

BUSINESS LAW REFORM BILL

EXPLANATORY NOTE

The Business Committee of the House has agreed to the introduction of this Bill under Standing Order 259 (c). Standing Order 259 (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.

GENERAL POLICY STATEMENT

The Government is concerned to ensure that the law affecting the operation of business is clear, efficient, and effective. This Bill represents a stage in the incremental improvement of existing business law to achieve these goals. The Government is also concerned to effect such substantive policy and technical amendments in a more timely manner through an omnibus Business Law Reform Bill.

The Bill contains various amendments to a number of business law statutes. Most of the amendments contained in the Bill are based upon suggestions from business law practitioners, enforcement agencies, and the business community. The Bill also includes outstanding recommendations of the Company Law Monitoring Group, which was set up to monitor the introduction of the 1993 company law reform package. In general, the amendments—

- Clarify and update various statutory provisions to ensure effect is given to the intended purpose of the provision; and
- Remove unnecessary compliance costs, for example, by providing flexibility in certain cases for parties to alter their rights and obligations by agreement and alternative procedures to requiring application to the High Court for administrative matters; and
- Ensure consistency between different legislative requirements.

The Bill addresses what consultation indicates are some of the business community's prime concerns with legislation. These are the cumulative costs of complying with legislation and 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, enterprise, and innovation in the economy.

CLAUSE BY CLAUSE ANALYSIS

This Bill makes various amendments to a number of different Acts. It is intended that the Bill will be divided into separate Bills at the committee of the whole House stage.

PART 1

COMPANIES ACT 1955

Clause 3 (1) substitutes *new sections 108 to 108c* in Part IV of the principal Act (which relates to the registration of company charges).

The Companies Act 1955 was repealed on 1 July 1997, but Part IV continues in force despite its repeal (*see* section 6 of the Companies (Registration of Charges) Act 1993, which will be amended by *Part 3* of the Bill so that Part IV of the Companies Act 1955 itself can be amended).

The purpose of *new section 108*, which enables the Registrar of Companies to extend the time for registration of a charge or to correct a mistake in the register of charges, is to provide an alternative to the procedure for Court-ordered extensions of time for registration of a charge or rectification of the register under the present section 108.

Before, however, the Registrar may exercise any of those powers in *new section 108*,—

- The Registrar must be satisfied that the failure to register the charge within the time required by the Act or the mistake in the register of charges was accidental, due to inadvertence or to some other good reason, or is not likely to prejudice the position of creditors or shareholders of the company; and
- The Registrar has given public notice setting out details relating to the Registrar's proposed action; and
- The Registrar has not received any objection to that proposed action within the time specified in the notice.

New section 108A, which is not affected by *new section 108*, carries over the present 108 of the Act containing the Court's power to order that the time for registration of a charge be extended or that the register of charges be corrected.

New section 108B provides that *new sections 108 and 108A* apply to charges created before the commencement of the Bill and registrable under Part IV of the 1955 Companies Act.

New section 108c carries over the existing section 108A relating to the form of certificates.

PART 2

COMPANIES ACT 1993

Clause 5 amends section 36 of the principal Act (which relates to the rights and powers attaching to shares).

Section 36 (1) sets out the rights attaching to a share in a company.

Section 36 (2) provides that such rights may be negated, altered, or added to by the company's constitution or by the terms of issue of the shares under section 41 or section 42 or section 44 of the Act.

The amendment inserts a reference in section 36 (2) to section 107 (2) of the Act, which relates to the issue of shares otherwise than in accordance with section 42 or section 44 or section 45, if all entitled persons have agreed or concur.

The effect of the amendment is that rights attaching to shares under section 36 (1) will be capable of being altered by the agreement of all entitled persons to issue shares.

Clause 6 amends section 40 of the principal Act (which relates to when contracts for the issue of shares are illegal contracts).

At present, section 40 provides that a contract for the issue of shares is an illegal contract unless the board is entitled to issue the shares and has complied with section 47 or section 49 of the Act.

The amendment provides other instances of when a contract for the issue of shares is not an illegal contract.

A contract for the issue of shares is not an illegal contract if the board is entitled to issue the shares and either—

- All entitled persons agree or concur with the issue of the shares under section 107 (2); or
- The contract or deed expressly provides that the contract or deed is subject to the board complying with section 47 or section 49, or all entitled persons agreeing to or concurring with the issue of the shares under section 107 (2).

Clause 7 amends section 85 of the principal Act (which relates to when a company may refuse to complete or delay the registration of the transfer of shares that have been transferred under a system of transfer approved under section 7 of the Securities Transfer Act 1991).

Clause 7 adds another ground on which a company may refuse to complete or delay registration. This is that the company may refuse to complete or delay the registration or the transfer of shares if the form of transfer of shares does not contain any identification number assigned to the shares or issued to the holder of the shares under a system of transfer approved under section 7 of the Securities Transfer Act 1991.

Clause 8 amends section 95 (2) of the principal Act (which provides that the requirements relating to when a company must send a share certificate to a holder of the shares do not apply in the case of shares that can be transferred under a system approved under the Securities Transfer Act 1991 without a share certificate).

The effect of the amendment is that where a share certificate was issued, but the shares can be transferred under a system approved under the Securities Transfer Act 1991 without a share certificate, the share certificate or evidence of its loss is not required to accompany the form of transfer before the company may register the transfer of the shares.

Clause 9 amends section 107 (1) (c) of the principal Act (which provides that if all entitled persons agree, a company's shares may be acquired other than in accordance with sections 58 to 65).

The amendment, which replaces the reference to section 58 with the reference to section 59, has the effect of requiring the board of a company to comply with the requirements of section 58 (which requires the board to deliver to the Registrar a notice of the share buy-back within 10 working days of the purchase (*see* section 58 (3) of the Act)).

Clause 10 amends section 126 (1) (b) and (c) (which provide that, for the purposes of certain sections of the Act, certain persons are directors, for example, a person whose directions are followed by a director or the board).

At present, those persons would not be directors for the purposes of being disqualified from acting as a director under section 383 or being prohibited from managing a company under section 385.

Accordingly, the effect of the amendment is to treat those persons as directors for the purposes of those provisions.

Clause 11 amends section 129 (2A) of the principal Act (which effectively provides that a transaction that is a charge secured over more than half the value

of the company's assets is not a major transaction and as such does not need to be approved by special resolution or is not contingent on approval by special resolution).

The amendment inserts in subsection (2A) a reference to paragraph (b) of the definition of "major transaction" as it is possible that a disposition of assets, as well as a transaction referred to in paragraph (c) of that definition, may be involved in a security transaction.

The effect of the amendment is that a charge arising out of a disposition of assets that are more than half the value of the company's assets is also excluded from the requirements relating to major transactions.

Clause 12 amends section 140 (2) of the principal Act (which provides what constitutes adequate disclosure of a director's interest in a transaction or proposed transaction with the company).

The amendment clarifies that when a director is interested in a transaction and the company has more than 1 director, the director must enter a notice in the interests register and also make disclosure to the board of the company.

The present requirements in section 140 (2) as to what constitutes sufficient disclosure of that interest have not been altered.

Clause 13 inserts a *new section 258A* in the principal Act, which requires a liquidator who considers that an offence has been committed against that Act or certain other Acts to report that fact to the Registrar.

A liquidator who does not comply with that requirement commits an offence and is liable to the penalty set out in section 373 (2), which is a fine not exceeding \$10,000.

There is a similar requirement in respect of receivers (*see* section 28 of the Receiverships Act 1993).

Clause 14 inserts a *new subsection (6A)* in section 261 of the principal Act (which enables a liquidator, by notice in writing, to require certain persons to provide company records, documents, and certain other information about the company).

The *new subsection (6A)* makes it an offence for a person not to comply with such a notice.

A person who commits that offence is liable on conviction to the penalty set out in section 373 (3) (which is a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years).

Clause 15 consequentially amends section 373 (2) and (3) of the principal Act (which sets out the penalties for certain offences against the Act) by adding references to the new offences contained in *new section 258A (2)* and *new subsection (6A)* of section 261.

Clause 16 amends section 385 (5) of the principal Act (which relates to when the Registrar may prohibit a person from being involved in the management of a company for a period not exceeding 5 years).

At present, the Registrar must not exercise such a power unless the Registrar has given not less than 10 working days' notice of that intention to the person concerned and has considered any representations made by the person. Those requirements will continue to apply.

At present, the Securities Commission must also authorise the Registrar to exercise such a power.

The amendment removes the need for the Securities Commission's authorisation.

However, the Registrar's acts or decisions are still subject to appeal under section 370 of the principal Act or to judicial review.

PART 3

COMPANIES (REGISTRATION OF CHARGES) ACT 1993

The amendment in *clause 18* is related to the amendments in *Part 1* (Companies Act 1955).

The effect of the amendment is to enable Part IV and section 463 of the Companies Act 1955 (which, despite their repeal on 1 July 1997, continue in force by virtue of section 6 (1) of the principal Act) to be amended.

PART 4

FAIR TRADING ACT 1986

Clause 20 replaces section 43 (5) of the principal Act (which sets out the limitation period for making a civil court application for relief under the Act).

At present, section 43 (5) provides that the application may be made within 3 years from the time when the matter giving rise to the application occurred.

New section 43 (5) effectively extends that limitation period by beginning it with the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.

Clause 21 is a transitional provision relating to the new limitation period, which will not apply to proceedings that were barred or commenced before the commencement of the Bill.

PART 5

FINANCIAL REPORTING ACT 1993

Clause 23 amends the definition of “exempt company” in section 2 of the principal Act (which relates to interpretation) by removing a reference to an overseas company.

Clause 24 amends section 13 (2) of the principal Act (which provides when group financial statements are not required for a reporting entity that is a company).

At present, section 13 (2) provides that if the reporting entity is a company and its only shareholders comprise a body corporate incorporated in New Zealand, group financial statements are not required in relation to that reporting entity.

The current wording of section 13 (2) does not adequately cover the position where a reporting entity has subsidiaries and has a holding company that is not a reporting entity.

Accordingly, the amendment requires that the holding company must also be a reporting entity.

Clause 25 amends section 18 of the principal Act (which relates to the registration of financial statements by issuers).

The amendment substitutes a *new subsection (3)*, which has the effect of—

- Removing the requirement that the copies of an issuer’s signed financial statements delivered to the Registrar must be certified by directors of the issuer to be correct copies.
- Providing that a person may inspect copies of those financial statements (including the auditor’s report) on payment of the prescribed fee, if any.

Clause 26 amends section 20 of the principal Act (which enables fees payable to the Registrar, and amounts payable to the Registrar by way of penalty, to be prescribed).

This consequential amendment, which alters a cross-reference, arises out of the amendment to section 18 in *clause 25*.

Clause 27 amends section 26 of the principal Act (which requires consultation in respect of the approval by the Accounting Standards Review Board of a financial reporting standard or an amendment to an approved financial reporting standard).

Subclause (1) inserts *new subsection (1A)*, which requires the Privacy Commissioner to be consulted about a financial reporting standard or an amendment to an approved financial standard that is likely to require the disclosure of personal information.

Subclause (2) makes a consequential amendment to section 26 (2) by adding a cross-reference to the *new subsection (1A)*.

Subclause (3) relates to definitions from the Privacy Act 1993.

Clause 28 amends section 33 of the principal Act (which relates to when the Regulations (Disallowance) Act 1989 applies to certain determinations by the Accounting Standards Review Board).

The amendment provides that the Regulations (Disallowance) Act 1989 will also apply to determinations of the Board under section 27 (3A) (which relates to approved financial reporting standards applying or ceasing to apply to a person or categories of person).

Clause 29 consequentially amends section 38 of the principal Act (which relates to offences by directors).

The amendment, which arises out of the amendment to section 18 in *clause 25*, removes the offence provision relating to the requirement for directors to certify copies of an issuer's financial statements.

Clause 30 inserts a *new section 42A* in the principal Act, which relates to when the disclosure of information about an individual is not a breach of principle 10 or principle 11 of the Privacy Act 1993.

The amendment is related to the amendment in *clause 27*.

PART 6

INSOLVENCY ACT 1967

Clause 32 repeals section 43 of the principal Act, which effectively treats loans between spouses differently from other loans by providing that any money or property lent by 1 spouse to the other spouse is to be treated as an asset of the bankrupt spouse's estate, unless it is proved by the lending spouse that the lending took place in good faith and more than 4 years before the adjudication.

Clause 33 replaces section 45 of the principal Act (which, at present, provides that the Court may order a bankrupt to make contributions towards the bankruptcy debts) with *new sections 45, 45A, and 45B*.

New section 45 provides that the Assignee, instead of the Court, may require a bankrupt to make contributions.

Before the Assignee may impose that requirement, the Assignee must—

- Have regard to all the circumstances of the bankruptcy and the bankrupt's conduct, earning power, responsibilities, and prospects; and
- Make reasonable allowance for the maintenance of the bankrupt, the bankrupt's spouse, and bankrupt's family.

New section 45A carries over the present section 45 (2) of the principal Act, which enables the Court to assign or charge in favour of the Assignee any amount payable to the bankrupt.

New section 45B requires the Assignee to apply any payments made under *new sections 45 and 45A* in accordance with section 104 of the principal Act (which relates to priorities in the distribution of assets).

Clause 34 replaces section 62 of the principal Act (which, among other things, prohibits a bankrupt from entering into or carrying on a business).

New section 62 (1) prohibits an undischarged bankrupt who does not have the consent of the Assignee or the Court from, either directly or indirectly,—

- Entering into, carrying on, or taking part in the management or control of any business (which includes the business of a company, trust, or incorporated society, or of a relative of the bankrupt);
- Being employed by any relative of the bankrupt or by any company, trust, or incorporated society, that is in the management or control of a relative of the bankrupt.

Clause 35 amends section 63 (1) of the principal Act (which relates to the arrest of a debtor who is about to leave the country or place of residence with a view to defeating or delaying proceedings under the Act).

Clause 36 amends section 64 of the principal Act (which enables the Court to order that a debtor's property be seized if there is probable ground for believing that the debtor is about to remove that property or is about to leave the country or has left the country).

Both of the amendments clarify that both a debtor's temporary departure and a debtor's permanent departure are covered by the sections.

Clause 37 inserts a *new section 68A* in the principal Act.

The new section enables the Assignee, by written notice, to require the bankrupt, the bankrupt's spouse or any other person to provide the Assignee with documents relating to the bankrupt's dealings or property.

At present, the Assignee must summon those persons under section 68 of the Act in order to obtain those documents.

The *new section 68A* is similar to section 261 (1) of the Companies Act 1993, which relates to a liquidator's power to obtain certain documents and information.

Clause 38 amends section 126 of the principal Act (relating to crimes by a bankrupt).

The amendment is similar to the amendments in *clauses 35 and 36*.

Clause 39 amends section 128 of the principal Act (which relates to summary offences by the bankrupt).

The amendments—

- Increase the maximum term of imprisonment for a summary offence from 3 months to 12 months;
- Makes a similar amendment to the amendment in *clause 38*;
- Provide that an information for any of the summary offences covered by section 128 may be laid within 2 years after the time when the matter of the information arose. At present the limitation period varies from 6 months to 2 years in respect of different summary offences.

Clause 40 amends section 128A of the principal Act (which relates to offences by undischarged bankrupts in relation to the management of companies).

The amendment—

- Increases the maximum term of imprisonment on a summary conviction from 6 months to 12 months;
- Increases the maximum fine payable on a summary conviction from \$1,000 to \$5,000.

PART 7
SECURITIES ACT 1978

Clause 42 makes a number of amendments to the Securities Amendment Act 1988.

Subclause (1) amends section 8 (3), which exempts an insider from liability if—

- Arrangements existed to ensure that no individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information (section 8 (3) (a)); and
- No individual who took part in the decision to buy or sell the securities received, or had access to, the inside information or was influenced, in relation to that decision, by an individual who had the information (section 8 (3) (b)).

The amendment in *subclause (1)* requires every individual who took part in the decision to buy or sell the securities to act in accordance with those arrangements (*see new section 8 (3) (c)*).

Subclause (2) replaces the word “member” with the words “holder of securities” in the following provisions:

- Section 17 (which relates to when holders of a public issuer’s securities may require the issuer to obtain legal advice as to whether the issuer has a cause of action against the insider).
- Section 18 (which relates to when a holder of a public issuer’s securities may exercise the issuer’s right of action against an insider).
- Section 19 (which relates to the distribution of money recovered by a public issuer from an insider).

The purpose of the amendments is to align the terminology in those provisions with the Companies Act 1993. That Act does not use the term member to describe shareholders.

Subclause (3) inserts a *new subsection (4A)* in section 17 of the Securities Amendment Act 1988.

The new subsection provides that any confidential communications between a legal adviser and another person for the purposes of establishing whether a public issuer has a cause of action against the insider are protected by absolute privilege.

At present, a solicitor or barrister who prepares an opinion under section 17 may be subject to a defamation action from a person named in the opinion if the opinion is circulated to other people for comment.

The purpose of the amendment is to encourage the solicitor or barrister to provide a more informed opinion by extending an absolute privilege to such communications.

PART 8
SUPERANNUATION SCHEMES ACT 1989

Clause 44 repeals section 9B (2) of the principal Act (which requires the trustees of each registered superannuation scheme affected by a transfer of members or beneficiaries to notify all members and beneficiaries of the scheme of the proposed transfer and its implications at least 1 month before the date of implementation of the proposed transfer).

The amendment replaces section 9B (2) with *new subsections (2) and (2A)*, which—

- Require the trustees to notify, in writing, all members and beneficiaries of the scheme and the Government Actuary, at least 1 month before the date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees; and
- Set out the contents of that written notification.

The effect of the amendment is to require that members and beneficiaries have sufficient time to consider the proposed transfer before having to determine whether to provide their consent.

At present, the notification must be given at least 1 month before the implementation of the proposed transfer.

Clause 45 inserts *new section 9BA* in the principal Act.

New section 9BA enables the Government Actuary to exempt trustees of a registered superannuation scheme from the requirement to obtain the written consent of all members and beneficiaries of the scheme if—

- The trustees have not been able to contact all members or beneficiaries of the scheme despite having taken all reasonable steps to do so; and
- The proposed action is not unreasonable in relation to the best interests of any member or beneficiary who has not been contacted.

The Government Actuary's decision is subject to section 23 of the Act (which relates to appeals against decisions of the Government Actuary).

Clause 46 (1) amends section 13 (1) of the principal Act (which requires trustees of a registered superannuation scheme to keep proper books of account and to prepare annual accounts in respect of the scheme that are audited).

The amendment requires the annual accounts in respect of the scheme to be prepared in accordance with generally accepted accounting practice as defined in the Financial Reporting Act 1993.

The amendment will require that accounts prepared under this provision are of an adequate standard.

Clause 46 (2) amends section 13 (2) of the principal Act (which relates to an exemption for trustees of a registered superannuation scheme from the requirement that the annual accounts of the scheme must be audited).

The amendment clarifies that those accounts must comply with generally accepted accounting practice as defined in the Financial Reporting Act 1993 in order to require that the accounts prepared under this exemption, while not audited, are of an adequate standard.

Clause 47 amends section 14 of the principal Act (which requires the trustees of a registered superannuation scheme to prepare an annual report on the scheme). The amendment—

- Changes from 6 months to 5 months, after the end of each financial year, the time within which the report must be prepared. That amended timeframe is consistent with the time specified in the Financial Reporting Act 1993 for preparing financial statements and is the same timeframe as that specified in the Companies Act 1993 for the preparation of annual reports for non-exempt companies. This will enable more timely information to be received by the trustee, while still providing sufficient time for the completion of the Actuary's report;
- Specifies that a copy of the completed annual report must be forwarded to the Government Actuary within 28 days after its completion. At present, no timeframe is specified.

Clause 48 amends section 15 of the principal Act (which relates to an actuarial examination of the financial position of certain superannuation schemes every 3 years).

The amendment—

- Changes from 9 months to 7 months, after the date as at which the financial position of the scheme was examined, the time within which the report of the Actuary must be received:
- Specifies that a copy of the actuary's report received by the trustees must be forwarded to the Government Actuary within 28 days after the date of its receipt. At present, no timeframe is specified.

PART 9

UNIT TRUSTS ACT 1960

Clause 50 amends section 20 of the principal Act (which sets out the financial statements, etc, to be filed by the manager of a unit trust).

The section deals with the requirements for managers that are issuers and managers that are not issuers.

The amendment clarifies that, for the purposes of the section, only the manager of a unit trust can be the issuer, not the unit trust.

BUSINESS LAW REFORM

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UNIT TRUSTS ACT 1960

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A BILL INTITULED

An Act to amend certain enactments of Parliament

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Business Law Reform Act 1999.

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

PART 1

COMPANIES ACT 1955

2. Part to be part of Companies Act 1955—This Part is part of the Companies Act 1955* (in this Part referred to as the principal Act).

*R.S. Vol. 15, p. 89

Amendments: 1985, No. 80; 1986, No. 80; 1987, No. 133; 1989, No. 101; 1990, No. 18; 1993, Nos. 105, 108; 1994, Nos. 4, 7, 81; 1996, No. 114; 1997, No. 26

3. New sections substituted—(1) The principal Act is amended by repealing sections 108 and 108A, and substituting the following sections:

“108. Registrar may extend time for registration of charge or correct register of charges—(1) The Registrar may, on the application of the company or any person interested, extend the time for registration of a charge, or correct a mistake in the register of charges, if—

“(a) The Registrar is satisfied that the failure to register the charge within the time required by this Act or the mistake in the register of charges—

“(i) Was accidental or due to inadvertence or to some other good reason; or

“(ii) Is not likely to prejudice the position of creditors or shareholders of the company; and

“(b) The Registrar has given public notice setting out—

“(i) The name of the company; and

“(ii) The name and address of the applicant; and

5 “(iii) The proposed action that the Registrar will take; and

“(iv) The date by which an objection to the Registrar’s proposed action must be delivered to the Registrar, not being less than 20 working days after the date of the notice; and

10 “(c) The Registrar has not received any objection to the Registrar’s proposed action within the time specified in the notice.

“(2) Nothing in this section limits or affects **section 108A**.

15 “**108A. Court may order extension of time for registration of charge or correction of register of charges**—(1) The Court may, on the application of the company or any person interested, and on any terms that the Court considers are just and expedient, order that the time for registration of a charge be extended or that the register of charges be corrected, if—

20 “(a) The Court is satisfied that the failure to register the charge within the time required by this Act or the mistake in the register of charges—

25 “(i) Was accidental or due to inadvertence or to some other good reason; or

“(ii) Is not likely to prejudice the position of creditors or shareholders of the company; or

“(b) On other grounds it is just and equitable to grant relief.

30 “**108B. Application of sections 108 and 108A**—**Sections 108 and 108A** apply to every charge created before the commencement of the **Business Law Reform Act 1999** and registrable under this Part in the same way as those sections apply to every charge created after the commencement of that Act.

35 “**108C. Form of certificates**—For the purposes of sections 102 and 104, a single form of certificate may be prescribed that is adaptable for use under either of those sections.”

(2) Section 122ZH (5) of the Local Government Act 1974 is consequentially amended by inserting, after the expression “section 108, the expression “or **section 108A**”.

PART 2

COMPANIES ACT 1993

4. Part to be part of Companies Act 1993—This Part is part of the Companies Act 1993* (in this Part referred to as the principal Act).

5

*1993, No. 105

Amendments: 1994, Nos. 6, 82; 1996, No. 115; 1997, No. 27; 1998, No. 31

5. Rights and powers attaching to shares—Section 36 (2) of the principal Act is amended by inserting, after the expression “section 44”, the expression “or section 107 (2)”.

6. Contracts for issue of shares—The principal Act is amended by repealing section 40, and substituting the following section: 10

“40. A contract or deed under which a company is or may be required to issue shares, whether on the exercise of an option or on the conversion of securities or otherwise, is an illegal contract for the purposes of the Illegal Contracts Act 1970 unless— 15

“(a) The board is entitled to issue the shares; and

“(b) Either—

“(i) The board has complied with section 47 or section 49; or 20

“(ii) All entitled persons agree or concur with the issue of the shares under section 107 (2); or

“(iii) The contract or deed expressly provides that the contract or deed is subject to—

“(A) The board complying with section 47 or section 49; or 25

“(B) All entitled persons agreeing to or concurring with the issue of the shares under section 107 (2).”

7. Transfer of shares under approved system—Section 85 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph: 30

“(c) Either—

“(i) The Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated; or 35

“(ii) Any identification number assigned to the shares or issued to the holder of the shares under a system of transfer approved under section 7 of the

Securities Transfer Act 1991 is not recorded on the form of transfer of the shares.”

5 **8. Share certificates**—Section 95 (2) of the principal Act is amended by omitting the words “of this section”, and substituting the expression “or subsection (5)”.

9. Unanimous assent to certain types of action—Section 107 (1)(c) of the principal Act is amended by omitting the expression “58”, and substituting the expression “59”.

10 **10. Meaning of director**—Section 126 (1) of the principal Act is amended by omitting from paragraphs (b) and (c) the words “and 301 of this Act”, and substituting in each case the expression “301, 383, and 385”.

15 **11. Major transactions**—Section 129 (2A) of the principal Act is amended by inserting, before the word “paragraph”, the words “paragraph (b) or”.

12. Disclosure of interest—Section 140 (2) of the principal Act is amended by omitting the word “or” in the first place where it appears, and substituting the words “and, if the company has more than 1 director,”.

20 **13. Duty to notify suspected offences**—The principal Act is amended by inserting, after section 258, the following section:

 “258A. (1) A liquidator of a company who considers that an offence has been committed by the company or any director of the company against this Act or any of the following Acts must report that fact to the Registrar:

25 “(a) The Companies Act 1955:

 “(b) The Securities Act 1978:

 “(c) The Financial Reporting Act 1993:

30 “(d) The Takeovers Act 1993.

 “(2) A liquidator who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373 (2).”

35 **14. Power to obtain documents and information**—Section 261 of the principal Act is amended by inserting, after subsection (6), the following subsection:

 “(6A) A person who fails to comply with a notice given under this section commits an offence and is liable on conviction to the penalty set out in section 373 (3).”

15. Penalty for failure to comply with Act—(1) Section 373 (2) of the principal Act is amended by inserting, after paragraph (m), the following paragraph:

“(ma) Section 258A (2) (which relates to the duty of liquidators to notify suspected offences):” 5

(2) Section 373 (3) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

“(a) Section 261 (6A) (which relates to the power of liquidators to obtain documents and information): 10

“(b) Section 273 (2) (which relates to certain prohibited conduct):

“(c) Section 274 (2) (which relates to the duty to identify and deliver property).”

16. Registrar may prohibit persons from managing companies—Section 385 of the principal Act is amended by repealing subsection (5), and substituting the following subsection: 15

“(5) The Registrar must not exercise the power conferred by subsection (3) unless— 20

“(a) Not less than 10 working days’ notice of the fact that the Registrar intends to consider the exercise of it is given to the person; and

“(b) The Registrar considers any representations made by the person.” 25

PART 3

COMPANIES (REGISTRATION OF CHARGES) ACT 1993

17. Part to be part of Companies (Registration of Charges) Act 1993—This Part is part of the Companies (Registration of Charges) Act 1993* (in this Part referred to as the principal Act). 30

*1993, No. 125

Amendments: 1994, No. 9; 1997, No. 15

18. Savings—Section 6 (1) of the principal Act is amended by adding the words “, and may be amended as if they had not been repealed.”

PART 4

FAIR TRADING ACT 1986

5 **19. Part to be part of Fair Trading Act 1986**—This Part is part of the Fair Trading Act 1986* (in this Part referred to as the principal Act).

*1986, No. 121

Amendments: 1990, No. 42; 1994, No. 124; 1997, No. 43

20. Other orders—Section 43 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

10 “(5) An application under subsection (1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.”

21. Provisions as to proceedings already barred and pending proceedings—Nothing in this Act—

- 15 (a) Enables any proceedings to be brought which were barred before the commencement of this Act; or
(b) Affects any proceedings commenced before the commencement of this Act.

PART 5

FINANCIAL REPORTING ACT 1993

20 **22. Part to be part of Financial Reporting Act 1993**—This Part is part of the Financial Reporting Act 1993* (in this Part referred to as the principal Act).

*1993, No. 106

Amendments: 1994, No. 11; 1996, Nos. 86, 103, 122; 1997, Nos. 17, 45

25 **23. Interpretation**—Section 2 of the principal Act is amended by omitting from the definition of the term “exempt company” in subsection (1) the words “an overseas company or”.

24. Obligation to prepare group financial statements—Section 13 (2) of the principal Act is amended by inserting, after the word “comprise”, the words “a reporting entity that is”.

25. Registration of financial statements by issuers—Section 18 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

35 “(3) Any person may, on payment of the prescribed fee (if any), inspect the copies of an issuer’s financial statements and

auditor's report on those statements delivered to the Registrar under subsection (1)."

26. Fees—Section 20 (a) of the principal Act is amended by inserting, after the expression "18 (2)", the expression "or section 18 (3)".

5

27. Consultation—(1) Section 26 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) The Board must not approve a financial reporting standard, or an amendment to an approved financial reporting standard, that is likely to require the disclosure of personal information unless—

10

"(a) The Board is satisfied that,—

"(i) In the case of a standard or amendment based on a standard or amendment adopted by the Institute of Chartered Accountants of New Zealand or the organisation or person by whom it was submitted to the Board, the Institute or organisation or person, as the case may be, consulted with the Privacy Commissioner before the standard or amendment was adopted; or

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"(ii) In the case of a standard or amendment based on a standard or amendment that was not adopted by the Institute of Chartered Accountants of New Zealand or organisation or person by whom it was submitted to the Board, the Institute or organisation or person, as the case may be, consulted with the Privacy Commissioner before the standard or amendment was submitted to the Board; or

25

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"(b) The Board has consulted with the Privacy Commissioner."

(2) Section 26 (2) of the principal Act is amended by omitting the words "of this section shall", and substituting the words "or subsection (1A) does".

35

(3) Section 26 of the principal Act is amended by adding the following subsection:

"(3) In subsection (1A), 'personal information' and 'Privacy Commissioner' have the same meanings as in section 2 of the Privacy Act 1993."

40

28. Disallowance of determinations by House of Representatives—The principal Act is amended by repealing section 33, and substituting the following section:

5 “33. The Regulations (Disallowance) Act 1989 applies to the following determinations of the Board as if the determination were a regulation within the meaning of that Act:

“(a) Any approval of a financial reporting standard and any amendment to an approved financial reporting standard:

10 “(b) Any revocation of an approval of an approved financial reporting standard:

“(c) Any determination made under section 27 (3A).”

29. Offences by directors of issuers—Section 38 of the principal Act is amended—

15 (a) By omitting from paragraph (b) the expression “section 18 (1) of this Act; or”, and substituting the expression “section 18 (1),—”:

(b) By repealing paragraph (c).

20 **30. Privacy Act 1993**—The principal Act is amended by inserting, after section 42, the following section:

25 “42A. The disclosure of personal information (as defined in section 2 of the Privacy Act 1993) is not a breach of principle 10 or principle 11 of that Act, if the disclosure is required for compliance with an applicable financial reporting standard that was approved after the commencement of the Business Law Reform Act 1999.”

PART 6

INSOLVENCY ACT 1967

30 **31. Part to be part of Insolvency Act 1967**—This Part is part of the Insolvency Act 1967* (in this Part referred to as the principal Act).

*R.S. Vol. 18, p.289

Amendments: 1987, No. 146; 1990, No. 7; 1993, No. 116; 1994, No. 40; 1998, No. 50

32. Repeal of section 43—Section 43 of the principal Act is repealed.

35 **33. New sections substituted**—The principal Act is amended by repealing section 45, and substituting the following sections:

“45. **Assignee may require bankrupt to contribute towards payment of debts**—(1) A bankrupt must pay any

amount, or make periodic payments, to the Assignee as required by the Assignee during the bankruptcy.

“(2) The Assignee may impose conditions in respect of those payments.

“(3) Before the Assignee may require the bankrupt to make those payments, the Assignee must— 5

“(a) Have regard to all the circumstances of the bankruptcy and the bankrupt’s conduct, earning power, responsibilities, and prospects; and

“(b) Make reasonable allowance for the maintenance of the bankrupt, the bankrupt’s spouse, and the bankrupt’s family. 10

“(4) The Court may, on the application of the bankrupt or any creditor,—

“(a) Vary, suspend, or cancel the bankrupt’s obligation to make the payments under this section: 15

“(b) Remit any arrears owing by the bankrupt.

“**45A. Court may order that money due to bankrupt be assigned to Assignee**—(1) The Court may, on the application of the Assignee, make an order assigning or charging to or in favour of the Assignee any money due to the bankrupt or to become due or payable to the bankrupt. 20

“(2) That assignment or charge operates as a discharge to the person who pays the Assignee.

“**45B. Application of section 104 to payments by bankrupt or assignments by Court**—The Assignee must apply the following payments in accordance with section 104: 25

“(a) Any amount paid by the bankrupt under **section 45**:

“(b) Any amount paid to the Assignee under an order made under **section 45A**.” 30

34. Prohibition of bankrupt entering business—The principal Act is amended by repealing section 62, and substituting the following section:

“62. (1) An undischarged bankrupt must not, without the consent of the Assignee or the Court either directly or indirectly,— 35

“(a) Enter into, carry on, or take part in the management or control of, any business:

“(b) Be employed by a relative of the bankrupt or by any company, trust, or incorporated society, that is managed or controlled by a relative of the bankrupt. 40

“(2) Nothing in this section restricts section 151 of the Companies Act 1993.”

- 35. Court may order debtor to be arrested**—Section 63 (1) of the principal Act is amended by inserting, after the word “residence”, the words “either temporarily or permanently”.
- 5 **36. Court may order debtor’s property to be seized**—Section 64 (1) (b) of the principal Act is amended by inserting, after the word “residence”, the words “either temporarily or permanently”.
- 10 **37. Assignee may obtain documents**—The principal Act is amended by inserting, after section 68, the following section:
“68A. The Assignee may, by notice in writing, require the bankrupt, the bankrupt’s spouse, or any other person to deliver to the Assignee any book, paper, or document relating to the dealings or property of the bankrupt in that person’s possession or under that person’s control as the Assignee requires.”
- 15 **38. Crimes by bankrupt**—Section 126 (1) (k) of the principal Act is amended by inserting, after the words “New Zealand” wherever they appear, the words “either temporarily or permanently”.
- 20 **39. Summary offences**—(1) Section 128 of the principal Act is amended—
(a) By omitting from subsection (1) the expression “3 months”, and substituting the expression “12 months”:
25 (b) By inserting in subsection (1) (f), after the words “New Zealand” wherever they appear, the words “either temporarily or permanently”.
(2) Section 128 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following
30 subsection:
“ (2) Despite anything in section 14 of the Summary Proceedings Act 1957, any information for any of the offences in paragraphs (a) to (g) of subsection (1) may be laid against a bankrupt at any time within 2 years after the time when the
35 matter of the information arose.”
- 40 **40. Offences by undischarged bankrupts in relation to management of companies**—Section 128A (1) of the principal Act is amended—
(a) By omitting the expression “6 months”, and substituting the expression “12 months”:

- (b) By omitting the expression “\$1,000”, and substituting the expression “\$5,000”.

PART 7

SECURITIES ACT 1978

41. Part to be part of Securities Act 1978—This Part is part of the Securities Act 1978*.

*R.S. Vol. 33, p. 587

Amendments: 1996, No. 100; 1997, Nos. 16, 54; 1998, No. 59

42. Amendments to Securities Amendment Act 1988—

(1) Section 8 (3) of the Securities Amendment Act 1988 is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph:

“(c) Every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).”

(2) Sections 17, 18, and 19 (2)(a) of the Securities Amendment Act 1988 are amended by omitting the word “member” wherever it appears, and substituting in each case the words “holder of securities”.

(3) Section 17 of the Securities Amendment Act 1988 is amended by inserting, after subsection (4), the following subsection:

“(4A) Any confidential communications between the solicitor or barrister and any other person for the purposes of establishing whether the public issuer has a cause of action against the insider, are protected by absolute privilege.”

PART 8

SUPERANNUATION SCHEMES ACT 1989

43. Part to be part of Superannuation Schemes Act 1989—This Part is part of the Superannuation Schemes Act 1989*(in this Part referred to as the principal Act).

*R.S. Vol. 38, p. 815

44. Implied provision as to transfer of members, etc—

Section 9B of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

“(2) The trustees of each registered superannuation scheme affected must notify all members and beneficiaries of the scheme and the Government Actuary in accordance with subsection (2A) if it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of members or beneficiaries—

“(a) From a registered superannuation scheme to any other superannuation scheme; or

“(b) From a superannuation scheme to a registered superannuation scheme.

5 “(2A) At least 1 month before the date by which the written consent of members and beneficiaries to a proposed transfer referred to in **subsection (2)** must be received by the trustees of each registered superannuation scheme affected,—

10 “(a) The trustees must notify all members and beneficiaries of the scheme in writing of—

“(i) The proposed transfer and its implications for members and beneficiaries; and

“(ii) The date on which the proposed transfer is to occur; and

15 “(iii) The date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees; and

“(iv) The fact that a copy of the notice has been forwarded to the Government Actuary; and

20 “(b) The trustees must notify the Government Actuary in writing of—

“(i) The proposed transfer and its implications for members and beneficiaries; and

25 “(ii) The date on which the proposed transfer is to occur; and

“(iii) The date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees.”

30 **45. Government Actuary may exempt trustees from requirement to obtain written consent of all members and beneficiaries**—The principal Act is amended by inserting, after section 9B, the following section:

35 “9BA. (1) The Government Actuary may exempt trustees of a registered superannuation scheme from the requirement to obtain the written consent of all members and beneficiaries of the scheme under sections 9 and 9B if the Government Actuary is satisfied that—

40 “(a) The trustees have not been able to contact all members or beneficiaries of the scheme despite having taken all reasonable steps to do so; and

“(b) The proposed action is not unreasonable in relation to the best interests of any member or beneficiary who has not been contacted.

“(2) To avoid doubt, any exemption given by the Government Actuary under this section is subject to section 23.”

46. Accounts—(1) Section 13 (1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph: 5

“(b) Annual accounts in respect of the scheme are prepared in accordance with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and” 10

(2) Section 13 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) That administration manager has prepared annual accounts in respect of the scheme that comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and” 15

47. Annual reports—(1) Section 14 (1) of the principal Act is amended by omitting the expression “6 months”, and substituting the expression “5 months” 20

(2) Section 14 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) The trustees must send a copy of the completed report to the Government Actuary within 28 days after its completion.” 25

48. Actuarial examination—(1) Section 15 (2) of the principal Act is amended by omitting the expression “9 months”, and substituting the expression “7 months”.

(2) Section 15 of the principal Act is amended by repealing subsection (3), and substituting the following subsection: 30

“(3) The trustees must send a copy of the report of the actuary to the Government Actuary within 28 days after the date of its receipt by the trustees.”

PART 9 35

UNIT TRUSTS ACT 1960

49. Part to be part of Unit Trusts Act 1960—This Part is part of the Unit Trusts Act 1960* (in this Part referred to as the principal Act).

*R.S. Vol. 10, p. 953

Amendments: 1987, No. 158; 1996, No. 101; 1998, No. 64

50. Accounts, etc, to be filed—Section 20 of the principal Act is amended—

- 5
- (a) By omitting from subsection (2) the words “of each unit trust, not being”, and substituting the words “, in relation to each unit trust, that is not”:
 - (b) By omitting from subsection (2A) the words “of each unit trust”, and substituting the words “, in relation to each unit trust,”.