

23	New heading and sections 69B to 69V inserted <i>Commission's powers for receiving evidence</i>	69V	Limitation on disclosure of information obtained in Commission's operations
69B	Power of Commission to receive evidence not otherwise admissible	24	New Part 4 heading inserted
69C	Method of receiving evidence		Part 4 Regulations
69D	Power to summon witnesses	25	Regulations and Orders in Council
69E	Witnesses' expenses <i>Exercise of inspection and evidence powers for overseas regulators</i>	26	New Part 5 inserted
69F	Power of Commission to act on requests of overseas regulators		Part 5 Recognition and application regimes
69G	Commission's consideration of requests		Subpart 1—Preliminary
69H	Conditions that may be imposed on providing information to overseas regulators	71	Purpose of this Part
69I	Undertakings to be obtained before providing certain information to overseas regulators <i>Commission's power to accept undertakings</i>	72	Definition of country in this Part
69J	Commission may accept undertakings		Subpart 2—Exemption from Part II and Regulations for New Zealand offers under recognition regime
69K	Enforcement of undertakings <i>Proceedings before Commission</i>	73	Exemption from Part II and Regulations for New Zealand offers under recognition regime
69L	Right to be heard and represented at proceedings before Commission	74	Power to exempt from Part II and Regulations under recognition regime
69M	Power to hear proceedings in private	75	Matters that must be stated in regulations implementing recognition regime
69N	Power to make other confidentiality orders	76	Offence for breach of regulations implementing recognition regime
69O	Commission may state case for opinion of High Court <i>Appeals of Commission decisions</i>		Subpart 3—Extension of Part II and Regulations to overseas offers under application regime
69P	Appeals to High Court on questions of law only	77	Extension of Part II and Regulations to overseas offers under application regime
69Q	Requirements for lodging appeal	78	Power to extend Part II and Regulations under application regime
69R	Determination of appeal <i>Miscellaneous provisions</i>	79	Matters that must be stated in regulations implementing application regime
69S	Witnesses and counsel to have privileges of witnesses and counsel in Court		Subpart 4—Enforcement of overseas pecuniary penalties under application regime
69T	No privilege against self-incrimination	80	Enforcement of overseas pecuniary penalties under application regime
69U	Restrictions on use of evidence obtained by summons	81	Power to enforce overseas pecuniary penalties under application regime
		82	Interpretation

<p>83 Registration of judgment</p> <p>84 Effect of registration</p> <p>85 Enforceability of registered judgment</p> <p>86 Stay may be granted</p> <p>87 Costs</p> <p>88 Interest</p> <p>89 Rules of private international law not to apply</p>	<p>90 Other regulations for registration of judgments under application regime</p> <p>27 Part III repealed</p> <p>28 Associated amendment to Unit Trusts Act 1960</p>
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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Securities Amendment Act 2002.
- (2) In this Act, the Securities Act 1978 is called “the principal Act”.

2 Commencement

- (1) Except as provided in subsection (2), this Act comes into force on 1 December 2002.
- (2) Section 25 comes into force on a date to be appointed by the Governor-General by Order in Council.

3 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of the term **Court**, and substituting the following definition:

“**Court** means, in relation to any matter, the Court before which the matter is to be determined”.
- (2) Section 2(1) of the principal Act is amended by repealing the definition of the term **document**, and substituting the following definition:

“**document** means any record of information; and includes—

 - “(a) anything on which there is writing or any image; and
 - “(b) information recorded by means of any article or device (for example, a disk) from which information is capable of being reproduced with or without the aid of any other article or device; and
 - “(c) material subsequently derived from information recorded by that means”.

- (3) Section 2(1) of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:
- “overseas regulator** means a body in another country with functions corresponding to those of the Commission”.

4 Exemptions from this Act

- (1) Section 5(5) of the principal Act is amended by repealing paragraphs (c) and (d).
- (2) Section 5 of the principal Act is amended by adding the following subsection:
- “(6) Nothing in Part 5 limits subsection (5).”

5 Previously allotted securities

- (1) Section 6(2) of the principal Act is amended by adding the words “or to the public outside New Zealand under an application regime under Part 5”.
- (2) Section 6 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2AA) A provision of Part II or the Regulations applies to a previously allotted security that is offered to a person outside New Zealand if—
- “(a) the provision applies to the security under section 77; and
- “(b) the security was originally allotted with a view to its being offered for sale to the public outside New Zealand in circumstances in which an application regime under Part 5 would have applied to the security; and
- “(c) the security has not previously been offered for sale to the public in New Zealand or to the public outside New Zealand under an application regime under Part 5.”
- (3) Section 6(3) of the principal Act is amended by omitting the words “in New Zealand”.
- (4) Section 6(5) of the principal Act is amended by omitting the expression “subsection (2)”, and substituting the words “subsections (2) and (2AA)”.
- (5) Section 6(7) of the principal Act is amended by inserting after the expression “subsection (2)”, the words “or subsection (2AA)”.

6 Term implied in certain offers of previously allotted securities

- (1) Section 6A(1)(b) of the principal Act is amended by inserting, after the expression “subsections (2),” the expression “(2AA).”
- (2) Section 6A(1)(c) of the principal Act is amended by omitting the words “in New Zealand”.

7 New section 7 substituted

The principal Act is amended by repealing section 7, and substituting the following section:

“7 Territorial scope of Part II

- “(1) Part II applies to securities offered to the public in New Zealand, regardless of—
 - “(a) where any resulting allotment occurs:
 - “(b) where the issuer is resident, incorporated, or carries on business.
- “(2) For the purposes of this Act, a security is offered to a person in New Zealand if an offer of that security for subscription is received by a person in New Zealand, unless the issuer demonstrates that it took all reasonable steps to ensure that members of the public in New Zealand may not accept the offer.
- “(3) Sections 38B and 58 (except section 58(3) and (4)) also apply to any advertisement that contains or refers to an offer of securities to the public outside New Zealand and that is distributed or to be distributed to a person outside New Zealand by,—
 - “(a) in the case of section 38B, a person resident or having a place of business in New Zealand;
 - “(b) in the case of section 58, a person resident or having a principal place of business in New Zealand.
- “(4) For the purpose of subsection (3), the definitions of **advertisement** and **offer** extend to communications or offers received by persons outside New Zealand.
- “(5) The territorial scope of Part II may be further extended under Part 5.
- “(6) For the avoidance of doubt, nothing in Part II applies to a security or an advertisement unless it applies under subsections (1) to (5).”

8 Functions of Commission

- (1) Section 10(ca) of the principal Act is amended by omitting the words “securities commission or other similar body in any other country”, and substituting the words “overseas regulator”.
- (2) Section 10(ca) of the principal Act is amended by omitting the words “commission or body” in both places where they occur, and substituting in each case the words “overseas regulator”.
- (3) Section 10 of the principal Act is amended by inserting, after paragraph (ca), the following paragraphs:

“(caa) to keep under review activities on securities markets, and to comment on those activities to the appropriate body; and

“(cab) on the Minister’s request, to advise the Minister on the conduct rules, or amendments to those rules, proposed by securities exchanges; and”.

9 Appointment of member to exercise powers of Chairperson in case of absence or incapacity

- (1) The heading to section 12 of the principal Act is amended by omitting the words “**in case of absence or incapacity**”.
- (2) Section 12(1) of the principal Act is amended by adding the words “, or if the Chairperson considers it not proper or desirable to participate personally in relation to a matter”.
- (3) Section 12(2) of the principal Act is amended by inserting, after the words “exercising those powers”, the words “, or if, in relation to a matter, the Chairperson does not consider it proper or desirable to participate personally,”.

10 New sections 14B to 14D inserted

The principal Act is amended by inserting, after section 14A, the following sections:

“14B Commission may act by divisions

- “(1) The Commission or Chairperson may determine that the powers of the Commission in relation to any matter or class of matters may be exercised by separate divisions of the Commission.
- “(2) The Commission or Chairperson may revoke or amend a determination made under subsection (1).

- “(3) Every determination (or revocation or amendment of a determination) must be recorded in writing and signed by 3 members or the Chairperson.

Compare: 1993 No 107 s 7A

“14C Membership, chairperson, meetings, and resolutions of division

- “(1) Each division consists of the members who are assigned to it for the time being by the Commission or Chairperson.
- “(2) Each division must have at least 3 members.
- “(3) If the members assigned to a division do not include the Chairperson, the Commission or Chairperson must nominate 1 of those members as chairperson of the division.
- “(4) Sections 15 and 15A apply to a meeting of the division as if it were a meeting of the entire Commission.
- “(5) A resolution in writing signed or assented to by letter, facsimile, electronic mail, or other similar means of communication by all members of the division is as effective as if it had been passed at a meeting of the division duly called and constituted.

Compare: 1993 No 107 s 7B

“14D Powers of division

- “(1) For the purposes of determining any matter or class of matters specified in a determination under section 14B,—
- “(a) the Commission consists of the division of the Commission specified in the determination; and
- “(b) the powers of that division are not affected by any changes or vacancies in its membership.
- “(2) A division of the Commission may exercise powers of the Commission even though another division of the Commission is exercising powers of the Commission at the same time.

Compare: 1993 No 107 s 7C”

11 Meetings of Commission

- (1) Section 15(2) of the principal Act is amended by omitting the words “such places as”, and substituting the words “the places, dates, and times, and by the methods, that”.
- (2) Section 15 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) A meeting of the Commission may be held—

- “(a) by a quorum of members being assembled together at the place, date, and time appointed for the meeting; or
- “(b) by means of audio, or audio and visual, communication by which a quorum of members can simultaneously hear each other throughout the meeting.”

12 Sections 18, 18A, 19, 25, and 26 repealed

The principal Act is amended by repealing sections 18, 18A, 19, 25, and 26 (which relate to powers to take evidence, proceedings before the Commission, stating cases for the opinion of the High Court, and appeals to the High Court).

13 Proceedings privileged

- (1) Section 28 of the principal Act is amended by omitting the heading, and substituting the heading “**Protection from liability for Commission and members, officers, and employees**”.
- (2) Section 28(2) of the principal Act is amended by omitting the words “Subject to subsection (3) of this section, no”, and substituting the word “No”.
- (3) Section 28 of the principal Act is amended by repealing subsections (3), (4), and (6).

14 Section 32 repealed

The principal Act is amended by repealing section 32 (which relates to offences).

15 Prohibition of advertisements

Section 38B(7) of the principal Act is amended by omitting the words “appear and be”, and substituting the words “be heard and”.

16 Criminal liability for misstatement in advertisement or registered prospectus

Section 58 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

- “(5) Every person who commits an offence against this section is liable—
 - “(a) on conviction on indictment to—

- “(i) imprisonment for a term not exceeding 5 years;
or
 - “(ii) a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued; or
- “(b) on summary conviction to—
- “(i) imprisonment for a term not exceeding 3 months;
or
 - “(ii) a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.”

17 Criminal liability for offering, distributing, or allotting in contravention of this Act

Section 59(1) of the principal Act is amended by omitting the expression “\$15,000”, and substituting the words “\$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued”.

18 New section 59A inserted

The principal Act is amended by inserting, after section 59, the following section:

“59A Criminal liability for obstructing exercise of powers

- “(1) Every person commits an offence who—
- “(a) refuses or fails, without reasonable excuse, to produce any document for inspection, or reproduce or assist in reproducing, in usable form, information recorded in that document, when required to do so under section 67;
or
 - “(b) having been summoned to appear before the Commission for the purposes of any matter, refuses, without reasonable excuse, or wilfully neglects to—
 - “(i) appear before the Commission:
 - “(ii) take an oath or make an affirmation as a witness:
 - “(iii) answer any question put to him or her concerning the matter:

- “(iv) provide to the Commission any document or information that he or she is required to provide; or
- “(c) deceives or attempts to deceive or knowingly misleads the Commission in providing any evidence to it; or
- “(d) is not the Commission, the Registrar, or a person authorised by the Commission or Registrar to make an inspection under section 67A and who wilfully communicates to any other person information acquired in the course of an inspection under that section; or
- “(e) wilfully acts in contravention of any order made by the Commission under section 69N; or
- “(f) wilfully contravenes section 68D; or
- “(g) wilfully resists or obstructs, or deceives or attempts to deceive, any person acting in the discharge of his or her functions or duties, or in the exercise of his or her powers, under this Act.
- “(2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.”

19 Other offences

- (1) Section 60(1) of the principal Act is amended by—
- repealing paragraphs (a) and (b); and
 - inserting in paragraph (c), after the words “other person,”, the words “without reasonable excuse and”; and
 - inserting in paragraph (d), before the words “acts in”, the words “without reasonable excuse,”; and
 - omitting the expression “\$1,000”, and substituting the expression “\$5,000”.
- (2) Section 60(2) of the principal Act is amended by omitting the expression “\$10,000”, and substituting the words “\$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued”.

20 New section 65A inserted

The principal Act is amended by inserting, before section 66, the following section:

“65A Jurisdiction of Courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences against Part II.”

21 New headings and sections 67 to 68K inserted

The principal Act is amended by repealing sections 67 to 68, and substituting the following headings and sections:

“Part 3**“General investigation and enforcement powers***“Powers of inspection***“67 Power to inspect documents**

“(1) The Commission may, in accordance with section 68,—

“(a) require any person to produce for inspection any document kept by that person:

“(b) if necessary, require any person to reproduce, or assist in reproducing, in usable form, information recorded in a document:

“(c) inspect and make records of that document:

“(d) for the purpose of making records of that document, take possession of that document, or any article or thing that the Commission reasonably requires to make a record of that document, and remove the document, article, or thing from the premises where it is kept for the period of time that is reasonable in the circumstances.

“(2) Documents may be required under this section either specifically, generally, or by class, nature, content, or effect.

“67A Power to request or approve Registrar or authorised persons to inspect documents

“(1) The Commission may, in accordance with sections 68 and 68A, request or approve the Registrar, or any other person authorised by the Commission or Registrar, to carry out an inspection by doing any of the things in section 67(1).

“(2) A request or approval under subsection (1) may relate to a particular case, or a class or classes of cases, specified by the Commission.

“(3) The fact that the Registrar, or any person authorised by the Commission or Registrar, does, or attempts to do, any of the

things in section 67(1) is sufficient evidence that that inspection under this section has been requested or approved by the Commission unless there is evidence to the contrary.

“68 Limits on exercise of power to inspect documents

The Commission may carry out an inspection under section 67, or request or approve the Registrar or any other person under section 67A to carry out an inspection, only if—

“(a) the inspection is for the purposes of—

“(i) this Act, the Securities Markets Act 1988, or any of the Acts listed in the First Schedule:

“(ii) complying with the request of an overseas regulator under section 69F or otherwise co-operating with an overseas regulator; and

“(b) the Commission first considers, along with any other relevant matters, any matters relating to the necessity or expediency of carrying out an inspection (for example, whether it is practicable to obtain the information from other sources or by other means in the time available).

“68A Requirements for persons authorised to inspect documents

“(1) The Commission or Registrar must not authorise a person to carry out an inspection under section 67 unless the Commission or Registrar is satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to carry out an inspection.

“(2) A person authorised by the Commission or Registrar to carry out an inspection under section 67 must, if requested at the time of carrying out the inspection, produce evidence of that person’s authority to carry out the inspection.

“68B Disclosure of information from inspection

“(1) On the direction of the Commission or Registrar, a person who has made an inspection under section 67 must give all records and disclose all information acquired in the course of the inspection to any person specified by the Commission or Registrar for the purposes of—

- “(a) this Act, the Securities Markets Act 1988, the Takeovers Act 1993, or any of the other Acts listed in the First Schedule:
 - “(b) detecting and prosecuting offences against any other Act, but, in this case, those records and information are not admissible in any criminal proceedings against the person from whom the records or information were acquired or any person to whom the records or information relate:
 - “(c) assisting the Commission to comply with the request of an overseas regulator under section 69F or otherwise co-operate with an overseas regulator.
- “(2) The Minister may, by written notice, require the Commission or Registrar to give a direction under subsection (1), and the Commission or Registrar must comply with that requirement.
- “(3) The Commission may, by written notice, require the Registrar to give a direction under subsection (1), and the Registrar must comply with that requirement.
- “(4) This section is subject to section 69N of this Act and to section 31X of the Takeovers Act 1993.

“68C **Powers not limited**

Sections 67 to 68B do not limit any power that the Registrar, Commission, or any other person has under the Companies Act 1993 or any other enactment.

“68D **Non-disclosure of information from inspection**

A person must not communicate to any other person any records or information acquired in the course of an inspection under section 67 except—

- “(a) in accordance with section 68B; or
- “(b) for the purposes of this Act, the Securities Markets Act 1988, the Takeovers Act 1993, or any of the other Acts listed in the First Schedule; or
- “(c) in accordance with the Official Information Act 1982 or the Privacy Act 1993; or
- “(d) in the course of criminal proceedings (but subject to the limitation in section 68B(1)(b)).

“68E No privilege against self-incrimination

Section 69T applies to information and documents provided under section 67.

“68F Protection from liability for persons exercising powers of inspection

Without limiting any other statutory protection from liability, no person is liable for any act done or omitted to be done by the person in the performance or intended performance of the person’s powers under section 67, section 68B, or section 68D unless the person acts in bad faith.

“68G Rights of appeal

A person who is aggrieved by an act or decision of the Commission or Registrar, or of any person authorised by the Commission or Registrar, under any of sections 67 to 68B may appeal against the act or decision to the Court.

“68H Time for appeal

An appeal under section 68G must be made—

- “(a) within 21 days of the date on which the person was notified of the act or decision; or
- “(b) within any longer time allowed by the Court.

“68I Situation while appeal pending

While any appeal under section 68G is pending,—

- “(a) the Commission or Registrar, or any person authorised by the Commission or Registrar, may continue to exercise the powers under any of sections 67 to 68B as if no appeal had been made; and
- “(b) no person is excused from fulfilling his or her obligations under any of those sections by reason of the appeal; and
- “(c) information that is obtained as a result of an inspection to which the appeal relates is not admissible as evidence in any criminal proceedings against the person to whom the information relates.

“68J Determination of appeal

The Court must determine the appeal by either dismissing the appeal or giving the directions or making the determination in the matter that it thinks fit.

“68K Requirements where appeal allowed

To the extent that an appeal in respect of an act or decision of the Commission or Registrar, or any person authorised by the Commission or Registrar, under any of sections 67 to 68B is allowed or granted,—

“(a) the Commission or Registrar must ensure that, as soon as practicable after the decision on the appeal is given, all records made by the Commission or Registrar, or by a person authorised by the Commission or Registrar, under section 67(1)(c) in respect of the act or decision are destroyed; and

“(b) no information acquired under section 67(1)(a) or (b) in respect of the act or decision is admissible in evidence in any proceedings.”

22 Section 69A repealed

The principal Act is amended by repealing section 69A (which relates to appeals from decisions under section 67A).

23 New heading and sections 69B to 69V inserted

The principal Act is amended by inserting, after section 69, the following heading and sections:

“Commission’s powers for receiving evidence

“69B Power of Commission to receive evidence not otherwise admissible

The Commission may receive in evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectively with any matter before it or that it may receive under section 69F, whether or not it would be otherwise admissible in a court of law.

Compare: 1978 No 103 ss 18(1), 18A(1)

“69C Method of receiving evidence

“(1) The Commission may receive evidence on oath and, for that purpose, a member or an officer or employee of the Commission may administer an oath.

- “(2) The Commission may permit a person appearing as a witness to give evidence by providing a written statement and, if the Commission thinks fit, verifying that statement by oath.
- “(3) The Commission must, if a meeting is requested by a person who is summoned to give evidence under section 69D, receive the evidence at a meeting of the Commission.
- “(4) If a meeting is requested under subsection (3), that meeting must not be held by a method under section 15(2A)(b) except with the consent of the person summoned.

Compare: 1978 No 103 ss 18(2), (4), 18A(3), (5)

“69D Power to summon witnesses

- “(1) A member of the Commission may issue a summons to a person requiring that person to appear before the Commission, or a member, officer, or employee of the Commission, in relation to any matter before the Commission and to do all or any of the following things:
 - “(a) give evidence:
 - “(b) give evidence under oath:
 - “(c) provide any documents or information in his or her possession or control that are relevant to the matter.
- “(2) The summons must be in writing, be signed by a member of the Commission, and state—
 - “(a) the date and time when, and the place where, the person must attend; and
 - “(b) the documents or information that the person is required to provide (either generally, specifically, or by class, nature, content, or effect); and
 - “(c) the person’s right to request that he or she give evidence at a meeting of the Commission; and
 - “(d) the penalty for failing to attend under section 59A.
- “(3) A summons may be served by delivering it personally to the person summoned or by leaving it at his or her usual place of residence or business at least 24 hours before his or her attendance is required.

Compare: 1978 No 103 ss 18(3), 18A(4)

“69E Witnesses’ expenses

- “(1) If a person has appeared as a witness (whether or not summoned to do so), the Commission may, if it thinks fit, order any sum to be paid to that witness for his or her expenses.
- “(2) That sum must not exceed the amount that would be payable to the witness if his or her attendance had been as a witness for the Crown in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Compare: 1978 No 103 ss 18(5), 18A(6)

*“Exercise of inspection and evidence powers for
overseas regulators*

“69F Power of Commission to act on requests of overseas regulators

- “(1) An overseas regulator may request the Commission to inquire into any matter related to the functions of that overseas regulator.
- “(2) The Commission may obtain information, documents, or evidence that, in the Commission’s opinion, is likely to assist the Commission in complying with that request by—
- “(a) exercising its powers of inspection, or requesting or approving the Registrar or any other authorised person to exercise the powers of inspection, under this Part:
 - “(b) exercising its powers to receive evidence and summon witnesses under this Part.
- “(3) The Commission may transmit the information, documents, or evidence obtained by it to the overseas regulator in the manner that the Commission thinks fit.

“69G Commission’s consideration of requests

- “(1) The Commission may comply with a request under section 69F only if the Commission is satisfied that—
- “(a) compliance will not substantially affect the performance of its other functions; and
 - “(b) it is appropriate to do so after taking into account any matters the Commission thinks relevant; and
 - “(c) the Minister has given his or her approval for the Commission to comply with the request.

- “(2) The Minister’s approval may relate to a particular request, or a class or classes of requests, specified by the Minister.
- “(3) The matters the Commission may take into account under subsection (1) include, without limitation,—
- “(a) whether the Commission is likely to be able to obtain the requested information, documents, or evidence:
 - “(b) the cost to the Commission of complying with the request:
 - “(c) whether the overseas regulator could more conveniently have the request satisfied from another source:
 - “(d) the extent to which the functions of the overseas regulator correspond with the functions of the Commission:
 - “(e) whether the overseas regulator would be likely to comply with a similar request made by the Commission and whether any arrangement with the overseas regulator to that effect exists:
 - “(f) whether, in the Commission’s opinion, it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 1992.

“69H Conditions that may be imposed on providing information to overseas regulators

- “(1) The Commission may impose any conditions in relation to providing information, documents, or evidence to an overseas regulator (whether in compliance with a request of an overseas regulator or otherwise).
- “(2) Those conditions may include, without limitation, conditions relating to—
- “(a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993):
 - “(b) the storing of, use of, or access to anything provided:
 - “(c) the copying, returning, or disposing of copies of documents provided:
 - “(d) payment of the costs incurred by the Commission in providing anything or in generally complying with a request.

“69I Undertakings to be obtained before providing certain information to overseas regulators

The Commission must not provide any information, evidence, or documents obtained from a person by a summons under section 69D to an overseas regulator (whether in compliance with the request of an overseas regulator or otherwise) unless the Commission has received in writing an undertaking by the overseas regulator to the effect that the information, evidence, or documents—

- “(a) will not be used by the overseas regulator as evidence in criminal proceedings against the person (other than a proceeding in respect of the falsity of the person’s testimony); and
- “(b) to the extent to which it is within the ability of the overseas regulator to ensure, will not be used by any other person, authority, or agency as evidence in proceedings of that kind.

“Commission’s power to accept undertakings

“69J Commission may accept undertakings

- “(1) The Commission may accept a written undertaking given by, or on behalf of, a person in connection with a matter in relation to which the Commission is exercising any of its powers or performing any of its functions for the purposes of this Act or any other Act.
- “(2) The person may withdraw or vary the undertaking with the consent of the Commission.

“69K Enforcement of undertakings

- “(1) If the Commission considers that a person who has given an undertaking under section 69J has breached a term of that undertaking, the Commission may apply to the Court for an order under subsection (2).
- “(2) The Court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:
 - “(a) an order directing the person to comply with that term:
 - “(b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:

- “(c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss, injury, or damage as a result of the breach:
- “(d) an order for any consequential relief that the Court thinks appropriate.

“Proceedings before Commission

“69L Right to be heard and represented at proceedings before Commission

- “(1) At any meeting of the Commission for the following purposes, the Commission must allow to be heard and represented any of the following persons who apply to the Commission for leave to be heard and represented:
 - “(a) at a meeting for the purposes of section 38B(7), the issuer of the securities to which the advertisement relates:
 - “(b) at a meeting for the purposes of section 38F(1)(e), the issuer of the investment statement:
 - “(c) at a meeting for the purposes of section 44(1)(b), the issuer of the registered prospectus:
 - “(d) at a meeting for the purposes of section 44B(2)(b) or (c), the contributory mortgage broker concerned:
 - “(e) at a meeting for the purposes of section 44B(2)(d), the contributory mortgage broker concerned and any director or secretary of the nominee company of that contributory mortgage broker:
 - “(f) at a meeting for the purposes of section 69, the person whose appeal is being considered:
 - “(g) at a meeting for the purposes of section 19ZC of the Securities Markets Act 1988, the person to whom the order is directed:
 - “(h) at a meeting for the purposes of section 36ZB of the Securities Markets Act 1988, the person to whom the order is directed:
 - “(i) at a meeting for the purposes of section 36ZT of the Securities Markets Act 1988, the registered exchange and public issuer or issuers concerned:
 - “(j) at a meeting for the purposes of any of those sections, a person who, in the Commission’s opinion, ought to be heard or whose appearance or representation will assist

the Commission in its consideration of the matter before it.

- “(2) At least 1 person who is a barrister or solicitor of not less than 7 years’ practice must attend at every meeting for the purposes of any of the sections to which subsection (1) applies.

Compare: 1978 No 103 s 19(1), (2)

“69M Power to hear proceedings in private

- “(1) The Commission may—

“(a) deliberate in private as to its decision on a matter or as to a question arising in the course of a meeting:

“(b) on its own initiative or on the application of any party to the proceedings, order that a meeting, class of meetings, or part of a meeting must be held in private.

- “(2) However, every meeting of the Commission for the purposes of section 69 must be held in public.

- “(3) The Commission may make an order under subsection (1) on the terms and conditions (if any) that it thinks fit.

Compare: 1978 No 103 s 19(3), (4), (5)(a)

“69N Power to make other confidentiality orders

- “(1) The Commission may, on its own initiative or on the application of any person, make an order prohibiting—

“(a) the publication or communication of any information, document, or evidence that is provided or obtained in connection with any inquiry or other proceedings of the Commission or Registrar:

“(b) the giving of evidence involving any such information, document, or evidence.

- “(2) The Commission may make an order under subsection (1) on the terms and conditions (if any) that it thinks fit.

- “(3) An order under subsection (1) may be expressed to have effect from the commencement of any inquiry or other proceedings of the Commission or Registrar to the end of that inquiry or proceedings.

- “(4) At the end of the inquiry or proceedings, the Official Information Act 1982 applies to any information or document or evidence that was the subject of the order under subsection (1).

Compare: 1978 No 103 s 19(5)(b), (6)

“69O Commission may state case for opinion of High Court

- “(1) The Commission may, at any time, state a case for the opinion of the High Court on a question of law arising in a matter before it.
- “(2) The High Court may order the removal into the Court of Appeal of a case stated for the opinion of the High Court under this section.
- “(3) The High Court or the Court of Appeal, as the case may be, must hear and determine the question, and remit the case with its opinion to the Commission.

Compare: 1978 No 103 s 25

“Appeals of Commission decisions**“69P Appeals to High Court on questions of law only**

- “(1) Every decision of the Commission is final and binding on the parties to the proceedings.
- “(2) However, if a party to proceedings before the Commission considers that the decision of the Commission is wrong in law, the party may appeal to the High Court on a question of law only.
- “(3) This section does not apply to decisions that may be appealed under section 68G.

“69Q Requirements for lodging appeal

- “(1) Every appeal under section 69P(2) must be made by lodging a notice of appeal within 10 working days after the date of the Commission’s decision with—
- “(a) the Registrar of the High Court in Wellington; and
 - “(b) the Commission.
- “(2) The appellant must also immediately deliver or post a copy of that notice of appeal to every other party to the proceedings.
- “(3) Every notice of appeal must specify—
- “(a) the decision or the part of the decision appealed from; and
 - “(b) the error of law alleged by the appellant; and
 - “(c) the question of law to be resolved; and
 - “(d) the grounds of appeal.

“69R Determination of appeal

- “(1) Subject to section 69Q, every appeal under section 69P(2) must be dealt with in accordance with the rules of Court.
- “(2) In its determination of any appeal under section 69P(2), the Court may—
- “(a) confirm, modify, or reverse the decision appealed against, or any part of that decision; or
 - “(b) refer the matter back to the Commission with directions to reconsider the whole or any specified part of the matter.

*“Miscellaneous provisions***“69S Witnesses and counsel to have privileges of witnesses and counsel in Court**

- “(1) Every person has the same privileges in relation to providing information and documents to, and answering questions before, the Commission, a member, officer, or employee of the Commission, or a person authorised by the Commission under section 67A, as witnesses have in proceedings before a court.
- “(2) Every person appearing as counsel before the Commission, or a member, officer, or employee of the Commission, has the same privileges as counsel have in proceedings before a court.
- “(3) Every person has the same privileges in relation to providing information and documents to the Registrar, or a person authorised by the Registrar under section 67A, as witnesses have in proceedings before a court.
- “(4) This section is subject to section 69T.

“69T No privilege against self-incrimination

No person is excused from answering any question or providing any information or document under this Act on the ground that to do so would or might incriminate or tend to incriminate that person.

Compare: 1993 No 107 s 11(4)

“69U Restrictions on use of evidence obtained by summons

The testimony of the person summoned under section 69D in the course of answering a question before, or providing any information or document to, the Commission, or a member,

officer, or employee of the Commission, is not admissible as evidence in criminal proceedings against that person (except in a proceeding in respect of the falsity of the testimony).

Compare: 1993 No 107 s 11(5), (6)

“69V Limitation on disclosure of information obtained in Commission’s operations

“(1) No court or other person may require a member, an officer, or an employee of the Commission, any delegate of the Commission, any expert appointed by the Commission, or any other person present at a meeting of the Commission to—

“(a) give evidence in court or in any proceedings of a judicial nature of anything coming to his or her knowledge in connection with the operations of the Commission; or

“(b) make discovery of a document or produce a document for inspection in court or in any proceedings of a judicial nature if the document was provided or obtained in connection with the operations of the Commission.

“(2) Subsection (1) does not apply to—

“(a) proceedings in respect of the falsity of any testimony; or

“(b) proceedings to which the Commission is a party; or

“(c) proceedings in respect of—

“(i) an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or

“(ii) the offence of conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or

“(iii) the offence of attempting to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.

“(3) This section does not limit the application of the Official Information Act 1982.

Compare: 1978 No 103 s 28(4), (5); 1993 No 107 s 11(7), (8)”

24 New Part 4 heading inserted

The principal Act is amended by inserting, before section 70, the following heading:

“Part 4 “Regulations”.

25 Regulations and Orders in Council

- (1) Section 70(1) of the principal Act is amended by omitting the words “in accordance with the recommendation of the Commission”, and substituting the words “on the recommendation of the Minister in accordance with subsection (3)”.
- (2) Section 70(2) of the principal Act is amended by omitting the words “in accordance with the recommendation of the Commission”, and substituting the words “on the recommendation of the Minister in accordance with subsection (3)”.
- (3) Section 70 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
“(3) The Minister must consult with the Commission before making a recommendation under subsection (1) or subsection (2).”

26 New Part 5 inserted

The principal Act is amended by inserting, after section 70A, the following Part:

“Part 5 “Recognition and application regimes

“Subpart 1—Preliminary

“71 Purpose of this Part

The purpose of this Part is to enable recognition and application regimes to be implemented that—

- “(a) provide for exemptions from Part II and the Regulations so that issuers may offer securities in New Zealand in accordance with the securities laws of designated countries;
- “(b) extend the territorial scope of Part II and the Regulations so that issuers may offer securities in designated countries in accordance with New Zealand securities laws, and investors in those countries may rely on and enforce those laws;
- “(c) provide for enforcement in New Zealand of fines and pecuniary penalties imposed for breaches of securities laws of designated countries.

“72 Definition of country in this Part

In this Part, **country** includes a state, a territory, a country, or a group of countries in respect of which a single securities law, or set of laws, is in force.

“Subpart 2—Exemption from Part II and Regulations for New Zealand offers under recognition regime

“73 Exemption from Part II and Regulations for New Zealand offers under recognition regime

“(1) A provision of Part II or the Regulations does not apply to a security offered to a person in New Zealand if—

“(a) a recognition regime set out in regulations made under section 74 applies to the security; and

“(b) the recognition regime provides an exemption from that provision for the security; and

“(c) the issuer of the security has opted into the recognition regime; and

“(d) any other preconditions of the recognition regime are met.

“(2) For the purposes of subsection (1), an issuer opts into a recognition regime in respect of a security by notifying the Registrar—

“(a) that an offer of the security is to be made under the recognition regime; and

“(b) of the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the issuer.

“74 Power to exempt from Part II and Regulations under recognition regime

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing a recognition regime for a designated country, that provide for—

“(a) exemptions from provisions of Part II and the Regulations; and

“(b) the other matters set out in section 75.

“(2) The Minister may recommend making an Order in Council under this section only—

- “(a) if he or she is satisfied that it is in the public interest after having regard to—
 - “(i) the securities laws of the designated country; and
 - “(ii) the interests of New Zealand investors; and
- “(b) after consulting with the Commission.

“75 Matters that must be stated in regulations implementing recognition regime

- “(1) The regulations made under section 74 must state—
 - “(a) the country to which the recognition regime applies; and
 - “(b) the classes of securities to which the recognition regime applies (whether by reference to type of issuer, offer, or any other matter); and
 - “(c) the exemptions from provisions of Part II and the Regulations for those securities; and
 - “(d) the preconditions that must be met for the recognition regime to apply, for example (without limitation), requiring specified information relating to the offer or securities to be provided to the Commission or Registrar; and
 - “(e) the terms and conditions that must be complied with under the recognition regime, for example (without limitation), requiring—
 - “(i) the offer of the securities to be made in accordance with specified provisions of the designated country’s laws;
 - “(ii) warnings to be given to investors so as to inform them that the offer of the securities is regulated under the designated country’s laws and that New Zealand securities laws do not apply to the offer;
 - “(iii) specified information relating to the offer or securities to be provided to the Commission or Registrar.
- “(2) Regulations may provide different exemptions, preconditions, and terms and conditions for different classes of securities, offers, persons, or circumstances.

“76 Offence for breach of regulations implementing recognition regime

- “(1) If there is a contravention, in respect of a security, of a term or condition that must be complied with under a recognition regime, each of the following persons commits an offence:
- “(a) the issuer of the security; and
 - “(b) every person who is a principal officer of the issuer at the time of the contravention; and
 - “(c) every promoter of the security; and
 - “(d) every person who has authorised himself or herself to be named and is named in any advertisement relating to the security as a director of the issuer or as having agreed to become a director either immediately or after an interval of time.
- “(2) A person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$300,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- “(3) No person may be convicted under subsection (1) for a contravention if—
- “(a) the contravention was for matters that, in the opinion of the Court, were immaterial, or that otherwise, in the opinion of the Court, having regard to all the circumstances of the case, ought reasonably to be excused; or
 - “(b) in the case of a person other than the issuer, in the opinion of the Court dealing with the case, the contravention did not take place with the person’s knowledge and consent.

“Subpart 3—Extension of Part II and Regulations to overseas offers under application regime

“77 Extension of Part II and Regulations to overseas offers under application regime

A provision of Part II or the Regulations applies to a security that is offered to a person outside New Zealand if—

- “(a) an application regime set out in regulations made under section 78 applies to the security; and
- “(b) the application regime applies that provision to the security; and

“(c) any other preconditions of the application regime are met.

“78 Power to extend Part II and Regulations under application regime

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the purpose of implementing an application regime for a designated country, that provide for—

“(a) the application of provisions of Part II and the Regulations to securities offered to persons in that country; and

“(b) the other matters set out in section 79.

“(2) The Minister may recommend making an Order in Council under this section only—

“(a) if he or she is satisfied that it is appropriate for New Zealand securities laws to apply to securities offered to persons in the designated country as set out in the proposed application regime; and

“(b) after consulting with the Commission.

“79 Matters that must be stated in regulations implementing application regime

“(1) The regulations made under section 78 must state—

“(a) the country to which the application regime applies; and

“(b) the classes of securities to which the application regime applies (whether by reference to type of issuer, offer, or any other matter); and

“(c) the provisions of Part II and the Regulations that apply to those securities; and

“(d) whether or not, or the extent to which, exemptions from those provisions granted by the Commission under section 5(5) may also apply for those securities; and

“(e) the preconditions (if any) that must be met for the application regime to apply; and

“(f) the terms and conditions (if any) that must be complied with under the application regime.

“(2) The regulations may provide different applications of provisions, preconditions, and terms and conditions for different classes of securities, offers, persons, or circumstances.

“Subpart 4—Enforcement of overseas pecuniary penalties under application regime

“80 **Enforcement of overseas pecuniary penalties under application regime**

This subpart applies to a judgment given by a court under a provision of the law of another country if—

- “(a) an application regime set out in regulations made under section 81 applies this subpart to that provision of the law of that country; and
- “(b) the judgment requires payment of a pecuniary penalty; and
- “(c) any other preconditions of the application regime are met.

“81 **Power to enforce overseas pecuniary penalties under application regime**

The Governor-General may, by Order in Council made on the recommendation of the Minister, for the purpose of implementing an application regime for a designated country, make regulations that provide for—

- “(a) the application of this subpart to provisions of the securities laws of that country under or in respect of which a pecuniary penalty may be imposed; and
- “(b) the preconditions of the application regime (if any).

“82 **Interpretation**

In this subpart, unless the context requires otherwise,—

“**court of rendition**, in relation to a judgment, means the court by which the judgment was given

“**enforcement**, in relation to a judgment, includes execution of a judgment

“**judgment** includes an order

“**pecuniary penalty** means a fine or other pecuniary penalty (whether criminal or civil)

“**place of rendition**, in relation to a judgment, means the country in which the court of rendition is established

“**registered judgment** means a judgment that is registered under section 83.

“83 **Registration of judgment**

The High Court must register a judgment to which this subpart applies under section 80 if an application is made to it in accordance with regulations made under section 90.

“84 **Effect of registration**

A registered judgment—

“(a) has the same force and effect; and

“(b) subject to sections 85 and 86, may give rise to the same proceedings by way of enforcement—
as if the judgment had been given by the High Court.

“85 **Enforceability of registered judgment**

A registered judgment is capable of being enforced in or by the High Court only if, and to the extent that, at the time when the proceeding for enforcement is or is to be taken, the judgment is capable of being enforced in or by—

“(a) the court of rendition; or

“(b) a court in the place of rendition.

“86 **Stay may be granted**

“(1) The High Court may, on application by a person against whom the registered judgment has been given, order that proceedings in the High Court to enforce the judgment—

“(a) not be commenced until a specified time; or

“(b) be stayed for a specified period.

“(2) The order—

“(a) must be made subject to conditions that—

“(i) within the period specified in the order, the person make and prosecute an appropriate application for relief in respect of the registered judgment; and

“(ii) the application be prosecuted in an expeditious manner; and

“(b) may be made subject to other conditions, including as to the giving of security, that the High Court thinks fit.

“(3) For the purposes of subsection (2)(a)(i), an **appropriate application for relief** is an application to set aside, vary, or appeal against the registered judgment that is made to a court or tribunal that has jurisdiction under the law in force in the place of rendition to grant the application.

“87 Costs

“(1) The following are recoverable in proceedings by way of enforcement of a registered judgment:

“(a) the reasonable costs and expenses of, and incidental to, obtaining and lodging the copy of the judgment; and

“(b) the costs and expenses reasonably incurred in attempting to execute the judgment in the court of rendition.

“(2) The entitlement of a person to, and the liability of a person for, the costs or expenses of, and incidental to, those proceedings are the same as they are in proceedings by way of enforcement of—

“(a) a similar judgment given by the High Court; or

“(b) if there is no such similar judgment, the most closely analogous judgment given by the High Court.

“88 Interest

Interest on the amount of a registered judgment—

“(a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the court of rendition; and

“(b) is recoverable to the extent that the judgment creditor satisfies the High Court as to the amount of the interest.

“89 Rules of private international law not to apply

If a judgment is registered in the High Court under this subpart, the courts of New Zealand must not, merely because of the operation of a rule of private international law, refuse to permit proceedings by way of enforcement of the registered judgment to be taken or continued.

“90 Other regulations for registration of judgments under application regime

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the registration of judgments under this subpart, including (without limitation) providing for—

“(a) the verification requirements for those judgments:

“(b) the registration and service of facsimiles of those judgments:

“(c) the service of notice of registration of those judgments:

“(d) other requirements for the way in which those judgments may be registered (for example, the currency of registrations and the registration of partly satisfied judgments).”

27 Part III repealed

The principal Act is amended by repealing Part III (which relates to amendments to other Acts).

28 Associated amendment to Unit Trusts Act 1960

Section 2 of the Unit Trusts Act 1960 is amended by inserting in the definition of the term **unit trust**, after the words “whether made before or after the commencement of this Act,”, the words “that is established under New Zealand law and”.

Legislative history

19 November 2002	Divided from Securities Markets and Institutions Bill (Bill 170-2), third reading
26 November 2002	Royal assent

This Act is administered in the Ministry of Economic Development.
