

## BANK OF NEW ZEALAND AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Bank of New Zealand Act 1979.

*Clause 1* relates to the Short Title.

*Clause 2* substitutes a *new section 2* in the principal Act relating to the interpretation of terms used in the principal Act.

*Clause 3* removes the prohibition contained in section 5 of the principal Act against the Bank carrying on a business that is not a business commonly carried on by a trading bank without the consent of the Minister of Finance.

*Clause 4* removes the prohibition contained in section 6 (3) of the principal Act against the Bank, without the consent of the Minister of Finance, subscribing for or acquiring shares in a company or corporation which, together with any shares to which the Bank is beneficially entitled, carry the right to exercise or control the exercise of more than one-fifth of the voting power at any general meeting of the company or corporation.

*Clause 5* repeals sections 7, 8, and 9 of the principal Act, and substitutes *new sections 7, 7A, 8, and 8A to 8C*.

The *new section 7* provides that the capital of the Bank shall consist of ordinary capital and preference capital issued in accordance with the *new section 8B*.

The *new section 7A* provides that the ordinary capital of the Bank shall be \$80,000,000 divided into 160 000 000 shares of 50 cents each all of which vest, and will continue to vest, in the Crown. All the shares in the ordinary capital of the Bank are of the same class.

The *new section 8* empowers the Board of the Bank, with the approval of the Minister of Finance and in accordance with any terms and conditions specified by the Minister, including terms and conditions relating to any person or persons to whom the ordinary capital of the Bank may be issued, to increase the ordinary capital of the Bank. The Board may, following any such increase in ordinary capital, subject to any terms and conditions specified by the Minister and in accordance with the articles of association of the Bank, issue the whole or any part of the unissued ordinary capital to such persons, for such purposes and on such terms and conditions as the Board determines.

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The new section also provides that no shares in the ordinary capital of the Bank, except *pari passu* distributions of fully paid bonus shares, shall be issued to the Crown, without the consent of the Minister of Finance.

Notice of every increase in ordinary capital is required to be published in the *Gazette*.

The existing section 8 empowers the Board of the Bank to recommend to the Minister of Finance that the capital of the Bank be increased and authorises the Governor-General, on the recommendation of the Minister, to increase the capital of the Bank by Order in Council. Under that section on any increase in capital all the shares are required to be issued to the Crown.

The *new section 8A* authorises the Board to consolidate and divide the ordinary capital of the Bank into ordinary shares of larger amounts than its existing ordinary shares or divide the ordinary capital into ordinary shares of smaller amounts than the existing ordinary shares.

The *new section 8B* authorises the Board, with the approval of the Minister, to issue preference capital and requires notice of every resolution authorising the issue of preference capital to be published in the *Gazette*.

The *new section 8C* provides that any money required to fully or partly pay up shares in the capital of the Bank issued to the Crown shall be paid to the Bank out of the Public Account from money appropriated by Parliament.

The *new section 8D* provides that no shares in the capital of the Bank, other than ordinary shares held by the Crown, confer any right to vote at general meetings of the shareholders of the Bank. The new section does not prevent the chairman of any general meeting of shareholders from ascertaining in accordance with the articles of association of the Bank, the views of those shareholders, other than the Crown, relating to the business, management, or affairs of the Bank.

The *new section 8E* requires the Crown to hold not less than two-thirds of the shares in the ordinary capital of the Bank.

The *new section 8F* provides that for the purposes of the Securities Act 1978 ordinary shares and preference shares in the capital of the Bank shall be deemed to be equity securities within the meaning of section 2 of that Act.

The *new section 8G* provides that ordinary shares and preference shares in the capital of the Bank are investments in which a trustee may invest trust funds for the purposes of the Trustee Act 1956.

The *new section 9* relates to the liability of the shareholders of the Bank. In the case of the Crown the new section provides that the Crown is not liable to contribute towards the payment or satisfaction of the debts or liabilities of the Bank any sum other than—

- (a) Any sum payable out of the Public Account in respect of shares held by the Crown which are not fully paid up; and
- (b) Any sum that the Crown is liable to pay under any guarantee, indemnity, or security given by the Minister of Finance under section 86 of the Public Finance Act 1977.

In the case of shareholders other than the Crown, the new section provides that no shareholder shall be liable to contribute towards the payment or satisfaction of the debts or liabilities of the Bank any sum other than—

- (a) Any sum payable by that shareholder in respect of shares held by that shareholder which are not fully paid up; and
- (b) Any sum which that shareholder is liable to pay otherwise than as a shareholder of the Bank.

*Clause 6* inserts a *new section 20A* in the principal Act. The new section requires the Board to prescribe articles of association of the Bank. Without limiting the

matters that may be contained in the articles of association, the articles of association are required to make provision for—

- (a) The issue, consolidation and subdivision of ordinary capital;
- (b) General meetings of shareholders;
- (c) The procedure for ascertaining the views of shareholders, other than the Crown, at general meetings of the shareholders concerning the business, management or affairs of the Bank.

The articles of association may be amended, added to or revoked.

The new section provides that no articles of association prescribed, and no revocation or amendment of, or addition to, the articles of association, shall have any force or effect without the written consent of the Minister. It also provides that no articles of association may be prescribed which are inconsistent with the principal Act and no amendment of, or addition to, the articles of association may be made which is inconsistent with the principal Act.

*Clause 7* removes the reference to the Higher Salaries Commission Act 1977 from section 21 (2) of the principal Act.

*Clause 8* removes the prohibition contained in section 24 (2) of the principal Act against establishing a branch, agency, or office of the Bank in a country in which the Bank does not already have a branch, agency or office without the consent of the Minister of Finance.

*Clause 9* substitutes a *new section 30* in the principal Act. The new section 30 authorises the Board to pay dividends and make other distributions to its shareholders but prohibits the making of any such payment or distribution which would reduce the ordinary capital of the Bank.

The *new section 30* does not apply in respect of the financial year of the Bank ending on 31 March 1987. The provisions of the existing section 30 of the principal Act shall continue to apply in respect of that financial year.

*Clause 10* amends the Higher Salaries Commission Act 1977.

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*Hon. R. O. Douglas*

## BANK OF NEW ZEALAND AMENDMENT

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### A BILL INTITULED

#### **An Act to amend the Bank of New Zealand Act 1979**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Bank of New Zealand Amendment Act 1986, and shall be read together with and deemed part of the Bank of New Zealand Act 1979\* (hereinafter referred to as the principal Act).
- 10 2. **Interpretation**—The principal Act is hereby amended by repealing section 2, and substituting the following section:  
“2. In this Act, unless the context otherwise requires,—

\*1979, No. 34

- “‘Articles of association’ means the articles of association of the Bank prescribed pursuant to **section 20A** of this Act:
- “‘Auditor’ means the person or persons for the time being appointed as auditor of the Bank: 5
- “‘Bank’ means the Bank of New Zealand constituted under this Act:
- “‘Board’ means the Board of Directors of the Bank appointed pursuant to section 10 of this Act:
- “‘Chief executive officer’ means the chief executive officer of the Bank appointed pursuant to section 21 of this Act, and includes any person acting as the chief executive officer of the Bank: 10
- “‘The Crown’ means Her Majesty the Queen in right of New Zealand: 15
- “‘Director’ means a director of the Bank:
- “‘General meeting’ means a meeting of the shareholders of the Bank convened by the Board in accordance with the articles of association of the Bank:
- “‘Local board’ means a local board of the Bank appointed pursuant to section 24 of this Act: 20
- “‘Minister’ means the Minister of Finance:
- “‘Ordinary capital’ means capital divided into ordinary shares which carry the right to participate *pari passu* in ordinary dividends and distributions of capital and reserves: 25
- “‘Preference capital’ means capital divided into shares which confer on the holders some preference over the holders of ordinary capital either in respect of the payment of dividends or the repayment of capital, or both: 30
- “‘Subsidiary’ has the same meaning as in section 158 of the Companies Act 1955:
- “‘Trading bank’ has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1964.” 35

**3. Functions of Bank**—The principal Act is hereby amended by repealing section 5, and substituting the following section:

- “5. The functions of the Bank shall be—
- “(a) To carry on in New Zealand and in any other part of the world the business of banking in all its aspects, including all financial, monetary, and other business that is at any time during the existence of the Bank commonly carried on in any part of the 40

world by banks, discount houses, merchant banks, or financiers; and

5 “(b) To carry on in New Zealand and in any other part of the world any other business or activity that, in the opinion of the Board, is capable of being advantageously carried on in connection with the business of banking or is capable of enhancing directly or indirectly the profitability of the Bank or the value of its undertaking or of any of its assets.”

10 **4. Powers of Bank**—Section 6 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

15 “(3) The Bank shall not, without the written consent of the Minister, sell or dispose of its undertaking or a substantial part thereof.”

**5. New sections substituted**—The principal Act is hereby amended by repealing sections 7, 8, and 9, and substituting the following sections:

20 “**7. Share capital**—The capital of the Bank shall comprise—  
“(a) Ordinary capital:  
“(b) Such preference capital as may be issued by the Board in accordance with **section 8b** of this Act.

25 “**7A. Ordinary capital**—(1) The ordinary capital of the Bank shall be \$80,000,000 divided into 160 000 000 ordinary shares of 50 cents each, all of which have been issued and allotted as fully paid up to, and which vest in, the Crown.

“(2) The shares in the ordinary capital of the Bank referred to in **subsection (1)** of this section shall always vest in the Crown.

30 “(3) All the shares in the ordinary capital of the Bank shall be of the same class.

“**8. Increase in ordinary capital**—(1) The Board may, from time to time, by resolution, recommend to the Minister that the ordinary capital of the Bank be increased, and may, with the approval of the Minister and in accordance with such  
35 terms and conditions as the Minister may specify, including any terms and conditions relating to the person or persons to whom such capital may be issued, by resolution, increase the ordinary capital of the Bank.

40 “(2) Subject to **subsection (1)** of this section, the Board may, following any such increase, and in accordance with the articles of association of the Bank, issue the whole or any part of the unissued ordinary capital of the Bank to such persons,

for such purposes, and upon such terms and conditions as the Board may determine.

“(3) Except for *pari passu* distributions of fully paid ordinary shares, no shares in the ordinary capital of the Bank shall, on any increase in that ordinary capital, be issued to the Crown without the consent of the Minister. 5

“(4) Notice of every resolution increasing the ordinary capital of the Bank shall be published by the Board in the *Gazette*.

“8A. **Consolidation and subdivision of ordinary capital**—(1) The Board may, from time to time, in accordance with the articles of association of the Bank,— 10

“(a) Consolidate and divide the ordinary capital of the Bank, including the ordinary capital referred to in **section 7A (1)** of this Act, into ordinary shares of larger amount than its existing ordinary shares: 15

“(b) Subdivide the ordinary shares of the Bank including the ordinary shares referred to in **section 7A (1)** of this Act, into ordinary shares of smaller amount than its existing ordinary shares, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced ordinary share shall be the same as it was in the case of the ordinary share from which the reduced share is derived. 20 25

“(2) Any of the ordinary capital of the Bank, being capital referred to in **section 7A (1)** of this Act, which is consolidated and divided or subdivided in accordance with **subsection (1)** of this section shall, notwithstanding such consolidation and division or subdivision, continue always to vest in the Crown. 30

“8B. **Preference capital**—(1) The Board may, from time to time, with the approval of the Minister, by resolution, issue preference capital of such amount and subject to such terms and conditions as the Board thinks fit.

“(2) Notice of every resolution authorising the issue of preference capital shall be published by the Board in the *Gazette*. 35

“8C. **Money to be appropriated by Parliament for acquisition of shares by the Crown**—There shall be paid to the Bank out of the Public Account, from money appropriated by Parliament for the purpose, such amount (if any) as is required to fully or partly pay up any shares in the capital of the Bank issued to the Crown. 40

**“8D. Voting rights attaching to shares in capital of Bank—**(1) The ordinary shares in the capital of the Bank for the time being held by the Crown shall confer on the Crown a right to vote at general meetings of the shareholders of the  
5 Bank.

“(2) No shares in the capital of the Bank, except ordinary shares for the time being held by the Crown, shall confer any right to vote at general meetings of the shareholders of the Bank.

10 “(3) Nothing in subsection (2) of this section shall prevent the chairman of any general meeting of the shareholders of the bank from ascertaining, in accordance with the articles of association of the Bank, the views of such shareholders, other than the Crown, relating to the business, management, or  
15 affairs of the Bank.

**“8E. Crown to hold two-thirds of ordinary capital of Bank—**No shares in the ordinary capital of the Bank shall be issued to any person and no transfer of any shares in the ordinary capital of the Bank shall be registered if, as a result of  
20 that issue or transfer, the Crown would hold less than two-thirds of the ordinary capital of the Bank, and any such issue or transfer of those shares shall be void and of no effect.

**“8F. Shares in capital of Bank deemed to be equity securities for purposes of Securities Act 1978—**For the  
25 purposes of the Securities Act 1978, ordinary shares and preference shares in the capital of the Bank shall be deemed to be equity securities within the meaning of section 2 of that Act.

**“8G. Trustee investment—**Ordinary shares and preference shares in the capital of the Bank shall, for the purposes of the  
30 Trustee Act 1956, be investments in which a trustee may invest trust funds.

**“9. Limited liability—**(1) The Crown shall not be liable to contribute towards the payment or satisfaction of any debts or liabilities of the Bank any sum other than—

35 “(a) Any sum payable to the Bank out of the Public Account in respect of shares in the capital of the Bank held by the Crown that are not fully paid up; and

40 “(b) Any sum that the Crown is liable to pay by virtue of any guarantee, indemnity, or security given by the Minister pursuant to section 86 of the Public Finance Act 1977.

“(2) No shareholder, other than the Crown, shall be liable to contribute towards the payment or satisfaction of any debts or liabilities of the Bank any sum other than—

“(a) Any sum payable by that shareholder in respect of shares in the capital of the Bank that are not fully paid up; and 5

“(b) Any sum that such shareholder is liable to pay otherwise than as a shareholder of the Bank.”

**6. Articles of association**—The principal Act is hereby amended by inserting, after section 20, the following section: 10

“20A. (1) The Board shall prescribe regulations for the management of the Bank to be known as the articles of association of the Bank.

“(2) Without limiting the matters that may be contained therein, articles of association prescribed under this section shall contain regulations relating to— 15

“(a) The issue, consolidation, and subdivision of ordinary capital of the Bank:

“(b) General meetings of the shareholders of the Bank:

“(c) The procedure for ascertaining the views of the shareholders of the Bank, other than the Crown, at any general meeting of the shareholders of the Bank, relating to the business, management or affairs of the Bank. 20

“(3) The Board may, from time to time, amend, or add to the articles of association, or revoke the articles and prescribe new articles in substitution. 25

“(4) No articles of association prescribed under this section, and no revocation or amendment of, or addition to, the articles of association shall have any binding force or effect without the written consent of the Minister. 30

“(5) No articles of association shall be prescribed under this section which are inconsistent with the provisions of this Act, and no amendment of, or addition to, any articles of association shall be made under this section which is inconsistent with the provisions of this Act. 35

“(6) The articles of association shall be printed and shall be available for public inspection at the head office of the Bank during normal banking hours.

“(7) A copy of the articles of association shall be supplied— 40

“(a) To the Minister:

“(b) Upon request, to any shareholder of the Bank and any stock exchange on which any securities of the Bank have been accepted for listing:

5 “(c) Upon payment of such fee as may be prescribed by the Board, to any member of the public.

“(8) Notice of every amendment of, or addition to, the articles of association, or revocation of the articles and substitution of new articles, shall be sent—

“(a) To the Minister; and

10 “(b) To any stock exchange on which any securities of the Bank have been accepted for listing; and

“(c) To every shareholder of the Bank.

15 “(9) The articles of association of the Bank shall bind the Bank and the shareholders of the Bank to the same extent as if they had been executed as a deed by each shareholder and contained covenants on the part of each shareholder to observe all the provisions thereof.”

**7. Officers of Bank**—Section 21 of the principal Act is hereby amended by repealing subsection (2), and substituting  
20 the following subsection:

25 “(2) The Board may, from time to time, determine the duties to be performed by, and the amount of remuneration and allowances to be given to, the chief executive officer, officers, and employees of the Bank; and may pay such remuneration and allowances out of the funds of the Bank.”

**8. Head office, branches, and local boards**—Section 24 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

30 “(2) The Board may establish such branches, agencies, and offices, whether within or outside New Zealand, as it thinks fit.”

**9. Dividends and distributions to shareholders**—(1) The principal Act is hereby amended by repealing section 30, and substituting the following section:

35 “30. (1) Subject to this section, the Bank may from time to time, in accordance with a resolution of the Board, pay dividends or make other distributions to its shareholders.

40 “(2) No payment or other distribution which reduces the ordinary capital of the Bank shall be made under **subsection (1)** of this section.

“(3) The amount of any dividend or other distribution paid to the Crown shall be paid into the Public Account.”

(2) Nothing in **section 30** of the principal Act, as enacted by **subsection (1)** of this section, shall apply in respect of the payment of dividends or the making of other distributions for the financial year of the Bank ending on the 31st day of March 1987 and, in respect of that financial year, the provisions of section 30 of the principal Act in force immediately before the commencement of this Act shall apply as if that section had not been repealed.

**10. Amendment to Higher Salaries Commission Act 1977**—The Higher Salaries Commission Act 1977 is hereby amended by omitting from the First Schedule (as substituted by section 3 of the Higher Salaries Commission Amendment Act 1980) the words “The Bank of New Zealand.”