

Securities (Local Authority Exemption) Amendment Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Securities (Local Authority Exemption) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill amends the Securities Act 1978 to exempt local authorities from the full disclosure requirements of that Act when issuing debt securities to the public. This will exempt local authorities from the requirement to produce a prospectus signed by all councillors when issuing debt securities to the public. They will still be required to produce an investment statement with a certificate signed by two councillors, although all councillors will be criminally liable for the accuracy of the content of the investment statement (under section 58 of the Securities Act 1978).

Information disclosure requirements

In the bill as introduced, local authorities are exempt from the full disclosure requirements of the Securities Act when issuing debt securities to the public. We understand that local authorities would still be required to fulfil the information disclosure requirements under the Local Government Act 2002, despite this exemption. However, we were concerned that the requirements in the Local Government Act would not be sufficient to ensure that investors and potential investors obtained adequate information on the financial position of the local authorities on an ongoing basis.

To address this concern, we recommend that clause 5 be amended to introduce additional requirements for local authorities. A local authority would be required to

- refer to its most recent audited annual financial statements in the investment statement that it distributes when issuing debt securities
- refer to interim financial statements in the investment statement where the date of allotment of the debt securities is more than nine months after the last balance date
- provide financial statements to investors and potential investors on request and free of charge
- state in the investment statement that the debt securities being offered are not guaranteed by the Crown, unless they are under the Public Finance Act 1989.

In our view, the proposed requirements would be less stringent and burdensome than the existing requirements under the Securities Act. In clause 5, we also recommend the insertion of new subsection 3D. This would make it clear that the requirements relating to allotments made in contravention of section 37A of the Securities Act would apply to the contents of the financial statements and interim financial statements for debt securities offered by a local authority.

Criminal liability

Some submitters argued that elected members of local authorities should be exempt from criminal liability for breaches of the Securities Act, as are Ministers of the Crown. However, we disagree, because councillors and Ministers of the Crown are not in similar positions in terms of accountability. Compared with local authorities,

the Crown has to fulfil significantly more reporting and accountability requirements, and is subject to more checks and balances.

Appendix

Committee process

The Securities (Local Authority Exemption) Amendment Bill was referred to the committee on 12 September 2007. The closing date for submissions was 2 November 2007. We received and considered five submissions from interested groups and individuals. We heard two submissions.

We received advice from the Ministry of Economic Development.

Committee membership

Gerry Brownlee (Chairperson)

Gordon Copeland (Deputy Chairperson)

Dave Hereora

Hon Darren Hughes (from 7 November 2007)

Hon Luamanuvao Winnie Laban

Hon Shane Jones (until 7 November 2007)

Simon Power

Hon Maryan Street (until 7 November 2007)

Hon Paul Swain (from 7 November 2007)

Lindsay Tisch

Dr Richard Worth

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Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

Hon Lianne Dalziel

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Securities (Local Authority Exemption) Amendment Act **2007**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**
This Act amends the Securities Act 1978.

4 Interpretation

Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**local authority** has the meaning set out in section 5(1) of the Local Government Act 2002”.

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5 Exemptions from this Act

(1) Section 5 is amended by inserting the following subsections after subsection (3):

“(3A) Nothing in sections 37, 37A(1)(c) and (d) and (1A), and 39 to 44 applies in respect of a debt security the issuer of which is a local authority.

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“(3B) The exemption in **subsection (3A)** is subject to the conditions that—

“(a) the investment statement relating to the debt securities refers to the most recent audited financial statements, and audited consolidated financial statements, for the local authority; and

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“(b) if the date of allotment of the debt securities would be more than 9 months after the balance date of the financial statements referred to in **paragraph (a)**, the investment statement relating to the debt securities refers to interim financial statements, and interim consolidated financial statements, for the local authority that have been prepared in accordance with generally accepted accounting practice (within the meaning of section 5(1) of the Local Government Act 2002) for a period beginning on the day after that balance date and ending on a date that is not more than 9 months later; and

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“(c) it is a term of the offer of the debt securities to the public that the local authority will, upon the request of a security holder or a prospective investor for a copy of any financial statements referred to in **paragraph (a) or (b)**, without fee, send, or cause to be sent, to that security holder or prospective investor, a copy of those statements; and

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“(d) the investment statement relating to the debt securities contains, unless the debt securities are expressly guaranteed by the Crown under the Public Finance Act 1989,

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a statement that the debt securities being offered are not
guaranteed by the Crown.

“(3C) The conditions in **subsection (3B)** apply despite anything to
the contrary in any regulations made under this Act.

“(3D) The financial statements referred to in **subsection (3B)(a)** 5
and (b) must, for the purposes of this Act, be treated as form-
ing part of the investment statement relating to the debt secur-
ities.”

(2) Section 37AC(1)(e)(i) is consequentially amended by omitting 10
“section 5A” and substituting “**section 5(3A)** or 5A”.

(3) Section 37AD(1)(b)(iii) is consequentially amended by omit-
ting “section 5A” and substituting “**section 5(3A)** or 5A”.

Legislative history

5 September 2007
12 September 2007

Introduction
First reading and referral to Commerce Committee
