

FINANCIAL REPORTING BILL

EXPLANATORY NOTE

THIS Bill requires issuers of securities to the public to file financial statements with the Registrar of Companies. It also provides for the establishment of an Accounting Standards Review Board which will have, as its principal function, the function of approving accounting standards. Financial statements will be required to comply with applicable accounting standards approved by the Board. If, however, the financial statements of the public issuer do not give a true and fair view of the affairs of the issuer, the financial statements will have to contain information and explanations so as to ensure that they give a true and fair view of those affairs.

PART I

INTERPRETATION AND APPLICATION

Clause 1 relates to the Short Title and commencement of the Bill. Except for the provisions of the Bill that impose the reporting requirements, the Bill comes into force on the date on which it receives the Royal assent. The provisions of the Bill that impose reporting requirements will come into force on 1 April 1992.

Clauses 2 to 9 define terms and expressions used in the Bill.

Clause 2 is a general interpretation provision.

Clause 3 defines the expression “generally accepted accounting practice”. Financial statements and group financial statements comply with generally accepted accounting practice if those statements comply with applicable accounting standards approved by the Accounting Standards Review Board and, in relation to matters that are not provided for in such standards and are not the subject of any judicial decisions, are appropriate to the circumstances of the case and have authoritative support within the accounting profession.

Clause 4 defines the term “issuer”. In general terms, the Bill will apply to persons and bodies that have securities on issue to the public, life insurance companies, unit trusts, and listed companies.

Clause 5 provides that a person continues to be an issuer for the purposes of the Bill for the whole of an accounting period even though that person may have ceased to be an issuer within the meaning of that term during that accounting period.

Clause 6 lists persons to whom the Bill will not apply. The Bill will not apply to—

- (a) The Crown;
- (b) Local authorities;
- (c) The Board of Trustees of the National Provident Fund;
- (d) The Reserve Bank of New Zealand;
- (e) Trustees of registered superannuation schemes;
- (f) Companies having less than 25 shareholders that have no securities on issue other than equity securities.

Clause 7 defines the term “balance date”.

Clauses 8 and 9 define the terms “financial statements” and “group financial statements” respectively.

PART II

PREPARATION AND REGISTRATION OF FINANCIAL STATEMENTS

Clause 10 requires the directors of every issuer to ensure that, within 3 months after the balance date of the issuer, financial statements are completed and signed on their behalf.

Clause 11 provides that the financial statements must comply with generally accepted accounting practice. If, in complying with generally accepted accounting practice, the financial statements do not give a true and fair view of the matters to which they relate, the directors will be required to add such information and explanations as will give a true and fair view of those matters.

Clauses 12 and 13 relate to the obligation to prepare group financial statements and the content of group financial statements and are in substantially the same terms as *clauses 10 and 11* of the Bill.

Clause 14 requires the financial statements and group financial statements to be audited.

Clause 15 relates to the auditor’s report. The auditor’s report will be required to state—

- (a) Whether the financial statements or group financial statements comply with generally accepted accounting practice; and
- (b) Whether, and having regard to any information and explanations that may have been added by the directors, the financial statements or group financial statements give a true and fair view of the matters to which they relate.

Clause 16 requires every issuer to deliver a copy of the financial statements or group financial statements, together with the auditor’s report on those statements, to the Registrar of Companies within 30 working days after they have been signed.

Clause 17 provides that the Bill does not require financial statements or group financial statements to be prepared and filed for an accounting period that ended before the accounting period in which a person becomes an issuer.

PART III

ACCOUNTING STANDARDS REVIEW BOARD

Clause 18 establishes the Accounting Standards Review Board.

Clause 19 provides that the Board is to comprise 7 members to be appointed by the Governor-General on the recommendation of the Minister of Justice.

Clause 20 defines the functions of the Board. The Board’s principal function is to approve accounting standards submitted to it by the New Zealand Society of Accountants or any other persons or organisations.

Clause 21 provides that the New Zealand Society of Accountants and any other person or organisation may submit accounting standards to the Board for approval and may also submit amendments to approved accounting standards for approval.

Clause 22 provides that accounting standards approved by the Board may be expressed to apply to issuers or groups generally or to specified classes of issuers or groups. The Board is required to specify the accounting period in relation to which approved accounting standards will commence to apply.

Clause 23 provides that the Board may revoke the approval of an accounting standard.

Clause 24 requires the Board to give public notice of the approval of accounting standards and the revocation of approval of accounting standards in the *Gazette* and in such other publications as it considers appropriate.

Clause 25 relates to the general powers of the Board.

Clause 26 requires the Board to prepare a report on its operations for each year ending on 30 June and submit that report to the Minister of Justice. The Minister is required to lay a copy of the report before the House of Representatives.

Clause 27 applies the machinery provisions set out in the **First Schedule** to the Bill to the Board.

Clause 28 applies the provisions of sections 5 to 7 of the Regulations (Disallowance) Act 1989 to determinations of the Board approving accounting standards and revoking approval of such standards.

Clause 29 is an evidentiary provision. It provides that a certificate signed by the Chairperson or Deputy Chairperson of the Board as to—

- (a) The making of a determination approving an accounting standard or revoking the approval of an accounting standard;
- (b) The accounting period for which an approved accounting standard will commence to apply;
- (c) The accounting period from the end of which an approved accounting standard will cease to apply;
- (d) The accounting period for which an approved accounting standard was in force—

is, in the absence of evidence to the contrary, sufficient evidence of the matters stated in it.

Clause 30 adds the Accounting Standards Review Board to the list of organisations named in the **First Schedule** to the Official Information Act 1982.

PART IV

MISCELLANEOUS

Clause 31 relates to offences. Where an issuer fails to comply with the requirements of *clause 10* (which relates to the preparation of financial statements) or *clause 12* (which relates to the preparation of group financial statements) or *clause 16* (which relates to registration), the issuer and every director of the issuer commits an offence.

Where financial statements or group financial statements do not comply with an applicable accounting standard the issuer and every director of the issuer commits an offence.

Clause 32 extends the time for the laying of informations for offences.

Clause 33 makes the Registrar of Companies responsible for the administration of the Act.

Clause 34 applies provisions of the Securities Act 1978 relating to enforcement.

Clause 35 amends a number of other Acts that contain financial reporting requirements for certain classes of bodies. The general approach adopted by the Bill in amending these Acts is to enable financial statements or group financial statements registered under the Bill to be used to report to members of those bodies. Where those Acts also require financial statements to be registered with a person having statutory functions, that requirement will not apply to issuers to which the Bill applies.

FINANCIAL REPORTING

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A BILL INTITULED

An Act to—

- 5
- (a) Require issuers of securities to the public to file financial statements that comply with generally accepted accounting practice and give a true and fair view of their affairs; and
 - (b) Establish an Accounting Standards Review Board and define its functions and powers; and

- (c) Give legal force to accounting standards approved by the Board; and
 (d) Provide for related matters

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

1. **Short Title and commencement**—(1) This Act may be cited as the Financial Reporting Act 1991. 5

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.

(3) Sections 3 to 9, Part II, sections 31, 32, 34, and 35 of, and the Second Schedule to, this Act shall come into force on the 1st day of April 1992. 10

PART I

INTERPRETATION AND APPLICATION

2. **Interpretation**—In this Act, unless the context otherwise requires,— 15

“Accounting period”, in relation to an issuer, means a year ending on a balance date of the issuer and, if as a result of the date of the formation or incorporation of the issuer or a change of the balance date of the issuer, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period: 20

“Approved accounting standard” means an accounting standard approved by the Board under section 22 of this Act; and includes an amendment to an approved accounting standard that is approved by the Board under that section: 25

“Applicable accounting standard”, in relation to an issuer or a group and to an accounting period of an issuer, means an approved accounting standard that applies to that issuer or that group and to that accounting period in accordance with a determination of the Board for the time being in force and publicly notified under section 24 of this Act: 30

“Balance date” has the meaning given to it by section 7 of this Act: 35

“Board” means the Accounting Standards Review Board established by this Act:

“Company” has the same meaning as in— 40

(a) Section 2 of the Companies Act 1955; or

(b) Section 2 of the Companies Act 1990,—
 as the case may be, and includes an overseas company:

“Director” means,—

(a) In relation to a company, a person occupying the position of a director of the company by whatever name called:

5 (b) In relation to a partnership (other than a special partnership), a partner:

(c) In relation to a special partnership, any general partner:

10 (d) In relation to a body corporate or unincorporate, other than a company or a partnership or a special partnership, a person occupying a position in the body that is comparable with that of a director of a company:

15 (e) In relation to a unit trust (within the meaning of section 2 of the Unit Trusts Act 1960), every trustee and the manager of the unit trust:

(f) In relation to any other person, that person:

“Equity security” means any interest in or right to a share in the share capital of a company; and includes—

20 (a) A preference share, and company stock; and

(b) Any renewal or variation of the terms or conditions of any existing equity security:

“Financial statements” has the meaning given to it by **section 8** of this Act:

25 “Generally accepted accounting practice” has the meaning given to it by **section 3** of this Act:

“Group” means a group comprising an issuer and its subsidiaries other than subsidiaries which, in terms of an applicable accounting standard, need not be dealt with in group financial statements:

30 “Group financial statements” has the meaning given to it by **section 9** of this Act:

“Issuer” has the meaning given to it by **section 4** of this Act:

“Minister” means the Minister of Justice:

35 “Overseas company” means a company incorporated outside New Zealand:

“Security” means an interest or right to participate in any capital, assets, earnings, royalties, or other property of any person; and includes—

40 (a) An interest in or right to be paid money that is deposited with, lent to, or otherwise owing by any person (whether or not the interest or right is secured by a charge over property); and

45 (b) A renewal or variation of the terms or conditions of an existing security:

“Subsidiary” means a subsidiary within the meaning of the Companies Act 1955 or the Companies Act 1990 or an applicable accounting standard:

“Working day” means a day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year.

3. Meaning of “generally accepted accounting practice”—For the purposes of this Act, financial statements and group financial statements comply with generally accepted accounting practice if those statements comply with—

- (a) Applicable accounting standards; and
- (b) In relation to matters for which no provision is made in applicable accounting standards and that are not subject to any applicable rule of law, accounting policies that—
 - (i) Are appropriate to the circumstances of the issuer; and
 - (ii) Have authoritative support within the accounting profession.

4. Meaning of “issuer”—(1) In this Act, “issuer” means—

- (a) Every person who has, whether before or after the commencement of this Act, allotted securities pursuant to—
 - (i) An offer required to be made by means of a registered prospectus in accordance with the Securities Act 1978; or
 - (ii) An offer contained in a prospectus required to be registered under the Companies Act 1955—whether or not the securities allotted are securities of the same type as the securities offered:
- (b) An authorised life insurance company (within the meaning of section 2 (1) of the Securities Act 1978) that has, whether before or after the commencement of this Act, issued any life insurance policy pursuant to an offer of securities to the public within the meaning of that Act:
- (c) An overseas company that has established a place of business in New Zealand and that has, whether before or after the commencement of this Act, allotted

securities pursuant to an offer in New Zealand of securities to the public within the meaning of the Securities Act 1978:

- 5 (d) Every unit trust (within the meaning of section 2 of the Unit Trusts Act 1960) that has, whether before or after the commencement of this Act, allotted securities pursuant to an offer of securities to the public within the meaning of the Securities Act 1978:
- 10 (e) Every person who is a party to a listing agreement with a stock exchange.
- (2) Every registered bank (within the meaning of section 2 (1) of the Reserve Bank of New Zealand Act 1989) that has allotted securities to the public within the meaning of the Securities Act 1978 is an issuer for the purposes of this Act.
- 15 (3) In this section references to securities that have been issued or allotted are to be taken as references to securities that have not been cancelled, redeemed, forfeited, or in respect of which obligations owing under them have not been discharged.
- 20 (4) **Subsection (2)** of this section shall come into force on a date to be appointed by the Governor-General by Order in Council.

5. Persons ceasing to be issuers during accounting period—Where a person ceases to be an issuer during an accounting period that person shall be deemed to continue to be an issuer in relation to that accounting period for the purposes of this Act.

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6. Certain persons not issuers—None of the following is an issuer for the purposes of this Act:

(a) The Crown:

30 (b) A local authority:

(c) The Board of Trustees of the National Provident Fund continued in existence under section 12 of the National Provident Fund Restructuring Act 1990:

(d) The Reserve Bank of New Zealand continued in existence under section 5 of the Reserve Bank of New Zealand Act 1989:

35 (e) The trustees of a superannuation scheme that is registered under the Superannuation Schemes Act 1989:

(f) A company within the meaning of section 2 (1) of the Companies Act 1955 that does not have more than 25 members and that would, but for this section, be an issuer by reason only of the allotment of equity securities:

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- (g) A company within the meaning of section 2 (1) of the Companies Act 1990 that does not have more than 25 shareholders and that would, but for this section, be an issuer by reason only of the allotment of equity securities.

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7. Meaning of “balance date”—(1) In this Act, the term “balance date” in relation to an issuer, means the close of the 31st day of March or of such other date as the directors of the issuer adopt as the issuer’s balance date.

(2) Subject to subsections (3) and (4) of this section, an issuer must have a balance date in every calendar year. 10

(3) If an issuer is formed or incorporated after the 31st day of March in a calendar year, it need not have a balance date in that year if its first balance date is not later than the 30th day of June in the next calendar year. 15

(4) If an issuer changes its balance date, it need not have a balance date in a calendar year if—

(a) The period between any 2 balance dates does not exceed 15 months; and

(b) The Registrar of Companies approves the change of balance date before it is made. 20

(5) The Registrar may approve a change of balance date with or without conditions.

(6) If an issuer changes its balance date, the period between any 2 balance dates must not exceed 15 months. 25

(7) The board of an issuer that is a company must ensure that the balance date of the company is the same as the balance date of its subsidiaries.

(8) The Registrar may, by notice in writing and subject to such conditions as the Registrar thinks fit, exempt an issuer from subsection (7) of this section either completely or in relation to a subsidiary or a class of subsidiaries. 30

(9) The existence of the exemption must be stated in a note to—

(a) The balance sheet of any subsidiary; and 35

(b) The consolidated balance sheet for a group.

8. Meaning of “financial statements”—In this Act, the term “financial statements”, in relation to an issuer and a balance date, means—

(a) A balance sheet for the issuer as at the balance date; and 40

(b) In the case of—

- (i) An issuer trading for profit, a profit and loss statement for the issuer in relation to the accounting period ending at the balance date; and
- 5 (ii) An issuer not trading for profit, an income and expenditure statement for the issuer in relation to the accounting period ending at the balance date; and
- 10 (iii) An issuer that is a building society within the meaning of the Building Societies Act 1965, a revenue and appropriation account for the issuer in relation to the accounting period ending at the balance date; and
- (c) A statement of cash flows for the issuer in relation to the accounting period ending at the balance date—
together with any notes or documents giving information relating to the balance sheet, statements, or account.

15 **9. Meaning of “group financial statements”**—In this Act the term “group financial statements”, in relation to a group and a balance date, means—

- (a) A consolidated balance sheet for the group as at that balance date; and
- 20 (b) Where a member of the group trades for profit, a consolidated profit and loss statement for the group in relation to the accounting period ending on that balance date; and
- 25 (c) Where no member of the group trades for profit, a consolidated income and expenditure statement for the group in relation to the accounting period ending on that balance date; and
- (d) A consolidated statement of cash flows for the group in relation to the accounting period ending on that
- 30 balance date—
together with any notes or documents giving information relating to the balance sheet or statement.

PART II

PREPARATION AND REGISTRATION OF FINANCIAL STATEMENTS

35 **10. Obligation to prepare financial statements**—The directors of every issuer must ensure that, within 3 months after the balance date of the issuer, financial statements that comply with **section 11** of this Act are—

- (a) Completed in relation to the issuer and that balance date; and
- 40 (b) Signed on behalf of the directors by 2 directors of the issuer, or, if the issuer has only one director, by that director.

11. Content of financial statements—(1) The financial statements of an issuer must comply with generally accepted accounting practice.

(2) If, in complying with generally accepted accounting practice, the financial statements do not give a true and fair view of the matters to which they relate, the directors of the issuer must add such information and explanations as will give a true and fair view of those matters. 5

12. Obligation to prepare group financial statements—
The directors of an issuer which has, on the balance date of the issuer, one or more subsidiaries, must ensure that, within 3 months after that balance date, group financial statements that comply with **section 13** of this Act are— 10

- (a) Completed in relation to that group and that balance date; and 15
- (b) Signed on behalf of the directors by 2 directors of the issuer, or, if the issuer has only one director, by that director.

13. Content of group financial statements—(1) The financial statements of a group must comply with generally accepted accounting practice. 20

(2) If, in complying with generally accepted accounting practice, the group financial statements do not give a true and fair view of the matters to which they relate, the directors of the issuer must add such information and explanations as will give a true and fair view of those matters. 25

14. Financial statements and group financial statements to be audited—(1) The directors of an issuer must ensure that the financial statements of the issuer or the group financial statements are audited. 30

(2) The financial statements or group financial statements must be audited,—

- (a) If the issuer is a company, by an auditor appointed in accordance with the Companies Act 1955 or the Companies Act 1990, as the case may be; or 35
- (b) If the issuer is incorporated or registered under any other Act that provides for the appointment of an auditor, by an auditor appointed under that Act; or
- (c) If the issuer is not incorporated or registered under an Act that provides for the appointment of an auditor, by an auditor appointed in accordance with the provisions of the Companies Act 1990 which shall, for 40

that purpose, apply with such modifications as may be necessary.

15. Auditor's report—The auditor's report must state—

- 5 (a) Whether, in the auditor's opinion, the financial statements or group financial statements, as the case may be, comply with generally accepted accounting practice; and
- 10 (b) Whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the directors of the issuer, the financial statements or group financial statements, as the case may be, give a true and fair view of the matters to which they relate.

15 **16. Registration**—(1) Every issuer must deliver to the Registrar of Companies, within 30 working days after the financial statements of the issuer or the group financial statements are required to be signed, a copy of those statements together with a copy of the auditor's report on those statements.

20 (2) The issuer must, at the same time, pay to the Registrar of Companies the prescribed registration fee.

25 (3) The copies delivered to the Registrar of Companies pursuant to **subsection (1)** of this section must be certified to be correct copies by 2 directors of the issuer, or, where the issuer has only one director, by that director.

30 (4) The Governor-General may, by Order in Council, prescribe the fee payable to the Registrar of Companies under **subsection (2)** of this section, and may also prescribe fees payable to the Registrar of Companies by way of penalty for failure to deliver financial statements or group financial statements and the auditor's report on those statements within the time prescribed by this section.

35 **17. Application of this Part to accounting periods ending before person becomes an issuer**—Nothing in this Part of this Act requires the directors of an issuer to ensure the completion of financial statements or group financial statements and the registration of those financial statements in relation to an accounting period that ended before the accounting period in which that person became an issuer.

PART III

ACCOUNTING STANDARDS

REVIEW BOARD

18. Establishment of Accounting Standards Review Board—There is hereby established a Board to be called the Accounting Standards Review Board. 5

19. Membership of Board—(1) The Board shall consist of 7 members appointed from time to time by the Governor-General on the recommendation of the Minister.

(2) One member shall be appointed as Chairperson and another shall be appointed as Deputy Chairperson. 10

(3) The Minister shall not recommend a person for appointment as a member of the Board unless, in the opinion of the Minister, that person is qualified for appointment by reason of his or her knowledge of, or experience in, business, accounting, or law. 15

20. Functions of Board—The Board has the following functions:

(a) To review and, if it thinks fit, approve accounting standards submitted to it for approval: 20

(b) To review, and if it thinks fit, approve amendments to any approved accounting standard submitted to it for approval:

(c) To give directions and make recommendations in relation to the submission to it of accounting standards for approval: 25

(d) To encourage the development of accounting standards including accounting standards for different classes of issuer:

(e) To liaise with the Australian Accounting Standards Review Board established by the Securities Commission Act 1989 of Australia with a view to harmonising New Zealand and Australian accounting standards. 30

21. Accounting standards may be submitted to Board for approval—The New Zealand Society of Accountants and any other organisation or person may, from time to time, submit— 35

(a) Accounting standards; and

(b) Amendments to any approved accounting standards— 40
to the Board for approval.

22. Approval of accounting standards—(1) Approved accounting standards may be expressed to apply in relation to all issuers or groups or to specified classes of issuers or groups.

(2) Approved accounting standards may—

- 5 (a) Have general or specific application:
(b) Differ according to differences in time, locality, place, or circumstance.

(3) Where the Board approves an accounting standard the Board shall specify the accounting period in relation to which the approved accounting standard shall commence to apply, not being an accounting period that ended before the date on which the accounting standard is approved.

23. Revocation of approval—The Board may revoke any approval of an accounting standard with effect from the end of an accounting period specified by the Board, not being an accounting period that ended before the date on which the approval is revoked.

24. Public notice—The Board must give notice of—

- 20 (a) The approval of an accounting standard and of any amendment to an approved accounting standard; and
(b) The revocation of any approval of an accounting standard and of any amendment to an approved accounting standard—

25 in the *Gazette* and in such publications as it considers appropriate for that purpose.

25. General powers—(1) The Board has such powers as are reasonably necessary to enable it to carry out its functions.

(2) Without limiting subsection (1) of this section, the Board may consult such persons or organisations as the Board thinks fit to assist the Board in deciding whether or not to—

- 30 (a) Approve an accounting standard; or
(b) Revoke any approval of an accounting standard.

26. Annual reports—(1) As soon as practicable after the end of each year ending with the 30th day of June, the Board shall furnish to the Minister a report of its operations during that year.

(2) The Minister shall lay a copy of the report before the House of Representatives as soon as practicable after receiving it.

27. Further provisions applying to Board—The provisions set out in the First Schedule to this Act apply in respect of the Board.

28. Disallowance of determinations by House of Representatives—Sections 5 to 7 of the Regulations (Disallowance) Act 1989 shall apply to every determination of the Board— 5

- (a) Approving an accounting standard and any amendment to an approved accounting standard; or
 - (b) Revoking an approval of an accounting standard and any amendment to an approved accounting standard— 10
- as if the determination was a regulation within the meaning of section 2 of that Act.

29. Certificates of Board—(1) A certificate signed by the Chairperson or Deputy Chairperson of the Board as to— 15

- (a) The making of a determination approving an accounting standard or any amendment to an approved accounting standard or revoking the approval of an accounting standard or any amendment to an approved accounting standard; or 20
- (b) The accounting period in relation to which an approved accounting standard shall commence to apply; or
- (c) The accounting period from the end of which an approved accounting standard shall cease to apply; or
- (d) The accounting period in relation to which an approved accounting standard was in force— 25

shall, in the absence of evidence to the contrary, be sufficient evidence of the matters stated in the certificate.

(2) All Courts and all persons acting judicially shall take judicial notice of the signature of the Chairperson or Deputy Chairperson appearing on a certificate given under subsection (1) of this section. 30

30. Amendment to Official Information Act 1982—The First Schedule to the Official Information Act 1982 (as substituted by section 23 (1) of the Official Information Amendment Act 1987) is hereby amended by inserting, in its appropriate alphabetical order, the following item: 35

“Accounting Standards Review Board”.

PART IV

MISCELLANEOUS

5 **31. Offences**—(1) Where an issuer fails to comply with section 10 or section 12 or section 16 of this Act, the issuer and every director of the issuer commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

10 (2) Where financial statements or group financial statements fail to comply with an applicable accounting standard, the issuer and every director of the issuer commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

(3) It is a defence to a director charged with an offence under subsection (1) of this section if the director proves that he or she—

15 (a) Did not know of, and could not reasonably have been expected to know of, the failure to comply; or

(b) Took all reasonable steps to ensure that the requirements of the relevant section would be complied with.

20 (4) It is a defence to a director charged with an offence under subsection (2) of this section if the director proves that he or she—

(a) Did not know of, and could not reasonably have been expected to know of, the failure to comply; or

25 (b) Took all reasonable steps to ensure that the financial statements or group financial statements would comply with the applicable accounting standard.

32. Time in which information may be laid—
Notwithstanding anything to the contrary in the Summary Proceedings Act 1957, an information for an offence against this Act may be laid at any time within 3 years after the date of the offence.

33. Administration of Act—The Registrar of Companies is charged with the administration of this Act.

35 **34. Amendment to Securities Act 1978**—(1) The First Schedule to the Securities Act 1978 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The Financial Reporting Act 1991.”

40 (2) Section 67 of the Securities Act 1978 (as applied in relation to this Act by subsection (1) of this section) shall so apply as if for paragraphs (a) and (b) of subsection (1) of that section there were substituted the following paragraphs:

“(a) Require any issuer (within the meaning of **section 4** of the Financial Reporting Act 1991) or any director, officer, or employee thereof to produce for inspection any book or paper or other document kept by the issuer;

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“(b) Require any person to produce for inspection any book or paper or other document that contains information relating to any money or other property that is managed, supervised, controlled, or held in trust by any such issuer;”.

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35. Amendments to other Acts—The enactments specified in the **Second Schedule** to this Act are hereby amended in the manner indicated in that Schedule.

SCHEDULES

FIRST SCHEDULE

Section 27

PROVISIONS APPLYING TO ACCOUNTING STANDARDS REVIEW BOARD

1. Term of office—(1) Every member of the Board shall be appointed for such term as the Governor-General shall specify in the instrument appointing the member, being a term not exceeding 5 years.

(2) A member of the Board may from time to time be reappointed.

2. Continuation in office after term expires—Notwithstanding **clause 1** of this Schedule, every member of the Board whose term of office has expired shall, unless sooner vacating office under **clause 3** of this Schedule, continue to hold office by virtue of the appointment for the term that has expired, until—

- (a) That member is reappointed; or
- (b) A successor to that member is appointed.

3. Extraordinary vacancies—(1) A member of the Board may at any time be removed from office by the Governor-General for disability affecting the performance of his or her duties as a member, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) A member of the Board may at any time resign office by giving written notice to that effect to the Minister.

(3) If a member of the Board dies, or resigns, or is removed from office, the vacancy created shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy may be filled by the appointment of a person by the Governor-General in accordance with **section 19** of this Act.

(5) A person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of the Board are not affected by a vacancy in its membership.

FIRST SCHEDULE—*continued*

PROVISIONS APPLYING TO ACCOUNTING STANDARDS REVIEW BOARD—
continued

4. Meetings of Board—(1) The Chairperson shall convene such meetings of the Board as he or she thinks necessary for the efficient performance of the functions of the Board.

(2) Meetings of the Board shall be held at such times and places as the Chairperson determines.

(3) At any meeting of the Board the quorum shall be 3 members.

5. Chairperson—(1) The Chairperson shall preside at every meeting of the Board at which he or she is present.

(2) Where the Chairperson becomes incapable of acting by reason of illness, absence, or other sufficient cause, or during any vacancy in the office of Chairperson, or if the Chairperson considers it not proper or desirable to participate personally in relation to a determination, the Deputy Chairperson shall have and may exercise all the powers, functions, and duties of the Chairperson.

(3) Where the Deputy Chairperson is incapable of acting by reason of illness, absence, or other sufficient cause, or there is a vacancy in the office of Deputy Chairperson, or if the Deputy Chairperson considers it not proper or desirable to participate personally in relation to a determination, the members of the Board shall, by resolution, appoint 1 of their number to act as Chairperson for the period or purpose stated in the appointment.

(4) A member of the Board appointed to act for the Chairperson shall, while acting as such, be deemed to be the Chairperson, and shall have and may exercise all the powers, functions, and duties of that office for the period or for the purpose stated in the appointment.

(5) No appointment of a member of the Board to act as Chairperson and no act done by that member as such, and no act done by the Board while any member is acting as such, shall, in any proceedings, be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

6. Voting at meetings—(1) All questions arising at a meeting of the Board shall be decided by a majority of the votes cast by the members present.

(2) The Chairperson shall have a deliberative vote and, in the event of any equality of votes, shall also have a casting vote.

(3) A resolution in writing signed, or assented to by letter or telegram or facsimile transmission or telex, by all members of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

7. Procedure—Subject to this Act, the Board may regulate its procedure in such manner as it thinks fit.

8. Members not personally liable—No member of the Board is personally liable for an act or default done or made by the Board or by any member of the Board in good faith in the course of the operations of the Board.

Section 35

SECOND SCHEDULE
ENACTMENTS AMENDED

Title of Act	Amendment
1908, No. 81—The Industrial and Provident Societies Act 1908 (R.S. Vol. 7, p. 407)	<p>By omitting from section 8 (a) (iii) the word “Once”, and substituting the words “If the society is not an issuer within the meaning of section 4 of the Financial Reporting Act 1991, once”.</p> <p>By omitting from section 8 (a) (iv) the word “Within”, and substituting the words “If the society is not an issuer within the meaning of section 4 of the Financial Reporting Act 1991, within”.</p> <p>To omit subparagraphs (vi) and (vii) of section 8 (a), and substitute the following subparagraphs:</p> <p>“(vi) Supply gratuitously to every member or person interested in the funds of the society, on application, a copy of the last annual return of the society for the time being or, in the case of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, a copy of the last financial statements of the society prepared under that Act and a copy of the auditor’s report on those statements:</p> <p>“(vii) Keep a copy of the last balance sheet for the time being, together with the report of the auditors or, in the case of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, a copy of the last financial statements of the society prepared under that Act and a copy of the auditor’s report on those statements, always hung up in a conspicuous place at the registered office of the society:”.</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1908, No. 212—The Incorporated Societies Act 1908 (R.S. Vol. 7, p. 383)	<p>By adding to section 23 the following subsection:</p> <p>“(4) Nothing in this section applies to a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991.”</p>
1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)	<p>By adding to section 133 the following subsection:</p> <p>“(4) Nothing in this section applies to a company that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991.”</p> <p>By repealing section 151 (1) (c), and substituting the following paragraph:</p> <p>“(c) Will enable the directors,—</p> <p> “(i) In the case of a company that is not an issuer within the meaning of section 4 of the Financial Reporting Act 1991, to ensure that any balance sheet, profit and loss account, or income and expenditure account of the company complies with section 153 of this Act; and</p> <p> “(ii) In the case of a company that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, to ensure that financial statements or group financial statements within the meaning of that Act comply with that Act; and”.</p> <p>By repealing the proviso to section 151 (3), and substituting the following proviso:</p> <p>“Provided that if accounting records are kept at a place outside New Zealand there shall be sent to, and kept at a place in, New Zealand such accounts and returns with respect to the business dealt with in the accounting records so kept as will disclose with reasonable accuracy the financial position of that business at intervals not exceeding 6 months and will,—</p> <p> “(i) In the case of a company that is not an issuer within the</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)— <i>continued</i>	<p>meaning of section 4 of the Financial Reporting Act 1991, enable to be prepared in accordance with this Act the company's balance sheet, its profit and loss account or income and expenditure account, and any document annexed to any of those documents giving information which is required by this Act and is thereby allowed to be so given; and</p> <p>“(ii) In the case of a company that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, enable financial statements or group financial statements within the meaning of that Act to be prepared in accordance with that Act.”.</p> <p>By inserting, after section 167, the following section:</p> <p>“167A. Financial statements of certain companies—(1) Nothing in sections 152 to 157, 159, and 160 of this Act applies to a company that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991.</p> <p>“(2) The directors of a company that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991 must, within the time fixed by section 152 of this Act, lay before the company in general meeting—</p> <p>“(a) A copy of the financial statements of the company registered under that Act; and</p> <p>“(b) A copy of the auditor's report on those statements registered under that Act.</p> <p>“(3) The directors of a company that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991 and</p>

SECOND SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)— <i>continued</i>	<p>that is required by that Act to prepare and register group financial statements must, within the time fixed by section 152 of this Act, lay before the company in general meeting—</p> <p>“(a) A copy of the group financial statements registered under that Act; and</p> <p>“(b) A copy of the auditor’s report on those statements registered under that Act.</p> <p>“(4) The following provisions of this Act shall apply in relation to an issuer within the meaning of section 4 of the Financial Reporting Act 1991 with the following modifications:</p> <p>“(a) Section 161 shall apply as if for subsection (1) there was substituted the following subsection:</p> <p> “(1) There shall be attached to the financial statements or group financial statements laid before a company in general meeting a report by the directors with respect to the state of the company’s affairs, the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, which they propose to carry to reserves.”</p> <p>“(b) Section 162 (1) shall apply as if for the words ‘every balance sheet’ there were substituted the words ‘the financial statements or group financial statements’:</p> <p>“(c) Section 162 shall apply as if for subsection (2) there was substituted the following subsection:</p> <p> “(2) Any member of the company, whether he is or is not entitled to have sent to him copies of the financial</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
<p>1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)—<i>continued</i></p>	<p>statements or group financial statements and any holder of debentures of the company, shall be entitled to be furnished on demand, without charge, with a copy of the last financial statements or group financial statements, including every document required by law to be annexed thereto, together with a copy of the auditor's report on those statements.:</p> <p>“(d) Section 166 shall apply as if subsection (1) was omitted.</p> <p>“(5) If any person being a director of a company fails to take all reasonable steps to comply with the provisions of this section, he or she shall, in respect of each offence, be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$400.</p> <p>“(6) In any proceedings against a person in respect of any offence under this section, it shall be a defence to prove that he or she had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provisions of this section were complied with and was in a position to discharge that duty.</p> <p>“(7) A person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the Court dealing with the case, the offence was committed wilfully.”</p> <p>By inserting in section 402 (1), after the word “applies”, the words “, not being an issuer within the meaning of section 4 of the Financial Reporting Act 1991,”.</p> <p>By inserting in section 402 (2), after the word “applies”, the words “, not being</p>

SECOND SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)— <i>continued</i>	<p>an issuer within the meaning of section 4 of the Financial Reporting Act 1991.”</p> <p>By inserting after section 402, the following section:</p> <p>“402A. Accounts of certain overseas companies—(1) Every overseas company to which this section applies that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991 shall, in every calendar year, make out separate financial statements that comply with the requirements of that Act in respect of its business, operations, or undertaking conducted in or from New Zealand.</p> <p>“(2) The company shall, in every calendar year, deliver to the Registrar copies of the financial statements referred to in subsection (1) of this section. Every such copy shall be certified by a person authorised in writing by the overseas company in that behalf.</p> <p>“(3) Every copy of the financial statements delivered to the Registrar shall be accompanied by or have endorsed on it a statement by a qualified person within the meaning of section 402 (5) of this Act setting out in respect of the financial statements the matters required to be stated by section 15 of the Financial Reporting Act 1991. Subsections (5) and (6) of section 165 and section 468 of this Act shall apply with respect to any such person as if he or she were a person employed by the company as auditor.</p> <p>“(4) Where the Registrar is satisfied that the financial statements of an overseas company delivered to the Registrar under the Financial Reporting Act 1991 also comply with the requirements of this section, the Registrar may, by notice in writing, exempt the overseas company from the obligation to deliver financial statements</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1955, No. 63—The Companies Act 1955 (R.S. Vol. 15, p. 89)— <i>continued</i>	<p>under this section subject to the condition that there is delivered to him or her the statement referred to in subsection (3) of this section in respect of the business, operations, or undertaking conducted in or from New Zealand.</p> <p>“(5) The Registrar may require an overseas company to deliver to him or her an additional copy of every document required to be delivered under this section.</p> <p>“(6) If any document required to be delivered to the Registrar under this section is not written in the English language, there shall be annexed to it a certified translation.”</p>
1960, No. 99—The Unit Trusts Act 1960 (R.S. Vol. 10, p. 953)	<p>By repealing section 11, and substituting the following section:</p> <p>“11. Trustee to keep accounts—</p> <p>(1) Every trustee of a unit trust shall cause proper books of account to be kept, either by the trustee or the manager, in respect of the unit trust.</p> <p>“(2) Every trustee of a unit trust, not being an issuer within the meaning of section 4 of the Financial Reporting Act 1991, shall cause to be sent annually, to every person who is a unit holder at the date of the statement, an audited statement of accounts in respect of the unit trust, together with a summary of any amendments of the trust deed that have been made since the date of the last statement.</p> <p>“(3) Every trustee of a unit trust that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991 shall cause to be sent annually, to every person who is a unit holder at the balance date of the unit trust,—</p> <p>“(a) A copy of the financial statements registered under that Act; and</p> <p>“(b) A copy of the auditor’s report on those statements registered under that Act—</p>

SECOND SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1960, No. 99—The Unit Trusts Act 1960 (R.S. Vol. 10, p. 953)— <i>continued</i>	<p>in respect of the trust, together with a summary of any amendments of the trust deed that have been made since the last balance date of the unit trust.”</p> <p>By inserting in section 20 (2), after the words “The manager of each unit trust”, the words “, not being an issuer within the meaning of section 4 of the Financial Reporting Act 1991,”.</p> <p>By inserting, after section 20 (2), the following subsection:</p> <p>“(2A) The manager of each unit trust that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, shall attach to the financial statements to be delivered to the Registrar of Companies under that Act a summary of purchases and sales of property under the unit trust, and a list of all the investments of the unit trust as at the end of the period to which the financial statements relate, together with particulars of the cost and the estimated market value as at that date of the investments and other property.”</p>
1965, No. 22—The Building Societies Act 1965 (R.S. Vol. 17, p. 41)	<p>By repealing section 91 (1) (as substituted by section 20 of the Building Societies Amendment Act 1987), and substituting the following subsection:</p> <p>“(1) Every society shall, not later than 3 months after the end of each financial year, prepare the following financial statements:</p> <p>“(a) A revenue and appropriation account for that financial year; and</p> <p>“(b) A balance sheet as at the end of that financial year; and</p> <p>“(c) A statement of cash flows for that financial year; and</p> <p>“(d) Such other financial statements in respect of the financial year as may be prescribed by regulations made under this Act—</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1965, No. 22—The Building Societies Act 1965 (R.S. Vol. 17, p. 41)— <i>continued</i>	<p>including any notes or documents giving information relating to the statements.”</p> <p>By repealing section 93 (as so substituted), and substituting the following section:</p> <p>“93. Form and content of financial statements—(1) The financial statements required by section 91 of this Act must—</p> <p>“(a) Give a true and fair view of—</p> <p> “(i) The society’s income and expenditure for; and</p> <p> “(ii) The state of the society’s affairs as at the end of; and</p> <p> “(iii) The cash flows of the society for—</p> <p>the financial year to which they relate; and</p> <p>“(b) Be in such form and contain such information as may be prescribed; and</p> <p>“(c) In the case of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, comply with the requirements of that Act.</p> <p>“(2) Any financial statements required under section 92 of this Act shall—</p> <p>“(a) Give a true and fair view,—</p> <p> “(i) In the case of any revenue and appropriation account, of the society’s income and expenditure for; and</p> <p> “(ii) In the case of any balance sheet, of the state of the society’s affairs as at the end of—</p> <p>the half-year to which they relate; and</p> <p>“(b) Be in such form and contain such information as may be prescribed.”</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1965, No. 22—The Building Societies Act 1965 (R.S. Vol. 17, p. 41)— <i>continued</i>	<p>By repealing section 95 (as so substituted), and substituting the following section:</p> <p>“95. Signing of financial statements—(1) The financial statements required by section 91 and section 92 of this Act shall be signed on behalf of the directors by 2 directors of the society.</p> <p>“(2) The financial statements must be approved by the board of directors before they are signed on their behalf.</p> <p>“(3) If financial statements have not been so signed and a copy of them is issued, circulated, or published, the society and every officer of the society who is in default shall be guilty of an offence against this Act.”</p> <p>By repealing section 96 (as so substituted), and substituting the following section:</p> <p>“96. Documents required to be annexed to balance sheets—(1) The revenue and appropriation account, statement of cash flows, and such other financial statements as are required under section 91 of this Act, and the auditor’s report shall be annexed to the balance sheet required by that section.</p> <p>“(2) Any revenue and appropriation account required pursuant to regulations made under section 92 of this Act and such other financial statements as are required pursuant to those regulations shall be annexed to any balance sheet required pursuant to those regulations.</p> <p>“(3) If any copy of a balance sheet is issued, circulated, or published without having annexed to it a copy of the financial statements required to be annexed to it, and, in the case of a balance sheet required by section 91 (1) (b) of this Act, a copy of the auditor’s report, the society, and every officer of the society who is in default, shall be guilty of an offence against this Act.”</p> <p>By omitting from section 97A (2) (as so substituted) the word “Two”, and</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1965, No. 22—The Building Societies Act 1965 (R.S. Vol. 17, p. 41)— <i>continued</i>	<p>substituting the words “Except in the case of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991, 2”.</p> <p>By inserting, after subsection 97A (2), (as so substituted) the following subsection:</p> <p>“(2A) The directors of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1991 shall attach to the financial statements to be delivered to the Registrar of Companies under that Act any financial statements required by section 91 (1) (d) of this Act.”</p> <p>By repealing paragraph (b) of subsection (3) of section 101 (as substituted by section 21 of the Building Societies Amendment Act 1987), and substituting the following paragraphs:</p> <p>“(b) In the case of the balance sheet, of the state of the society’s affairs as at the end of the financial year; and</p> <p>“(c) In the case of the statement of cash flows, of the society’s cash flows for the financial year.”</p> <p>By repealing paragraph (c) of subsection (4) of section 101 (as so substituted), and substituting the following paragraphs:</p> <p>“(c) The balance sheet gives a true and fair view of the state of the society’s affairs as at the end of the financial year; and</p> <p>“(d) The statement of cash flows gives a true and fair view of the society’s cash flows for the financial year,—”.</p> <p>By inserting in subsection (4) of section 101 (as so substituted), after the words “or balance sheet”, the words “or statement of cash flows”.</p> <p>By omitting from section 102 (4) (b) (as substituted by section 22 of the Building Societies Amendment Act 1987) the words “income, and expenditure”, and</p>

SECOND SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Title of Act	Amendment
1965, No. 22—The Building Societies Act 1965 (R.S. Vol. 17, p. 41)— <i>continued</i>	substituting the words “income and expenditure, and cash flows”.