

Takeovers Code (Implementation and Enforcement) Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Takeovers Code (Implementation and Enforcement) Bill and recommends that it be passed with the amendments shown.

Introduction

The bill aims to amend the Securities Act 1978 and the Takeovers Act 1993 to enable the effective implementation and enforcement of a takeovers code. The bill precedes the Takeovers Code (the Code) which comes into force on 1 July 2001, and facilitates the Takeovers Panel (the Panel) to effectively implement and enforce the Code when it comes into force.

The bill makes six main changes to the two Acts, to:

- Amend the functions of the Securities Commission (the Commission) to enable it to provide the Panel with agreed administrative and support services
- Enable the Commission and the Panel to share certain information
- Provide for divisions of the Panel to exercise certain powers of the Panel under the Act

- Add powers of inspection of the Registrar of Companies to the Takeovers Act (which are similar to equivalent provisions in the Securities Act)
- Enable the Panel to grant exemptions from compliance with any provisions of the Code in respect of classes of persons, transactions and offers
- Provide that regulations may be made imposing certain fees and authorising the Panel to recover costs for work carried out under the Takeovers Act or the Code.

Summary

We recommend a number of changes to the bill, including:

- Amending clause 4 to ensure the definition of Takeovers Panel in the Securities Act is consistent with current wording in the Takeovers Act
- The addition of a new clause 12A to clarify that the Panel is exempt from taxation
- The addition of a new clause 11A to limit the Panel from delegating its exemption power under section 45(1) of the Takeovers Act, to ensure consistency
- The addition of a new clause 14(4) to clarify that the Panel is required to give the reasons why it is appropriate that an exemption be granted and how the exemption is consistent with the objectives of the Code
- Amending clause 6(3) of the Schedule of the Takeovers Act to ensure the Panel is able to act quickly and within its statutory timeframes.

Securities Act

Interpretation

We note that the definition of **Takeovers Panel** in the Securities Act is not consistent with the current wording used in the Takeovers Act. We recommend that the definition in the Securities Act be amended so that it means the Takeovers Panel established under Part I of the Takeovers Act. This amendment will ensure consistency between the Securities Act and the Takeovers Act.

Proceedings privileged

The current wording of section 28(2) extends privilege for officers and employees of the Securities Commission to both takeovers and securities work. The New Zealand Law Society (the Law Society) submits that this privilege be limited to work undertaken by Securities Commission staff on takeovers matters only.

We consider that to extend this privilege for the Securities Commission staff in relation to takeovers work but not securities work would create an arbitrary distinction with no justifiable reason. Further, clause 7 brings the privileges of officers of the Securities Commission in line with other like Crown entities such as the Commerce Commission and Takeovers Panel. For consistency, it is appropriate that the employees of all these bodies have the same level of immunity. The liability of the Commission itself remains to protect people from negligence.

Takeovers Act

Clarification of tax exemption

Under the Takeovers Act it is not clear whether the Panel is a public authority for the purposes of the Inland Revenue legislation and exempt from taxation. Crown entities such as the Commerce Commission and Securities Commission are exempt from taxation. We consider that a new clause should be added to the bill to clarify that the Panel is likewise exempt from taxation and recommend accordingly. We note that this amendment has the support of The Treasury and the Inland Revenue Department.

Delegation of exemption powers

The Law Society submits that section 14(2) of the Takeovers Act be amended to limit the Panel from delegating its exemption power under section 45(1) of the Act. We agree with the submission and recommend that the bill be amended accordingly.

Rationale for exemptions

We considered the Panel's power to grant exemptions from the Code. National Nominees Limited and ANZ Nominees Limited submit that the bill specify the areas where exemptions will be given by the Panel in the Takeovers Act so as to provide certainty to the market. However, we note that the Code looks on a case by case

basis at the passing of control (and who holds control) in a takeover situation in order to determine if someone has breached the 20 per cent threshold. For this reason, a prescriptive list that tries to outline where and when control passes is inconsistent with the case by case approach of the Code.

However, we suggest that the Panel be required to give a reason as to why it has granted an exemption and to state how the exemption is related to the particular provision and the principles of the Code. We note that this proposed amendment to insert a subclause in section 45 will provide market participants with greater clarity and transparency in relation to the Panel's use of its exemption power. It will also ensure that the Panel uses its exemption power having regard to the fundamental principles of the Code.

Bare trustees

We considered whether an avoidance of doubt provision should be inserted in the bill that specifies that the Code not apply to bare trustees. We note that, if an avoidance of doubt provision for bare trustees were included, it would also be appropriate to consider implementing a provision for other groups of people that have a case for an exemption, such as people who have the ability to vote by proxy. Such provisions could lead to inconsistency with the Code and create a risk that this list is seen as exhaustive. Further, John King, Chairperson of the Panel, comments that the Panel is aware of the issue concerning bare trustees and recommends that this issue and a number of similar issues are best dealt with by way of class exemptions rather than by inserting them in the Code. The National Nominees Limited submitters on this provision were contacted and indicate that they are satisfied with the Panel's class exemption.

Procedure for signing off written resolutions

Currently clause 6(3) of the Schedule of the Takeovers Act requires that all members of the Panel sign a written resolution of the Panel in lieu of holding a meeting. However, we consider that, where a matter is considered by a division, it is important that all members of the division are also able to sign written resolutions in lieu of holding a meeting. We recommend an amendment to clause 6(3) of the Schedule to ensure the Panel is able to act quickly and within its statutory timeframes.

Registrar of Companies' powers of inspection

One submitter believes that section 31C(1)(b) and (c) be deleted on the basis that enforcement of the Code does not readily justify subsequent use of that information by the liquidator of the company or the Official Assignee for the purposes of a bankruptcy. This provision is based on section 67 of the Securities Act. The use of this power is subject to the Panel acting reasonably and within the principles of natural justice. We note that the Ministry of Justice has supported the inclusion of this section and we are satisfied that no amendment to the bill is necessary.

We questioned whether this limitation in section 31C (a)(ii), when read in conjunction with section 31A, will have the effect that information provided to another law enforcement agency under this section will effectively not be able to be used. We note that the Registrar of Companies (the Registrar) will be able to provide information obtained in a section 31A inspection to other agencies such as the Police or the Serious Fraud Office. This will enable the Registrar to alert those agencies to the possibility that offences have been committed or to the existence of information in relation to offences that have or are already being investigated. However, if that agency later wishes to have that information admitted in Court, it will have to obtain it again in accordance with the legislation it is enforcing. This ensures that the other agencies are not able to use the information in Court without following the process set out for the offences in question. This provision is beneficial to provide other agencies with information it might not otherwise have known to look for. For this reason, we do not consider an amendment to the bill is necessary.

Obligation to disclose shareholdings

National Nominees Limited/Citibank Nominees (NZ) Limited and ANZ Nominees Limited submit to prescribe in the Code how the Panel would find out when someone has crossed the 20 percent threshold and who has responsibility for disclosing that information. We note that it is not the responsibility of the bare trustees to monitor who has beneficial ownership in a company and to disclose that information.

We also considered the viability of introducing a reporting requirement for a party when it or it is aware someone else has crossed the 20 percent threshold to notify the Panel. The Chairperson of the

Panel comments that under the New Zealand Takeovers Code it is an offence for which heavy penalties are provided by the Act to cross the threshold. Therefore, it would be unusual to include a requirement that a party, having committed an offence, give notice of having committed that offence. Further, the Chairperson of the Panel told us that it is unlikely that breaches of the fundamental rule under the Code will go unnoticed. The size of the New Zealand market place with such a small number of takeovers means that information gathered from the Securities Amendment Act 1988 and shareholder information regarding substantial movements of shares will also quickly be received from the Registrar, the New Zealand Stock Exchange and the public. We note that any reporting obligation could cut across other legal duties owed such as trustees' fiduciary duties to beneficiaries, would raise issues around the practicality of enforcing such an obligation and could divert resources away from the Panel investigating breaches of the Code.

Guidelines, modifications and binding rulings

Two submitters proposed to amend the Takeovers Act so as to empower the Panel to issue guidelines, make modifications, supplementary rules and unacceptable conduct declarations, and enable the Panel to grant binding rulings on the application of the Code. We understand that under section 8 of the Takeovers Act one of the Panel's functions is to formulate and recommend amendments to the Code as necessary. Therefore, the Panel is already able to recommend amendments to the Code as necessary. Further, by virtue of section 15 of the Takeovers Act, the Panel already has the ability to issue guidelines in relation to the interpretation of the Code. Other issues such as the granting of binding rulings by the Panel that remain outside the scope of the bill or would require public consultation are discussed under the heading 'important issues for further discussion'.

Panel's discretion over Takeovers Code policy

We sought clarification about the ability of the Panel to unilaterally determine the policy contained in the Code. We note that to amend the Takeovers Act and to remove the law reform function from the Panel would involve a substantive re-write of the Takeovers Act. Such action would not only be a substantial deviation in policy, but could also prevent the committee from meeting its report back date

of 30 April 2001. This would also inhibit the Panel's ability to effectively implement and enforce the Code. We note that the Governor-General still has to approve or disapprove these amendments on the recommendation of the Minister of Commerce and the Takeovers Act's provisions are subject to consideration by the Regulations Review Committee. We consider this issue should be amongst those reviewed by the Government.

We discussed the inability of the Minister to direct changes to the Code. We consider that this is not the appropriate time to re-visit the issue. However, we note that this could create inflexibility and recommend that this issue be considered further in the review the Ministry of Economic Development is undertaking on the functions of the bodies that regulate our securities market.

Membership of the Takeovers Panel

At the hearing of evidence, there was some discussion in relation to the current membership of the Panel and the use of divisions. We note that, with regard to conflicts of interest, guidelines exist to ensure that Panel members will not be involved in any consideration of a matter where conflict arises. We discussed the quorum for panel divisions and consider that, when sitting in divisions, written resolutions should require all members of the relevant division.

We also understand that requiring a division of three members is reasonable given the size of the Panel. However, there is the option of appointing associate members to the Panel to sit on specific matters if too many conflicts of interest exist.

Important issues for further consideration

There were a number of issues raised by submissions and discussions that were outside of the scope of this bill. We believe these issues should be discussed in the review the Ministry of Economic Development is undertaking on the functions of the bodies that regulate our securities market and the latest Business Law Reform Bill. These issues are set out below.

Legal professional privilege

The issue of legal professional privilege was raised in relation to the Registrar's powers to require the production and inspection of information. It was submitted by the Law Society that the provisions in

the bill do not specifically state the entitlement of any person to invoke legal professional privilege in relation to those powers. The question was raised, on the other hand, whether privilege should be restricted in some respect. We understand that to make explicit or to quantify legal professional privilege in this bill could raise major legal and justice issues.

We note that the law in New Zealand makes it clear that, unless a statute provides otherwise, legal professional privilege applies to statutory powers to obtain information. Therefore, the default situation is that legal professional privilege does apply. If a provision is inserted into the bill that states a person is entitled to invoke legal professional privilege, it may also need to be inserted into the Securities Act, and consistency with the provision in the Companies Act on legal professional privilege considered. We do not consider an exception to legal professional privilege should be made in this case.

Listed entities

The Institute of Directors submits that the application of the Code be extended to all listed entities, whether a company or not. We note that this proposal would be outside the scope of this bill. Further, a change of this nature should be considered in conjunction with other areas of securities regulation to ensure consistency. For this reason, we do not consider an amendment is necessary at this time.

Binding rulings

Two submitters propose that the Panel should be able to grant binding rulings on the application of the Code. The majority consider that giving the Panel a binding rulings function is an issue that should not be dealt with in the context of this bill. We are advised that the proposal from the Securities Commission, that it have the ability to make binding rulings, proved controversial to the submitters to the Commission. The constitutional issues, with the Panel acting as the executive, the legislative and judicial arms of the Government, raises questions of accountability and conflicts of interest. The Law Commission was concerned about this constitutional issue and believed that it was inappropriate to usurp the role of the Courts. We are advised that no other country has given a securities regulator that enforces securities law the power to create binding rulings. Further, a number of other options exist to give market

certainty to the public such as policy statements, practice notes and other administrative actions.

Some of us consider that the Panel's existing unconfined exemption power allows it, in effect, to dispense with the law. That goes wider than the proposed ruling power. Some of us consider that serious uncertainties will arise from the combination of the Code's sweeping prohibitions with broad discretionary exemptions. Some of us believe a power to give market participants certainty in advance that plans will not fall foul of uncertain rules will be less offensive constitutionally than the power to exempt. Some of us consider that objectors to proposed similar powers for the Securities Commission are overlooking the existing constitutional tension created by broad offences coupled with exemption powers.

Though ACT opposes the imposition on shareholders of takeover rules they have not chosen, it does want the Code to work effectively if we must have it. The ability to give certainty is needed for that purpose, and to protect a market reputation for integrity.

Liability of directors

The Institute of Directors recommends an amendment to section 44(6) of the Takeovers Act to remove the strict liability of directors. This type of liability for directors is not unique to the Takeovers Act. Similar liability provisions exist in section 218 of the Companies Act and section 60(2) of the Securities Act. Collectively, as a board, directors exercise an important decision making power of the company. By virtue of a board's decision making power, under the Companies Act, directors have duties to shareholders and the company, and are accountable for the majority of the decisions. Further, we note that a director will be found liable under section 44(6) only if, in the opinion of the Court, the contravention took place with his or her knowledge and consent. We note that this issue is to be included in next discussion document on the Business Law Reform Bill being prepared by the Ministry of Economic Development. We anticipate that the discussion document will be released for public consultation in the middle of 2001.

ACT considers that strict vicarious liability for directors is wrong in principle. They should be liable only for their own faults and breaches of duty. Strict liability has recently spread in a range of laws. It undermines the clarity of company law, and encourages

directors to engage, ultimately at shareholder expense, in backcovering, including excessive recourse to lawyers. ACT considers that a start to rolling back this poorly-considered change should not have to wait for a Business Law Reform Bill that may never come.

Appendix

The Takeovers Code (Implementation and Enforcement) Bill was introduced on 23 November 2000 and referred to the Commerce Committee for consideration. The closing date for submissions was 1 February 2001. We received six submissions of which two were heard. Hearing evidence on the bill took fifty minutes and consideration took 30 minutes. We received advice from the Ministry of Economic Development.

Committee membership

David Cunliffe (Chairperson)

Kevin Campbell (Deputy Chairperson)

Steve Chadwick

Hon Ruth Dyson

Gerrard Eckhoff

Warren Kyd

Hon Tony Ryall

Pansy Wong

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

[Subject to this Act, **]**

Text struck out unanimously

New (unanimous)

[Subject to this Act, **]**

Text inserted unanimously

Hon Paul Swain

Takeovers Code (Implementation and Enforcement) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Takeovers Code (Implementation and Enforcement) Act **2000**.

2 Commencement 5
This Act comes into force on **1 June 2001**.

Part 1
Securities Act 1978

3 Securities Act 1978 called principal Act in this Part 10
In this Part, the Securities Act 1978¹ is called "the principal Act".

¹ 1978 No 103

4 Interpretation
Section 2(1) of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:

Struck out (unanimous)

"Takeovers Panel means the Takeovers Panel established by section 5 of the Takeovers Act 1993". 15

New (unanimous)

"Takeovers Panel means the Takeovers Panel established under Part I of the Takeovers Act 1993".

5 Functions of Commission 20
Section 10 of the principal Act is amended by adding the expression "; and" to the end of paragraph (d), and also by adding the following paragraph:

"(e) by agreement with the Takeovers Panel, to provide administrative and support services to the Panel."

- 6 New section 17A inserted**
The principal Act is amended by inserting, after section 17, the following section:
- “17A Sharing of information with Takeovers Panel**
- “(1) The Commission may communicate to the Takeovers Panel 5
any information that the Commission—
“(a) holds in relation to the exercise of the Commission’s
powers or the performance of its functions and duties;
and
“(b) considers may assist the Takeovers Panel in the exer- 10
cise of the Panel’s powers or the performance of its
functions and duties.
- “(2) The Commission may use any information communicated to
it by the Takeovers Panel under **section 15A** of the Takeovers
Act 1993 in the Commission’s exercise of its powers or the 15
performance of its functions and duties.
- “(3) This section applies despite anything to the contrary in any
enactment, contract, deed, or document.”
- 7 Proceedings privileged**
Section 28(2) of the principal Act is amended by inserting, 20
after the words “member of the Commission”, the words “, or
any officer or employee of the Commission,”.
- Part 2**
Takeovers Act 1993
- 8 Takeovers Act 1993 called principal Act in this Part** 25
In this Part, the Takeovers Act 1993² is called “the principal
Act”.
² 1993 No 107
- 9 Short Title and commencement**
Section 1 of the principal Act is amended by repealing sub-
section (3), and substituting the following subsection: 30
“(3) Section 17 and Part III come into force on **1 June 2001**.”
- 10 Interpretation**
Section 2(1) of the principal Act is amended by inserting, in
their appropriate alphabetical order, the following definitions:

“**Registrar** means a person who for the time being holds the office of Registrar of Companies or Deputy Registrar of Companies in accordance with the Companies Act 1993

“**Securities Commission** means the Securities Commission established by section 9 of the Securities Act 1978”.

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11 New sections 7A to 7C inserted

(1) The principal Act is amended by inserting, after section 7, the following sections:

“7A Chairperson may direct Panel to sit in divisions

“(1) Subject to **subsection (2)**, the Chairperson may direct that the powers of the Panel in relation to any matter or class of matter be exercised by separate divisions of the Panel. 10

“(2) The Chairperson must not direct a separate division of the Panel to exercise—

“(a) any power in connection with the performance of its functions under paragraph (a) or paragraph (b) of section 8(1): 15

“(b) the power of the Panel to grant an exemption under **section 45(1)(b)**.

“(3) The Chairperson may revoke or amend a direction given under **subsection (1)**. 20

“(4) Every direction, amendment, or revocation, of a direction must be in writing signed by the Chairperson.

“7B Membership and Chairperson of division

“(1) Each division must consist of members assigned to it by the Chairperson. 25

“(2) If the members appointed to a division do not include either the Chairperson or the Deputy Chairperson, the Chairperson must nominate 1 of those members as Chairperson of that division. 30

“(3) If the Chairperson of a division is absent from a meeting of the division, the members present must appoint 1 of themselves as Chairperson of the division for the purposes of that meeting.

“7C Powers of division

“(1) For the purposes of determining any matter or class of matter specified in a direction under **section 7A**,— 35

- “(a) the Panel is deemed to consist of the division of the Panel specified in the direction; and
 - “(b) the powers of any such division are not affected by any changes or vacancies in its membership.
- “(2) A division of the Panel may exercise powers of the Panel under this Act even though another division of the Panel is exercising powers of the Panel at the same time.” 5
- (2) Section 10 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) Every meeting of the Panel or of a division of the Panel held for the purposes of section 13 or section 32 must be chaired by— 10
- “(a) the Chairperson of either the Panel or the division of the Panel (as the case may be) if the person is a barrister or solicitor of at least 7 years’ practice; or 15
 - “(b) a member of the Panel or the division of the Panel (as the case may be) who is a barrister or solicitor of at least 7 years’ practice if **paragraph (a)** is not applicable.”

New (unanimous)

11A Delegation of certain powers by Panel

Section 14(2) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “or **section 45(1)**”. 20

12 New section 15A inserted

The principal Act is amended by inserting, after section 15, the following section: 25

“15A Sharing of information with Securities Commission

- “(1) The Takeovers Panel may communicate to the Securities Commission any information that the Takeovers Panel—
- “(a) holds in relation to the exercise of the Panel’s powers or the performance of its functions and duties; and 30
 - “(b) considers may assist the Securities Commission in the exercise of the Commission’s powers or the performance of its functions and duties.
- “(2) The Takeovers Panel may use any information communicated to it by the Securities Commission under **section 17A** of the 35

Securities Act 1978 in the Panel's exercise of its powers or the performance of its functions and duties.

“(3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.”

New (unanimous)

12A New section 17A inserted

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The principal Act is amended by inserting, after section 17, the following section:

“17A **Panel deemed to be public authority**

“(1) The Panel is deemed to be a public authority for the purposes of the Inland Revenue Acts.

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“(2) In this section, **Inland Revenue Acts** has the same meaning as in section 3(1) of the Tax Administration Act 1994.”

13 New Part 2A inserted

The principal Act is amended by inserting, after section 31, the following Part:

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“Part 2A

“Registrar’s powers of inspection

“Inspection

“31A Power of Registrar to inspect documents

“(1) The Registrar, or any person authorised by the Registrar, may, for the purposes of Part III,—

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“(a) require any person to produce for inspection any document kept by that person:

“(b) inspect and make records of a document referred to in **paragraph (a)**:

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“(c) for the purpose of making records of any such document, take possession of the document and remove it from the premises where it is kept, for such period of time as is reasonable in the circumstances.

“(2) The Registrar must not authorise a person to carry out an inspection under **subsection (1)** unless the Registrar is satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to carry out an inspection.

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- “(3) A person authorised by the Registrar to carry out an inspection under **subsection (1)** must, if requested at the time of carrying out the inspection, produce evidence of that person’s authority to carry out the inspection.
Compare: 1978 No 103 s 67(1) 5
- “31B **Panel to request or approve inspection**
- “(1) The Registrar, or any person authorised by the Registrar, must not do any of the things listed in **section 31A(1)(a) to (c)** without the request or approval of the Panel.
- “(2) A request or approval of the Panel under **subsection (1)**— 10
“(a) must be made for the purposes of Part III; and
“(b) may relate to a particular case or limited class or classes of cases specified by the Panel.
- “(3) In determining whether to make a request or approval under **subsection (1)**, the Panel must consider, along with any other relevant matters, any matters relating to the necessity or expediency of carrying out an inspection, for example, whether it is practicable to obtain the information from other sources or by other means in the time available. 15
- “(4) The fact that the Registrar, or any person authorised by the Registrar for the purposes of **section 31A**, requires the production of a document, or makes or attempts to make an inspection, is sufficient evidence that **subsection (1)** has been complied with, unless there is evidence to the contrary. 20
Compare: 1978 No 103 s 67(2), (4) 25
- “31C **Disclosure of information from inspection**
- “(1) On the direction of the Registrar, a person who has made an inspection under **section 31A** must give all records and disclose all information acquired in the course of the inspection to— 30
“(a) any person specified by the Registrar for the purposes of—
“(i) Part III:
“(ii) exercising powers conferred by this Act:
“(iii) detecting and prosecuting offences against any other Act; but those records and information are 35
not admissible in any criminal proceedings against the person from whom the records or

- information were acquired or any person to whom they relate:
- “(b) a liquidator for the purposes of the liquidation of a company: 5
- “(c) the Official Assignee for the purposes of a bankruptcy. 5
- “(2) The Minister or the Panel may, by written notice, require the Registrar to give a direction under **subsection (1)**; and the Registrar must comply with that requirement.
- “(3) This section is subject to section 13. 10
- Compare: 1978 No 103 s 67(5), (6)
- “31D **Powers not limited**
- Sections 31A, 31B, and 31C** do not limit any power that the Registrar or any other person has under the Companies Act 1993 or any other enactment. 15
- Compare: 1978 No 103 s 67(7)
- “31E **Non-disclosure of information from inspection**
- A person must not communicate to any other person any information acquired in the course of an inspection under **section 31A** except—
- “(a) in accordance with **section 31C**; or 20
- “(b) for the purposes of this Act; or
- “(c) in accordance with the Official Information Act 1982 or the Privacy Act 1993; or
- “(d) in the course of any criminal proceedings. 25
- Compare: 1978 No 103 s 67A(1)

“*Offences*”

- “31F **Offences**
- “(1) Every person commits an offence who—
- “(a) refuses or fails to produce any document for inspection when required to do so under **section 31A**: 30
- “(b) resists, obstructs, deceives, or attempts to deceive the Registrar, or any person authorised by the Registrar, in carrying out an inspection under **section 31A**:
- “(c) is not authorised by the Registrar to make an inspection under **section 31A** and who communicates to any other 35

person information acquired in the course of an inspection under that section:

- “(d) contravenes **section 31E** (which relates to communicating information acquired in the course of an inspection).
 - “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,000. 5
- Compare: 1978 No 103 ss 60(1)(a)–(c), 67A(2)

“Appeals

- “**31G Rights of appeal** 10
- A person who is aggrieved by an act or decision of the Registrar, or of any person authorised by the Registrar, under any of **sections 31A to 31C** may appeal against the act or decision to the Court.

Compare: 1978 No 103 ss 68(1), 69A(1)

- “**31H Time for appeal** 15
- An appeal under **section 31G** must be made—
- “(a) within 21 days of the date on which the person was notified of the act, decision, or refusal; or
- “(b) within any longer time allowed by the Court. 20

Compare: 1978 No 103 ss 68(1), 69A(1)

- “**31I Situation while appeal pending**
- While any appeal made under **section 31G** is pending,—
- “(a) the Registrar, or any person authorised by the Registrar, may continue to exercise his or her powers under any of **sections 31A to 31C** as if no appeal had been made; and 25
- “(b) no person is excused from fulfilling his or her obligations under any of those sections by reason of the appeal; and
- “(c) information that is obtained as a result of an inspection to which the appeal relates is not admissible as evidence 30
- in any criminal proceedings against the person to whom the information relates.

Compare: 1978 No 103 s 68(3)

“31J Determination of appeal

The Court must determine the appeal by either dismissing the appeal or giving such directions or making such determination in the matter as it thinks fit.

Compare: 1978 No 103 ss 68(2), 69A(2)

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“31K Requirements where appeal allowed

To the extent that an appeal in respect of an act or decision of the Registrar, or any person authorised by the Registrar, under any of **sections 31A to 31C** is allowed or granted—

- “(a) the Registrar must ensure that, as soon as practicable after the decision on the appeal is given, all records made by the Registrar, or by a person authorised by the Registrar, under **section 31A(1)(c)** in respect of the act or decision are destroyed; and 10
- “(b) no information acquired under **paragraph (a)** or **paragraph (b)** of **section 31A(1)** in respect of the act or decision is admissible in evidence in any proceedings. 15

Compare: 1978 No 103 s 68(3)”.

14 Panel may grant exemptions

- (1) Section 45 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 20
 - “(1) The Panel may, in its discretion and on such terms and conditions (if any) as it thinks fit,—
 - “(a) exempt any person from compliance with any provision of the Takeovers Code; and 25
 - “(b) exempt, from compliance with any provision of the Takeovers Code,—
 - “(i) any class of persons:
 - “(ii) any class of transactions:
 - “(iii) any class of offers.” 30
- (2) Section 45(2) of the principal Act is amended by inserting, after the words “An exemption”, the words “under **subsection (1)(a)**”.
- (3) Section 45 of the principal Act is amended by inserting, after subsection (2), the following subsection: 35

“(2A) An exemption under **subsection (1)(b)** may be granted in respect of proposed acts or omissions.”

New (unanimous)

(4) Section 45 of the principal Act is amended by inserting, after subsection (4), the following subsection:

“(4A) The Panel’s reasons for granting an exemption under **subsection (1)** must include— 5
 “(a) why it is appropriate that the exemption is granted; and
 “(b) how the exemption is consistent with the objectives of the Takeovers Code.”

15 Regulations 10

(1) Section 46(a) of the principal Act is repealed.

(2) Section 46 of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs:

“(c) prescribing the fees and charges payable, or the rate at which fees and charges are to be calculated, for the purposes of this Act: 15

“(ca) without limiting **paragraph (c)**, prescribing fees and charges that the Panel may require to be paid to it—

“(i) in connection with the exercise by the Panel of any power or function conferred on it by this Act: 20

“(ii) on an application to the Panel to exercise any power or function conferred on it by this Act:

“(cb) authorising the Panel to require payment of any costs incurred by the Panel.”

16 New sections 47 to 49 substituted 25

(1) The principal Act is amended by repealing Part IV, and substituting the following sections:

“47 **Amendment to Official Information Act 1982**

The Official Information Act 1982 is amended by inserting in the First Schedule, in their appropriate alphabetical order, the words “Takeovers Panel”. 30

- “48 Amendment to Public Finance Act 1989**
The Public Finance Act 1989 is amended by inserting in the Fourth and Sixth Schedules, in their appropriate alphabetical order, the words “Takeovers Panel”.
- “49 Repeal of Companies Amendment Act 1963** 5
“(1) The Companies Amendment Act 1963 is repealed.
“(2) Despite **subsection (1)**, Part I of the Companies Amendment Act 1963 continues in force in respect of the acquisition of shares in a company in any case where notice of a takeover scheme has, before the commencement of this section, been served on the company under section 4 of the Companies Amendment Act 1963.” 10
(2) Section 3(2)(c) and (d) of the Securities Act 1978 is repealed.
- 17 Schedule amended**
(1) Clause 4 of the Schedule of the principal Act is amended by revoking subclause (2), and substituting the following subclauses: 15
“(2) Meetings of the Panel must be held at such places, dates, and times, and by such methods, as the Chairperson determines.
“(2A) A meeting of the Panel may be held either— 20
“(a) by a quorum of members being assembled together at the place, date, and time appointed for the meeting; or
“(b) by means of audio, or audio and visual, communication by which a quorum of members can simultaneously hear each other throughout the meeting.” 25

New (unanimous)

- (2) Clause 6(3) of the Schedule of the principal Act is amended by inserting, after the word “Panel,” in the first place where it appears, the words “or, of a division of the Panel, as the case may be,”.

**Takeovers Code (Implementation
and Enforcement)**

Legislative history

23 November 2000

Introduction (Bill 83-1)

13 December 2000

First reading and referral to Commerce Committee
