

Business Law Reform Bill

Government Bill

Explanatory note

General policy statement

The Business Committee of the House has agreed to the introduction of this Bill under Standing Order 264(c). Standing Order 264(c) provides that the Business Committee may agree to the introduction of a Bill that amends more than 1 Act as a law reform Bill or other omnibus Bill. It is intended that the Bill will be divided into separate Bills at the committee of the whole House stage.

The Government wants the law affecting the operation of business to be clear, efficient, and effective. This Bill represents a stage in the incremental improvement of existing business law to achieve these goals.

The Bill contains various amendments to a number of business law statutes. Most of the amendments contained in the Bill are based on suggestions from business law practitioners, enforcement agencies, and the business community. In general, the amendments—

- clarify and update various statutory provisions to give effect to the intended purpose of the provisions; and
- remove unnecessary compliance costs, for example, by providing filing exemptions to some classes of companies; and
- remove conflicts within and between legislation.

The Bill addresses business community concerns with business law legislation as identified by consultation. These are the cumulative costs of complying with legislation and the difficulties in reconciling different legislative requirements. In aggregate, the amendments will reduce some of these costs to promote both the efficient use of economic resources, and enterprise and innovation, in the economy.

Companies Act 1993

The purposes of the Companies Act 1993 changes are—

- to give effect to some of the changes referred to in relation to the Financial Reporting Act 1993; and
- to make it easier for reporting entities to provide annual reports to shareholders in electronic form; and
- to improve the efficiency and effectiveness of cross-border enforcement of company law; and
- to remove filing requirements where the same or similar information is filed in another jurisdiction.

Dumping and Countervailing Duties Act 1988

The purposes of the Dumping and Countervailing Duties Act 1988 changes are—

- to amend the statutory timeframes for investigations to exclude the Christmas/New Year break, in order to ensure that interested parties can actively engage with officials; and
- to simplify the legislative tool for determining the date from which duties are payable.

Financial Reporting Act 1993

The purpose of the Financial Reporting Act 1993 changes is to improve the application, efficiency, and effectiveness of the financial reporting system. The Bill aims to achieve this by, among other things,—

- removing unneeded or excessive preparation, audit, and filing requirements; and
- establishing an exemption system that provides flexibility to exempt entities from unnecessary requirements in circumstances that cannot be clearly defined in primary legislation; and
- specifying additional classes of entities that will have reporting requirements; and
- strengthening enforcement.

Friendly Societies and Credit Unions Act 1982

The purpose of the changes to the Friendly Societies and Credit Unions Act 1982 is to improve the efficiency of that Act and to give credit unions a greater ability to grow their businesses without

introducing unmanageable risks to their members. Specifically, the field of membership set out in a credit union's rules (commonly referred to as the "common bond") is broadened on 2 fronts—

- the common bond requirement no longer depends on the satisfaction of the Registrar of Friendly Societies and Credit Unions. A common bond is any qualification that can be objectively determined; and
- charities and incorporated societies that have a common bond can be members of a credit union.

The Bill also gives credit unions and their associations more flexibility in administrative matters. For example,—

- a credit union is allowed to specify a minimum deposit greater than the statutory minimum if its rules allow; and
- an association of credit unions no longer has to seek Ministerial approval before offering new services to its credit union members.

Insurance Companies' Deposits Act 1953

The purpose of the changes to the Insurance Companies' Deposits Act 1953 is to protect New Zealand's international reputation by prohibiting entities registered or established in New Zealand from using the word insurance, or a similar word, in their name or holding out that they are New Zealand insurers, where they are offering insurance overseas but are not offering insurance in New Zealand. The Bill therefore prevents entities from representing either overseas or domestically that they are supervised under New Zealand's insurance regulatory regime when in fact they are not.

The Bill provides an exception to the prohibition for certain brokers. It also provides the Ministry of Economic Development with the ability to exempt entities who have a legitimate reason to use a particular word in their names. The prohibition covers all types of legal forms and all types of insurers. Consequential amendments are made to the Life Insurance Act 1908 and the Mutual Insurance Act 1955.

Clause by clause analysis

Clause 1 relates to the Bill's title.

Clause 2 is the commencement clause. Most of the amendments come into force on the day after the date on which the Bill receives the Royal assent. However, the following amendments come into

force on a date to be appointed by the Governor-General by Order in Council:

- an amendment relating to the qualifications of directors (*see clause 6*):
- amendments relating to non-active entities (*see clauses 7, 10, and 29*):
- amendments relating to annual reports and concise annual reports for companies (*see clauses 8, 9, 11, 14, and 17*):
- amendments relating to the provision of information and documents by overseas companies (*see clauses 12 and 13*):
- amendments relating to a new exemption power in the Financial Reporting Act 1993 (*see clauses 33 to 37*):
- amendments relating to a new infringement system in that Act (*see clauses 25(2) and 39*).

These amendments will come into force after regulations have been made to give full effect to the changes (for example, to prescribe fees, forms, relevant overseas jurisdictions, and requirements for concise annual reports).

Part 1 Companies Act 1993

Clause 3 provides that *Part 1* amends the Companies Act 1993.

Clause 4 relates to the commencement of *Part 1*.

Clause 5 amends the interpretation section to refer to the new definition of exempt company in *new section 6A* of the Financial Reporting Act 1993 (as inserted by *clause 28*) and to include a definition of annual report.

Clause 6 amends section 151 (which relates to the qualifications of directors) to disqualify a person who is prohibited from being a director or a promoter of or being concerned or taking part in the management of an overseas company under an order made, or a notice given, under a law of a prescribed overseas jurisdiction.

Clause 7 inserts *new section 196A*. *New section 196A* provides that financial statements need not be audited if the company is a non-active entity under *new section 10A* of the Financial Reporting Act 1993 (as inserted by *clause 29*).

Clause 8 repeals section 209 (which relates to the sending of annual reports to shareholders) and substitutes *new sections 209 to 209B*.

New section 209 provides that the board of a company may, instead of sending a copy of the annual report, send to the shareholders a notice that contains—

- a statement that the shareholders have a right to receive from the company, free of charge and on request, a copy of the annual report:
- a statement that the shareholders may obtain a copy of the annual report by electronic means:
- a statement as to whether the board has prepared a concise annual report. A concise annual report is a report on the affairs of the company that is prepared in accordance with requirements that will be prescribed by regulations.

New section 209A provides for annual reports to be sent to shareholders on request.

New section 209B provides for annual reports and concise annual reports to be made available by electronic means.

If the board of a company fails to comply with these new sections, every director of the company commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Clause 9 amends section 210 (which relates to sending information to shareholders who elect not to receive an annual report) as a consequence of the amendments in *clause 8*.

Clause 10 inserts *new section 211A*. *New section 211A* provides that the obligations to prepare and make available annual reports and financial statements do not apply in relation to non-active companies under *new section 10A* of the Financial Reporting Act 1993 (as inserted by *clause 29*).

Clause 11 substitutes *new section 213* as a consequence of the amendments in *clauses 8 and 9*.

Clause 12 inserts *new section 332A*. *New section 332A* allows the Registrar to approve the use of a form for the purposes of Part 18 by specified overseas companies.

Clause 13 inserts *new section 343A*. *New section 343A* provides that overseas companies are not required to provide information, notice of information, or documents under Part 18 if—

- the company is incorporated in a prescribed overseas jurisdiction; and

- the information or document has been given to, or is held by, a body or person in that jurisdiction whose functions correspond to those of the Registrar; and
- the information or document is of a prescribed class.

Clause 14 amends section 374 as a consequence of the amendments in *clauses 8 and 9*.

Clause 15 amends section 383 (which relates to the Court disqualifying persons as directors) to allow the Court to disqualify a person if the person has been prohibited in an overseas jurisdiction 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.

Clause 16 amends section 395 (which relates to regulations) to allow regulations to be made—

- to prescribe overseas jurisdictions for the purposes of *new section 151(2)(eb)*;
- to prescribe requirements for concise annual reports;
- to prescribe overseas jurisdictions and information for the purposes of *new section 343A*.

Clause 17 and the schedule provide for consequential amendments.

Part 2

Dumping and Countervailing Duties Act 1988

Clause 18 provides that *Part 2* amends the Dumping and Countervailing Duties Act 1988.

Clause 19 amends the interpretation section by inserting a definition of day to mean (except in sections 14 and 17) “any day of the week other than a day in the period beginning with 25 December in any year and ending with 15 January in the following year”. This new definition does not apply to investigations initiated before the commencement of this Bill.

Clause 20 amends section 14(1) by making references to *new sections 17A and 17B*.

Clause 21 repeals section 17 and substitutes *new sections 17, 17A, and 17B*.

New section 17 provides that the day on and from which anti-dumping duty or countervailing duty is payable or must be secured

is the day after the date of a provisional direction, final determination, or reassessment determination. For both of the latter types of determination, the Minister can specify another later date instead.

New section 17A provides that duty may be levied retrospectively to cover all or part of a period of provisional measures in certain situations. These situations are a finding of—

- material injury to an industry; or
- a threat of material injury where there would have been material injury if there had not been provisional measures.

New section 17B provides that duty may be levied retrospectively to cover a period of up to 60 days before provisional measures in certain situations. These are, for dumped goods,—

- a history of dumping causing material injury or an awareness by the importer that the goods were dumped and that the dumping would cause injury; and
- material injury caused by substantial dumped imports of the goods in a relatively short period.

For subsidised goods, the situations are—

- critical circumstances apply and there have been massive imports in a relatively short period of subsidised goods; and
- these have caused material injury that is difficult to repair.

In addition, *new section 17B* provides that if an undertaking under section 15 is violated, and then the Minister gives a provisional direction under section 16, the Minister may impose duty retrospectively for all or part of the 60-day period before the application of the provisional direction.

Clause 22 amends section 18 by making references to *new sections 17, 17A, and 17B*.

Part 3 Financial Reporting Act 1993

Clause 23 provides that *Part 3* amends the Financial Reporting Act 1993.

Clause 24 relates to the commencement of *Part 3*.

Clause 25 amends the interpretation section by referring to the new definition of exempt company in *new section 6A* (as inserted by *clause 28*), by substituting a new definition of turnover as a consequence of the amendment in *clause 31*, and by inserting definitions relating to the new infringement system that is inserted by *clause 39*.

Clause 26 amends the definition of issuer in section 4 to provide that a person is an issuer if the person receives money raised from the issue of securities to the public from a conduit issuer. The effect is that the directors of these persons are required to comply with the preparation, filing, and audit obligations of issuers.

Clause 27 inserts *new sections 4A to 4D*. *New section 4A* provides that a person will be a recipient of money from a conduit issuer (under the amended definition of issuer) if—

- the person is related to a conduit issuer who has raised an amount of money by the issue of securities offered to the public; and
- that money is raised as part of a scheme or arrangement under which all or a substantial part of that money is provided for the use of the person or for the use of certain associates of the person.

New sections 4B to 4D give the Securities Commission a power to exempt a person, or a class of persons, from being an issuer in these circumstances. The Commission's reasons for granting an exemption must be notified in the *Gazette* together with the exemption.

Clause 28 inserts *new section 6A*. *New section 6A* contains a new definition of exempt company. Under the new definition, an exempt company is a company, other than an overseas company or an issuer, that—

- satisfies at least 2 of the following:
 - assets do not exceed \$1,000,000;
 - turnover does not exceed \$2,000,000;
 - 5 or fewer full-time employees; and
- is not a subsidiary and does not have any subsidiaries.

Under the Act, the directors of a reporting entity are required to prepare financial statements that comply with generally accepted accounting practice (including all applicable financial reporting standards). In comparison, the financial statements of an exempt company are required to be in the form, contain the particulars, and comply with the directions that are prescribed by regulations.

Clause 29 inserts *new section 10A*. *New section 10A* provides that the directors of an entity do not have to prepare financial statements if the entity is a non-active entity and has delivered to the Registrar a declaration stating that it was a non-active entity in respect of the relevant accounting period. An entity is a non-active entity if the

entity is not an issuer, has not derived any income, has no deductions, has not disposed of any assets, and has not been a party to certain transactions.

Clause 30 amends section 13(2) (which relates to an exemption from the obligation to prepare group financial statements) to provide that the exemption does not apply if the company is an issuer.

Clause 31 repeals section 19 (which requires overseas companies and certain other companies to register financial statements) and substitutes *new sections 19 and 19A*. The main effect of the amendment is to change the companies to which section 19 applies. Section 19 currently applies to overseas companies and to companies that have 25% or more overseas ownership. *New section 19* adds a requirement, in the case of the second category, that the company must be large. To be large, the company and its subsidiaries (if any) must satisfy at least 2 of the following:

- assets exceed \$10,000,000;
- turnover exceeds \$20,000,000;
- 50 or more full-time employees.

In considering whether a company has 25% or more overseas ownership, ownership of shares by a subsidiary of a body corporate incorporated outside New Zealand must still be taken into account. However, ownership of shares by a subsidiary of that subsidiary is no longer taken into account.

In addition, *new section 19* provides that the section does not apply to a company (**company A**) if the following requirements are satisfied:

- company A is a subsidiary of a New Zealand company (**company B**); and
- company B prepares financial statements; and
- company B prepares group financial statements in relation to a group comprising company B, company A, and all other subsidiaries of company B; and
- those statements are delivered to the Registrar for registration.

Clause 32 amends section 20 (as a consequence of the amendments in *clause 31*).

Clause 33 amends section 24 (which relates to the functions of the Accounting Standards Review Board) to add the function of granting exemptions under *new section 29A*.

Clause 34 inserts *new sections 29A to 29D*. *New sections 29A to 29D* allow the Board to exempt, by notice in the *Gazette*,—

- any person or class of persons from compliance with any provision of any applicable financial reporting standard;
- any directors of an overseas company, or any directors of a class of overseas company, from compliance with section 15 (which requires financial statements of issuers to be audited) or section 19 (which requires financial statements to be registered).

The exemption power is subject to a safeguard to ensure that an exemption is granted only in appropriate circumstances. Before granting an exemption, the Board must be satisfied that—

- in the case of an exemption from compliance with a provision of a financial reporting standard, due to exceptional circumstances, compliance with the relevant provision would be inappropriate; and
- in the case of an exemption from compliance with section 15 or section 19, compliance with the relevant provision would require the directors of the overseas company to comply with requirements that are—
 - materially different from overseas financial reporting requirements with which the overseas company must comply; and
 - unduly onerous or burdensome; and
- the extent of the exemption is not broader than what is reasonably necessary to address the problem; and
- the applicant has consulted with persons or organisations who would be affected by the exemption; and
- granting the exemption is, in the circumstances, fit and proper.

Clause 35 amends section 30 (which relates to consultation) to provide for consultation when granting, amending, or revoking exemptions under *new section 29A*.

Clause 36 repeals and substitutes section 33 (which provides for the disallowance of determinations by the House of Representatives) by adding a reference to exemption notices under *new section 29A*. To avoid doubt, *new section 33(2)* clarifies that the determinations and notices are not regulations for the purposes of the Acts and Regulations Publication Act 1989. Instead, the Act already provides for the public notification of determinations in the *Gazette* and any other publications that the Board thinks fit (*see section 29*). For consistency, a similar provision is included for exemptions (*see new*

section 29A(4)). The amendment to section 33 ensures that, in relation to disallowance and publication, exemptions under *new section 29A* are treated in a similar manner to the approval of financial reporting standards and to determinations under section 27(3A).

Clause 37 amends section 34 (which relates to certificates of the Board) as a consequence of the new exemption power in *new section 29A*.

Clause 38 amends section 39 as a consequence of the amendments in *clause 31*.

Clause 39 inserts *new sections 41A to 41D*. *New sections 41A to 41D* insert a new infringement system. The infringement offences are—

- an offence against section 38(b) (which relates to the failure to register a copy of the financial statements of an issuer):
- an offence against section 39 (which relates to the failure to register a copy of the financial statements of an overseas company or of certain other companies).

If a person is alleged to have committed an infringement offence, that person may either be—

- proceeded against summarily for the alleged offence under the Summary Proceedings Act 1957; or
- served with an infringement notice.

The level of infringement fees for each infringement offence is \$7,000.

Clause 40 inserts *new section 42B*. *New section 42B* allows regulations to be made for the purposes of—

- prescribing fees or charges in connection with exemptions under *new sections 4B and 29A*;
- prescribing forms and information for the purposes of the infringement system.

Clause 41 contains a consequential amendment to the Summary Proceedings Act 1957.

Transitional provision

Clause 42 is a transitional provision that clarifies that the amendments in the Bill apply to accounting periods after the commencement of the amendments.

Part 4

Friendly Societies and Credit Unions Act 1982

Clause 43 provides that *Part 4* amends the Friendly Societies and Credit Unions Act 1982.

Clauses 44(1), 46, and 48 amend various sections to enable charitable entities and incorporated societies to be members of credit unions. However, as with minors, charitable entities and incorporated societies cannot be officers of credit unions (*new section 106(1)*).

Clause 44(2) removes the current requirement for the Registrar to be satisfied a credit union has a common bond, and replaces it with an objective test requiring that the credit union's rules specify a common bond.

Clause 45 amends section 102 to enable credit unions to set any qualification that can be objectively determined as their common bond. This replaces the current situation, in which the question of whether there is a common bond between members of a credit union depends on the subjective judgement of the Registrar of Friendly Societies and Credit Unions (the **Registrar**). *New section 102(2)* provides that an objectively determined qualification—

- includes every person who fulfills the qualification; and
- is able to be determined by a person who is not a member of the credit union; and
- does not depend on any person's subjective judgement.

Clause 47 amends section 105 to provide that in order for any money to be payable by members to credit unions, all fees, levies, and charges (or the mechanisms for charging them) must be set out in a credit union's rules.

Clause 48 amends section 106 to provide that members need have no more than \$10 in paid-up shares, although a credit union's rules may allow for a minimum deposit of more or less than \$10.

Clause 49 amends section 135, which relates to amalgamations of credit unions and transfers of a credit union's engagements. It provides that credit unions cannot amalgamate or transfer their engagements if doing so would breach the Act.

Clauses 50 and 51 amend sections 138 and 140 respectively, which are concerned with the power of the Registrar to liquidate or suspend a credit union. Currently, in issues of liquidation or suspension, the question of whether there is a common bond between members of a

credit union depends on the subjective judgement of the Registrar. *New sections 138 and 140(1) and (1A)* provide an objective test.

Clause 52 amends section 143(3) and (4) to remove the requirement for Ministerial authorisation in order for an association of credit unions to provide services that are listed in the Act.

Clause 53 is a transitional provision. It enables every application, investigation, proceeding, action, or other matter concerning a common bond that started before the commencement of the Bill to continue as if the Bill had not been passed.

Part 5 Insurance Companies' Deposits Act 1953

Clause 54 provides that *Part 5* amends the Insurance Companies' Deposits Act 1953.

Clause 55 raises the penalty in section 20(1) for non-compliance with the Act from \$100 to \$1,000.

Clause 56 raises the penalty under section 22(1) for carrying on business after a prohibition notice from \$200 to \$2,000.

Clause 57 inserts *new sections 22A to 22E*. *New section 22A* sets out 3 definitions to apply to the new group of sections.

New Zealand person is to mean any of the following:

- a company registered in New Zealand under the Companies Act 1993:
- an association within the meaning of the Mutual Insurance Act 1955:
- an incorporated or unincorporated body established in New Zealand:
- a person who is resident in New Zealand within the meaning of section OE 1 of the Income Tax Act 2004.

An overseas company is defined to mean an overseas company registered on the overseas register kept under Companies Act 1993.

Specified insurance business is to mean any of the following:

- any class of insurance business carried on under the Act:
- insurance provided by an association under the Mutual Insurance Act 1955:
- the business of insurance upon human life or the grant of annuities, or of reinsurance in respect of policies of insurance upon human life or the grant of annuities under the Life Insurance Act 1908.

New section 22B prohibits a New Zealand person or an overseas company registered in New Zealand from holding out overseas that the person carries on a specified insurance business in New Zealand, or that the person is regulated by New Zealand law in respect of a specified insurance business, if the person does not carry on that specified insurance business in New Zealand.

New section 22C prohibits a New Zealand person or an overseas company registered in New Zealand from using certain words in a name in New Zealand if the person does not carry on specified insurance business in New Zealand. The words are (in any language)—

- insurance:
- assurance:
- underwriter:
- reinsurance:
- any term that has the same or similar meaning.

New section 22D provides an exception for certain brokers from *new sections 22B and 22C*.

The broker must be offering a specified insurance business that is provided by a person carrying on that specified insurance business in New Zealand.

New sections 22B and 22C also do not apply to an agent who is authorised to make a deposit under section 4B and is offering specified insurance business in New Zealand.

New section 22E provides that the Secretary may grant an exemption from *section 22C* if the Secretary is satisfied that the person who will be subject to the exemption—

- will not be offering or providing specified insurance business in New Zealand; and
- has a legitimate reason to use the particular word in the person's name.

Clause 58 is a transitional provision providing that *Part 5* does not affect any entity in existence when the Part comes into force until 3 months after the Part comes into force.

Clauses 59 and 60 consequentially amend the Life Insurance Act 1908 and the Mutual Insurance Act 1955. The amendments refer to the applicable *new sections 22A to 22E* of the Insurance Companies' Deposits Act 1953.

Regulatory impact and compliance cost statement for Financial Reporting Act 1993 amendments and related Companies Act 1993 amendments

Statement of nature and magnitude of problem and need for government action

The Financial Reporting Act 1993 (**FRA**) in combination with 60-odd other statutes impose various obligations on entities to prepare and, in some cases, make public audited financial statements. The purpose of the preparation requirements is to provide users (eg, shareholders) with information about the financial performance and position of the entity. The purpose of the audit requirement is to give users an assurance that the statements have been independently verified. The purpose of the requirements to make the statements public is to provide for accountability and transparency.

The most significant requirements of the current system are as follows:

- all companies must prepare financial statements either in accordance with full New Zealand standards (New Zealand International Financial Reporting Standards (**NZIFRS**) from 2007 onwards), the less demanding Framework for Differential Reporting (**FDR**), or the relatively simple exempt companies system (**ECS**), which only requires the completion of simple fill-in-the-box type forms. The top tier comprises issuers, entities that are funded by taxation, rates, and levies, and some large private companies. The FDR provides exemptions from the full standards for certain medium-sized and small entities that do not have public accountability. The bottom tier only applies to small companies:
- overseas companies must file audited financial statements with the Registrar produced in accordance with NZIFRS even if they would otherwise qualify for the FDR or ECS:
- issuers, as defined in the Securities Act 1978, must file audited financial statements produced in accordance with NZIFRS with the Registrar of Companies:
- entities subject to the Public Finance Act 1989 and the Local Government Act 2002 are required to comply with NZIFRS or differential reporting and make their financial statements publicly available through various means such as tabling annual reports in Parliament.

Further information on the current system is provided in the Status Quo column in Table 2.

Table 1: Problems and magnitude

| Problem | Magnitude |
|---|---|
| Some small companies are required to comply with differential reporting even though ECS would be sufficient to meet their shareholders' needs. | It is unclear how many companies have excessive obligations but it is probably in the thousands. There are 410 000 registered companies, and with the changes proposed later in this RIS, it is estimated that more than 300 000 could be eligible for the ECS. |
| Excessive financial statement preparation, audit, and filing obligations for companies that have 25% or more overseas ownership. | The unnecessary requirements affect around 4 000 companies that currently file, and an unknown number that are required to, but do not. The cost of filing is \$100 per year. In addition, there are unnecessary financial statement preparation and audit costs. The costs per company can range from a few hundred to several hundreds of thousands of dollars. The cost associated with unnecessary enforcement, both for the Registrar of Companies and the companies in terms of legal costs and the opportunity cost of senior executive time, can also be substantial. The total cost to the economy is several million dollars. |
| Excessive financial statement preparation, audit, and filing obligations for companies that are registered overseas and carry on business in New Zealand. | |
| Unsuitability of a small number of specific requirements in IFRS for some New Zealand reporting entities. | Low magnitude. It would be improper to attempt to estimate the magnitude more precisely because that would prejudge the outcome of processes to be carried out by the Accounting Standards Review Board (ASRB), which is an independent Crown entity. |
| Avoidance of reporting obligations by entities that receive public money through a conduit issuer. | Very low. Probably fewer than 10 instances. |
| Excessive costs of distributing financial reports to shareholders. | The problem only has significant effects on the small number of companies that have large numbers of shareholders (ie, most issuers and a small number of private companies). |

| Problem | Magnitude |
|--|---|
| Criminal prosecution, which is the only enforcement means available, in relation to directors that do not file annual returns on time is time consuming and often out of proportion to the seriousness of the offence. | The Registrar's prosecution strategy over the 2 years has identified more than 500 alleged offenders. Not all offenders will have been identified. |
| Non-active reporting entities have obligations to file audited financial statements, even though this serves no purpose. | Statistics of non-active entities are not kept. However, it would be reasonable to assume that a significant number of companies are registered for name-reservation purposes only. |

Statement of public policy objectives

To enable an adequately enforced, lower cost, and effective financial reporting framework and legislation that promote transparency of reporting entity financial performance and position, and public accountability.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving desired objectives

Table 2: Regulatory options

| Status quo | Options for amending FRA in 2006 as part of Business Law Reform Bill | Preferred options |
|---|--|--------------------------|
| Some small companies are required to comply with the FDR when the ECS would suffice. The following conditions must all be met to qualify for the ECR: It must not be an overseas company; assets must not exceed \$450,000; turnover must not exceed \$1 million; it must not be a subsidiary; and it must not have subsidiaries. | 1 Give responsibility for determining the qualifying thresholds and requirements for the ECS to the Accounting Standards Review Board. This is not preferred because it would require additional changes to the FRA. | 2 |
| | 2 Raise the thresholds to make a larger number of companies eligible for the ECS by adopting the following thresholds for a two-out-of-three criterion: | |

| Status quo | Options for amending FRA in 2006 as part of Business Law Reform Bill | Preferred options |
|--|---|-------------------|
| | <ul style="list-style-type: none"> (i) total assets of less than \$1 million; and (ii) annual turnover of less than \$2 million; and (iii) 5 or fewer full-time equivalent employees. <p>Subsequent changes could be made by Order in Council to account for the fact that thresholds tend to become out of date after some time and this would allow them to be increased without using parliamentary time.</p> | |
| Companies with 25% or more overseas ownership have financial statement preparation, audit, and filing obligations in relation to— | 3 Remove the additional financial reporting requirements imposed on ECS and FDR-sized overseas-owned companies (ie, those meeting the following two-out-of-three criterion: (i) Total assets of less than \$10 million; (ii) Annual turnover of less than \$20 million; and (iii) 50 or fewer full time equivalent employees. | 3 |
| (i) the New Zealand branch as though it were a stand-alone legal entity; and | 4 Remove the additional financial reporting requirements on all overseas-owned companies. This is not preferred because there has been no public consultation with stakeholders on this specific matter. | |
| (ii) in some circumstances, group financial statements for the New Zealand operations of the overseas company. This requirement will arise if, for example, the overseas company has a New Zealand branch and a New Zealand-incorporated subsidiary; and | | |

| Status quo | Options for amending FRA in 2006 as part of Business Law Reform Bill | Preferred options |
|--|---|------------------------------|
| <p>(iii) the separate financial statements of the overseas company; and</p> <p>(iv) in some circumstances, the group financial statements of the overseas company.</p> <p>In cases (i) and (ii), the financial statements must be prepared and filed in accordance with NZ GAAP (generally approved reporting standards), and be audited and filed. In cases (iii) and (iv), they are usually required to be prepared in accordance with NZ GAAP and filed. However, the Registrar can accept statements prepared in accordance with requirements that are “substantially the same” as NZ GAAP. The audit report must also be filed where the financial statements are required to be audited in the company’s home country.</p> | <p>5 Amend a number of sections of the FRA to change the relevant requirements. This is not preferred because the relevant provisions are convoluted and intricately mixed with the domestic reporting requirements and would require a major rewrite of one part of the FRA.</p> <p>6 Create an exemption-making power for the ASRB, in consultation with other government agencies, to make exemptions that fit the specific circumstances.</p> | <p>6</p> |

| Status quo | Options for amending FRA in 2006 as part of Business Law Reform Bill | Preferred options |
|---|--|--------------------------|
| Unsuitability of a small number of specific requirements in NZIFRS for some reporting entities. | 7 Create an exemption-making power for the ASRB, in consultation with other government agencies, to make exemptions that fit the particular circumstances. | 7 |
| | 8 Seek changes to the standards from the International Accounting Standards Board. This is not preferred because the IASB has a policy that domestic issues should be dealt with locally. | |
| Entities that receive public money through a conduit issuer have no financial reporting obligations. | 9 Require entities that receive money from the public through conduit issuers to comply with financial reporting requirements as if they were issuers. | 9 & 10 |
| | 10 Require companies with wholly owned subsidiaries that are issuers in their own right to file audited group financial reports. | |
| Companies are required to send annual reports to all shareholders. | 11 Give shareholders the option of receiving concise annual reports. | 11 & 12 |
| | 12 Only require companies to notify shareholders of the availability of company reports in hard copy or electronic form. | |
| Criminal prosecution is the only enforcement means available in relation to directors who do not file annual returns. | 14 Introduce an infringement notice and fee system for late filing. There are a range of options for the fee amount. \$7,000 is proposed primarily because it reflects the level of fines being imposed by the courts in relation to this offence. | 14 |
| Non-active reporting entities must file financial statements. | 15 Exempt a company from filing if the directors file a statement with the Registrar stating the company has not been active during the course of the year. | 15 |

The proposed changes to overseas company reporting could lead to a reduction in the number of companies filing their financial statements with the Registrar from 9 600 to 4 100. This will increase the

fixed cost per filing. The filing fee for financial statements, which is currently \$100, may have to be increased by 100% to meet the shortfall.

Statement of net benefit of proposal, including total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

Government

Option 2 will reduce Companies Office total administration costs. The amount will be able to be determined once some modelling has been done. Option 6 will add to the ASRB's range of functions, but it is unlikely to be used often. Option 7 will reduce the costs because such exemptions will no longer have to be implemented in a convoluted and non-transparent way. Again, those powers are not expected to be used frequently. Option 14 will reduce the costs of prosecuting individual directors; however, the infringement notice system will be used by the Registrar every time a breach is detected. There will be costs in administering the infringement notice system. However, that will be partially offset by the reduction in court enforcement. Option 15 will reduce Companies Office administration costs.

Business

The business community is the major beneficiary of the proposed changes. Option 2 will reduce compliance costs for companies that are required to comply with differential reporting but will now be eligible for the ECS. Option 3 will reduce compliance costs for an estimated 4 000 companies. Option 7 will benefit a small number of reporting entities. Options 9 and 10 will increase compliance costs for a handful of companies, but for business more generally it will enhance the credibility of our financial markets. Options 11 and 12 will reduce compliance costs for companies that have a large number of shareholders.

There will be a one-off cost for reporting entities and their advisors in relation to Option 14 as they get used to the idea that close to 100% of contraventions will be punished. The fee for filing a set of financial statements could well double from the current \$100 level. Compliance costs to businesses are detailed in the Business Compliance Cost Statement.

Society

The proposals will not have significant impacts on groups other than those identified above.

Statement of consultation undertaken**Stakeholder consultation**

A discussion document on small company reporting was released in 2002. Two further discussion documents were released in 2004 in relation to the full range of issues. There has been additional consultation with the New Zealand Institute of Chartered Accountants, the Financial Reporting Standards Board, and other selected stakeholders.

Some stakeholders have suggested more far-reaching reforms than are being proposed. These include proposals for fundamental changes to the financial reporting framework, institutional reform, the ways that audit standards are made and auditors are regulated. Others see no need for such changes. Further work will be carried out on these issues in 2006.

Government departments/agencies consultation

The Ministry of Justice, Treasury, Inland Revenue Department, New Zealand Customs Service, Department of Internal Affairs, Ministry for the Environment, Statistics New Zealand, Department of the Prime Minister and Cabinet, Office of the Auditor General, State Services Commission, Accounting Standards Review Board, Companies Office, Reserve Bank, Securities Commission, New Zealand Institute of Chartered Accountants, and the Charities Commission.

Business compliance cost statement

The Financial Reporting Act 1993 imposes business compliance costs in 2 ways. First, it requires issuers, companies, and other reporting entities to produce financial reports. Secondly, it imposes auditing and filing requirements on some of those entities.

Overall, the package of measures described in this paper will reduce business compliance costs by several million dollars. Providing companies with the option of providing concise annual reports as an alternative to full annual reports will neither increase or decrease compliance costs.

Compliance cost reductions will come about in the following ways:

- raising the thresholds to make the number of companies qualifying for the exempt companies system will reduce the costs of preparing financial statements for some thousands of companies. At least 300 000 of the 410 000 companies registered as at November 2005 are expected to qualify:
- removing the additional reporting requirements on overseas companies that qualify for differential reporting and the exempt companies system will remove unnecessary preparation and/or audit and filing costs for an estimated 4 000 companies. It will also increase privacy for the company shareholders:
- providing companies with the option of notifying shareholders of the availability of annual reports rather than sending those reports will reduce compliance costs for the small proportion of companies that have large numbers of shareholders:
- the exemption from preparing, auditing, and filing financial statements for non-active entities will reduce costs in relation to companies that have been registered for name-reservation purposes.

Compliance cost increases will come about in the following way: entities that receive public money through a conduit issuer will need to meet the full preparation, audit, and filing costs as though they were issuers. This will affect 10 or fewer companies.

Ministry of Economic Development officials will place the RIS/BCCS and other information on its website, include an item in its electronic news bulletin, and write to all submitters informing them of the decisions. The New Zealand Institute of Chartered Accountants will also include articles in its monthly publication, the *Chartered Accountants Journal*. This information will help entities and their professional advisors to understand the proposed changes and minimise the associated compliance costs.

**Regulatory impact and compliance cost statement for
certain Companies Act 1993 amendments and
Insurance Companies' Deposits Act
1953 amendments**

*Statement of nature and magnitude of problem and need
for government action*

Companies Act 1993

Management and director bans

Directors and managers who have been banned from establishing and operating companies in overseas jurisdictions can continue to act as directors and managers of companies in New Zealand. Therefore, some New Zealand companies are being managed by overseas banned directors, putting shareholders and investors at potential risk from people who have previously been shown to be unsuitable company directors. There is no direct evidence of numbers which could indicate the magnitude of the problem in this country.

Overseas companies

Some overseas companies are required to provide information to the Registrar of Companies and pay a filing cost to do so when that information is already available online to New Zealanders. This results in duplication of information and significant costs to the overseas company. Duplication of documentation requirements is common in the almost 80% of Australian companies of 1 299 in total on the New Zealand overseas companies register.

Insurance Companies' Deposits Act 1953

The Insurance Council of New Zealand has raised concerns regarding companies being registered in New Zealand by overseas persons who then only offer insurance products overseas. The main concern is that since the companies are not offering insurance products in New Zealand, the companies are not subject to New Zealand insurance legislation, but these companies are—

- using the word “insurance” (or a similar word) in the company name; and
- representing (expressly or impliedly) that they are governed by New Zealand insurance legislation, because they are registered under the Companies Act 1993.

Technically these insurers are correct. As they do not offer insurance products in New Zealand, they are not required to take any action under, nor do anything to comply with, the applicable insurance legislation. However, this also means they are not subject to any regulatory oversight by New Zealand. Many countries in which these companies are operating do not expect this to be the position, and have expressed concern.

The Insurance Council has informed officials that it has received extensive inquiries out of Japan, Korea, Hong Kong, and Australia in relation to 2 insurance companies providing insurance products in those countries, which are registered companies in New Zealand but have not lodged a deposit with the Public Trust in New Zealand and do not appear to have a rating.

The Insurance Council and the countries making the inquiries are concerned that overseas persons are using this “loophole” to get around compliance with regulatory supervision in overseas jurisdictions. This problem has adversely impacted on New Zealand’s reputation in the worldwide insurance industry and the perception of New Zealand’s regulatory quality status.

The level of penalty for non-compliance with the Act is \$100 per day. This amount (set in 1953) is no longer considered by the Registrar of Companies to be effective as a deterrent to breaches of the Insurance Companies’ Deposits Act 1953.

Statement of public policy objectives

The public policy objectives are—

- to ensure that those who are permitted to operate as a company director or manager in New Zealand are not of a character that makes them unsuitable to do so, and to ensure that the costs to business of complying with New Zealand’s company filing requirements are minimised without reducing the amount and type of information that is provided:
- to minimise New Zealand-registered insurance companies’ ability to mislead potential policyholders outside New Zealand by representing themselves as regulated insurers when they are not.

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving desired objectives

Status Quo: Companies Act 1993

Sections 382, 383, and 385 of the Companies Act 1993 provide for the prohibition of directors and managers of New Zealand companies and those of overseas companies that carry on business in New Zealand in certain circumstances. These include offences under New Zealand law relating to making false statements, carrying on business fraudulently, insolvent trading, and a range of Companies Act 1993, Crimes Act 1961, and proposed Securities Markets Act 1988 offences.

Company directors who have been banned in foreign jurisdictions are able to become company directors in New Zealand without reference to their previous prohibition in another country.

Part 18 of the Companies Act 1993 provides for the registration of overseas companies that are operating in New Zealand. Companies registered in overseas jurisdictions that carry on business in New Zealand are subject to registration and filing fees (\$30 per annual return) required when financial statements, annual returns, audited accounts, director and shareholder information, and changes to the company's constitution are submitted to the Registrar.

The status quo is not preferred because it does not achieve the public policy objectives.

Preferred option: Amend Companies Act 1993

Extend the Companies Act 1993 management and director banning provisions to persons who have been banned in overseas jurisdictions. The Registrar of Companies and the High Court will be responsible for the prohibition of company directors and managers.

Exempt some overseas registered companies from the requirement to file certain information if that information is already readily accessible in New Zealand. Examples of documentation requirements that could be exempted include—

- filing the company's constitution and notifying changes to the constitution;
- registering the names and residential addresses of all company directors and notifying changes of directors and their addresses.

The Registrar would grant an exemption if the relevant information could be readily accessed in this country. Initially, the opportunity for seeking an exemption from certain filing requirements would apply only to Australian companies operating in New Zealand. For example, if information was available on the ASIC website and accessible from New Zealand. Work with Australian officials to establish how this will occur is ongoing.

Status quo: Insurance Companies' Deposits Act 1953

The statutes about the operation of health, general, marine, and life insurance govern only those insurers offering insurance in New Zealand. These statutes include the Insurance Companies' Deposits Act 1953, Insurance Companies (Ratings and Inspections) Act 1994, Life Insurance Act 1908, and Marine Insurance Act 1908. If companies only offer insurance products overseas, these Acts do not apply.

The regulatory requirements on New Zealand insurers are limited, mainly relating to making a deposit of \$500,000 with the Public Trust, and for general insurers, obtaining a rating from an approved rating agency, the fees for which are around \$40,000 annually per company.

The penalty for non-compliance with the Insurance Companies' Deposits Act 1953 is \$100 per day during the continuance of the breach, which is imposed on the company and the officers involved. This amount (set in 1953) is no longer considered by the Registrar of Companies to be effective as a deterrent to breaches of the Act.

This is not the preferred option because officials have become aware that companies are using this position to misrepresent to overseas jurisdictions that they are regulated under an insurance supervisory regime when they are not. This is causing reputation problems for New Zealand.

Alternative option: Amend Insurance Companies' Deposits Act 1953 through Review of Financial Products and Providers

The status quo is to be comprehensively reviewed under the current Review of Financial Products and Providers (**RFPP**). This is not the preferred option because the problem would not be remedied until 2008 at the earliest, and there is potential for further damage to New Zealand's reputation in leaving the "loophole" open to be exploited by overseas persons.

As the problem is impacting on New Zealand's reputation, leaving the status quo for another 2 years does not meet the public policy objectives, and an interim measure is required until the issue can be more comprehensively addressed.

Preferred option: Insurance Companies' Deposits Act 1953

Amend the Insurance Companies' Deposits Act 1953 to—

- prohibit an entity incorporated in New Zealand, where that entity does not offer insurance in New Zealand, from—
 - using the words “insurance”, “assurance”, “underwriting”, or “reinsurance” or similar word (in any language) in its name; or
 - holding out that it is a New Zealand insurer, assurer, underwriter, or reinsurer:
- increase the penalty for non-compliance with the Act from \$100 per day to \$1,000 per day, and provide a transitional period where a company registered prior to the enactment will be given a reasonable amount of time to comply without incurring the penalty:
- provide a mechanism to allow an exemption from the prohibition where the breach is of a technical nature, for instance, where the entity is only providing insurance brokering services.

The proposal would apply to any type of legal structure and any type of insurance, and would not be retrospective.

The amendment to the Act would be an interim measure until the issue can be more comprehensively addressed under the RFPP.

Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options

Government

The efficiency and effectiveness of the Companies Act 1993 offences and penalties system will be enhanced by the proposed changes. The changes will ensure that company directors and managers banned in foreign jurisdictions, and therefore considered unsuitable to hold those positions in New Zealand, are prohibited from doing so in this country, making the enforcement system more

comprehensive. The change will also limit opportunities for people seeking to take advantage of the ease of travel between jurisdictions. Both proposed changes to the Companies Act 1993 achieve outcomes included in the memorandum of understanding on business law between New Zealand and Australia. The proposed changes align the New Zealand and Australian company law regimes more closely. There is an expectation of reduced paperwork from this proposal but the Companies Office will not lose revenue as a result. Companies Office fees are set on a cost recovery basis.

The Insurance Companies' Deposits Act 1953 proposal will help to protect the perception and status of the New Zealand insurance industry and New Zealand internationally. The proposal would add some administration, monitoring, compliance, and enforcement costs to Registrar(s) and any person appointed to provide exemptions for technical breaches. These would be covered by baseline budgets because the incidence of the problem to date has been limited and only a small number of "insurance" entities are established in New Zealand each year. The proposal will not remedy the problem in relation to the companies already identified as using the "loophole" since it cannot be retrospective.

The increase in the penalty for non-compliance with the Insurance Companies' Deposits Act 1953 from \$100 per day to \$1,000 per day will make the penalty more effective as a deterrent to breaching the Act.

Industry

The only effect that the Companies Act 1993 changes will have on overseas banned directors and managers will be a restriction from becoming a company manager or director in New Zealand because of their previous overseas prohibition.

Under the Companies Act 1993, overseas registered companies granted an exemption by the Registrar from filing certain information will benefit from reduced compliance costs (detailed in the business compliance cost statement). Previous costs associated with preparation, the different formats of the New Zealand and Australian requirements, 2 schedules of filing, and postal costs will no longer apply under the exemption. Companies will be required to pay only the filing fee which applies within their home jurisdiction, not the New Zealand (\$30) fee also.

The Insurance Companies' Deposits Act 1953 proposal will assist in protecting the international reputation of the New Zealand insurance industry. It will mean that entities set up in New Zealand, but only providing insurance products overseas, would not be authorised to use the name insurance or hold themselves out as a New Zealand insurance company, or as a New Zealand insurer. If they wish to use the term insurance (or similar term) they would need to comply with the New Zealand insurance regulatory regime.

The proposal will add costs to those entities only offering insurance products overseas because, to continue, they will also need to offer insurance products in New Zealand. However, the proposal would bring the costs into line with the costs imposed on entities actually providing insurance products in New Zealand, and would prevent the misrepresentation. The regulatory requirements on New Zealand insurers are limited, mainly relating to making a deposit of \$500,000 with the Public Trust, and for general insurers, obtaining a rating from an approved rating agency, the fees for which are around \$40,000 annually per company. A company will need to meet the cost of changing its name if it is in breach.

Society

There will be greater confidence that those banned from certain activities in overseas jurisdictions cannot simply carry on business in New Zealand unchecked, but will be banned from holding directorships and management positions in New Zealand also. Shareholders and creditors will be greater safeguarded from those directors of New Zealand companies and overseas companies carrying on business in New Zealand who have been convicted of some crime of dishonesty or mismanagement that has led to them being banned in an overseas jurisdiction. Shareholders and the public will continue to have access to up-to-date information regarding overseas companies operating in New Zealand.

The Insurance Companies' Deposits Act 1953 proposal would improve confidence in the New Zealand insurance regulatory regime internationally.

Statement of consultation undertaken

Government departments/agencies consultation

Consultation on the proposed changes to the Companies Act 1993 was undertaken with the Treasury, the Ministry of Justice, the

Ministry of Foreign Affairs and Trade, the Inland Revenue Department, and the Department of the Prime Minister and Cabinet. Stakeholder consultation was undertaken with the Institute of Directors. Consultation on the Insurance Companies' Deposits Act 1953 was undertaken with the Treasury, the Ministry of Justice, and the Reserve Bank of New Zealand. Consultation was also undertaken with the Insurance Council of New Zealand, as the issue was originally raised by them.

Business compliance cost statement

Initially the opportunity for seeking an exemption under the Companies Act 1993 from certain filing requirements would apply only to Australian companies operating in New Zealand. Eighty percent of the total 1 299 companies on the New Zealand overseas company register are based in Australia. The proposal will prompt a reduction in compliance costs for companies exempted from filing certain documents under the Companies Act 1993. The preparation, time, and postal costs will no longer apply if the information required can be accessed from this country. The reduction in costs will fall evenly over all overseas companies operating in New Zealand and registered in Australia. Transitional arrangements under the Companies Act 1993 will be put in place to ensure that accurate information is available to all overseas companies prior to the enactment of the proposals. Standardised forms for filing information in each jurisdiction will also be created to further reduce compliance costs of operating across jurisdictions.

The Insurance Companies' Deposits Act 1953 proposal will add to some companies' costs. The costs will be the costs of filing a deposit of funds with the Public Trust and of providing information to the rating agency to obtain a rating each year. The actual costs of these are unknown but fall around form filling and time taken to collate information. The additional costs will be the same as those incurred by others in the New Zealand insurance market. The proposal would apply to overseas persons operating entities in New Zealand (except for certain brokers) that only provide insurance products in other jurisdictions.

Hon Lianne Dalziel

Business Law Reform Bill

Government Bill

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Schedule

Consequential amendments

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Business Law Reform Act **2006**.
- 2 Commencement**
- (1) **Part 1** and the Schedule come into force as provided in **section 4**. 5
- (2) **Part 3** comes into force as provided in **section 24**.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- Part 1**
Companies Act 1993 10
- 3 Principal Act amended**
This Part amends the Companies Act 1993.
- 4 Commencement of this Part**
- (1) **Sections 5(3), 6 to 14, 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. 15
- (2) The rest of **this Part** comes into force on the day after the date on which this Act receives the Royal assent.
- 5 Interpretation** 20
- (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 accounting periods that commence after the commencement of this subsection. 25
- (3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
“**annual report**—
“(a) means a report prepared under section 208; and 30
“(b) does not include a concise annual report”.
- 6 Qualifications of directors**
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: 5
 - “(ii) being a promoter of an overseas company:
 - “(iii) being concerned or taking part in the management of an overseas company:”.
- 7 New section 196A inserted** 10
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 the 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.” 15
- 8 New sections 209 to 209B substituted** 20
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,— 25
- “(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— 30
- “(a) a statement to the effect that the shareholder has a right to receive from the company, free of charge and on request, 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 35
 - “(c) a statement as to how the shareholder may obtain a copy of the annual report by electronic means; and

- “(d) a statement as to whether the board of the company has prepared, in relation to the same accounting period of 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 and on request, a copy of the concise annual report; and 5
 - “(ii) to the effect that the shareholder may obtain a copy of the concise annual report by electronic means; and 10
 - “(iii) as to how the shareholder may obtain a copy of the concise annual report by electronic means.
- “(4) For the purposes of this section and **section 209B, 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 prescribed requirements (which may require the inclusion of financial statements, group financial statements, or summary financial statements prepared in accordance with 1 or more approved financial reporting standards). 15 20
- “(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).
- “209A Board must send copy of 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 makes a written request to the company to receive a copy of the annual report, the board of the company must send to the shareholder, free of charge, a copy of that annual report within 5 working days of receiving the request. 25 30
- “(2) 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** 35
- “(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 earlier of—
- “(i) the date the board sends to the shareholders a copy of a more recent annual report; or 5
 - “(ii) the date the board sends to the shareholders a notice under **section 209(1)(b)** in relation to a more recent 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. 10
- “(2) If the board of a company has sent a notice to a shareholder under **section 209(1)(b)** and the board has prepared a concise annual report, the board must— 15
- “(a) send to the shareholder a copy of the concise annual report, free of charge, within 5 working days of receiving a written request from the shareholder to receive that copy; and
 - “(b) 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 earlier of— 20
 - “(i) the date the board sends to the shareholders a copy of a more recent annual report or concise annual report; or 25
 - “(ii) the date the board sends to the shareholders a notice under **section 209(1)(b)** in relation to a more recent accounting period; and 30
 - “(c) ensure that the manner described in the notice under **section 209(3)(d)(iii)** allows a copy of the concise annual 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).” 35

- 9 Information for shareholders who elect not to receive annual report**
- (1) The heading to section 210 is amended by omitting “**elect not to receive annual report**” and substituting “**waive right to receive annual report or notice**”. 5
- (2) Section 210 is amended by repealing subsections (1) to (4) and substituting the following subsections:
- “(1) A shareholder of a company who has waived under section 212 the right to receive any or all documents under **section 209** may, by written notice to the company, elect to be sent each year in place of the document or documents any or all of the following documents, and the board of the company must send those documents to the shareholder each year: 10
- “(a) financial statements (including any group financial statements) and any auditor’s report required under Part 11: 15
- “(b) summary financial statements, if any.
- “(2) The board of a company must send the documents referred to in **subsection (1)(a)** to a shareholder of the company who has waived under section 212 the right to receive any or all documents under **section 209** if the shareholder— 20
- “(a) has not made any election under **subsection (1)**; or
- “(b) has made an election under **subsection (1)(b)** to receive summary financial statements, but the company has not produced any summary financial statements. 25
- “(3) Any documents required to be sent under **subsection (1) or subsection (2)** must be sent not less than 20 working days before the annual meeting of shareholders.”
- 10 New section 211A inserted**
- The following section is inserted after section 211: 30
- “211A Obligations to prepare and make available annual reports or financial statements do not apply to non-active 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— 35
- “(a) prepare an annual report under section 208 in respect of that accounting period; or

“(b) send or make available under **sections 209 to 210** any annual report, notice, financial statement, or other document in respect of that accounting period.”

11 New section 213 substituted

Section 213 is repealed and the following section substituted: 5

“213 Failure to disclose

Subject to the constitution of a company, if this Act requires an annual report, notice, financial statement, or other document to be sent to a shareholder, the failure to send the annual report, notice, financial statement, or other document to the shareholder in accordance with this Act does not affect the validity of proceedings at a meeting of the shareholders of the company if the failure to do so was accidental.” 10

12 New section 332A inserted

The following section is inserted after section 332: 15

“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. 20

“(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.” 25

13 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 30

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 35

- “(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.” 5
- 14 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: 10
- “(21) **section 209(5)** (which relates to the obligation to make the annual report available to shareholders):
- “(21A) **section 209A(2)** (which relates to the obligation to send copies of annual reports to shareholders on request):
- “(21B) **section 209B(3)** (which relates to making annual reports and concise annual reports available by electronic means and concise annual reports available on request): 15
- “(22) section 210(7) (which relates to the obligation to send financial statements to shareholders who waive the right to receive an annual report or notice under **section 209**):” 20
- 15 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” 25
- 16 Regulations** 30
- (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 for the purposes of **sections 209 and 209B**: 35
- “(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.” 5
- 17 Consequential amendments**
The enactments specified in the Schedule are amended in the manner set out in that Schedule.
- Part 2** 10
- Dumping and Countervailing Duties Act 1988**
- 18 Principal Act amended**
This Part amends the Dumping and Countervailing Duties Act 1988.
- 19 Interpretation** 15
- (1) Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**day**, except in sections 14 and **17**, means any day of the week other than a day in the period beginning with 25 December in any year and ending with 15 January in the following year”. 20
- (2) **Subsection (1)** does not apply to investigations initiated before the commencement of this Act.
- 20 Anti-dumping and countervailing duties**
Section 14(1) is amended by omitting “section 17 of this Act” and substituting “**section 17, 17A, or 17B**”. 25
- 21 New sections 17 to 17B substituted**
- (1) Section 17 is repealed and the following sections are substituted:
- “**17 Date on and from which duty payable** 30
The day on and from which anti-dumping duty or countervailing duty is payable or must be secured is—
“(a) for a provisional direction under section 16(1) or (2), the day after the date of that direction:
“(b) for a final determination under section 13(1),—

- “(i) the day after the date of that determination; or
 “(ii) a specified day after the day in **subparagraph (i)**:
 “(c) for a reassessment determination under section 14(6),—
 “(i) the day after the date of that reassessment determination; or
 “(ii) a specified day after the day in **subparagraph (i)**.
- “17A Duty may be levied retrospectively to cover period of provisional measures if certain conditions met**
- “(1) This section applies if the Minister makes a provisional direction and later makes a final determination on the grounds of—
 “(a) material injury to an industry; or
 “(b) a threat of material injury where there would have been material injury if there had not been provisional measures.
- “(2) The Minister may impose duty retrospectively for all or part of the period covered by the earlier provisional direction.
- “(3) This section overrides **section 17** if its conditions are met.
- “17B Duty may be levied retrospectively to cover period of up to 60 days before provisional measures if certain conditions met**
- “(1) This section applies if the Minister determines that it is necessary to impose retrospective duty to preclude recurrence of material injury and the Minister determines either of the following:
- “(a) for dumped goods,—
 “(i) either that—
 “(A) there is a history of dumping causing material injury; or
 “(B) the importer was or should have been aware that the goods were dumped and that the dumping would cause injury; and
 “(ii) material injury has been caused by substantial dumped imports of the goods in a relatively short period; or
- “(b) for subsidised goods, critical circumstances apply and there have been massive imports in a relatively short period of goods that—
 “(i) benefit from export subsidies paid or bestowed inconsistently with the WTO Agreement; and

- “(ii) have caused material injury that is difficult to repair.
- “(2) The Minister may impose duty retrospectively for all or part of the 60-day period before the application of the provisional direction. 5
- “(3) If the exporter or the Government of the country of export violates an undertaking under section 15 and then the Minister gives a provisional direction under section 16, the Minister may impose duty retrospectively for all or part of the 60-day period before the application of the provisional direction. 10
- “(4) No retrospective duty may be imposed under **subsection (3)** before the date of the violation of the undertaking.
- “(5) This section overrides **section 17** if its conditions are met.”
- (2) The definition of **duty** in section 2(1) of the Customs and Excise Act 1996 is amended by omitting “or 17” and substituting “**17, 17A, or 17B**”. 15
- 22 Third country anti-dumping and countervailing duties**
Section 18 is amended by omitting “and 17” and substituting “**17, 17A, and 17B**”.

Part 3 20

Financial Reporting Act 1993

- 23 Principal Act amended**
This Part amends the Financial Reporting Act 1993.
- 24 Commencement of this Part**
- (1) **Sections 25(2), 29, 33 to 37, 39, and 41** 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. 25
- (2) The rest of **this Part** comes into force on the day after the date on which this Act receives the Royal assent. 30
- 25 Interpretation**
- (1) Section 2(1) is amended by repealing the definition of **exempt company** and substituting the following definition:
“**exempt company** has the meaning given to it by **section 6A**”.

- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**infringement fee**, in relation to an infringement offence, means \$7,000
- “**infringement notice** means a notice issued under **section 41B** 5
- “**infringement offence** means an offence against section 38(b) or 39”.
- (3) Section 2(1) is amended by repealing the definition of **turnover** and substituting the following definition:
- “**turnover**— 10
- “(a) means, in relation to a company, the total annualised gross operating revenue of the company (exclusive of any tax required to be collected) reported in the statement of financial performance, income and expenditure statement, or revenue and appropriation account, as the case may be, for the accounting period for which the financial statements are required; and includes (without limitation) any sales, fee income, grants, output appropriations, cost recoveries, donations, dividends, interest, and subscriptions of the company for that accounting period: 15 20
- “(b) means, in relation to a group, the total annualised gross operating revenue of the group (exclusive of any tax required to be collected) reported in the consolidated statement of financial performance or consolidated income and expenditure statement, as the case may be, for the accounting period for which the financial statements are required; and includes (without limitation) any sales, fee income, grants, output appropriations, cost recoveries, donations, dividends, interest, and subscriptions of the group for that accounting period” 25 30
- 26 Meaning of issuer**
- Section 4(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) every recipient of money from a conduit issuer (within the meaning of **section 4A**):” 35

27 New sections 4A to 4D inserted

The following sections are inserted after section 4:

“4A Recipients of money from conduit issuers

- “(1) In section 4, a person is a recipient of money from a conduit issuer if—** 5
- “(a) the person is related to another person (the conduit issuer); and**
 - “(b) the conduit issuer has raised an amount of money by the issue of securities offered to the public within the meaning of the Securities Act 1978; and** 10
 - “(c) that money is raised as part of a scheme or arrangement under which all or a substantial part of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of any of the following:** 15
 - “(i) the person; or**
 - “(ii) 1 or more third persons that are subsidiaries of the person; or**
 - “(iii) 1 or more third persons that act, or are accustomed to act, in accordance with the wishes of the person; or** 20
 - “(iv) any combination of the persons referred to in subparagraphs (i) to (iii); and**
 - “(d) all or part of the money that is provided under paragraph (c) has not yet been repaid or returned to the conduit issuer.** 25
- “(2) In subsection (1), a person is related to another person if—**
- “(a) the persons are acting jointly or in concert; or**
 - “(b) the first person acts, or is accustomed to acting, in accordance with the wishes of the other person; or** 30
 - “(c) the persons are related companies (within the meaning of section 2(3) of the Companies Act 1993); or**
 - “(d) the persons have a business relationship, a personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as related; or** 35
 - “(e) the first person is related to a third person who is related to the other person (in both cases under any of paragraphs (a) to (d)), and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances,** 40

the first person should be regarded as related to the other person.

“4B Exemption from being issuer under section 4(1)(ba)

“(1) The Securities Commission may, by notice in the *Gazette*, exempt—

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“(a) a person from being an issuer under **section 4(1)(ba)**; or

“(b) a class of persons from being issuers under **section 4(1)(ba)**.

“(2) The exemption may be granted on any terms and conditions that the Securities Commission thinks fit.

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“(3) The Securities Commission may vary or revoke an exemption in the same way as an exemption may be granted under this section.

“(4) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

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“4C Exemption may apply to accounting period before exemption is granted

An exemption under **section 4B** may, if the Securities Commission thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period are required to be completed.

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“4D Securities Commission must notify reasons for exemption

“(1) The Securities Commission’s reasons for granting an exemption under **section 4B** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.

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“(2) However, the Securities Commission may defer notifying or not notify the reasons for granting an exemption if the Commission is satisfied that it is proper to do so on the ground of commercial confidentiality.”

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- 28 New section 6A inserted**
- The following section is inserted after section 6:
- “6A Meaning of exempt company**
- “(1) In this Act, **exempt company** means a company, other than an overseas company or an issuer, if— 5
- “(a) at least 2 of the following subparagraphs apply:
- “(i) as at the balance date of the accounting period for which financial statements are required, the value of the total assets of the company (including intangible assets) reported in the statement of financial position did not exceed \$1,000,000: 10
- “(ii) in the accounting period for which financial statements are required, the turnover of the company did not exceed \$2,000,000:
- “(iii) as at the balance date of the accounting period for which financial statements are required, the company has 5 or fewer full-time equivalent employees; and 15
- “(b) as at the balance date of the accounting period for which financial statements are required, the company— 20
- “(i) was not a subsidiary of another body corporate or association of persons; and
- “(ii) did not have any subsidiaries.
- “(2) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 25
- “(a) amending the maximum amount of assets that applies under **subsection (1)(a)(i)**:
- “(b) amending the maximum amount of turnover that applies under **subsection (1)(a)(ii)**:
- “(c) amending the maximum number of full-time equivalent employees that applies under **subsection (1)(a)(iii)**. 30
- “(3) In counting employees for the purposes of **subsection (1)**, part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.”
- 29 New section 10A inserted** 35
- The following section is inserted after section 10:
- “10A Non-active entities not required to prepare financial statements**
- “(1) The directors of an entity do not have to comply with section 10 in respect of an accounting period if the entity— 40

- “(a) was a non-active entity in respect of that accounting period; and
- “(b) has, within the specified period, delivered to the Registrar a declaration, in the prescribed form, stating that it was a non-active entity in respect of that accounting period. 5
- “(2) For the purposes of this section, an entity is a **non-active entity** in respect of an accounting period if the entity is not an issuer and, during that period, the entity—
- “(a) has not derived, or been deemed to have derived, any income; and 10
- “(b) has no deductions; and
- “(c) has not disposed of, or been deemed to have disposed of, any assets; and
- “(d) has not been a party to, perpetuated, or continued with, any transactions that, during the period,— 15
- “(i) give rise to income in any person’s hands; or
- “(ii) give rise to fringe benefits to any employee or to any former employee; or
- “(iii) give rise to a debit in the entity’s imputation credit account or dividend withholding payment account. 20
- “(3) In determining whether a company is a non-active entity, no account may be taken of any—
- “(a) statutory company filing fees or associated accounting or other costs; or 25
- “(b) bank charges or other minimal administration costs totalling not more than \$50 in the accounting period; or
- “(c) interest earned on any bank account during the accounting period, to the extent that the total interest does not exceed the total of any charges or costs incurred by the entity to which **paragraph (b)** applies. 30
- “(4) In this section, **deduction, income, imputation credit account, and dividend withholding payment account** have the same meanings as in section OB 1 of the Income Tax Act 2004. 35
- “(5) In this section, **specified period**, in relation to an accounting period, means the period within which the directors of the entity would, but for this section, be required to ensure that financial statements are completed under section 10.” 40

- 30 Obligation to prepare group financial statements**
Section 13(2) is amended by inserting “the company is not an issuer and” after “balance date if”.
- 31 New sections 19 and 19A substituted**
Section 19 is repealed and the following sections are substituted: 5
- “19 Overseas companies and certain other companies to register financial statements**
- “(1) This section applies to—
- “(a) any company, other than an issuer, that is an overseas company; or 10
 - “(b) any company, other than an issuer,—
 - “(i) that is large; and
 - “(ii) in which shares that in aggregate carry the right to exercise or control the exercise of 25% or more of the voting power at a meeting of the company are held by— 15
 - “(A) a subsidiary of a company or body corporate incorporated outside New Zealand; or
 - “(B) a company or body corporate incorporated outside New Zealand; or 20
 - “(C) a person not ordinarily resident in New Zealand; or
 - “(c) any company, other than an issuer, that is a subsidiary of a company referred to in **paragraph (a) or paragraph (b)**. 25
- “(2) However, this section does not apply to a company (**company A**) if the following requirements are satisfied:
- “(a) company A is a subsidiary of a company that is incorporated in New Zealand (**company B**); and
 - “(b) financial statements in relation to company B that comply with section 11 are completed and signed within the time specified in section 10; and 30
 - “(c) group financial statements in relation to a group comprising company B, company A, and all other subsidiaries of company B that comply with section 14 are completed and signed within the time specified in section 13; and 35
 - “(d) a copy of the financial statements referred to in **paragraph (b)** and a copy of the group financial statements referred to in **paragraph (c)**, together with the auditor’s report on 40

those statements, are delivered to the Registrar for registration.

- “(3) The directors of every company to which this section applies must—
- “(a) ensure that, within 20 working days after the financial statements of the company and any group financial statements in relation to a group comprising that company and its subsidiaries are required to be signed, copies of those statements, together with a copy of the auditor’s report on those statements, are delivered to the Registrar for registration; and 5 10
 - “(b) pay to the Registrar the prescribed registration fee.

“19A Interpretation for section 19

- “(1) For the purposes of **section 19**,—
- “(a) a person is ordinarily resident in New Zealand if that person— 15
 - “(i) is domiciled in New Zealand; or
 - “(ii) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period: 20
 - “(b) a company is large if at least 2 of the following subparagraphs apply: 25
 - “(i) as at the balance date of the accounting period for which financial statements are required, the total assets (including intangible assets) of the company and its subsidiaries (if any) reported in the statement of financial position or consolidated statement of financial position (as the case may be) exceeds \$10,000,000: 30
 - “(ii) in the accounting period for which financial statements are required, the total turnover of the company and its subsidiaries (if any) exceeds \$20,000,000: 35
 - “(iii) as at the balance date of the accounting period for which financial statements are required, the company and its subsidiaries (if any) have 50 or more full-time equivalent employees: 40

- “(c) **auditor’s report**, in relation to an overseas company, means a report by a person qualified for appointment as auditor in accordance with section 199 of the Companies Act 1993.
- “(2) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5
- “(a) amending the amount of assets that must be exceeded under **subsection (1)(b)(i)**;
- “(b) amending the amount of turnover that must be exceeded under **subsection (1)(b)(ii)**; 10
- “(c) amending the minimum number of full-time equivalent employees that applies under **subsection (1)(b)(iii)**.
- “(3) In counting employees for the purposes of **subsection (1)**, part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.” 15
- 32 Fees**
Section 20(b) is amended by omitting “section 19(2)” and substituting “**section 19(3)**”.
- 33 Functions of Board**
Section 24(1) is amended by inserting the following paragraph after paragraph (e): 20
- “(ea) to grant exemptions under **section 29A**.”.
- 34 New sections 29A to 29D inserted**
The following sections are inserted after section 29:
- “29A Board may grant exemptions”** 25
- “(1) The Board may, by notice in the *Gazette*, exempt—
- “(a) any person or class of persons from ensuring that financial statements or group financial statements comply with a provision of an applicable financial reporting standard: 30
- “(b) any directors of an overseas company, or any directors of a class of overseas company, from compliance with either or both of the following provisions:
- “(i) section 15 (which requires financial statements and group financial statements of issuers to be audited): 35

- “(ii) **section 19** (which requires overseas companies and certain other companies to register financial statements).
- “(2) The Board must not grant an exemption under this section unless it is satisfied that,— 5
- “(a) in the case of an exemption under **subsection (1)(a)**, due to exceptional circumstances, compliance with the relevant provision would be inappropriate; and
- “(b) in the case of an exemption under **subsection (1)(b)**, compliance with the relevant provision would require the directors of the overseas company to comply with requirements that are— 10
- “(i) materially different from the financial reporting requirements that the overseas company must comply with under the law in force in the country, State, or territory in which the overseas company is incorporated; and 15
- “(ii) unduly onerous or burdensome; and
- “(c) the extent of the exemption is not broader than what is reasonably necessary to address the matters specified in **paragraph (a) or paragraph (b)**; and 20
- “(d) the person who applied for the exemption (if any) has taken reasonable steps to consult with persons or organisations or representatives of persons or organisations who, in the opinion of the Board, would be affected by the exemption; and 25
- “(e) granting the exemption is, in the circumstances, fit and proper.
- “(3) The exemption may be granted on any terms and conditions that the Board thinks fit. 30
- “(4) The Board may give notice of the exemption in any publications it thinks fit (in addition to notifying the exemption in the *Gazette*).
- “(5) The Board may vary or revoke an exemption in the same way as an exemption may be granted under this section. 35

“29B Exemption may apply to accounting period before exemption is granted

An exemption under **section 29A** may, if the Board thinks fit, apply to an accounting period that commenced before the

exemption is granted (including an accounting period that ended before the exemption is granted) if,—

- “(a) in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 18 or **section 19**, the exemption is granted before those documents are required to be delivered for registration under those sections; or 5
- “(b) in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed. 10

“29C Failure to comply with applicable financial reporting standard must be disregarded if directors of reporting entity are exempt

In considering whether the financial statements of a reporting entity, or group financial statements of a group comprising a reporting entity and its subsidiaries, comply with generally accepted accounting practice, a failure of the financial statements or group financial statements to comply with a provision of an applicable financial reporting standard must be disregarded if the directors of the reporting entity— 15

- “(a) are exempted under **section 29A(1)(a)** from ensuring that the financial statements or group financial statements comply with the provision of the applicable financial reporting standard; and 25
- “(b) comply with the terms and conditions of that exemption.

“29D Board must notify reasons for exemption

- “(1) The Board’s reasons for granting an exemption under **section 29A** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 30
- “(2) However, the Board may defer notifying or not notify the reasons for granting an exemption if the Board is satisfied that it is proper to do so on the ground of commercial confidentiality.” 35

35 Consultation

- (1) Section 30(1) is amended by repealing paragraph (c) and substituting the following paragraphs:

- “(c) revoke the approval of any approved financial reporting standard; or
- “(d) grant, amend, or revoke an exemption under **section 29A.**”
- (2) Section 30 is amended by inserting the following subsection after subsection (1): 5
- “(1A) The Board must, in deciding whether or not to grant, amend, or revoke an exemption under **section 29A**, consult with—
- “ (a) the Commissioner of Inland Revenue; and
- “ (b) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).” 10
- 36 New section 33 substituted**
- Section 33 is repealed and the following section substituted: 15
- “33 Disallowance of determinations and exemptions by House of Representatives**
- “(1) The Regulations (Disallowance) Act 1989 applies to—
- “ (a) the following determinations of the Board as if the determination were a regulation within the meaning of that Act: 20
- “ (i) any approval of a financial reporting standard and any amendment to an approved financial reporting standard:
- “ (ii) any revocation of an approval of an approved financial reporting standard: 25
- “ (iii) any determination made under section 27(3A):
- “ (b) any notice published in the *Gazette* under **section 29A** (which relates to exemptions) as if the notice were a regulation within the meaning of that Act. 30
- “(2) The determinations and notices referred to in **subsection (1)** are not regulations for the purposes of the Acts and Regulations Publication Act 1989.”
- 37 Certificates of Board**
- Section 34(1) is amended by inserting the following paragraph after paragraph (b): 35
- “ (ba) the granting, amendment, or revocation of an exemption under **section 29A** or the accounting period or interim

accounting period in relation to which an exemption under that section applies; or”.

- 38 Offences by directors of overseas companies and subsidiaries of overseas companies** 5
- (1) The heading to section 39 is amended by omitting “**subsidiaries of overseas companies**” and substituting “**other companies to which section 19 applies**”.
- (2) Section 39 is amended by omitting “subsection (2) of that section” and substituting “**subsection (3)** of that section”.
- 39 New sections 41A to 41D inserted** 10
- The following sections are inserted after section 41:
- “41A Infringement offences**
- “(1) If a person is alleged to have committed an infringement offence, that person may either—
- “(a) be proceeded against summarily for the alleged offence under the Summary Proceedings Act 1957; or 15
- “(b) be served with an infringement notice as provided in **section 41B.**
- “(2) Despite section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or a Registrar of a Court to lay an information is not necessary where the Registrar proceeds with an infringement offence summarily. 20
- “41B Infringement notices**
- “(1) The Registrar may issue an infringement notice to a person if the Registrar believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 25
- “(2) The Registrar may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a Court under section 21 of the Summary Proceedings Act 1957. 30
- “(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

- “41C Procedural requirements for infringement notices**
- “(1) An infringement notice may be served on a person—
- “(a) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or 5
 - “(b) by sending it, or a copy of it, by post, addressed to the person at the person’s last known place of residence or business.
- “(2) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under **subsection (1)(b)** must be treated as having been served on the person on the date it was posted. 10
- “(3) An infringement notice must be in the prescribed form and must contain—
- “(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and 15
 - “(b) the amount of the infringement fee; and
 - “(c) an address at which the infringement fee may be paid; and
 - “(d) the time within which the infringement fee must be paid; and 20
 - “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - “(f) a statement that the person served with the notice has a right to request a hearing; and 25
 - “(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
 - “(h) any other prescribed matters.
- “(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,— 30
- “(a) reminder notices may be prescribed under regulations made under this Act; and 35
 - “(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- “(5) Reminder notices must contain the prescribed information.

- “41D Payment of infringement fee**
The Registrar must pay all infringement fees received into a Crown Bank Account.”
- 40 New section 42B inserted**
The following section is inserted after section 42A: 5
- “42B Regulations**
- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- “(a) prescribing fees and charges that—
- “(i) the Securities Commission may require to be paid to it in connection with an application to the Securities Commission to grant or amend an exemption under **section 4B**: 10
- “(ii) the Board may require to be paid to it in connection with an application to the Board to grant or amend an exemption under **section 29A**: 15
- “(b) prescribing the amounts of those fees or charges or the method by which they are to be calculated:
- “(c) prescribing forms for the purposes of **section 10A** and forms of infringement notices and reminder notices: 20
- “(d) prescribing the information that must be included in infringement notices or reminder notices.
- “(2) The amounts payable under regulations made under this section are recoverable by the Securities Commission or the Board (as the case may be) in any court of competent jurisdiction as a debt due to the Securities Commission or the Board.” 25
- 41 Consequential amendment to Summary Proceedings Act 1957**
- (1) This section amends the Summary Proceedings Act 1957.
- (2) The definition of **infringement notice** in section 2(1) is amended by inserting the following paragraph after paragraph (b): 30
- “(ba) **section 41B** of the Financial Reporting Act 1993; or”.

Transitional provision

- 42 Amendments apply to accounting periods after commencement**
- (1) **Sections 25(1) and (3), 26 to 28, 30 to 32, and 38** apply in respect of accounting periods that commence after the commencement of those sections. 5
- (2) The requirements and provisions that would have applied if the provisions referred to in **subsection (1)** had not been enacted continue to apply in respect of each accounting period that commenced before the commencement of the provisions referred to in **subsection (1)**. 10
- (3) **Sections 25(2), 29, 39, and 41** apply in respect of accounting periods that commence after the commencement of those sections.
- (4) The requirements and provisions that would have applied if the provisions referred to in **subsection (3)** had not been enacted continue to apply in respect of each accounting period that commenced before the commencement of the provisions referred to in **subsection (3)**. 15
- (5) Nothing in this section limits **sections 4C and 29B** of the principal Act (which allow an exemption to apply to an accounting period before the exemption is granted). 20

Part 4**Friendly Societies and Credit Unions Act 1982**

- 43 Principal Act amended** 25
This Part amends the Friendly Societies and Credit Unions Act 1982.
- 44 Society may register as credit union**
- (1) Section 100 is amended by repealing paragraph (a) and substituting the following paragraph: 30
- “(a) the society has no fewer than 21 members who are—
- “(i) adults; or
- “(ii) charitable entities as defined by the Charities Act 2005; or
- “(iii) incorporated societies registered under the Incorporated Societies Act 1908; and”.
- (2) Section 100 is amended by repealing paragraph (d), and substituting the following paragraph: 35

“(d) the rules of the society specify a common bond (as defined in **section 102**).”

45 Qualifications for admission to membership of credit union

Section 102 is amended by repealing subsections (1) and (2) and substituting the following subsections: 5

- “(1) For the purposes of this **Part**, a credit union has a common bond if the qualification for membership is—
- “(a) following a particular occupation: 10
 - “(b) residing in a particular locality: 10
 - “(c) being employed in a particular locality:
 - “(d) being employed by a particular employer:
 - “(e) being a member of a bona fide organisation or being otherwise associated with members of the organisation for a purpose other than that of forming a society to be registered as a credit union: 15
 - “(f) any other qualification that can be objectively determined:
 - “(g) a mixture of any qualifications in **paragraphs (a) to (f)**.
- “(2) For the purposes of **subsection (1)**, a qualification can be objectively determined if it— 20
- “(a) includes every person who fulfills the qualification; and
 - “(b) is able to be determined by a person who is not a member of the credit union; and
 - “(c) does not depend on any person’s subjective judgement.” 25

46 Registration and rules of credit union

Section 104(1) is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) the reference in section 12(1) to 7 adult members were a reference to 21 members and each of the 21 members is— 30
- “(i) an adult; or
 - “(ii) a charitable entity as defined by the Charities Act 2005; or 35
 - “(iii) an incorporated society registered under the Incorporated Societies Act 1908; and”.

- 47 Effect of rules on members of credit union**
 Section 105 is amended by repealing subsection (4) and substituting the following subsection:
 “(4) Fees for admission to membership, or levies, or charges for management or other services are payable by a member to a credit union only if the rules of the credit union set out—
 “(a) the amount of the fees, levies, or charges; or
 “(b) the mechanism for charging the fees, levies, or charges.” 5
- 48 Membership of credit union, voting rights** 10
 Section 106 is amended by repealing subsections (1) and (2) and substituting the following subsections:
 “(1) An individual, a charitable entity as defined by the Charities Act 2005, or an incorporated society registered under the Incorporated Societies Act 1908 can be a member of a credit union, except that— 15
 “(a) section 39 (which relates to the membership of minors) applies to any credit union as if it were a society registered under Part 2; and
 “(b) no charitable entity as defined by the Charities Act 2005 or incorporated society registered under the Incorporated Societies Act 1908 can be an officer of a credit union. 20
 “(2) Members need have no more than \$10 in fully paid-up shares, although a credit union’s rules may allow for a deposit of more or less than \$10 in fully paid-up shares.” 25
- 49 Amalgamation of credit unions and transfer of engagements**
 Section 135 is amended by repealing subsection (4) and substituting the following subsections: 30
 “(4) For the purposes of this section, section 83, as far as it is applicable and with any necessary modification, applies in respect of a credit union as if it were a society registered under Part 2.
 “(4A) The Registrar must not register a special resolution under section 82 if the proposed amalgamation or transfer of engagements would result in a breach of any provision of this Act.” 35

50 New section 138 substituted

Section 138 is repealed and the following section substituted:

“138 Registrar may apply to put credit union into liquidation

On the application of the Registrar, the High Court may appoint a liquidator of a credit union for the liquidation of the credit union in accordance with the Companies Act 1993 if—

“(a) the credit union is unable to pay sums due and payable to its members, or is able to pay such sums only by obtaining further subscriptions for shares or by defaulting in its obligations to creditors; or

“(b) there has been, in relation to that credit union, failure to comply with any provision of, or any direction given under, this Act; or

“(c) there is no longer a common bond between the members of the credit union; or

“(d) the liquidation of the credit union is in the public interest or is just and equitable having regard to the interests of all members of the credit union.”

51 Cancellation or suspension of registration, and dissolution of credit union

Section 140 is amended by repealing subsection (1) and substituting the following subsections:

“(1) The Registrar may suspend a credit union’s registration for any term not exceeding 3 months, and may from time to time renew the suspension for any term not exceeding 3 months, or may cancel a credit union’s registration if there is no longer a common bond between the credit union’s members or the Registrar is satisfied that—

“(a) registration has been obtained for the credit union by fraud or mistake; or

“(b) the credit union exists for an illegal purpose; or

“(c) the credit union has wilfully, and after notice from the Registrar, breached any of the provisions of this Act; or

“(d) the credit union has not commenced business within 1 year of registration or has voluntarily suspended business for more than 6 months; or

“(e) the credit union has fewer than 21 members; or

“(f) the credit union has ceased to exist; or

“(g) at the request of the credit union, there is good reason for the cancellation or suspension; or

- “(h) there has been a failure by the credit union to comply with any direction of the Registrar given under this Act.
- “(1A) **Subsection (1)** is subject to the following provisions (as far as they are applicable and with any modifications necessary so that they apply to a credit union as if it were a society registered under Part 2): 5
- “(a) section 92(2) to (9):
- “(b) section 93(1):
- “(c) section 94(1) to (4), and (6):
- “(d) section 95: 10
- “(e) section 96.”
- 52 Associations of credit unions to be registered**
- (1) Section 143(3) is amended by repealing paragraph (e) and substituting the following paragraph:
- “(e) to provide any other services specified in **subsection (4)**.” 15
- (2) Section 143 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) Specified services for the purposes of **subsection (3)(e)** are—
- “(a) receiving deposits or subscriptions (other than subscriptions solely of an annual or periodic nature to be used for the Association’s purposes) from its component members for purposes specified in its rules: 20
- “(b) making loans to its component members:
- “(c) establishing and maintaining a central funding scheme for the benefit of its component members: 25
- “(d) levying its component members the amount or amounts for purposes and in the manner specified in its rules:
- “(e) providing, or administering any scheme providing, fidelity insurance, savings insurance, or loan protection insurance: 30
- “(f) undertaking training or education programmes for its component members or members of credit unions or the public:
- “(g) providing advisory services for its component members: 35
- “(h) arranging, providing, or co-ordinating data processing or computer services for its component members.”

Transitional provision

- 53 Proceedings in relation to section 135(4)(b), 138(c), or 140(1)(c)(ii)** 5
Every application, investigation, proceeding, action, or other matter concerning a common bond that was commenced under section 135(4)(b), 138(c), or 140(1)(c)(ii) before the commencement of this **Part** may continue as if this **Part** had not been passed.
- Part 5**
- Insurance Companies' Deposits Act 1953** 10
- 54 Principal Act amended**
This Part amends the Insurance Companies' Deposits Act 1953.
- 55 Penalty for non-compliance** 15
Section 20(1) is amended by omitting "\$100" and substituting "\$1,000".
- 56 Further penalty for carrying on business after notice prohibiting** 20
Section 22(1) is amended by omitting "\$200" and substituting "\$2,000".
- 57 New sections 22A to 22E inserted**
The following sections are inserted after section 22:
- "22A Interpretation**
In **sections 22A to 22E**,—
- "New Zealand person** means any of the following: 25
- "(a) a company registered in New Zealand under the Companies Act 1993:
- "(b) an association within the meaning of the Mutual Insurance Act 1955:
- "(c) an incorporated or unincorporated body established in New Zealand: 30
- "(d) a New Zealand resident within the meaning of section OE1 of the Income Tax Act 2004
- "overseas company** means an overseas company registered on the overseas register kept under the Companies Act 1993 35
- "specified insurance business** means any of the following:

- “(a) any class of insurance business carried on under this Act: 5
- “(b) insurance provided by an association under the Mutual Insurance Act 1955: 5
- “(c) the business of insurance upon human life or the grant of annuities, or of reinsurance in respect of policies of insurance upon human life or the grant of annuities under the Life Insurance Act 1908. 5
- “22B Certain New Zealand persons and overseas companies prohibited from holding out New Zealand connection 10**
- No New Zealand person or overseas company may hold out outside New Zealand that the person carries on a specified insurance business in New Zealand, or that the person is regulated by New Zealand law in respect of a specified insurance business, if the person does not carry on that specified insurance business in New Zealand. 15
- “22C Certain New Zealand persons and overseas companies prohibited from using certain words in their name**
- “(1) If a New Zealand person or overseas company does not carry on specified insurance business in New Zealand, the person cannot— 20
- “(a) be formed, incorporated, or registered using a name or title that includes a restricted word; or
- “(b) change the person’s name or title to a name or title that includes a restricted word; or 25
- “(c) carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) using a name or title that includes a restricted word.
- “(2) The restricted words are the following in any language: 30
- “(a) insurance: 30
- “(b) assurance:
- “(c) underwriter:
- “(d) re-insurance:
- “(e) any term that has the same or similar meaning as the terms in **paragraphs (a) to (d)**. 35
- “22D Exception for certain brokers**
- “(1) **Sections 22B and 22C** do not apply if the person is a broker offering a specified insurance business that is provided by a

- person carrying on that specified insurance business in New Zealand.
- “(2) **Sections 22B and 22C** do not apply if the person—
- “(a) is an agent who is authorised to make a deposit under section 4B; and 5
 - “(b) is offering specified insurance business in New Zealand.
- “**22E Exemption from section 22C granted by Secretary**
- The Secretary may issue exemptions from **section 22C** if the Secretary is satisfied that the person who will be subject to the exemption— 10
- “(a) will not be offering or providing specified insurance business in New Zealand; and
 - “(b) has a legitimate reason to use the particular word in the person’s name.” 15
- 58 Transitional provision**
- This Part** does not affect any entity in existence when **this Part** comes into force until 3 months after **this Part** comes into force.
- 59 Consequential amendment to Life Insurance Act 1908**
- (1) This section amends the Life Insurance Act 1908. 20
 - (2) The following section is inserted after section 36:
- “**36A Overseas business**
- Sections 22A to 22E** of the Insurance Companies’ Deposits Act 1953 apply to certain business in New Zealand and overseas.”
- 60 Consequential amendment to Mutual Insurance Act 1955** 25
- (1) This section amends the Mutual Insurance Act 1955.
 - (2) The following section is inserted after section 43:
- “**43A Overseas business**
- Sections 22A to 22E** of the Insurance Companies’ Deposits Act 30
- 1953 apply to certain business in New Zealand and overseas.”
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Schedule
Consequential amendments

s 17

Co-operative Companies Act 1996 (1996 No 24)

Section 29(j): omit “210(1)” and substitute “210(3)”.

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Heading to section 32: omit “and 210” and substitute “to 210”.

Section 32: omit “and 210” and substitute “to 210”.

Securities Markets Act 1988 (1988 No 234)

Section 26(1): insert “or notice” after “annual report” in each place where it appears.

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