act - The principal Act is amended by repealing section 346, and substituting the following new section -

"346. Notice that receiver or manager appointed or has ceased to act - (1) Any person who obtains an order for the appointment of a receiver or manager of the property of a company or of the Cook Islands property of an overseas company, or who appoints such a receiver or manager under any powers contained in any instrument, shall ensure that written notice (signed by him or his agent) of the fact is -

- (a) forthwith advertised in 2 issues of a newspaper circulating daily in Rarotonga; and
- (b) given to the Registrar within 3 days from the date of the order or of the appointment under those powers, and the Registrar shall register the notice and enter the fact in the register of charges.

The notice shall state the full name of the receiver or manager and the situation of his office and shall include a brief description of the property in respect of which the receiver or manager has been appointed.

(2) Where a receiver or manager of the property of a company or overseas company has been appointed, every deed, agreement, invoice, order for goods, business letter, or other document entered into or issued by or on behalf of the company or the receiver or manager or the liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver or manager has been appointed:

Provided that failure to comply with this subsection shall not affect the validity of any such document.

(3) Where any person appointed receiver or manager of the property of a company, or of the Cook Islands property of an overseas company, ceases to act as such, that person shall ensure that written notice (signed by him or his agent) to that effect is given to the Registrar within 3 days of his so ceasing, and the Registrar shall register the notice and enter the fact in the register of charges.

(4) If -

- (a) any person makes default in complying with subsection (1) or subsection (3) of this section, that person shall be liable to a fine not exceeding \$50 for every day during which the default continues;
- (b) default is made in complying with subsection (2) of this section, the company and every officer, liquidator, receiver, or manager of the company who knowingly and wilfully authorises or permits the default shall be liable to a fine not exceeding \$500."

3. Court may determine or limit receivership on application of liquidator -

The principal Act is further amended by inserting after section 346, the following new section -

"346A. Court may determine or limit receivership on application of liquidator - (1) On the application of the liquidator of a company that is being wound up (other than by means of a members' voluntary winding up) and in respect of which a receiver or manager has been appointed (whether before or after the commencement of the winding up) the Court may -

- (a) order that the receiver or manager shall cease to act as such from a date specified by the Court, and prohibit the appointment of any other receiver or manager; or
- (b) order that the receiver or manager shall, from a date specified by the Court, act as such only in respect of certain assets specified by the Court.

An order under this subsection may be made on such terms and conditions as the Court thinks fit.

(2) The Court may from time to time, on an application made either by the liquidator or by the receiver or manager, rescind or amend an order made under subsection (1).

(3) A copy of an application made under this section shall be served on the receiver or manager not less than 7 days before the hearing of the application, and the receiver or manager may appear before and be heard by the Court in respect of the application.

(4) Except as provided in subsection (1) of this section, no order made under this section shall affect any security or charge over the undertaking or property of the company."

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This Act is administered by the Justice Department