

Financial Reporting Amendment Bill

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Business Law Reform Bill as reported from the Commerce Committee. The committee of the whole House divided it into the following bills:

- The Companies Amendment Bill (No 2), comprising Part 1 and the Schedule
 - The Dumping and Countervailing Duties Amendment Bill, comprising Part 2
 - This bill, comprising Part 3
 - The Friendly Societies and Credit Unions Amendment Bill, comprising Part 4
 - The Insurance Companies' Deposits Amendment Bill, comprising Part 5.
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Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,	Text struck out unanimously
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New (unanimous)

Subject to this Act,	Text inserted unanimously
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<i>(Subject to this Act,)</i>	Words struck out unanimously
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<u>Subject to this Act,</u>	Words inserted unanimously
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As reported from the committee of the whole House

Struck out

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New

Subject to this Act,	Text inserted
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<i>((Subject to this Act,))</i>	Words struck out
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<u>Subject to this Act,</u>	Words inserted
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Hon Lianne Dalziel

Financial Reporting Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
.		
23	Principal Act amended	3
25	Interpretation	3
26	Meaning of issuer	4
27	New sections 4A to 4D inserted	4
	4A Recipients of money from conduit issuers	4
	4B Exemption from being issuer under section 4(1)(ba)	7
	4C Exemption may apply to accounting period before exemption is granted	7
	4D Securities Commission must notify reasons for exemption	8
27A	Persons ceasing to be issuers during accounting period	8
28	New section 6A inserted	8
	6A Meaning of exempt company	8
29	New section 10A inserted	9
	10A Non-active entities not required to prepare financial statements	9
30	Obligation to prepare group financial statements	11
31	New sections 19 and 19A substituted	11
	19 Overseas companies and certain other compa- nies to register financial statements	11
	19A Interpretation for section 19	12
32	Fees	13
33	Functions of Board	14
34	New sections 29A to 29D inserted	14
	29A Board may grant exemptions	14
	29B Exemption may apply to accounting period before exemption is granted	16
	29C Failure to comply with applicable financial reporting standard must be disregarded if direc- tors of reporting entity are exempt	17
	29D Board must notify reasons for exemption	17

35	Consultation	17
36	New section 33 substituted	18
	33 Disallowance of determinations and exemptions by House of Representatives	18
37	Certificates of Board	19
37A	New sections 35A to 35E inserted	19
	35A Securities Commission may grant exemptions to directors of issuers that are incorporated or con- stituted outside New Zealand	19
	35B Registrar of Companies may grant exemptions to directors of overseas companies	20
	35C Consultation	21
	35D Exemption may apply to accounting period before exemption is granted	22
	35E Reasons for exemption must be notified	22
38	Offences by directors of overseas companies and subsid- iaries of overseas companies	23
39	New sections 41A to 41D inserted	23
	41A Infringement offences	23
	41B Infringement notices	23
	41C Procedural requirements for infringement notices	23
	41D Payment of infringement fee	24
40	New section 42B inserted	25
	42B Regulations	25
41	Consequential amendment to Summary Proceedings Act 1957	25
	<i>Transitional provision</i>	
42	Accounting periods to which amendments apply	26

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Financial Reporting Amendment Act **2006**.

2 Commencement

- (1) **Sections 25(3), 31, 32, and 38** come into force on the day that is 2 months after the date on which this Act receives the Royal assent.

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- (2) **Sections 25(2), 26 to 27A, 29, 33 to 37A, 39, and 41** come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 5

23 Principal Act amended

This Part amends the Financial Reporting Act 1993.

Struck out (unanimous)

- 24 Commencement of this Part** 10
- (1) **Sections 25(2), 29, 33 to 37, 39, and 41** come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (2) The rest of **this Part** comes into force on the day after the date on which this Act receives the Royal assent. 15

25 Interpretation

- (1) Section 2(1) is amended by repealing the definition of **exempt company** and substituting the following definition:
 “**exempt company** has the meaning given to it by **section 6A**”. 20
- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
 “**infringement fee**, in relation to an infringement offence, means \$7,000
 “**infringement notice** means a notice issued under **section 41B** 25
 “**infringement offence** means an offence against section 38(b) or 39”.
- (3) Section 2(1) is amended by repealing the definition of **turnover** and substituting the following definition:
 “**turnover**— 30
 “(a) means, in relation to a company, the total annualised gross operating revenue of the company (exclusive of any tax required to be collected) reported in the statement of financial performance, income and expenditure

statement, or revenue and appropriation account, as the case may be, for the accounting period for which the financial statements are required; and includes (without limitation) any sales, fee income, grants, output appropriations, cost recoveries, donations, dividends, interest, and subscriptions of the company for that accounting period:

- “(b) means, in relation to a group, the total annualised gross operating revenue of the group (exclusive of any tax required to be collected) reported in the consolidated statement of financial performance or consolidated income and expenditure statement, as the case may be, for the accounting period for which the financial statements are required; and includes (without limitation) any sales, fee income, grants, output appropriations, cost recoveries, donations, dividends, interest, and subscriptions of the group for that accounting period”.

26 Meaning of issuer

Section 4(1) is amended by inserting the following paragraph after paragraph (b):

- “(ba) every recipient of money from a conduit issuer (within the meaning of **section 4A**):”.

27 New sections 4A to 4D inserted

The following sections are inserted after section 4:

“4A Recipients of money from conduit issuers

“(1) In section 4, a person is a **recipient of money from a conduit issuer** if—

- “(a) the person is related to another person (the **conduit issuer**); and

Struck out

- “(b) the conduit issuer has raised an amount of money by the issue of securities offered to the public within the meaning of the Securities Act 1978; and

New

“(b) the conduit issuer raises an amount of money by the issue of securities offered to the public within the meaning of the Securities Act 1978 and that offer is made under that Act after the commencement of this section; and

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Struck out (unanimous)

“(c) that money is raised as part of a scheme or arrangement under which all or a substantial part of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of any of the following:

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“(i) the person; or

“(ii) 1 or more third persons that are subsidiaries of the person; or

“(iii) 1 or more third persons that act, or are accustomed to act, in accordance with the wishes of the person; or

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“(iv) any combination of the persons referred to in **subparagraphs (i) to (iii)**; and

New (unanimous)

“(c) that money is raised as part of a scheme or arrangement under which 75% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—

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“(i) the person; or

“(ii) the person and 1 or more third persons that are related to the person; and

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“(ca) the money that is provided to the person under **paragraph (c)** is 10% or more of the money that is raised under **paragraph (b)**; and

“(d) all or part of the money that is provided under **paragraph (c)** has not yet been repaid or returned to the conduit issuer.

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Struck out (unanimous)

- “(2) In **subsection (1)**, a person is related to another person if—
- “(a) the persons are acting jointly or in concert; or
 - “(b) the first person acts, or is accustomed to acting, in accordance with the wishes of the other person; or
 - “(c) the persons are related companies (within the meaning of section 2(3) of the Companies Act 1993); or
 - “(d) the persons have a business relationship, a personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as related; or
 - “(e) the first person is related to a third person who is related to the other person (in both cases under any of **paragraphs (a) to (d)**), and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as related to the other person.

New (unanimous)

- “(2) In **subsection (1)**,—
- “(a) a person is related to another person if—
 - “(i) they are acting jointly or in concert; or
 - “(ii) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or

Struck out

- “(iii) they are related bodies corporate within the meaning of section 5(7) of the Securities Markets Act 1988; or

New

- “(iii) they are related companies within the meaning of section 2(3) of the Companies Act 1993; or

New (unanimous)

“(iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or

“(v) they are both, directly or indirectly, under the control of the same person; but

“(b) a director of a company or other body corporate is not related to that company or body corporate merely because he or she is a director of that company or body corporate.

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“4B Exemption from being issuer under section 4(1)(ba)

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“(1) The Securities Commission may, by notice in the *Gazette*, exempt—

“(a) a person from being an issuer under **section 4(1)(ba)**; or

“(b) a class of persons from being issuers under **section 4(1)(ba)**.

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“(2) The exemption may be granted on any terms and conditions that the Securities Commission thinks fit.

“(3) The Securities Commission may vary or revoke an exemption in the same way as an exemption may be granted under this section.

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“(4) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

“4C Exemption may apply to accounting period before exemption is granted

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An exemption under **section 4B** may, if the Securities Commission thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period are required to be completed.

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“4D Securities Commission must notify reasons for exemption

“(1) The Securities Commission’s reasons for granting an exemption under **section 4B** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 5

“(2) However, the Securities Commission may defer notifying or not notify the reasons for granting an exemption if the Commission is satisfied that it is proper to do so on the ground of commercial confidentiality.” 10

New (unanimous)

27A Persons ceasing to be issuers during accounting period

Section 5 is amended by adding the following subsection as subsection (2):

“(2) However, this section does not apply to a person who ceases to be an issuer as a result of an exemption under **section 4B.**” 15

28 New section 6A inserted

The following section is inserted after section 6:

“6A Meaning of exempt company

“(1) In this Act, **exempt company** means a company, other than an overseas company or an issuer, if— 20

“(a) at least 2 of the following subparagraphs apply:

“(i) as at the balance date of the accounting period for which financial statements are required, the value of the total assets of the company (including intangible assets) reported in the statement of financial position did not exceed \$1,000,000: 25

“(ii) in the accounting period for which financial statements are required, the turnover of the company did not exceed \$2,000,000:

“(iii) as at the balance date of the accounting period for which financial statements are required, the company has 5 or fewer full-time equivalent employees; and 30

“(b) as at the balance date of the accounting period for which financial statements are required, the company— 35

- “(i) was not a subsidiary of another body corporate or association of persons; and
“(ii) did not have any subsidiaries.
- “(2) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5
“(a) amending the maximum amount of assets that applies under **subsection (1)(a)(i)**:
“(b) amending the maximum amount of turnover that applies under **subsection (1)(a)(ii)**:
“(c) amending the maximum number of full-time equivalent employees that applies under **subsection (1)(a)(iii)**. 10
- “(3) In counting employees for the purposes of **subsection (1)**, part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.”
- 29 New section 10A inserted** 15
The following section is inserted after section 10:
- “10A Non-active entities not required to prepare financial statements**
- “(1) The directors of an entity do not have to comply with section 10 or 19 in respect of an accounting period if the entity— 20
“(a) was a non-active entity in respect of that accounting period; and
“(b) has, within the specified period, delivered to the Registrar a declaration, in the prescribed form, stating that it was a non-active entity in respect of that accounting period. 25
- “(2) For the purposes of this section, an entity is a **non-active entity** in respect of an accounting period if the entity is not an issuer and, during that period, the entity—
“(a) has not derived, or been deemed to have derived, any income; and 30
“(b) has no (*deductions*) expenses; and
“(c) has not disposed of, or been deemed to have disposed of, any assets; and
- Struck out (unanimous)**
- “(d) has not been a party to, perpetuated, or continued with, any transactions that, during the period,— 35

Struck out (unanimous)

- “(i) give rise to income in any person’s hands; or
“(ii) give rise to fringe benefits to any employee or to any former employee; or
“(iii) give rise to a debit in the entity’s imputation credit account or dividend withholding payment account.”

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New (unanimous)

- “(d) has not been a party to, perpetuated, or continued with, any transactions that, during the period, give rise to obligations under the Income Tax Act 2004 in relation to the ~~((company))~~ entity or any other person (or both).”

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- “(3) In determining whether ~~((a company))~~ an entity is a non-active entity, no account may be taken of any—

“(a) statutory company filing fees or associated accounting or other costs; or

“(b) bank charges or other minimal administration costs totalling not more than \$50 in the accounting period; or

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“(c) interest earned on any bank account during the accounting period, to the extent that the total interest does not exceed the total of any charges or costs incurred by the entity to which **paragraph (b)** applies.”

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Struck out (unanimous)

- “(4) In this section, **deduction, income, imputation credit account, and dividend withholding payment account** have the same meanings as in section OB 1 of the Income Tax Act 2004.”

- “(5) In this section, **specified period**, in relation to an accounting period, means the period within which the directors of the entity would, but for this section, be required to ensure that financial statements are completed under section 10.”

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Struck out (unanimous)

- 30 Obligation to prepare group financial statements**
Section 13(2) is amended by inserting “the company is not an issuer and” after “balance date if”.

New (unanimous)

- 30 Obligation to prepare group financial statements**
Section 13(2) is amended by omitting “and a balance date if the only shareholders of the company at that balance date” and substituting “if, on the balance date of the company, the company is not an issuer and the only shareholders of the company”.
- 31 New sections 19 and 19A substituted**
Section 19 is repealed and the following sections are substituted:
- “19 Overseas companies and certain other companies to register financial statements**
- “(1) This section applies to—
- “(a) any company, other than an issuer, that is an overseas company; or
- “(b) any company, other than an issuer,—
- “(i) that is large; and
- “(ii) in which shares that in aggregate carry the right to exercise or control the exercise of 25% or more of the voting power at a meeting of the company are held by—
- “(A) a subsidiary of a company or body corporate incorporated outside New Zealand; or
- “(B) a company or body corporate incorporated outside New Zealand; or
- “(C) a person not ordinarily resident in New Zealand; or
- “(c) any company, other than an issuer, that is a subsidiary of a company (*referred to in paragraph (a) or paragraph (b)*) or body corporate incorporated outside New Zealand.
- “(2) However, this section does not apply to a company (**company A**) if the following requirements are satisfied:

- “(a) company A is a subsidiary of a company that is incorporated in New Zealand (**company B**); and
- “(b) financial statements in relation to company B that comply with section 11 are completed and signed within the time specified in section 10; and 5
- “(c) group financial statements in relation to a group comprising company B, company A, and all other subsidiaries of company B that comply with section 14 are completed and signed within the time specified in section 13; and 10
- “(d) a copy of the financial statements referred to in **paragraph (b)** and a copy of the group financial statements referred to in **paragraph (c)**, together with the auditor’s report on those statements, are delivered to the Registrar for registration. 15
- “(3) The directors of every company to which this section applies must—
- “(a) ensure that, within 20 working days after the financial statements of the company and any group financial statements in relation to a group comprising that company and its subsidiaries are required to be signed, copies of those statements, together with a copy of the auditor’s report on those statements, are delivered to the Registrar for registration; and 20
- “(b) ~~(pay)~~ensure that the company pays to the Registrar the prescribed registration fee at the same time. 25

“19A Interpretation for section 19

- “(1) For the purposes of **section 19**,—
- “(a) a person is ordinarily resident in New Zealand if that person— 30
- “(i) is domiciled in New Zealand; or
- “(ii) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period: 35
- “(b) a company is large if at least 2 of the following subparagraphs apply:

- “(i) as at the balance date of the accounting period for which financial statements are required, the total assets (including intangible assets) of the company and its subsidiaries (if any) reported in the statement of financial position or consolidated statement of financial position (as the case may be) exceeds \$10,000,000: 5
- “(ii) in the accounting period for which financial statements are required, the total turnover of the company and its subsidiaries (if any) exceeds \$20,000,000: 10
- “(iii) as at the balance date of the accounting period for which financial statements are required, the company and its subsidiaries (if any) have 50 or more full-time equivalent employees: 15
- “(c) **auditor’s report**, in relation to an overseas company, means a report by a person qualified for appointment as auditor in accordance with section 199 of the Companies Act 1993:

New (unanimous)

“(d) a subsidiary does not include any company or body corporate or association of persons that is classified as a subsidiary in any applicable financial reporting standard. 20

- “(2) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 25
 - “(a) amending the amount of assets that must be exceeded under **subsection (1)(b)(i)**;
 - “(b) amending the amount of turnover that must be exceeded under **subsection (1)(b)(ii)**;
 - “(c) amending the minimum number of full-time equivalent employees that applies under **subsection (1)(b)(iii)**. 30
- “(3) In counting employees for the purposes of **subsection (1)**, part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.”

32 Fees 35
 Section 20(b) is amended by omitting “section 19(2)” and substituting “**section 19(3)**”.

33 Functions of Board

Section 24(1) is amended by inserting the following paragraph after paragraph (e):

“(ea) to grant exemptions under **section 29A**.”.

34 New sections 29A to 29D inserted

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The following sections are inserted after section 29:

“29A Board may grant exemptions**Struck out (unanimous)**

“(1) The Board may, by notice in the *Gazette*, exempt—

“(a) any person or class of persons from ensuring that financial statements or group financial statements comply with a provision of an applicable financial reporting standard: 10

“(b) any directors of an overseas company, or any directors of a class of overseas company, from compliance with either or both of the following provisions: 15

“(i) section 15 (which requires financial statements and group financial statements of issuers to be audited):

“(ii) **section 19** (which requires overseas companies and certain other companies to register financial statements). 20

Struck out**New (unanimous)**

“(1) The Board may, by notice in the *Gazette*, exempt any person or class of persons from ensuring that financial statements or group financial statements comply with a provision of an applicable financial reporting standard. 25

“(2) The Board must not grant an exemption under this section unless it is satisfied that,—

Struck out (unanimous)

- “(a) in the case of an exemption under **subsection (1)(a)**, due to exceptional circumstances, compliance with the relevant provision would be inappropriate; and
- “(b) in the case of an exemption under **subsection (1)(b)**, compliance with the relevant provision would require the directors of the overseas company to comply with requirements that are—
- “(i) materially different from the financial reporting requirements that the overseas company must comply with under the law in force in the country, State, or territory in which the overseas company is incorporated; and
- “(ii) unduly onerous or burdensome; and

Struck out**New (unanimous)**

- “(a) due to exceptional circumstances, compliance with the relevant provision would be inappropriate; and
- “(c) the extent of the exemption is not broader than what is reasonably necessary to address the matters specified in **paragraph (a) (or paragraph (b))**; and
- “(d) the person who applied for the exemption (if any) has taken reasonable steps to consult with persons or organisations or representatives of persons or organisations who, in the opinion of the Board, would be affected by the exemption; and
- “(e) granting the exemption is, in the circumstances, fit and proper.

New

- “(1) The Board may, by notice in the *Gazette*, exempt the directors of any class of reporting entities from ensuring that financial

New

- statements or group financial statements comply with any provision of an applicable financial reporting standard.
- “(2) The Board must not grant an exemption under this section unless it is satisfied that—
- “(a) compliance with the relevant provision would, in the circumstances, result in financial statements or group financial statements that are misleading in a material way or are likely to be misleading in a material way; and 5
 - “(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption; and 10
 - “(c) the person who applied for the exemption (if any) has taken reasonable steps to consult with persons or organisations or representatives of persons or organisations who, in the opinion of the Board, would be affected by the exemption. 15
- “(3) The exemption may be granted on any terms and conditions that the Board thinks fit.
- “(4) The Board may give notice of the exemption in any publications it thinks fit (in addition to notifying the exemption in the *Gazette*). 20
- “(5) The Board may vary or revoke an exemption in the same way as an exemption may be granted under this section.
- “29B Exemption may apply to accounting period before exemption is granted 25**
- An exemption under **section 29A** may, if the Board thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if,— 30
- “(a) in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 18 or (**section 19**), the exemption is granted before those documents are required to be delivered for registration under those sections; or 35

“(b) in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed.

- “29C Failure to comply with applicable financial reporting standard must be disregarded if directors of reporting entity are exempt** 5
- In considering whether the financial statements of a reporting entity, or group financial statements of a group comprising a reporting entity and its subsidiaries, comply with generally accepted accounting practice or applicable financial reporting standards (or both), a failure of the financial statements or group financial statements to comply with a provision of an applicable financial reporting standard must be disregarded if the directors of the reporting entity— 10
- “(a) are exempted under **section 29A(1)(a)** from ensuring that the financial statements or group financial statements comply with the provision of the applicable financial reporting standard; and 15
- “(b) comply with the terms and conditions of that exemption. 20
- “29D Board must notify reasons for exemption**
- “(1) The Board’s reasons for granting an exemption under **section 29A** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.
- “(2) However, the Board may defer notifying or not notify the reasons for granting an exemption if the Board is satisfied that it is proper to do so on the ground of commercial confidentiality.” 25
- 35 Consultation**
- (1) Section 30(1) is amended by repealing paragraph (c) and substituting the following paragraphs: 30
- “(c) revoke the approval of any approved financial reporting standard; or
- “(d) grant, amend, or revoke an exemption under **section 29A.**” 35

Struck out (unanimous)

(2) Section 30 is amended by inserting the following subsection after subsection (1):

“(1A) The Board must, in deciding whether or not to grant, amend, or revoke an exemption under **section 29A**, consult with—

“(a) the Commissioner of Inland Revenue; and

“(b) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).”

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New (unanimous)

(2) Section 30 is amended by inserting the following subsection after subsection (1):

“(1A) The Board must, in deciding whether or not to grant, amend, or revoke an exemption under **section 29A**, consult with the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).”

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36 New section 33 substituted

Section 33 is repealed and the following section substituted:

“33 Disallowance of determinations and exemptions by House of Representatives

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“(1) The Regulations (Disallowance) Act 1989 applies to—

“(a) the following determinations of the Board as if the determination were a regulation within the meaning of that Act:

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

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“(ii) any revocation of an approval of an approved financial reporting standard:

“(iii) any determination made under section 27(3A):

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“(b) any notice published in the *Gazette* under **section 29A** (which relates to exemptions) as if the notice were a regulation within the meaning of that Act.

“(2) The determinations and notices referred to in **subsection (1)** are not regulations for the purposes of the Acts and Regulations Publication Act 1989.”

37 Certificates of Board

Section 34(1) is amended by inserting the following paragraph after paragraph (b): 5

“(ba) the granting, amendment, or revocation of an exemption under **section 29A** or the accounting period or interim accounting period in relation to which an exemption under that section applies; or” 10

New (unanimous)

37A New sections 35A to 35E inserted

The following sections are inserted before section 36:

“**35A Securities Commission may grant exemptions to directors of issuers that are incorporated or constituted outside New Zealand** 15

“(1) The Securities Commission may, by notice in the *Gazette*, exempt any directors of an issuer that is incorporated or constituted outside New Zealand, or any directors of a class of those issuers, from compliance with any provision of sections 8 to 11, 13 to 16, 18, 36, 36A, or 38. 20

“(2) The Securities Commission must not grant an exemption under this section unless it is satisfied that— 25

“(a) the exemption would not cause significant detriment to subscribers for the securities of the issuer that are members of the public in New Zealand, having regard to the financial reporting requirements that must be complied with in relation to the issuer under the law in force in the country where the issuer is incorporated or constituted; and

New (unanimous)**Struck out**

- “(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption; and
- “(c) granting the exemption is, in the circumstances, fit and proper.

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New

- “(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.

- “(3) The exemption may be granted on any terms and conditions that the Securities Commission thinks fit.

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- “(4) The Securities Commission may vary or revoke an exemption in the same way as an exemption may be granted under this section.

- “(5) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

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“35B Registrar of Companies may grant exemptions to directors of overseas companies

- “(1) The Registrar of Companies may, by notice in the *Gazette*, exempt any directors of an overseas company that is not an issuer, or any directors of a class of those overseas companies, from compliance with any provision of sections 8 to 11, 13, 14, 19, 36, 36A, or 39.

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- “(2) The Registrar of Companies must not grant an exemption under this section unless he or she is satisfied that—

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- “(a) compliance with the relevant provision would require the directors of the overseas company to comply with requirements that are unduly onerous or burdensome; and

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New (unanimous)

Struck out

- “(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption; and
- “(c) granting the exemption is, in the circumstances, fit and proper.

5

New

- “(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.

- “(3) The exemption may be granted on any terms and conditions that the Registrar of Companies thinks fit. 10
- “(4) The Registrar of Companies may give notice of the exemption in any publications he or she thinks fit (in addition to notifying the exemption in the *Gazette*).
- “(5) The Registrar of Companies may vary or revoke an exemption in the same way as an exemption may be granted under this section. 15
- “(6) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989. 20

“35C Consultation

- “(1) In deciding whether or not to grant, amend, or revoke an exemption under **section 35A or 35B**, the Securities Commission or the Registrar of Companies (as the case may be)— 25
- “(a) may consult any persons or organisations that the Commission or Registrar thinks fit; but
- “(b) must consult with—
- “(i) the Commissioner of Inland Revenue if the exemption is under **section 35B** and involves any provision of section 10; and 30

New (unanimous)

- “(ii) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).
- “(2) This section does not limit section 16 or 17 of the Crown Entities Act 2004. 5
- “35D Exemption may apply to accounting period before exemption is granted**
- An exemption under **section 35A or 35B** may, if the Securities Commission or the Registrar of Companies (as the case may be) thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if,— 10
- “(a) in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 18 or **19**, the exemption is granted before those documents are required to be delivered for registration under those sections; or 15
- “(b) in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed. 20
- “35E Reasons for exemption must be notified**
- “(1) The Securities Commission’s reasons for granting an exemption under **section 35A** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 25
- “(2) The Registrar of Companies’ reasons for granting an exemption under **section 35B** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 30
- “(3) However, the Securities Commission or the Registrar of Companies (as the case may be) may defer notifying or not notify the reasons for granting an exemption if the Securities Commission or the Registrar of Companies is satisfied that it is proper to do so on the ground of commercial confidentiality.” 35

- 38 Offences by directors of overseas companies and subsidiaries of overseas companies**
- (1) The heading to section 39 is amended by omitting “**subsidiaries of overseas companies**” and substituting “**other companies to which section 19 applies**”. 5
- (2) Section 39 is amended by omitting “subsection (2) of that section” and substituting “**subsection (3)** of that section”.
- 39 New sections 41A to 41D inserted**
The following sections are inserted after section 41:
- “41A Infringement offences** 10
- “(1) If a person is alleged to have committed an infringement offence, that person may either—
- “(a) be proceeded against summarily for the alleged offence under the Summary Proceedings Act 1957; or
- “(b) be served with an infringement notice as provided in **section 41B.** 15
- “(2) Despite section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or a Registrar of a Court to lay an information is not necessary where the Registrar proceeds with an infringement offence summarily. 20
- “41B Infringement notices**
- “(1) The Registrar may issue an infringement notice to a person if the Registrar believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- “(2) The Registrar may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a Court under section 21 of the Summary Proceedings Act 1957. 25
- “(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked. 30
- “41C Procedural requirements for infringement notices**
- “(1) An infringement notice may be served on a person—
- “(a) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or 35

- “(b) by sending it, or a copy of it, by post, addressed to the person at the person’s last known place of residence or business.
- “(2) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under **subsection (1)(b)** must be treated as having been served on the person on the date it was posted. 5
- “(3) An infringement notice must be in the prescribed form and must contain—
- “(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and 10
- “(b) the amount of the infringement fee; and
- “(c) an address at which the infringement fee may be paid; and
- “(d) the time within which the infringement fee must be paid; and 15
- “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
- “(f) a statement that the person served with the notice has a right to request a hearing; and 20
- “(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
- “(h) any other prescribed matters.
- “(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,— 25
- “(a) reminder notices may be prescribed under regulations made under this Act; and 30
- “(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- “(5) Reminder notices must contain the prescribed information.
- “**41D Payment of infringement fee** 35
The Registrar must pay all infringement fees received into a Crown Bank Account.”

40 New section 42B inserted

The following section is inserted after section 42A:

“42B Regulations

“(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 5

“(a) prescribing fees and charges that—

“(i) the Securities Commission may require to be paid to it in connection with an application to the Securities Commission to grant or amend an exemption under **section 4B or 35A:** 10

“(ii) the Board may require to be paid to it in connection with an application to the Board to grant or amend an exemption under **section 29A:**

New (unanimous)

“(iii) the Registrar of Companies may require to be paid to him or her in connection with an application to him or her to grant or amend an exemption under **section 35B:** 15

“(b) prescribing the amounts of those fees or charges or the method by which they are to be calculated:

“(c) prescribing forms for the purposes of **section 10A** and forms of infringement notices and reminder notices: 20

“(d) prescribing the information that must be included in infringement notices or reminder notices.

“(2) The amounts payable under regulations made under this section are recoverable by the Securities Commission or the Board or the Registrar of Companies (as the case may be) in any court of competent jurisdiction as a debt due to the Securities Commission or the Board or the Registrar of Companies.” 25

41 Consequential amendment to Summary Proceedings Act 1957

(1) This section amends the Summary Proceedings Act 1957. 30

(2) The definition of **infringement notice** in section 2(1) is amended by inserting the following paragraph after paragraph (b):

“(ba) **section 41B** of the Financial Reporting Act 1993; or”. 35

*Transitional provision***Struck out (unanimous)**

- 42 Amendments apply to accounting periods after commencement**
- (1) **Sections 25(1) and (3), 26 to 28, 30 to 32, and 38** apply in respect of accounting periods that commence after the commencement of those sections. 5
- (2) The requirements and provisions that would have applied if the provisions referred to in **subsection (1)** had not been enacted continue to apply in respect of each accounting period that commenced before the commencement of the provisions referred to in **subsection (1)**. 10
- (3) **Sections 25(2), 29, 39, and 41** apply in respect of accounting periods that commence after the commencement of those sections.
- (4) The requirements and provisions that would have applied if the provisions referred to in **subsection (3)** had not been enacted continue to apply in respect of each accounting period that commenced before the commencement of the provisions referred to in **subsection (3)**. 15
- (5) Nothing in this section limits **sections 4C and 29B** of the principal Act (which allow an exemption to apply to an accounting period before the exemption is granted). 20

New (unanimous)

- 42 Accounting periods to which amendments apply**
- (1) **Sections 25(1) and (3), 28, 29, 31, 32, and 38** apply in respect of— 25
- (a) accounting periods that have not ended at the respective commencement of those provisions; and
- (b) accounting periods that commence after the respective commencement of those provisions.
- (2) The requirements and provisions that would have applied if the provisions referred to in **subsection (1)** had not been enacted continue to apply in respect of accounting periods that ended on or before the respective commencement of those provisions. 30

New (unanimous)

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| (3) | Sections 25(2), 26 to 27A, 30, 39, and 41 apply in respect of accounting periods that commence after the respective commencement of those provisions. | |
| (4) | The requirements and provisions that would have applied if the provisions referred to in subsection (3) had not been enacted continue to apply in respect of accounting periods that commenced on or before the respective commencement of those provisions. | 5 |
| (5) | Nothing in this Part limits sections 4C, 29B, and 35D of the principal Act (which allow an exemption to apply to an accounting period before the exemption is granted regardless of whether that accounting period commences before or after the respective commencement of those provisions). | 10 |

Legislative history

14 November 2006

Divided from Business Law Reform Bill (Bill 64–2)
as Bill 64–3C
