

# **COMPANY AND SECURITIES LAW (MISCELLANEOUS PROVISIONS) BILL**

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AS REPORTED FROM THE COMMERCE COMMITTEE

## **COMMENTARY**

### **Recommendation**

The Commerce Committee has examined the Company and Securities Law (Miscellaneous Provisions) Bill and recommends that it be passed with the amendments shown in the bill.

### **Conduct of the examination**

The Company and Securities Law (Miscellaneous Provisions) Bill was introduced and referred to the Commerce Committee on 20 May 1997 for consideration and report back to the House by Monday, 9 June. The committee wrote to a number of groups it thought may have an interest in the bill and gave them the opportunity to make a submission if they so wished. We received two written submissions.

Advice was received from the Ministry of Commerce.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

### **Background**

This bill aims to clarify the obligations of companies in registering charges, enables the smooth introduction of a new investment product disclosure regime and updates accounting terminology contained in legislation.

### **Companies (Registration of Charges) Act 1993**

Part 1 of the bill amends the Companies (Registration of Charges) Act 1993 which requires companies incorporated under the Companies Act 1993 to register charges in accordance with the provisions of the Companies Act 1955. This Part clarifies that the provisions of the Companies Act 1955 that relate to the registration of charges are saved for the purposes of the Companies (Registration of Charges) Act 1993 despite the repeal of the Companies Act 1955 on 30 June 1997. This amendment is therefore required to be passed by

30 June 1977. It will avoid confusion about whether companies are still required to register charges after 1 July 1997. If this amendment was not enacted, it could lead to litigation and impose unnecessary costs and uncertainty on companies.

The prescribed forms for Part IV of the Companies Act 1955 are contained in the Companies Act 1955 Regulations 1994. The fee for registration of charges is included in Part 1 of the First Schedule to the Companies Act 1955. We have recommended an amendment to clause 3 to provide for the continuation of the application of any regulations made under the Companies Act 1955, prescribing fees and forms for the purposes of Part IV of the Companies Act 1955 and the First Schedule to that Act. If this was not done then it is possible that the regulations would have lapsed when the empowering provisions are repealed on 30 June 1997.

### **Securities Act 1978**

Part 2 of the bill amends the Securities Act 1978. Most of the amendments relate to the new investment product disclosure regime. This legislation comes into force on 1 October 1997. The amendments in this Part are intended to ensure that the new regime operates smoothly. We have recommended an amendment to clause 8 to create consistency of cross referencing with provisions in clauses 7 and 10 of the bill.

### **Current accounting terminology**

Clauses 5, 7 (1)(c), 7 (2) and 11 change references to "balance sheet" in the Securities Act 1978 and the Securities Amendment Act 1988, to "statement of financial position". This change brings the Securities Act 1978 into line with current accounting terminology.

Accounting standards now require that issuers of securities prepare a statement of financial position rather than a balance sheet. The amendment will therefore reduce the compliance cost for issuers.

Part 3 of the bill amends the Financial Reporting Act 1993 to update accounting terminology to conform with accounting standards. The amendments replace references to "balance sheet" with "statement of financial position" and references to "profit and loss statement" are replaced with "statement of financial performance". These amendments will bring the Financial Reporting Act 1993 into line with current accounting terminology.

### **Further amendments to Company Law Reform**

We are aware that there are a number of further technical amendments required to company law. Consolidation, and where possible, simplification of company law is important rather than referring back to repealed legislation for regulation-making powers.

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KEY TO SYMBOLS USED IN REPRINTED BILL  
AS REPORTED FROM A SELECT COMMITTEE

<i>New (Unanimous)</i>		
<table border="1"><tr><td>Subject to this Act,</td></tr></table>	Subject to this Act,	Text inserted unanimously
Subject to this Act,		
<del>(Subject to this Act,)</del>	Words struck out unanimously	
<u>Subject to this Act,</u>	Words inserted unanimously	

*Hon John Luxton*

**COMPANY AND SECURITIES LAW (MISCELLANEOUS PROVISIONS)**

ANALYSIS

<p>Title</p> <p>1. Short Title and commencement</p> <p style="text-align: center;">PART 1</p> <p>COMPANIES (REGISTRATION OF CHARGES) ACT 1993</p> <p>2. Part to be part of Companies (Registration of Charges) Act 1993</p> <p>3. Savings</p> <p style="text-align: center;">PART 2</p> <p style="text-align: center;">SECURITIES ACT 1978</p> <p>4. Part to be part of Securities Act 1978</p> <p>5. Interpretation</p> <p>6. Void irregular allotments</p> <p>7. Voidable irregular allotments</p> <p>8. Meaning of "authorised advertisement"</p> <p>9. Meaning of "authorised advertisement" in relation to offers of debt securities by registered banks</p>	<p>10. Form and content of investment statement</p> <p><i>Amendments to Securities Amendment Act 1988</i></p> <p>11. Amendments to Securities Amendment Act 1988</p> <p style="text-align: center;">PART 3</p> <p style="text-align: center;">FINANCIAL REPORTING ACT 1993</p> <p>12. Part to be part of Financial Reporting Act 1993</p> <p>13. Meaning of "balance date"</p> <p>14. Meaning of "financial statements"</p> <p>15. Meaning of "group financial statements"</p> <p>16. Content of group financial statements</p> <p>17. References to balance sheet and to profit and loss statement in other Acts</p>
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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

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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).

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

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

“6. (1) 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.

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*New (Unanimous)*

“(2) Any regulations made under the Companies Act 1955 prescribing forms for the purposes of Part IV of that Act and the First Schedule of that Act (as substituted by any Order in Council immediately in force before the repeal of that Act) continue to apply for the purposes of **subsection (1)**, and may from time to time be amended or revoked or revoked and substituted, in whole or in part, in the same manner in which they could have been amended or revoked or revoked and substituted under that Act.”

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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).

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\*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:

5       “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:”.

10       **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”.

15       **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—

(a) By omitting from paragraph (a) the word “any”, and substituting the word “an”:

20       (b) By omitting from paragraph (b) the word “any” in the first place where it occurs, and substituting the word “the”:

(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”.

25       (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”.

30       (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”.

35       **8. Meaning of “authorised advertisement”**—Section 38 of the principal Act (as substituted by section 16(1) of the Securities Amendment Act 1996) is amended by repealing paragraph (b), and substituting the following paragraphs:

“(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— 5

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

    “(ii) That describes where a copy of the prospectus or the disclosure statement can be obtained free of charge; and 10

    “(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—** 15  
(1) The principal Act is amended by repealing section 38AA.

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

**10. Form and content of investment statement—** 20  
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:

“(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” 25

*Amendments to Securities Amendment Act 1988*

**11. Amendments to Securities Amendment Act 1988—** 30  
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”.

PART 3

FINANCIAL REPORTING ACT 1993

**12. Part to be part of Financial Reporting Act 1993—**

5 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, 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”.

10 **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”.

15 (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—

20 (a) By omitting the words “balance sheet” in both places where they occur, and substituting in each case the words “statement of financial position”:

(b) By omitting from paragraph (b) the words “profit and loss statement”, and substituting the words “statement of financial performance”.

25 **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”.

30 **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.

35 (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.