

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 28 July 1988.

[Clauses 85 to 96 of this Bill were formerly clauses 85 to 96 of the Finance Bill (No. 3)]

Hon. Dr Michael Cullen

BANK OF NEW ZEALAND

ANALYSIS

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An Act to enable Bank of New Zealand to be constituted as a company incorporated and registered under the Companies Act 1955 and to repeal the Bank of New Zealand Act 1979

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

1. Short Title—This Act may be cited as the Bank of New Zealand Act 1988.

85. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

10 “The Act” means the Companies Act 1955:

“Appointed day” means the date appointed by the Governor-General in an Order in Council made under **section 87** of this Act:

15 “Articles” means the articles of association delivered to the Registrar under **section 87** of this Act:

“Memorandum” means the memorandum of association delivered to the Registrar under **section 87** of this Act:

“Minister” means the Minister of Finance:

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Price

incl. GST \$1.90

“Registrar” means the Registrar of Companies and includes a Deputy Registrar.

(2) In this Part of this Act, depending upon the context in which the term is used, “Bank” means either—

- (a) Bank of New Zealand constituted under the Bank of New Zealand Act 1979; or
- (b) That bank deemed to be incorporated and registered as a company under the Act by virtue of this Part of this Act.

86. Act to bind the Crown—This Act shall bind the Crown. 10

87. Incorporation of Bank as a company under the Companies Act 1955—(1) Notwithstanding anything contained in the Act, on a date to be appointed by the Governor-General by Order in Council, the Bank shall be deemed to be a company limited by shares incorporated and registered under the Act and under the name Bank of New Zealand. 15

(2) An Order in Council may be made at any time after the Governor-General is advised by the Minister that the following documents have been delivered to the Registrar: 20

- (a) A memorandum of association in a form which the Minister considers, after consultation with the Bank, to be appropriate and which states the name of the Bank and that the liability of its members is limited;
- (b) Articles of association in a form which the Minister 25 considers, after consultation with the Bank, to be appropriate;
- (c) A notice of situation of registered office as required by section 115 of the Act.

(3) Nothing in sections 14, 15, and 25 of the Act shall apply in respect of the memorandum. 30

(4) Nothing in sections 20 and 23 (1) (c) of the Act shall require the articles to be signed or attested.

(5) The memorandum and articles of association of the Bank shall be the memorandum and articles delivered to the Registrar under this section. 35

(6) Nothing in subsection (5) of this section shall prevent the memorandum and articles being altered, amended, or substituted in accordance with the Act.

(7) On or before the appointed day the Registrar shall issue a certificate of incorporation in respect of the Bank. 40

(8) Without limiting subsection (1) of this section the certificate of incorporation shall be conclusive evidence that the Bank was,

on the appointed day, registered as a company under Part II of the Act.

(9) In the application of section 200 of the Act to the Bank—

- 5 (a) Nothing in subsection (4) of that section shall be construed to require the return containing the particulars of the directors and secretary to have endorsed on it or be accompanied by, a written consent to act as a director by any person who holds office as a director of the Bank on the appointed day by virtue of this Act; and
- 10 (b) Subsection (5) (a) of that section shall apply as if those directors had been appointed as directors of the Bank on the appointed day.

88. Effect of registration under the Act—

15 (1) Notwithstanding any other enactment or rule of law, from the commencement of the appointed day the Bank shall be deemed to be a company incorporated and registered under Part II of the Act and, subject to **section 89** of this Act, the Act shall apply to it accordingly.

20 (2) The Bank is, and shall continue to be, the same legal entity as the Bank originally incorporated under The New Zealand Bank Act 1861 and subsequently constituted under the Bank of New Zealand Act 1979 and in particular, but without limiting the generality of the foregoing,—

- 25 (a) The deemed incorporation and registration of the Bank as a company shall not affect rights, interests, liabilities, or obligations existing immediately before the appointed day;
- 30 (b) Real and personal property (including choses in action) belonging to or vested in the Bank immediately before the appointed day shall continue to belong to or vest in the Bank as so incorporated.

89. Supplementary provisions relating to share capital and other matters—

35 (1) The Bank shall be deemed to have been incorporated on the appointed day with an authorised and registered capital of \$1,000,000,000 divided into 2,000,000,000 shares of 50 cents each.

40 (2) On the appointed day the Crown and every other person who was registered as the holder of shares in the capital of the Bank immediately before the appointed day shall continue to be registered as the holder of those shares paid up to the same extent and subject to the rights and obligations conferred or imposed by the articles and by law.

(3) Nothing in section 60 of the Act applies in respect of the allotment and paying up of shares in the capital of the Bank issued before the appointed day.

(4) Section 64 of the Act shall, on and after the appointed day, apply to the amount standing to the credit of the share premium account in the books of the Bank immediately before the appointed day as if that amount had been transferred to a share premium account in accordance with that section. 5

(5) Nothing in sections 117 and 134 of the Act and the proviso to subsection (1) of section 135 and the first proviso to subsection (1) of section 152 of the Act shall apply to the Bank. 10

(6) Nothing in section 135 (1) of the Act shall require the Bank to hold a general meeting as its annual meeting in the calendar year in which the appointed day falls if the Bank has held an annual general meeting in that year before the appointed day. 15

(7) Nothing in section 152 (1) of the Act shall require the directors of the Bank in the calendar year in which the appointed day falls to lay before the Bank in general meeting a profit and loss account if a profit and loss account has been laid before the Bank in general meeting in that year before the appointed day. For the purposes of section 152 (1) of the Act the reference to the expression "preceding account" shall be read and construed as a reference to a profit and loss account laid before the Bank in general meeting whether before or after the appointed day. 20 25

(8) Nothing in section 152 (2) of the Act shall apply in respect of the calendar year in which the appointed day falls if a balance sheet has been laid before the Bank in general meeting in that year before the appointed day. 30

(9) The Bank shall continue to be deemed to be registered as a registered bank pursuant to section 38E of the Reserve Bank of New Zealand Act 1964.

(10) Every director of the Bank holding office immediately before the appointed day shall, subject to the articles, continue to hold office on and after the appointed day for the residue of the term for which that director was appointed. 35

(11) The Chairman and the Deputy Chairman of the Bank holding office immediately before the appointed day shall, subject to the articles, continue to hold office as Chairman and Deputy Chairman respectively on and from the appointed day. 40

(12) Nothing in section 184 (1) of the Act shall prevent any prospectus issued by the Bank from including the name of a director of the Bank who holds office by virtue of subsection (10) of this section.

90. Provisions relating to Crown shareholding—

(1) Shares in the capital of the Bank held by the Crown on and after the appointed day shall be held by the person for the time being holding the office of Minister of Finance.

5 (2) The Minister of Finance may exercise all or any of the Crown's rights and powers as the holder of the shares in the Bank.

(3) Any money required to be paid by the Minister on subscribing for, or otherwise acquiring, shares in the capital of
10 the Bank shall be paid out of money appropriated by Parliament for the purpose.

91. Crown not liable for debts of Bank—On and after the appointed day the Crown shall not be liable to contribute towards the payment or satisfaction of any debts or liabilities of
15 the Bank any sum other than—

(a) Any sum payable to the Bank out of money appropriated by Parliament in respect of shares in the capital of the Bank subscribed for, or otherwise acquired, by the Minister that are not fully paid up; and

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

92. Annual report—(1) Within 3 months after the end of
25 every financial year of the Bank after the appointed day, being a financial year at the end of which the Crown held directly or indirectly more than 50 percent of the ordinary shares in the capital of the Bank or had the right to control the composition of its board of directors, the Bank shall—

30 (a) Prepare a general report on the operations of the Bank and its subsidiaries during that year; and

(b) Submit that report, together with the audited consolidated financial statements of the Bank for that year, to the Minister.

35 (2) The Minister shall lay a copy of the report, those financial statements, and the auditor's report before the House of Representatives not later than the 16th sitting day after the date on which the Minister receives them.

93. Auditors—The person or persons holding office as the
40 auditors of the Bank immediately before the appointed day shall continue to hold that office on and after the appointed day and until the conclusion of the next annual general

meeting of the Bank after the appointed day as if appointed to that office under section 163 (1) of the Act.

94. Trustee investment—On and after the appointed day shares in the capital of the Bank shall, for the purposes of the Trustee Act 1956, be investments in which a trustee may invest 5 trust funds.

95. Status of directors and employees of Bank—No person shall be deemed, on or after the appointed day, to be employed in the Government Service for the purposes of the Government Superannuation Fund Act 1956 or in the Public 10 Service for the purposes of the State Sector Act 1988 by reason only of being a director or employee of the Bank or any of its subsidiaries.

96. Repeals and savings—(1) The following enactments are hereby repealed on the appointed day: 15

(a) The Bank of New Zealand Act 1979:

(b) The Bank of New Zealand Amendment Act 1986.

(2) Section 15 of the Bank of New Zealand Act 1979 shall, notwithstanding the repeal of that Act by subsection (1) of this section, continue to have effect as if it were still in force in 20 respect of any act or default done or made before the appointed day.