

COMPANY AND SECURITIES LAW (MISCELLANEOUS PROVISIONS) 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

This Bill amends the Companies (Registration of Charges) Act 1993, Securities Act 1978, and Financial Reporting Act 1993. The amendments are purely technical and implement existing Government policy.

The amendment to the Companies (Registration of Charges) Act 1993 makes it clear that the obligation to register company charges will continue after the repeal on 30 June 1997 of Part IV of the Companies Act 1955.

The amendments to the Securities Act 1978 and Financial Reporting Act 1993 will ensure the smooth introduction of the new investment product disclosure regime. Some of these amendments will result in significant compliance cost reductions for issuers of securities to the public.

CLAUSE BY CLAUSE COMMENTARY

Clause 1 relates to the Short Title and commencement. Part 1 comes into force on the date on which the Act receives the Royal assent. Parts 2 and 3 come into force on 1 October 1997 or on a date to be appointed by the Governor-General by Order in Council (whichever is the earlier).

PART 1

COMPANIES (REGISTRATION OF CHARGES) ACT 1993

Clause 3, which is a savings provision, provides that, for the purposes of the Companies (Registration of Charges) Act 1993, Part IV and section 463 of the Companies Act 1955 continue in force after their repeal by section 2 of the Companies Act Repeal Act 1993.

Since 1 July 1994, companies incorporated under the Companies Act 1993 have been required to register charges in accordance with Part IV of the Companies Act 1955. The Companies Act 1955 is, however, repealed on 30 June 1997. This

clause makes it clear that the obligation to register charges will continue after that repeal.

PART 2

SECURITIES ACT 1978

Some of the amendments in this Part relate to the new investment product disclosure regime, and are required to ensure the smooth implementation of that regime.

The rest (*clauses 5, 7 (1) (c) and (2), and 11*) bring the principal Act into line with current accounting terminology by changing references to the term “balance sheet” to “statement of financial position”.

Clause 6 amends section 37 (6) of the principal Act.

The present section 37 (6) requires the directors of an issuer to pay interest at the rate of 10% per annum on subscriptions that have not been repaid to subscribers within the period specified in the section in cases where the allotment of securities is void. This is not consistent with sections 38F (13) and 44, which are comparable provisions, and which require interest to be paid at a rate prescribed by regulations.

The amendment provides that the interest is paid at a rate to be prescribed by regulations made under the principal Act.

Clause 7 (3) contains a similar amendment in the case of section 37A (7) of the principal Act.

Clause 7 (1) (a) and (b) amend section 37A (1) (a) and (b) of the principal Act to clarify that the current investment statement must be provided to a subscriber for securities.

Clause 8 amends the definition of “authorised advertisement” in section 38 of the principal Act.

The amendment will require (if an investment statement is not needed in respect of certain offers of securities) an authorised advertisement to refer to a registered prospectus (in the case of an issuer, other than a registered bank) or to a disclosure statement (in the case of an issuer that is a registered bank).

Clause 9 repeals section 38AA of the principal Act (which defines “authorised advertisement” in relation to offers of debt securities by registered banks).

The effect of that section (if it were not repealed) and the Securities Amendment Act 1996 (when it comes into force) would have been that an authorised advertisement relating to offers of debt securities by a registered bank would have been required to refer to both an investment statement and to a disclosure statement (rather than just to an investment statement which will already refer to the disclosure statement).

This amendment is related to the amendment in *clause 8*.

Clause 10 amends section 38E (1) (c) of the principal Act.

That provision requires an investment statement to refer to the registered prospectus and to state the date of its registration. It was not, however, intended that there be a new investment statement each time a new prospectus is registered.

The amendment provides that, if a registered prospectus is required in respect of the securities referred to in the investment statement, the investment statement must state that there is a registered prospectus containing an offer of securities to which the investment statement relates. It will not have to refer to the date of the registration of the prospectus.

PART 3

FINANCIAL REPORTING ACT 1993

All of the amendments in this Part bring the principal Act into line with current accounting terminology by changing references to—

- (a) The term “balance sheet” to “statement of financial position”; and
- (b) The term “profit and loss statement” to “statement of financial performance”.

Clause 17 updates such references in other Acts.

Hon John Luxton

COMPANY AND SECURITIES LAW (MISCELLANEOUS PROVISIONS)

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A BILL INTITULED

An Act to amend the Companies (Registration of Charges) Act 1993, the Securities Act 1978, and the Financial Reporting Act 1993

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

1. Short Title and commencement—(1) This Act may be cited as the Company and Securities Law (Miscellaneous Provisions) Act 1997.

10 (2) Part 1 comes into force on the date on which this Act receives the Royal assent.

(3) Parts 2 and 3 come into force on a date to be appointed by the Governor-General by Order in Council.

(4) Parts 2 and 3 come into force on 1 October 1997 if no Order in Council is made under **subsection (3)** appointing a date that is earlier than that date as the date for the coming into force of those Parts.

PART 1 5

COMPANIES (REGISTRATION OF CHARGES) ACT 1993

2. 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). 10

*1993, No. 125
Amendment: 1994, No. 9

3. Savings—The principal Act is amended by adding the following section:

“6. For the purposes of this Act, Part IV and section 463 of the Companies Act 1955 (despite their repeal by section 2 of the Companies Act Repeal Act 1993) continue in force after their repeal.” 15

PART 2

SECURITIES ACT 1978

4. Part to be part of Securities Act 1978—This Part is part of the Securities Act 1978* (in this Part referred to as the principal Act). 20

*R.S. Vol. 33, p. 587
Amendment: 1996, No. 100

5. Interpretation—Section 2 of the principal Act is amended by repealing the definitions of the terms “date of a balance sheet” and “date of an interim balance sheet”, and substituting the following definitions: 25

“‘Date of a statement of financial position’ or ‘date of an interim statement of financial position’ means the date as at which the statement of affairs contained in the statement of financial position or interim statement of financial position has been drawn up:” 30

6. Void irregular allotments—Section 37 (6) of the principal Act is amended by omitting the words “the rate of 10 percent per annum”, and substituting the words “a rate prescribed from time to time by regulations made under this Act”. 35

7. Voidable irregular allotments—(1) Section 37A (1) of the principal Act (as substituted by section 15 of the Securities Amendment Act 1996) is amended—

- 5 (a) By omitting from paragraph (a) the word “any”, and substituting the word “an”;
- (b) By omitting from paragraph (b) the word “any” in the first place where it occurs, and substituting the word “the”;
- 10 (c) By omitting from paragraph (c) (i) and (ii) the words “balance sheet” in each place where they occur, and substituting in each case the words “statement of financial position”.

(2) Section 37A (1A) of the principal Act (as so substituted) is amended by omitting from paragraphs (b), (c) (i), and (d) (i) the words “balance sheet” in each place where they occur, and substituting in each case the words “statement of financial position.”

15 (3) Section 37A (7) of the principal Act is amended by omitting the words “the rate of 10 percent per annum”, and substituting the words “a rate prescribed from time to time by regulations made under this Act”.

8. Meaning of “authorised advertisement”—Section 38 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

25 “(b) In relation to an offer of securities to the public in respect of which an investment statement is not required, but in respect of which a registered prospectus or a disclosure statement under section 81 of the Reserve Bank of New Zealand Act 1989 is required, an advertisement—

30 “(i) That refers to a registered prospectus or a current disclosure statement; and

35 “(ii) That describes where a copy of the prospectus or the disclosure statement can be obtained free of charge; and

“(iii) That complies with this Act and regulations:

“(c) In any other case, an advertisement that complies with this Act and regulations.”

9. Meaning of “authorised advertisement” in relation to offers of debt securities by registered banks—(1) The principal Act is amended by repealing section 38AA.

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(2) Section 3 (3) of the Securities Amendment Act 1996 is consequentially repealed.

10. Form and content of investment statement—Section 38E (1) of the principal Act (as inserted by section 17 of the Securities Amendment Act 1996) is amended by repealing paragraph (c), and substituting the following paragraph: 5

“(c) If a registered prospectus is required in respect of the securities referred to in the investment statement, state that there is a registered prospectus containing an offer of securities to which the investment statement relates; and” 10

Amendments to Securities Amendment Act 1988

11. Amendments to Securities Amendment Act 1988—Section 26 (1) of the Securities Amendment Act 1988 is amended by omitting the words “balance sheet” in both places where they occur, and substituting in each case the words “statement of financial position”. 15

PART 3

FINANCIAL REPORTING ACT 1993

12. 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). 20

*1993, No. 106
Amendments: 1994, No. 11; 1996, No. 103

13. Meaning of “balance date”—Section 7 (10) of the principal Act is amended by omitting the words “balance sheet”, and substituting the words “statement of financial position”. 25

14. Meaning of “financial statements”—(1) Section 8 (1) of the principal Act is amended by omitting the words “balance sheet” in both places where they occur, and substituting in each case the words “statement of financial position”. 30

(2) Section 8 (1) (b) (i) of the principal Act is amended by omitting the words “profit and loss statement”, and substituting the words “statement of financial performance”.

15. Meaning of “group financial statements”—Section 9 (1) of the principal Act is amended— 35

- (a) By omitting the words “balance sheet” in both places where they occur, and substituting in each case the words “statement of financial position”:
- 5 (b) By omitting from paragraph (b) the words “profit and loss statement”, and substituting the words “statement of financial performance”.

10 **16. Content of group financial statements**—Section 14 (3) of the principal Act is amended by omitting the words “profit and loss statement”, and substituting the words “statement of financial performance”.

15 **17. References to balance sheet and to profit and loss statement in other Acts**—(1) Unless the context otherwise requires, every reference to a balance sheet in any Act, other than the principal Act, is a reference to a statement of financial position.

(2) Unless the context otherwise requires, every reference to a profit and loss statement in any Act, other than the principal Act, is a reference to a statement of financial performance.