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1978, No. 103

An Act to establish a Securities Commission; and to consolidate and amend the law relating to the offering of securities to the public, and to extend the application thereof

[20 October 1978

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Securities Act 1978.

(2) The provisions of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council. For the purposes of this subsection, one or more Orders in Council may be made bringing different provisions of this Act into force on different dates.

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

“Allot” includes sell, issue, assign, and convey; and “allotment” has a corresponding meaning:

“Approved superannuation scheme” means—

(a) A superannuation scheme that, for the time being, is granted or is deemed to have been granted approval or interim approval under Part II of the Superannuation Schemes Act 1976:

(b) Any fund or arrangement if amounts paid thereto or in respect thereof are allowed as deductions for income tax purposes pursuant to section 149, section 151, or section 152 of the Income Tax Act 1976:

“Associated persons” has the same meaning as in section 8 of the Income Tax Act 1976:

“Authorised advertisement” has the meaning assigned to it by section 38 of this Act:

“Books and papers” or “books or papers” includes all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, cards, documents, photographic plates, microfilms, photostatic negatives, prints, tapes, discs, computer reels, perforated rolls, and any other type of record whatsoever; and also includes all papers and other records relating to accounting operations and practice:

“Building society” has the same meaning as in section 2 (1) of the Building Societies Act 1965:

“Chattel” includes livestock:

“Commission” means the Securities Commission established by this Act:

“Company” means a company within the meaning of the Companies Act 1955 or an overseas company within the meaning of that Act:

“Contributory mortgage” means a mortgage of land that—

(a) Secures money owing to 2 or more persons or to a nominee on behalf of 2 or more persons, whether or not the mortgage originally secured money owing to only one person; or

(b) Has the same priority in respect of the land as another mortgage or mortgages of that land;—and, for the purposes of this definition, money owing to not more than 5 persons as joint tenants shall be deemed to be owed to one person:

“Contributory scheme” means any scheme or arrangement that, in substance and irrespective of the form thereof, involves the investment of money in such circumstances that—

(a) The investor acquires or may acquire an interest in or right in respect of property; and

(b) Pursuant to the terms of investment that interest or right will or may be used or exercised in conjunction with any other interest in or right in respect of property acquired in like circumstances, whether at the same time or not;—

but does not include such a scheme or arrangement if the number of investors therein does not exceed 5, and neither a manager of the scheme nor any associated person is a manager of any other such scheme or arrangement:

“Convertible note” has the same meaning as in section 196 of the Income Tax Act 1976:

“Co-operative company” means—

(a) A company registered as a co-operative company under the Co-operative Companies Act 1956; or

(b) A company registered as a co-operative dairy company under the Co-operative Dairy Companies Act 1949; or

(c) A company registered as a co-operative freezing company under the Co-operative Freezing Companies Act 1960:

“Court” means the Supreme Court, and includes a Judge thereof:

“The Crown” includes a Government department:

“Date of a prospectus” means the date specified on a prospectus pursuant to section 39 (a) of this Act:

“Debt security” means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property); and includes—

(a) A debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and

(b) Any renewal or variation of the terms or conditions of any existing debt security; and

(c) Any security that is declared by the Governor-General, by Order in Council, to be a debt security for the purposes of this Act;—

but does not include an interest in a contributory mortgage:

“Director”, in relation to a body corporate or other body, means—

(a) Where the body is a company, any person occupying the position of a director of the company by whatever name called:

(b) Where the body is not a company, any person occupying a position in the body that is comparable to that of a director of a company:

“Distribute” includes make available, publish, and circulate; and also includes disseminate by letter, newspaper, broadcasting, television, cinematograph film, or any other means whatsoever:

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

(a) A preference share, and company stock;

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

(c) Any security that is declared by the Governor-General, by Order in Council, to be an equity security for the purposes of this Act:

“Expert” means any person who holds himself out to be of a profession or calling that gives authority to a statement made by him; and includes an accountant, engineer, valuer, quantity surveyor, and geologist; but does not include a person acting in his capacity as an auditor or as a director or officer of a body:

“Government department” includes the Public Trustee and the Maori Trustee:

“Issuer” means—

(a) In relation to an equity security or a debt security or to a prospectus that relates to an equity security or a debt security or to a trust deed that relates to a debt security, the person on whose behalf any money paid in consideration of the allotment of the security is received:

(b) In relation to a participatory security or to a prospectus that relates to a participatory security or to a deed of participation that relates to a participatory security, the manager:

“Labour share” has the same meaning as in the Companies Act 1955:

“Local authority” means a body that is a local authority for the purposes of Part I of the Local Authorities Loans Act 1956:

“Manager”, in relation to a participatory security, means the person or persons acting in the promotion or management of the arrangement or scheme to which the security relates:

“Minister” means the Minister of Justice:

“Money” includes money’s worth:

“Offer” includes an invitation, and any proposal or invitation to make an offer; and “to offer” has a corresponding meaning:

“Participatory security” means any security other than an equity security or a debt security:

“Person” includes a corporation sole, a company or other body corporate (whether incorporated in New Zealand or elsewhere), an unincorporated body of persons, a public body, and a Government department:

“Prescribed” means prescribed by regulations made under the authority of this Act:

“Principal officer”, in relation to a body corporate or other body, means—

(a) A director of the body; or

(b) A person in accordance with whose directions or instructions any or all of the directors of the body are accustomed to act; or

(c) In relation to any particular requirement of this Act, any person whose function it is, or who has undertaken, to ensure that that requirement is complied with by the body:

Provided that for the purposes of this Act, a person shall not be regarded as a person in accordance with whose directions or instructions any or all of the directors of a body are accustomed to act by reason only that the directors act on advice given by him solely in a professional capacity:

“Promoter”, in relation to a security, means a person who is instrumental in the formulation of a prospectus relating to the security; and, where a body corporate is a promoter, includes every person who is a director thereof; but does not include a director or officer of the issuer of the security or a person acting solely in his professional capacity:

“Prospectus” means any brochure, pamphlet, notice, circular, or other document, offering securities to the public for subscription:

“Qualified auditor” means a member of the New Zealand Society of Accountants who holds a certificate of public practice, the Audit Office, or a member, fellow, or associate of an association of accountants constituted outside New Zealand who is for the time being approved for the purposes of this Act by the Minister by notice in the *Gazette*:

Provided that—

(a) None of the following persons shall be qualified for appointment as auditor of the accounting or other records of an issuer of securities:

(i) The issuer, or a principal officer, officer, or employee of the issuer:

(ii) A person who is a partner of or in the employment of a person specified in subparagraph (i) of this paragraph:

(iii) A body corporate:

(b) A person shall not be qualified for appointment as auditor of an issuer of securities if he is by virtue of paragraph (a) of this proviso, disqualified for appointment as auditor of any person that is the issuer’s subsidiary or holding company or a subsidiary of the issuer’s holding company, or would be so disqualified if that person were a company:

“Registrar” means—

(a) In sections 7 and 67 of this Act, a person for the time being holding the office of Registrar of Companies or Deputy Registrar of Companies in accordance with the Companies Act 1955:

(b) In all other sections of this Act, the Registrar of Companies appointed in accordance with the Companies Act 1955, and, pursuant to sections 4 (2) and 5 (2) of that Act, includes every Deputy Registrar of Companies, District Registrar of Companies, and Assistant Registrar of Companies appointed in accordance with that Act:

“Relative” has the same meaning as in the Income Tax Act 1976:

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

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

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

“Security holder”, in relation to a security offered to the public, means—

(a) In the case of a bearer security or a security to which section 51 of this Act does not apply, the holder of that security; or

(b) In the case of any other security, the person who is registered as the holder of the security in a register kept pursuant to section 51 of this Act:

“Statutory supervisor” means a person appointed as a statutory supervisor in respect of participatory securities for the purposes of, and in accordance with, this Act:

“Subscribe” includes purchase and contribute to, whether by way of cash or otherwise; and “subscription” and “subscriber” have corresponding meanings:

“Trustee” means a person appointed as a trustee in respect of debt securities for the purposes of, and in accordance with, this Act:

“Trustee corporation” means the Public Trustee or the Maori Trustee or any corporation authorised by any Act of the General Assembly to administer the estates of deceased persons and other trust estates.

3. Construction of references to offering securities to the public—(1) Any reference in this Act to an offer of securities to the public shall be construed as including—

- (a) A reference to offering the securities to any section of the public, however selected; and
- (b) A reference to offering the securities to individual members of the public selected at random; and
- (c) A reference to offering the securities to a person if the person became known to the offeror as a result of any advertisement made by or on behalf of the offeror and that was intended or likely to result in the public seeking further information or advice

about any investment opportunity or services,— whether or not any such offer is calculated to result in the securities becoming available for subscription by persons other than those receiving the offer.

(2) None of the following offers shall constitute an offer of securities to the public:

(a) An offer of securities made to any or all of the following persons only:

(i) Relatives or close business associates of the issuer:

(ii) Persons whose principal business is the investment of money or who, in the course of and for the purposes of their business, habitually invest money:

(iii) Any other person who in all the circumstances can properly be regarded as having been selected otherwise than as a member of the public:

(b) An invitation to a person to enter into a bona fide underwriting or sub-underwriting agreement with respect to an offer of securities:

(c) A take-over offer within the meaning of Part I of the Companies Amendment Act 1963.

(3) A person shall not be precluded from being regarded as a member of the public in regard to any offer of securities by reason only that he is a purchaser of goods from, or an employee or client of, or a holder of securities previously issued by, the issuer or any promoter of the securities.

(4) Any reference in this Act to an offer of securities to the public shall be construed as including—

(a) A reference to offering the securities to the public by any means of communication; and

(b) A reference to distributing to the public prospectuses or application forms for the subscription for the securities.

(5) Proof of an offer of securities to one person selected as a member of the public shall be prima facie evidence of an offer of securities to the public.

4. Application of this Act—(1) The provisions of this Act shall have effect notwithstanding anything to the contrary in any other enactment or in any deed, agreement, application, prospectus, or advertisement.

(2) A condition of any agreement requiring or binding an applicant for securities to waive compliance with any requirement of this Act, or purporting to affect him with notice of

any contract, document, or matter relating to the securities that is not specifically referred to in a prospectus, shall be void.

(3) Nothing in this Act shall limit any powers a trustee or statutory supervisor may have other than pursuant to this Act.

5. Exemptions from this Act—(1) Nothing in Part II of this Act shall apply in respect of—

- (a) Any policy of life or endowment assurance or any policy securing an annuity; or
- (b) Any estate or interest in land for which a separate certificate of title can be issued under the Land Transfer Act 1952 or the Unit Titles Act 1972, other than any such estate or interest that—
 - (i) Forms part of a contributory scheme; and
 - (ii) Does not entitle the holder to a right in respect of a specified part of the land for which a separate certificate of title can be so issued; or
- (c) Any proprietary right to chattels (other than any such right that forms part of a contributory scheme); or
- (d) Any share in the share capital of a flat or office owning company (as defined in section 2 (1) of the Companies Amendment Act 1964); or
- (e) Any interest or right to participate in the capital, assets, earnings, royalties, or other property of any company, partnership, or other person whose sole undertaking is the practice, conduct, or operation of any one or more of the professions, occupations, or businesses that may in law be practised, conducted, or operated only by persons having or possessing qualifications specified in the Second Schedule to this Act; or
- (f) A mortgage of land other than a contributory mortgage; or
- (g) An interest in a unit trust (as defined in section 2 (1) of the Unit Trusts Act 1960); or
- (h) A labour share or a share purchased or subscribed for by an employee of a company under an employee share purchase scheme (as defined in section 166 of the Income Tax Act 1976); or
- (i) An interest in the Government Superannuation Fund; or

- (j) An interest in an approved superannuation scheme, if every party to the scheme is one or more of the following persons:
- (i) An employer who is, or is likely to be accepted as, a participating employer in the scheme:
 - (ii) An employee, former employee, or prospective employee of such an employer:
 - (iii) A dependant or personal representative of a party to the scheme:
 - (iv) A trustee or other manager or administrator of the scheme.
- (2) Nothing in sections 33, 34, and 37 to 54 of this Act shall apply in respect of—
- (a) Any debt security or participatory security the issuer of which is—
- (i) A trading bank named in the First Schedule to the Reserve Bank of New Zealand Act 1964; or
 - (ii) A trustee savings bank established under the Trustee Savings Banks Act 1948; or
 - (iii) A private savings bank (as defined in section 2 of the Private Savings Banks Act 1964); or
 - (iv) An authorised money-market dealer (as defined in section 2 of the Reserve Bank of New Zealand Act 1964):
- (b) Any security the issuer of which is a building society.
- (3) Nothing in sections 33 to 35 and 37 to 69 of this Act shall apply in respect of any security the issuer of which is—
- (a) The Crown; or
 - (b) A local authority; or
 - (c) The National Provident Fund Board established by the National Provident Fund Act 1950; or
 - (d) The Reserve Bank of New Zealand constituted under the Reserve Bank of New Zealand Act 1964; or
 - (e) The Housing Corporation of New Zealand established by the Housing Corporation Act 1974; or
 - (f) The Rural Banking and Finance Corporation of New Zealand established by the Rural Banking and Finance Corporation Act 1974.
- (4) Nothing in sections 33, 34, and 37 to 50 of this Act shall apply in respect of an interest in a contributory mortgage.
- (5) The Commission may, in its discretion and upon such terms and conditions (if any) as it thinks fit, by notice in the

Gazette, exempt any person or class of persons from compliance with any provision or provisions of Part II of this Act or of any regulations made under section 70 (1) of this Act, and may in like manner vary or revoke any such exemption. Every such exemption shall have effect according to its tenor.

6. Exemption from this Act of previously allotted securities—(1) Subject to subsections (2) to (4) of this section, nothing in sections 33, 34, and 36 to 59 of this Act shall apply in respect of a security that has previously been allotted.

(2) All the provisions of this Act shall apply in respect of a security that has previously been allotted (whether in New Zealand or elsewhere) if—

- (a) The security was originally allotted with a view to its being offered for sale to the public in New Zealand; and
- (b) The security has not previously been offered for sale to the public in New Zealand.

(3) For the purposes of this section it shall, unless the contrary is proved, be evidence that an allotment of a security was made with a view to its being offered for sale to the public if it is shown—

- (a) That an offer of the security for sale to the public was made within 6 months after the allotment; or
- (b) That at the date when the offer was made the whole consideration to be received by the allotter in respect of the security had not been so received.

(4) Notwithstanding section 2 of this Act, in this Act, unless the context otherwise requires, in relation to a security to which subsection (2) of this section applies,—

- (a) The term “issuer” means the original allotter of the security; and
- (b) The term “promoter” includes the holder of the security:

Provided that, for the purposes of sections 33 and 34 of this Act, an offer to the public for subscription of such a security, or a distribution of a prospectus relating to such a security, made by or on behalf of the holder of the security shall be deemed to have been made by or on behalf of the issuer thereof.

7. Application of this Act to securities offered overseas—

(1) Nothing in sections 33 to 54 of this Act shall apply in respect of any security that is offered for subscription only to—

- (a) Persons outside New Zealand; or
- (b) Persons outside New Zealand, and persons in New Zealand who in all the circumstances can properly be regarded as having been selected otherwise than as members of the public.

(2) Where it is proposed to offer a security for subscription to persons outside New Zealand in circumstances that, if the offer were made in New Zealand, sections 33, 34, and 37 to 54 of this Act would apply thereto, the issuer of the security shall ensure that—

- (a) Notice of the proposed offer is given to the Registrar before the offer is made; and
- (b) If required to do so by the Registrar and within such time as he may prescribe, identical copies of any documents specified by the Registrar (being documents issued or distributed in connection with the offer) are delivered to him for registration.

8. Act to bind Crown—This Act shall bind the Crown.

PART I

SECURITIES COMMISSION

9. Securities Commission—(1) There is hereby established a Commission to be called the Securities Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do and suffer.

(3) The common seal of the Commission shall be judicially noticed in all Courts and for all purposes.

10. Functions of Commission—The functions of the Commission shall be—

- (a) To perform the functions and duties conferred or imposed on it by or under this Act or any other enactment; and

- (b) To keep under review the law relating to bodies corporate, securities, and unincorporated issuers of securities, and to recommend to the Minister any changes thereto that it considers necessary; and
- (c) To keep under review practices relating to securities, and to comment thereon to any appropriate body; and
- (d) To promote public understanding of the law and practice relating to securities.

11. Membership of Commission—(1) The Commission shall consist of 5 members to be appointed from time to time by the Governor-General on the recommendation of the Minister.

(2) A member of the Commission who is a barrister or solicitor of the Supreme Court of not less than 7 years' practice shall be so appointed as Chairman of the Commission.

12. Alternate members of Commission—(1) The Governor-General may, on the recommendation of the Minister, appoint as alternate members of the Commission persons who may act as the alternate of the Chairman, or of a member of the Commission, during the Chairman's or member's incapacity to perform the duties of his office.

(2) In any case where the Chairman is satisfied that another member of the Commission is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office or that the member considers it not proper or desirable that he should adjudicate on any specified matter, he may appoint an alternate member to act as the alternate of the member during his incapacity or in respect of that matter, as the case may be.

(3) In any case where the Minister is satisfied that the Chairman of the Commission is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office or that the Chairman considers it not proper or desirable that he should adjudicate on any specified matter, the Minister may appoint a member or alternate member of the Commission to act as the alternate of the Chairman during his incapacity or in respect of that matter, as the case may be. If a member of the Commission is appointed as the alternate of the Chairman, an alternate member may be appointed to act as the alternate of that member.

(4) Any alternate appointed under subsection (2) or subsection (3) of this section shall, while he acts as such, be deemed to be the Chairman or member of the Commission in whose place he acts.

(5) No appointment of an alternate and no act done by him as such, and no act done by the Commission while any alternate is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

13. Term of office of members and alternate members of Commission—(1) Subject to subsections (3) and (4) of this section, every member and alternate member of the Commission shall hold office for such term as the Governor-General shall specify in his appointment, being a term not exceeding 5 years.

(2) Any member or alternate member of the Commission may from time to time be reappointed as such.

(3) Any member or alternate member of the Commission may be at any time removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister.

(4) Notwithstanding that the term of office of a member or alternate member of the Commission has expired or that a member or alternate member of the Commission has resigned his office, he shall be deemed to continue a member or alternate member of the Commission for the purpose of deciding any inquiry, application, or matter that was wholly heard before the expiration of his term of office or before his resignation took effect, as the case may be.

(5) The powers and functions of the Commission shall not be affected by any vacancy in its membership.

14. Remuneration, allowances, and expenses of members and alternate members of Commission—(1) There shall be paid to the members and alternate members of the Commission such remuneration by way of fees, salary, wages, or allowances, and such travelling allowances and expenses, as may from time to time be fixed, either generally or in respect of any particular member or members or alternate member or alternate members, by the Higher Salaries Commission.

(2) Any decision under subsection (1) of this section shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no date is so specified the decision shall take effect on the date thereof.

15. Meetings of Commission—(1) Subject to this section, the Chairman shall convene such meetings of the Commission as he thinks necessary for the efficient performance of the functions assigned to it.

(2) Meetings of the Commission shall be held at such places as the Chairman determines.

(3) The Chairman shall preside at all meetings of the Commission at which he is present.

(4) In the absence of the Chairman from any meeting the members present shall appoint one of their number to be the chairman for the purposes of that meeting.

(5) At any meeting of the Commission, the quorum necessary for the transaction of business shall be 3 members.

(6) All questions arising at any meeting of the Commission shall be decided by a majority of votes of the members present and voting. The presiding member shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

16. Assent to resolution without a meeting—A resolution in writing signed, or assented to by letter, telegram, cable, or telex message by all the members of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

17. General powers of Commission—Without limiting any other provision of any Act, the Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions and duties.

18. Powers of Commission to take evidence—(1) At any meeting of the Commission it may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not the same would be otherwise admissible in a Court of law.

(2) The Commission may take evidence on oath and for that purpose a member of the Commission or an officer or employee thereof may administer an oath.

(3) A member of the Commission may by order under the seal of the Commission served on the person, summon any person to appear before the Commission to give evidence as to the matter before it, and require any witness to produce to the Commission all or any books or papers in his possession or control relative to the matter. Every summons under this section shall be served either by delivering the same to the person summoned or by leaving the same at his usual place of abode at least 24 hours before his attendance is required.

(4) The Commission may permit a person appearing as a witness before the Commission to give evidence by tendering and, if the Commission thinks fit, verifying by oath, a written statement.

(5) Where any person has appeared as a witness before the Commission pursuant to a summons in that behalf, or has given evidence before the Commission, whether pursuant to a summons or not, the Commission may, if it thinks fit, order any sum to be paid to that witness on account of his expenses, not exceeding the amount that would be payable to him if his attendance had been as a witness for the Crown in a criminal case in accordance with the regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

19. Provisions relating to certain proceedings before Commission—(1) At any meeting of the Commission for the purposes of section 44 (1) (b) or section 69 of this Act, the Commission shall allow to appear and be represented any person who applies to the Commission for leave to appear or be represented and who is—

- (a) In the case of a meeting for the purposes of section 44 (1) (b) of this Act, the issuer of the prospectus the cancellation of which is being considered; or
- (b) In the case of a meeting for the purposes of section 69 of this Act, the person whose appeal is being considered; or
- (c) In the opinion of the Commission, a person who ought to be heard or a person whose appearance or representation will assist the Commission in its consideration of the matter before it.

(2) At every meeting of the Commission for the purposes of section 44 (1) (b) or section 69 of this Act, the person acting as chairman of the Commission at the meeting shall be a barrister or solicitor of the Supreme Court of not less than 7 years' practice.

(3) Except as provided by subsections (4) and (5) of this section, every meeting of the Commission for the purposes of section 69 of this Act shall be held in public.

(4) The Commission may deliberate in private as to its decision in any matter or as to any question arising in the course of any proceedings before it.

(5) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter, the Commission may, of its own motion or on the application of any party to the proceedings,—

- (a) Order that any proceedings or any class of proceedings held by it be heard in private, either as to the whole or any portion thereof:
- (b) Make an order prohibiting the publication of any report or account of any proceedings before it (whether heard in public or in private) either as to the whole or any portion thereof:
- (c) Make an order prohibiting the publication of the whole or any part of any books and papers produced at any meeting of the Commission.

20. Employees of Commission—(1) Subject to the provisions of this section, the Commission may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as it thinks necessary for the efficient carrying out of its functions, powers, and duties under this Act or any other enactment.

(2) The number of officers and employees who may be appointed under subsection (1) of this section, whether generally or in respect of any specified duties, shall from time to time be determined by the Minister.

(3) Officers and employees appointed under subsection (1) of this section shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commission from time to time determines in agreement with the State Services Commission, or as the Minister from time to time determines in any case where the Commission and the State Services Commission fail to agree.

(4) Any determination under subsection (3) of this section shall take effect on such date (whether the date thereof or

any earlier or later date) as may be specified therein. If no date is so specified the determination shall take effect on the date thereof.

21. Employment of experts—(1) The Commission may appoint any person, who in its opinion possesses expert knowledge or is otherwise able to assist it in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any functions of the Commission.

(2) The Commission shall pay persons appointed by it under this section, for services rendered by them, fees and commission or either at such rates as it thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commission.

22. Superannuation or retiring allowances—(1) For the purpose of providing a superannuation fund or retiring allowance for any of the officers or employees of the Commission, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section.

(2) Notwithstanding anything in this Act, any person who immediately before becoming an officer or employee of the Commission is a contributor to the Government Superannuation Fund under Part II of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as he continues to be an officer or employee of the Commission; and that Act shall apply to him in all respects as if his service as such an officer or employee were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subsection (2) of this section shall entitle any such person to become a contributor to the Government Superannuation Fund after he has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subsection (2) of this section, to a person who is in the service of the Commission (whether as an officer or an employee) and who is

a contributor to the Government Superannuation Fund, the term "controlling authority" in relation to any such person means the Commission.

23. Application of certain Acts to members and staff of Commission—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956 by reason of his appointment as a member or alternate member of the Commission, or an officer or employee of the Board, or a person appointed by the Board under section 21 of this Act.

24. Members of Commission and staff to maintain secrecy—(1) Every member and alternate member of the Commission, and every officer or employee thereof and every person appointed under section 21 of this Act, shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) Every person specified in subsection (1) of this section shall maintain secrecy in respect of all matters that come to his knowledge in the exercise of his functions or duties under this Act and shall not communicate any such matters to any person except for the purpose of giving effect to this Act or any other enactment that confers powers or functions on the Commission.

25. Commission may state case for opinion of Supreme Court—(1) The Commission may at any time state a case for the opinion of the Supreme Court on any question of law arising in any matter before it.

(2) The Supreme Court may order the removal into the Court of Appeal of any case stated for the opinion of the Supreme Court under this section.

(3) The Supreme Court or the Court of Appeal, as the case may be, shall hear and determine the question, and shall remit the case with its opinion to the Commission.

26. Appeals to Supreme Court on questions of law only—(1) Subject to subsections (2) to (10) of this section, every decision of the Commission shall be final and binding on the parties to the proceedings.

(2) Where any party to any proceedings before the Commission is dissatisfied with any determination of the Com-

mission as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of the Court on a question of law only.

(3) Within 14 days after the date of the determination the appellant shall lodge a notice of appeal with the Commission. The appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings.

(4) Within 14 days after the lodging of the notice of appeal, or within such further time as the Chairman of the Commission may in his discretion allow, the appellant shall state in writing and lodge with the Commission a case setting out the facts and the grounds of the determination and specify the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.

(5) The Chairman of the Commission shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle the case, sign it, send it to the Registrar of the Supreme Court at Wellington, and make a copy available to each party.

(6) The settling and signing of the case by the Chairman shall be deemed to be the statement of the case by the Commission.

(7) If within 14 days after the lodging of the notice of appeal, or within such further time as may be allowed, the appellant does not lodge a case pursuant to subsection (4) of this section, the Chairman of the Commission may certify that the appeal has not been prosecuted.

(8) The Court or a Judge thereof may in its or his discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal or the stating of any case.

(9) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

(10) The provisions of section 144 of the Summary Proceedings Act 1957 shall apply in respect of any determination under this section as if the determination were made under section 107 of the Summary Proceedings Act 1957.

27. Delegation of powers by Commission—(1) The Commission may from time to time, by writing under the hand of the Chairman, delegate to any person any of the Commis-

sion's powers under this Act or any other enactment, except this power of delegation and the powers conferred by sections 5 (5), 44, 67, and 69 of this Act.

(2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commission.

(4) Any such delegation may be made subject to such restrictions and conditions as the Commission thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor.

(6) Any person purporting to exercise any power of the Commission by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

28. Proceedings privileged—(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951 or against section 32 (d) of this Act,—

(a) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it acted in bad faith or without reasonable care:

(b) No proceedings, civil or criminal, shall lie against any member or alternate member of the Commission for anything he may do or say or fail to do or say in the course of the operation of the Commission, unless it is shown that he acted in bad faith or without reasonable care:

(c) No member or alternate member of the Commission, or officer or employee thereof, or person appointed under section 21 of this Act, or person to whom a power of the Commission has been delegated under section 27 of this Act, shall be required to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the course of the operations of the Commission.

(2) Anything said or any information supplied or any book or paper produced by any person in the course of any proceedings before the Commission shall be privileged in the same manner as if the proceedings were proceedings in a Court.

(3) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

29. Evidence of resolution of Commission—In any proceedings for an offence against this Act, a certificate purporting to be signed by the Chairman of the Commission for the time being and certifying that a copy of a resolution set out in, or attached to, the certificate was passed by the Commission on a date specified in the certificate shall be sufficient evidence, until the contrary is proved, that such a resolution was so passed by the Commission.

30. Annual reports—(1) As soon as practicable after the end of each year ending with the 31st day of March, the Commission shall furnish to the Minister a report of its operations during that year.

(2) A copy of the report shall be laid before Parliament.

31. Money to be appropriated by Parliament for purposes of this Act—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

32. Offences—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

(a) Having been summoned to appear before the Commission for the purposes of any matter, refuses or wilfully neglects to appear before the Commission in pursuance of the summons, or to take an oath or make an affirmation as a witness, or to answer any question put to him concerning the matter, or to produce to the Commission any book or paper that he is required to produce; or

- (b) Deceives or attempts to deceive or knowingly misleads the Commission on any evidence given or otherwise proffered to it; or
- (c) Acts in contravention of any order made by the Commission under paragraph (b) or paragraph (c) of section 19 (5) of this Act; or
- (d) Acts in contravention of section 24 (2) of this Act.

PART II

RESTRICTIONS ON OFFER AND ALLOTMENT OF SECURITIES TO THE PUBLIC

33. Restrictions on offer of securities to the public—(1) No security shall be offered to the public for subscription, by or on behalf of an issuer, unless—

- (a) The offer is made in, or accompanied by, a prospectus—
 - (i) That complies with sections 39 and 40 of, and all regulations made under, this Act; and
 - (ii) An identical copy of which has been registered by the Registrar pursuant to section 42, or sections 42 and 43, of this Act; or
 - (b) The offer is made in an authorised advertisement.
- (2) No debt security shall be offered to the public for subscription, by or on behalf of an issuer, unless—
- (a) The issuer of the security has appointed a person as a trustee in respect of the security and both the issuer and that person have signed a trust deed relating to the security; and
 - (b) A copy of the trust deed has been registered by the Registrar pursuant to section 46 of this Act; and
 - (c) Where the provisions of the trust deed have been amended, a copy of the instrument amending the deed has been registered by the Registrar pursuant to section 47 of this Act.
- (3) No participatory security shall be offered to the public for subscription, by or on behalf of an issuer, unless—
- (a) The issuer of the security has appointed a person as a statutory supervisor in respect of the security and both the issuer and that person have signed a deed of participation relating to the security; and
 - (b) A copy of the deed of participation has been registered by the Registrar pursuant to section 46 of this Act; and

- (c) Where the provisions of the deed of participation have been amended, a copy of the instrument amending the deed has been registered by the Registrar pursuant to section 47 of this Act.

34. Restrictions on distribution of prospectuses—No prospectus shall be distributed, by or on behalf of an issuer,—

- (a) After it has been amended, unless a memorandum of all the amendments has been registered pursuant to section 43 of this Act and all the amendments have been incorporated in every copy of the prospectus that is so distributed; or
- (b) After the cancellation of its registration pursuant to section 44 of this Act; or
- (c) If it is false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not it became so misleading as a result of a change in circumstances occurring after the date of the prospectus).

35. Restrictions on door-to-door sales—(1) No person shall go from house to house offering securities to the public or any member of the public.

(2) In this section, the term “house” shall not include an office used for business purposes, or any other premises used by the occupier wholly or partly for the purpose of carrying on any trade, business, profession, or calling.

(3) Nothing in this section shall apply with respect to the offering for subscription of securities in any co-operative company or building society.

36. Restrictions on advertising of otherwise exempt securities—No security specified in subsection (2) or subsection (3) or subsection (4) of section 5 of this Act shall be offered to the public for subscription by way of a newspaper, magazine, circular, or brochure or by broadcasting, television, or cinematograph film, if the offer contains any information or matter that is not of a kind specified in regulations made under this Act.

37. Restrictions on allotment of securities—(1) No allotment of a security offered to the public for subscription shall be made if—

- (a) The issuer of the security does not hold a properly completed form of application therefor that is signed by or on behalf of the subscriber and that was distributed to the subscriber in or with a prospectus relating to the security; or
 - (b) The form of application therefor was distributed to the subscriber in or with a prospectus—
 - (i) That did not incorporate all amendments registered in respect thereof pursuant to section 43 of this Act at the time of allotment; or
 - (ii) The registration of which has been cancelled pursuant to section 44 of this Act; or
 - (iii) The registration of which is suspended pursuant to section 44 of this Act at the time of allotment; or
 - (iv) That is known by the issuer of the security, or any director of the issuer, at the time of allotment, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the prospectus became so misleading as a result of a change of circumstances occurring after the date of the prospectus); or
 - (c) The form of application therefor does not state—
 - (i) The date of the prospectus in or with which it was distributed to the subscriber; and
 - (ii) The date or dates of registration of any amendments to the prospectus; or
 - (d) The date of allotment would be more than 9 months after the date of any balance sheet set out, in accordance with regulations made under this Act, in the prospectus distributed to the subscriber or, where there is no such balance sheet, more than 6 months after the date of the prospectus; or
 - (e) After that allotment the total amount of securities issued under the prospectus relating to the security would (after deducting, in the case of an allotment of debt securities, the total amount of debt securities of the issuer redeemed since the date of the prospectus) exceed the amount specified in the prospectus as the maximum amount that will be so issued.
- (2) No allotment shall be made of an equity security offered to the public for subscription unless—

- (a) The amount payable on application for the security is not less than 10 percent of the nominal amount of the security; and
- (b) In the case of the first allotment of equity securities offered to the public for subscription by an issuer only, the amount stated in the prospectus relating thereto as the minimum amount which, in the opinion of the directors of the issuer, must be raised by the issue of the securities in order to provide for the matters specified in regulations made under this Act is subscribed, and the sum payable on application for the amount so stated is paid to and received by the issuer, within 4 months after the date of the prospectus; and, for the purposes of this paragraph,—

- (i) A sum shall be deemed to have been paid to and received by the issuer if a cheque for that sum is received in good faith by the issuer and the directors of the issuer have no reason for suspecting that the cheque will not be paid:

- (ii) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash.

(3) No allotment of a participatory security offered to the public for subscription shall be made unless at the time of allotment the statutory supervisor holds a written statement signed by the subscriber authorising the subscription for that particular security.

(4) Where subscriptions for securities are received by or on behalf of an issuer but, by reason of this section or for any other reason, the securities may not be, or are not, allotted, the issuer shall ensure that—

- (a) At all times while held by it, the subscriptions are kept in a trust account on behalf of the subscribers; and

- (b) The subscriptions, together with such interest (if any) as has been earned thereon, are repaid to the subscribers as soon as reasonably practicable.

If any such money is not so repaid within 2 months after the date the subscription was received by or on behalf of the issuer (or, in any case to which subsection (2) (b) of this section applies, within 5 months after the date of the prospectus), the issuer and all the directors thereof shall be jointly and severally liable to repay the money with

interest at the rate of 10 percent per annum from the date the subscription was received by or on behalf of the issuer:

Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

Authorised Advertisements

38. Authorised advertisements—In this Act the term “authorised advertisement” means an advertisement that offers securities to the public for subscription and that—

- (a) Refers to a prospectus that relates to all the securities and that is registered under this Act, and states the date of registration thereof; and
- (b) States that allotments of the securities shall be made only on receipt of a form of application forming part of, or issued with, a copy of the prospectus; and
- (c) Specifies the place or places at which copies of the prospectus may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent a prospectus, or both; and
- (d) Contains no other information or matter, except information or matters of a kind specified in regulations made under this Act; and
- (e) Does not appear in association with any other advertisement that relates to the securities and that contains any information or matter not specified in paragraphs (a) to (d) of this section.

Prospectuses

39. Form and content of prospectus—Every prospectus required for the purposes of this Act shall—

- (a) Be in writing and be dated; and
- (b) Specify, or refer to statements included in the prospectus that specify, any documents required by section 41 of this Act to be endorsed on or attached to the copy delivered to the Registrar pursuant to that section; and
- (c) Contain all information, statements, certificates, and other matters that it is required to contain by regulations made under this Act.

40. Statement in prospectus by expert—(1) No prospectus shall contain a statement purporting to be made by an expert unless—

- (a) He has given and has not, before delivery of a copy of the prospectus for registration in accordance with section 41 of this Act, withdrawn his written consent to the issue of the prospectus with the statement included in the form and context in which it is included; and
- (b) A statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus; and
- (c) A statement of his qualifications appears in the prospectus; and
- (d) A statement appears in the prospectus as to whether or not he is or is intended to be a director, officer, or employee of, or professional adviser to, the issuer of the prospectus; and
- (e) If the statement by the expert was made more than 4 months before the date of delivery of a copy of the prospectus for registration in accordance with section 41 of this Act, a supplementary statement on the same matter made by the same or another expert less than 4 months before that date appears in the prospectus.

(2) Where under subsection (1) (e) of this section, a supplementary statement by an expert is required to appear in a prospectus—

- (a) The supplementary statement shall specifically affirm, deny, or qualify all assertions of fact contained in the original statement; and
- (b) If in the opinion of the expert making the supplementary statement, any opinions expressed in the original statement require further comment because of any such denial or qualification of any assertions of fact, or for any other reason, the supplementary statement shall contain such comments.

41. Requirements relating to prospectuses delivered to Registrar for registration—Every prospectus delivered to the Registrar for registration under this Act shall—

- (a) Have endorsed thereon or attached thereto—
 - (i) Any consent to the issue thereof required by section 40 of this Act from any person as an expert; and

(ii) All documents, information, certificates, and other matters required to be endorsed thereon or attached thereto for the purposes of this section by regulations made under this Act; and

(b) Be signed by—

(i) The issuer of the prospectus (if an individual) and every person who is a director of the issuer at the time the prospectus is delivered to the Registrar, or by its or his agent authorised in writing; and

(ii) Every promoter of the securities to which the prospectus relates, or by its or his agent authorised in writing.

42. Registration of prospectus—(1) Subject to subsections (2) and (3) of this section, the Registrar shall forthwith register every prospectus delivered to him in accordance with section 41 of, and any regulations made under, this Act.

(2) The Registrar may refuse to register a prospectus if—

(a) It does not comply with this Act; or

(b) It contains any misdescription or error or any matter that is not clearly legible or is contrary to law; or

(c) The prescribed registration fee is not paid.

(3) The Registrar shall refuse to register a prospectus if—

(a) The date of registration would be earlier than the date of the prospectus; or

(b) He is of the opinion that the prospectus contains a statement that is false or misleading on a material particular or omits any material particular.

(4) Notwithstanding subsections (2) and (3) of this section,—

(a) The Registrar shall not refuse to register a prospectus pursuant to either of those subsections if—

(i) The text, diagrams, illustrations, photographs, and other information, the size and style of the print, and the layout used in the prospectus are (except for the colours used and any signatures) the same as those used or specified in a prospectus, including any attachment relating thereto, previously approved by him as suitable for registration; and

(ii) He considers that the colours used in the prospectus are such that every word therein is clearly legible:

(b) The Registrar may register a prospectus that does not comply with section 41 of this Act if he is satisfied that it complies with all provisions of this Act other than section 41 and, except for the matters referred to in that section, it is a satisfactory copy of a prospectus that is already registered.

(5) Upon registration of a prospectus pursuant to this section, the Registrar shall forthwith give a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the prospectus has been registered under this section.

43. Amendment of registered prospectus—(1) The issuer of a prospectus that has been registered under this Act may at any time deliver, or cause to be delivered, to the Registrar a memorandum of amendments to the prospectus.

(2) Every memorandum of amendments to a prospectus delivered to the Registrar shall be delivered in duplicate and accompanied by a copy of the prospectus as amended.

(3) Subject to subsections (4) and (5) of this section, the Registrar shall forthwith register every memorandum of amendments to a prospectus delivered to him in accordance with this section, and from the date of registration of the memorandum the prospectus as amended shall be deemed to be a registered prospectus.

(4) The Registrar may refuse to register a memorandum of amendments to a prospectus if—

(a) Pursuant to section 42 (2) of this Act, he could have refused to register the prospectus as amended if it had been delivered for registration at the time of the delivery to him of the memorandum; or

(b) The prescribed registration fee is not paid.

(5) The Registrar shall refuse to register a memorandum of amendments to a prospectus if—

(a) He is of the opinion that the prospectus as amended contains a statement that is false or misleading on a material particular or omits any material particular; or

(b) The date of the prospectus is altered.

(6) Upon registration of a memorandum of amendments to a prospectus pursuant to this section, the Registrar shall forthwith give a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the memorandum has been registered under this section.

44. Suspension and cancellation of registration of prospectus—(1) Where at any time after the registration of a prospectus pursuant to this Act the Commission is of the opinion that the prospectus is false or misleading on a material particular or omits any material particular (whether or not it was so false or misleading, or the omission was material, at the time the prospectus was registered), the Commission may exercise either or both of the following powers in respect of the prospectus:

- (a) If it considers that suspension of the registration of the prospectus is desirable in the public interest, the Commission may suspend the registration of the prospectus for a period not exceeding 14 days:
- (b) After giving the issuer of the prospectus not less than 7 days' written notice of the meeting at which the matter will be considered by the Commission, the Commission may at that meeting cancel the registration of the prospectus.

(2) Where the Commission suspends the registration of a prospectus pursuant to this section,—

- (a) It shall forthwith notify the issuer thereof of the suspension and the reasons therefor; and
- (b) No member or alternate member of the Commission, or officer or employee thereof, or person appointed under section 21 of this Act shall, except following cancellation of the prospectus under this section or in the course of any criminal proceedings, divulge or communicate to any other person the fact of the suspension or any matter relating thereto.

(3) Where the Commission cancels the registration of a prospectus pursuant to this section,—

- (a) It shall forthwith notify the issuer thereof of the cancellation and the reasons therefor; and
- (b) It may notify any other person of the cancellation and the reasons therefor.

Trust Deeds and Deeds of Participation

45. Contents of deeds—(1) Every trust deed, and deed of participation, required for the purposes of this Act shall contain all information and other matters that are required to be included therein by regulations made under this Act.

(2) Every trust deed, and deed of participation, required for the purposes of this Act shall be deemed to contain all clauses that are prescribed in regulations made under this Act as clauses that are deemed to be contained in a trust deed or a deed of participation, as the case may be; and every such clause shall have effect notwithstanding anything to the contrary in any deed in which it is deemed to be contained.

(3) A trust deed or deed of participation may expressly adopt all or any of the clauses that are prescribed in regulations made under this Act as clauses that may be adopted in a trust deed or deed of participation, as the case may be.

46. Registration of trust deeds and deeds of participation—

(1) Subject to subsection (2) of this section, the Registrar shall forthwith register every copy of a trust deed or deed of participation delivered to him for registration under this Act.

(2) The Registrar may refuse to register a trust deed or deed of participation if—

(a) It does not comply with this Act; or

(b) It contains any misdescription or error or any matter that is not clearly legible; or

(c) The prescribed registration fee is not paid.

(3) Upon registration of a copy of a deed pursuant to this section, the Registrar shall forthwith give a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the deed has been registered under this section.

47. Amendment of registered deed—(1) Where a trust deed or deed of participation that has been registered under this Act has been lawfully amended, the issuer shall ensure that there is delivered to the Registrar, as soon as practicable after the amendment, a copy of the instrument by which the amendment to the deed was made.

(2) Subject to subsection (3) of this section, the Registrar shall forthwith register every copy of an instrument amending a deed that—

(a) Is delivered to him for registration under this section; and

(b) If the Registrar so requires, is accompanied by a copy of the deed as amended.

(3) The Registrar may refuse to register a copy of an instrument amending a deed if—

- (a) Pursuant to section 46 (2) of this Act, he could have refused to register the deed as amended if it had been delivered for registration at the time of the delivery to him of the copy of the instrument; or
- (b) The prescribed registration fee is not paid.
- (4) Upon registration of a copy of an instrument pursuant to this section, the Registrar shall forthwith give a certificate under his hand of that registration, and the certificate shall be conclusive evidence that the copy has been registered under this section.

Trustees and Statutory Supervisors

48. Persons who may act as trustees and statutory supervisors—(1) No person other than a trustee corporation or a person approved for the purpose by the Commission in accordance with this section, shall accept appointment or act as a trustee or statutory supervisor.

(2) No trustee or statutory supervisor shall, without the consent of the Court, be discharged or retire from that position until—

- (a) All functions and duties of that position have been fulfilled and performed; or
- (b) The issuer of the securities has appointed another person as a trustee or statutory supervisor, as the case may be, in its place, and that person has accepted appointment as such.

(3) The Commission may from time to time, by notice in the *Gazette*, approve any person or persons, or class or classes of persons, to act as a trustee or statutory supervisor for the purposes of this Act. Any such approval may be in respect of specified securities, or a specified class or classes of securities only, or in respect of all securities; and may be on such terms and conditions as the Commission thinks fit.

(4) The Commission may at any time, by notice in the *Gazette*, revoke any approval of a person, or class of persons, given by it under this section:

Provided that no such revocation shall affect any appointment of that person or a person of that class made before the date of the revocation, or the powers, duties, or obligations of the person under or by virtue of any such appointment.

(5) A person may act as trustee or statutory supervisor in respect of all or any securities offered to the public by the same issuer:

Provided that nothing in this subsection shall derogate from subsection (1) of this section.

49. Trustees and statutory supervisors may apply to Court for orders relating to securities—(1) Where at any time after due inquiry, a trustee or statutory supervisor of securities is of the opinion that—

- (a) The issuer and any guarantor of the securities are unlikely to be able to pay all money owing in respect of the securities when it becomes due; or
- (b) The provisions of any deed relating to the securities are no longer adequate to give proper protection to the security holders—

the trustee or statutory supervisor may, in its absolute discretion, apply to the Court for an order or orders under this section.

(2) An application to the Court under this section shall be served on such persons as the Court may direct.

(3) On an application by a trustee or statutory supervisor under this section, the Court may, after giving the issuer and such other persons as it thinks fit an opportunity of being heard, by order—

- (a) Amend the provisions of any deed relating to the securities:
- (b) Impose such restrictions on the activities of the issuer, including restrictions on advertising, as the Court thinks necessary for the protection of the interests of the security holders:
- (c) Direct the issuer or the trustee or statutory supervisor to convene a meeting of the security holders for the purpose of having placed before them by the trustee or statutory supervisor such information relating to their interests, and such proposals for the protection of their interests, as the Court or the trustee or statutory supervisor considers necessary or appropriate, and for the purpose of obtaining their opinions or directions in relation thereto; and the Court may give such directions in relation to the conduct of the meeting as the Court thinks fit:
- (d) Stay all civil actions or civil proceedings before any Court by or against the issuer or any guarantor of the securities:

- (e) Restrain the payment of any money by the issuer or any guarantor of the securities to the security holders or any class of such holders:
- (f) Appoint a receiver or manager of such of the property as constitutes the security (if any) for the securities:
- (g) Give such other directions as the Court considers necessary to protect the interests of the security holders, other holders of securities of the issuer, any guarantor of the securities, or the public.

In making any such order the Court shall have regard to the interests of all creditors of the issuer.

(4) The Court may at any time vary or rescind any order made under this section.

50. Duty of auditor to report to trustee or statutory supervisor—(1) Whenever the auditor of an issuer of debt securities or participatory securities offered to the public furnishes to the issuer or its members or the security holders any report, statement of accounts, certificate, or other document that is required by any Act or by any deed relating to the securities to be so furnished, he shall forthwith send a copy thereof to the trustee or statutory supervisor of the securities.

(2) Whenever, in the performance of his duties as auditor, the auditor of an issuer of debt securities or participatory securities offered to the public becomes aware of any matter that in his opinion is relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor of the securities, he shall, within 7 business days of becoming so aware, send—

- (a) To the issuer, a report in writing on the matter; and
- (b) To the trustee or statutory supervisor, as the case may be, a copy of that report.

(3) The auditor of an issuer of debt securities or participatory securities offered to the public shall from time to time, at the request of the trustee or statutory supervisor, furnish to the trustee or statutory supervisor such information or particulars relating to the issuer as are requested and are within his knowledge and are in his opinion relevant to the exercise or performance of the powers or duties of the trustee or statutory supervisor.

(4) Nothing in this section shall affect the duties or liability of any trustee or statutory supervisor.

Obligations of Issuers

51. Issuers to keep registers of securities—(1) Every issuer of securities offered to the public shall keep in New Zealand—

- (a) A register of all equity securities; and
- (b) Where the issuer is a company, a register of all debentures, debenture stock, bonds, notes, certificates of deposit, and convertible notes; and
- (c) A register of all participatory securities—
of which it is the issuer.

(2) Every register kept for the purposes of this section shall contain in respect of every security entered therein—

- (a) The name and address of the holder thereof;
- (b) The date on which the security was allotted or transferred to the holder, as the case may be;
- (c) The nature of the security;
- (d) The amount secured by the security;
- (e) The due date of the security (if any); and
- (f) Such other particulars as are required to be entered therein by regulations made under this Act:

Provided that nothing in paragraphs (a) and (b) of this subsection shall apply in respect of bearer securities.

(3) No notice of any trust, expressed, implied, or constructive, shall be entered on a register kept under this section.

(4) Every register kept under this section shall be prima facie evidence of any matters directed by this Act to be inserted therein.

(5) Every issuer of securities offered to the public (other than securities that have been redeemed) shall ensure that every register kept by it under this section is audited at least once a year by a qualified auditor. If the auditor considers at any time that this section is not being complied with, he shall forthwith advise the trustee or statutory supervisor of the securities or (where there is no trustee or statutory supervisor) the security holders at their next meeting.

(6) Every issuer shall send notice to the Registrar of the place where its registers are kept and of any change in that place:

Provided that an issuer shall not be bound to send notice under this subsection where the registers have, at all times since they came into existence or, in the case of a register in existence at the commencement of this Act, at all times since then, been kept at the registered office of the issuer.

(7) Nothing in this section shall in any way derogate from any provision of the Companies Act 1955 or any other enactment.

52. Rights of inspection of registers of securities and to copies of registers and deeds—(1) Every register kept under section 51 of this Act shall, except when duly closed (but subject to such reasonable restrictions as the issuer may impose, so that not less than 2 hours in each day shall be allowed for inspection), be open to the inspection of any holder of the securities without fee, and of any other person on payment of the prescribed fee.

(2) Any person may require a copy of a register kept under section 51 of this Act, or any part thereof, on payment of the prescribed fee.

(3) The issuer of any debt securities or participatory securities shall ensure that a copy of any trust deed or deed of participation relating to the securities is forwarded to every holder of the securities on his request and on payment of the prescribed fee.

(4) For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the rules of the issuer or in the securities or any trust deed or deed of participation relating thereto, during a period or periods not exceeding in the whole 30 days in any year.

(5) Nothing in this section shall in any way derogate from any provision of the Companies Act 1955 or any other enactment.

53. Issuers to keep proper accounting records—(1) Every issuer of securities offered to the public (other than securities that have been redeemed) shall at all times keep, in such manner as will enable the audit thereof to be conveniently and properly carried out, accounting records that—

(a) Correctly record and explain the transactions of the issuer (in the case of equity securities or debt securities) or the arrangement or scheme to which the securities relate (in the case of participatory securities); and

(b) Will at any time enable the financial position of the issuer or the arrangement or scheme, as the case may be, to be ascertained.

(2) Without limiting the generality of subsection (1) of this section, accounting records kept pursuant to that subsection shall contain all information required to be contained therein by regulations made under this Act.

(3) Accounting records kept under this section, or copies thereof, shall be retained by the issuer for a period of at least 5 years after the date they are made or the date of completion of the transaction to which they relate, whichever is the later:

Provided that nothing in this subsection shall derogate from any other requirement to keep accounting records for a particular time.

(4) All accounting records kept under this section shall be open to inspection at all reasonable times by the trustee or statutory supervisor, as the case may be.

(5) Every issuer of equity securities or debt securities offered to the public (other than securities that have been redeemed) shall ensure that its accounting records are audited at least once a year by a qualified auditor.

(6) Every issuer of participatory securities offered to the public shall ensure that, if the statutory supervisor so requires, the accounting records relating to the arrangement or scheme to which the securities relate are audited at least once a year by a qualified auditor.

(7) Every issuer of securities offered to the public shall supply, on demand and without charge, to every security holder who so requests,—

(a) In the case of equity securities or debt securities, a copy of the last audited balance sheet (including every document required by law to be attached thereto) of the issuer of the securities; or

(b) In the case of participatory securities, a copy of the last audited balance sheet (including every document required by law to be attached thereto) relating to the arrangement or scheme to which the securities relate or, where there is no such balance sheet, a summary of the accounting records relating to the arrangement or scheme that correctly sets out the financial position thereof at the time:

Provided that no security holder shall be entitled to more than one copy of each balance sheet or summary:

Provided also that, where an issuer of securities is a company forming part of a group of companies, the last audited balance sheet thereof need not be supplied if the last audited balance sheet of the group is supplied in its place.

(8) Nothing in this section shall in any way derogate from any provision of the Companies Act 1955 or any other enactment.

54. Issuers to issue certificates evidencing securities—

(1) Every issuer of a security offered to the public shall send, or cause to be sent, to the security holder either the security or a certificate of the security within one month of the allotment, or receipt by or on behalf of the issuer of a registrable transfer, of the security.

(2) Every security or certificate sent to a security holder pursuant to this section shall be executed by or on behalf of the issuer of the security:

Provided that it shall be sufficient compliance with the provisions of this subsection requiring a security or certificate to be executed by any person if a facsimile of the required signature and seal (if any) is reproduced on the security or certificate.

(3) In this section, the term "certificate" means a certificate or other document that properly evidences the nature, ownership, terms, and conditions of the security.

Liability of Issuers, etc., and Offences

55. Interpretation of provisions relating to prospectuses—

For the purposes of this Act—

- (a) A statement included in a prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included; and
- (b) A statement shall be deemed to be included in a prospectus if it is contained therein or in any memorandum of amendments thereto or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

56. Civil liability for mis-statements in prospectus—

(1) Subject to the provisions of this section, the following persons shall be liable to pay compensation to all persons who subscribe for any securities on the faith of a prospectus for the loss or damage they may have sustained by reason of any untrue statement included in the prospectus, that is to say:

- (a) Where the issuer is an individual, the issuer of the securities;
- (b) Every person who is a director of the issuer at the time of the issue of the prospectus:

- (c) Every person who has authorised himself to be named and is named in the prospectus as a director of the issuer or as having agreed to become a director either immediately or after an interval of time:
 - (d) Every promoter of the securities.
- (2) No person shall be liable under subsection (1) of this section if he proves that—
- (a) Having consented to become a director of the issuer, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (b) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or
 - (c) After the issue of the prospectus and before the securities were subscribed for, he, on becoming aware of any untrue statement therein, withdrew his consent thereto and gave notice to the trustee or statutory supervisor (if any) and the Registrar of the withdrawal and of the reason therefor, and also gave reasonable public notice of the withdrawal; or
 - (d) As regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true; or
 - (e) As regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or extract from a report or valuation of an expert,—
 - (i) It fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; and
 - (ii) He had reasonable grounds to believe and did up to the time of the issue of the prospectus believe that the person making the statement was competent to make it; and
 - (iii) That person had given the consent required by section 40 of this Act to the issue of the prospectus and had not withdrawn that consent before

delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before the securities were subscribed for; or

(f) As regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or copy of or extract from the document.

(3) Where—

(a) A prospectus contains the name of a person as a director of the issuer or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorised or consented to the issue thereof; or

(b) The consent of a person is required under section 40 of this Act to the issue of a prospectus and he either has not given that consent or has withdrawn it before the issue of the prospectus—

the directors of the issuer, except any without whose knowledge or consent the prospectus was issued, shall be liable to indemnify the person named as aforesaid or whose consent was required as aforesaid, as the case may be, against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or of the inclusion therein of a statement purporting to be made by him as an expert, as the case may be, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Where any person acting in good faith, believing a statement in a prospectus to be untrue, withdraws his consent to the issue of the prospectus, he shall not be liable in respect of the withdrawal to the issuer or any other person, whether or not the statement is untrue.

57. Civil liability for mis-statements by expert—(1) Subject to the provisions of this section, every person who gives a consent to the issue of a prospectus required of him by section 40 of this Act, or by regulations made under this Act, shall be liable to pay compensation to all persons who subscribe for any securities on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement included in the prospectus and purporting to be made by him as an expert.

(2) No person shall be liable under subsection (1) of this section if he proves that—

- (a) Having given his consent to the issue of the prospectus, he withdrew it in writing before delivery of the prospectus for registration; or
- (b) After delivery of the prospectus for registration and before the securities were subscribed for, he, on becoming aware of the untrue statement, withdrew his consent in writing and gave notice to the trustee or statutory supervisor (if any) and the Registrar of the withdrawal and of the reason therefor, and also gave reasonable public notice of the withdrawal; or
- (c) He was competent to make the statement and that he had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

(3) Where any person acting in good faith, believing a statement in a prospectus to be untrue, withdraws his consent to the issue of the prospectus, he shall not be liable in respect of the withdrawal to the issuer or any other person, whether or not the statement is untrue.

58. Criminal liability for mis-statements in prospectus—

Where a prospectus that includes any untrue statement is issued, every person who signed the prospectus, or on whose behalf the prospectus was signed, for the purposes of section 41 (b) of this Act commits an offence and is liable—

- (a) On conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$25,000, or to both; or
- (b) On summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$15,000, or to both,—

unless he proves either that the statement was immaterial or that he had reasonable grounds to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

59. Criminal liability for offering, distributing, or allotting in contravention of this Act—(1) Subject to subsection (2) of this section, if an offer of a security is made to the public, or a prospectus relating to a security is distributed, or a

security is allotted, in contravention of this Act, (or, in the case of an interest in a contributory mortgage, in contravention of regulations made under this Act),—

- (a) The issuer of the security; and
- (b) Every person who is a principal officer of the issuer at the time of the contravention; and
- (c) Every promoter of the security; and
- (d) Every person who has authorised himself to be named and is named in any prospectus relating to the security as a director of the issuer or as having agreed to become a director either immediately or after an interval of time—

each commits an offence, and is liable on summary conviction to a fine not exceeding \$15,000.

(2) No person shall be convicted under subsection (1) of this section for any such contravention if—

- (a) The contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial, or was otherwise such as, in the opinion of the Court having regard to all the circumstances of the case, ought reasonably to be excused; or
- (b) In the case of a person other than the issuer, in the opinion of the Court dealing with the case, the contravention did not take place with his knowledge and consent.

60. Other offences—(1) Every person who—

- (a) Refuses or fails to produce for inspection any document when required to do so pursuant to section 67 of this Act; or
- (b) Resists, obstructs, deceives, or attempts to deceive any person acting in the discharge of his functions or duties, or in the exercise of his powers, under this Act; or
- (c) Makes a record of or divulges or communicates to any other person, otherwise than in accordance with section 67 (5) of this Act or for the purposes of this Act or any of the Acts listed in the First Schedule to this Act or in the course of any criminal proceedings, any information that he has acquired in the course of an inspection under section 67 of this Act; or

- (d) Acts in contravention of, or fails to comply in any respect with, any provision of sections 35, 47, 50, 51, 52, and 54 of this Act or any requirement imposed pursuant to any of those sections—

commits an offence and is liable on summary conviction to a fine not exceeding \$1,000.

(2) If a person contravenes or fails to comply in any respect with any provision of sections 7, 36, 37 (4), 48, and 53 of this Act, or any requirement imposed pursuant to any of those sections, the person, and every principal officer thereof, commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000:

Provided that—

- (a) No person shall be convicted under this subsection in respect of any such contravention or failure to comply if the contravention or failure was in respect of matters which in the opinion of the Court dealing with the case were immaterial, or was otherwise such as, in the opinion of the Court having regard to all the circumstances of the case, ought reasonably to be excused:
- (b) No principal officer shall be convicted under this subsection in respect of any such contravention or failure to comply if, in the opinion of the Court dealing with the case, the contravention or failure did not take place with his knowledge and consent.

61. Liability of officers and auditors of issuer—Subject as hereinafter provided, any provision, whether contained in the articles of association of an issuer or in any contract with an issuer or otherwise, for exempting any officer of the issuer or any person (whether an officer of the issuer or not) employed by the issuer as auditor from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty, or breach of trust of which he may be guilty in relation to the issuer shall be void:

Provided that—

- (a) Nothing in this section shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force; and

- (b) Notwithstanding anything in this section, an issuer may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 63 of this Act in which relief is granted to him by the Court.

62. Liability of trustees and statutory supervisors—

(1) Subject to the following provisions of this section, any provision of a deed or contract relating to debt securities or participatory securities shall be void in so far as it would have the effect of exempting a trustee or statutory supervisor thereof from or indemnifying him against liability for breach of trust where he fails to show the degree of care and diligence required of him as trustee or statutory supervisor having regard to the provisions of any deed conferring on him any powers, authorities, or discretions.

(2) Subsection (1) of this section shall not invalidate—

(a) Any release otherwise validly given in respect of anything done or omitted to be done by a trustee or statutory supervisor before the giving of the release; or

(b) Any provision enabling such a release to be given—

(i) On the agreement thereto of a majority comprising not less than three-fourths in value of the security holders voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose; and

(ii) Either with respect to specific acts or omissions or on the trustee or statutory supervisor being wound up or ceasing to act.

(3) Subsection (1) of this section shall not operate—

(a) To invalidate any provision in force at the commencement of this Part of this Act; or

(b) To deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done by him while any such provision was in force.

63. Power of Court to grant relief in certain cases—(1) If in any proceedings against any person for negligence, default, breach of duty, or breach of trust in connection with—

- (a) An offer to the public or allotment of securities;
- (b) An issue of a prospectus or advertisement;
- (c) The management of securities offered to the public; or
- (d) Any matter related thereto—

it appears to the Court hearing the case that the person is or may be liable in respect of the negligence, default, breach of duty, or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty, or breach of trust, the Court may relieve him either wholly or partly from his liability, on such terms as the Court may think fit.

(2) Where any such person has reason to apprehend that any claim will or might be made against him in respect of any such negligence, default, breach of duty, or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a Court before which proceedings against that person for negligence, default, breach of duty, or breach of trust had been brought.

(3) Where any case to which subsection (1) of this section applies is being tried by a Judge with a jury, the Judge may, after hearing the evidence, if he is satisfied that the defendant ought in pursuance of that subsection to be relieved wholly or partly from the liability sought to be enforced against him, withdraw the case wholly or partly from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the Judge may think proper.

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

65. Saving of liability under general law—Nothing in this Act shall limit or diminish any liability that any person may incur under any rule of law or enactment other than this Act.

General Provisions

66. Registers to be kept by Registrar for purposes of this Act—(1) The Registrar shall cause to be kept in the office of each District Registrar of Companies such registers as he considers necessary for the purposes of this Act, and all matters required by this Act to be registered or recorded by the Registrar shall be recorded therein.

(2) Sections 7 and 9 of the Companies Act 1955 shall apply in respect of any documents kept by the Registrar for the purposes of this Act as if they were documents kept for the purposes of the Companies Act 1955.

67. Registrar's powers of inspection—(1) Subject to subsections (2) and (3) of this section, the Registrar or any person authorised by him may, for the purposes of this Act or any of the Acts specified in the First Schedule to this Act,—

- (a) Require any issuer or promoter of securities offered to the public, or any director, officer, or employee thereof, to produce for inspection any book or paper or other document kept by the issuer or the promoter;
- (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 or promoter;
- (c) Inspect and make records of any such book or paper or other document; and
- (d) For the purpose of making records thereof, take possession of and remove from the premises where they are kept, for such period of time as is reasonable in the circumstances, any such book or paper or other document.

(2) Neither the Registrar nor any person authorised by him may require the production of a document, or make an inspection, under subsection (1) of this section other than pursuant to a request, or with the approval, of the Commission. Any request made, or approval given, by the Commission for the purposes of this subsection may relate to a particular case or to such limited class or classes of cases as the Commission may specify.

(3) No person authorised by the Registrar for the purposes of subsection (1) of this section may require the production of a document or make an inspection under that subsection unless he has first made a declaration in the prescribed form

that he will not, except in accordance with subsection (5) of this section or for the purposes of this Act or any of the Acts listed in the First Schedule to this Act or in the course of any criminal proceedings, make a record of or divulge or communicate to any other person any information that he acquires by an inspection under that subsection.

(4) The fact that the Registrar, or a person authorised by him for the purposes of subsection (1) of this section, requires the production of a document, or makes or attempts to make an inspection, under that subsection shall, in the absence of evidence to the contrary, be sufficient evidence that subsection (2) of this section has been complied with.

(5) A person who has made an inspection under subsection (1) of this section shall, upon being directed to do so by the Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such person or persons as the Registrar specifies.

(6) The Minister or the Commission may, by written notice, require the Registrar to give a direction under subsection (5) of this section; and the Registrar shall comply with any such requirement.

(7) Nothing in this section shall in any way limit any power that the Registrar or any other person may have under the Companies Act 1955 or any other enactment.

68. Appeals against Registrar's powers of inspection—

(1) Any person who is aggrieved by any act or decision of the Registrar, or any person authorised by him, under section 67 of this Act may within 21 days after being notified of such act or decision, or within such further time as the Court may allow, appeal against the act or decision to the Court.

(2) On hearing the appeal, the Court may confirm the act or decision of the Registrar or person or may give such directions or make such determination in the matter as it thinks fit.

(3) Notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the Court in respect of an act or decision of the Registrar, or any person authorised by him, under section 67 of this Act, until a decision on the appeal or application is given, the Registrar, and any person authorised by him under that section for the purpose, may continue to exercise his powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligations under that section by reason of that appeal or application:

Provided that, to the extent that an appeal or application in respect of any such act or decision is allowed or granted, as the case may be,—

- (a) The Registrar shall ensure that, forthwith after the decision on the appeal or application is given, all records made by him, or by a person authorised by him for that purpose, under section 67 (1) (c) of this Act in respect of that act or decision are destroyed or expunged; and
- (b) No information acquired under paragraph (a) or paragraph (b) of section 67 (1) of this Act in respect of that act or decision shall be admissible in evidence in any proceedings.

69. Appeals against other decisions of Registrar—(1) Any person who is aggrieved by—

- (a) The refusal of the Registrar to register any prospectus, deed, memorandum of amendments to a prospectus, or instrument amending a deed; or

(b) Any other refusal, act, or decision of the Registrar under any provision of this Act (other than section 67) or any regulations made under this Act,—
may within 21 days after being notified of such refusal, act, or decision, or within such further time as the Commission may allow, appeal against the refusal, act, or decision to the Commission.

(2) On hearing the appeal, the Commission may confirm the refusal, act, or decision of the Registrar or may give such directions or make such other determination in the matter as it thinks fit; and, subject to section 26 of this Act, the determination of the Commission on the appeal shall be final and binding on the parties thereto.

(3) On any appeal under this section the Commission may make an order for the payment by any party to the appeal of the costs incurred in respect of the appeal by any other party to the appeal, and in any such case the costs so awarded shall be recoverable as a debt due by the party against whom they have been awarded to the party in whose favour they have been awarded.

70. Regulations and Orders in Council—(1) The Governor-General may from time to time, by Order in Council, in accordance with the recommendation of the Commission, make regulations for all or any of the following purposes:

- (a) Prescribing, or empowering the Registrar to prescribe, forms required for the purposes of this Act;
- (b) Regulating advertising relating to an offer of securities to the public; including prescribing requirements as to or restrictions on the text thereof or the use of words or expressions therein, the layout or method of presentation thereof, and the size of type used therein;
- (c) Prescribing the documents, information, statements, certificates, and other matters that shall be contained in or endorsed on or attached to prospectuses required for the purposes of this Act; and different matters may be prescribed in respect of prospectuses relating to different kinds of securities and different classes of issuers;
- (d) Providing that statements included in, or relating to, a prospectus or to securities to which a prospectus relates, made for the purposes of regulations made under this Act shall be deemed to be statements made in the prospectus for the purposes of sections 55 to 65 of this Act;
- (e) Prescribing the information and other matters that may be contained in offers to which section 36 of this Act applies and in authorised advertisements, and different matters may be prescribed in respect of offers or advertisements relating to different kinds of securities and different classes of issuers;
- (f) Prohibiting or restricting the use in prospectuses required for the purposes of this Act or authorised advertisements of certain words, information, statements, or graphics;
- (g) Prescribing the information and other matters that shall be included in trust deeds and deeds of participation for the purposes of this Act, and the clauses that shall be deemed to be contained in, or may be adopted by, such deeds; and different matters and clauses may be prescribed in respect of deeds relating to different kinds of securities and different classes of issuers; and, without limiting the generality of the foregoing, clauses specifying the duties and powers of trustees or statutory supervisors, as the case may be, and the obligations of issuers may be prescribed as clauses that are deemed to be contained in such deeds;

- (h) Regulating the offer to the public of interests in contributory mortgages; and prescribing requirements relating to the management of such interests, including requirements relating to the auditing thereof:
- (i) Prescribing the places at which documents shall be delivered, and the number of copies of such documents required, for the purposes of this Act:
- (j) Prescribing transitional and savings provisions relating to the coming into force of this Act; and without limiting the generality of the foregoing, any such regulation may provide that, subject to such terms and conditions as are specified in the regulation, specified provisions of this Act shall not apply during a specified transitional period, or specified provisions of Acts repealed by this Act shall continue to apply, in respect of any specified person or class of persons:
- (k) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act; and prescribing the fines, not exceeding \$5,000, that may be imposed in respect of any such offence:
 - (1) Providing for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
 - (2) The Governor-General may from time to time, by Order in Council, in accordance with the recommendation of the Commission, add to the Second Schedule to this Act any qualification. Any reference in this Act to the Second Schedule shall be construed as a reference to that Schedule with any additions made by any Order in Council for the time being in force under this subsection.
 - (3) Before making any recommendation for the purposes of subsection (1) or subsection (2) of this section, the Commission shall—
 - (a) Do everything reasonably possible on its part to advise all persons and organisations, who in its opinion will be affected by any Order in Council made in accordance with the recommendation, of the proposed terms thereof; and give such persons and organisations a reasonable opportunity to make submissions thereon to the Commission; and

- (b) Give notice in the *Gazette*, not less than 14 days before making the recommendation, of its intention to make the recommendation and state briefly in the notice the matters to which the recommendation relates; and
- (c) Make copies of the recommendation available for inspection by any person who so requests before an Order in Council is made in accordance therewith:

Provided that this subsection shall not apply in respect of any particular recommendation if the Commission considers that it is desirable in the public interest that the recommendation be made urgently:

Provided also that failure to comply with this subsection shall in no way affect the validity of any Order in Council made under this section.

(4) The Governor-General may from time to time, by Order in Council, make regulations prescribing fees to be paid for the purposes of this Act.

PART III

AMENDMENTS TO OTHER ACTS

71. Amendments to Companies Act 1955—(1) Sections 47, 48, 48A, 48B, 49 to 51, 53 to 56, 56A, 57 to 59, 63, 65 (3), 95, 95A to 95D, 96, 407 to 410, 410A, 411, 457 (2), and 472 of, and subsections (6) to (10) of section 366 of, and the Fourth, Fifth, and Eleventh Schedules to, the Companies Act 1955 are hereby repealed.

(2) Section 2 (1) of the Companies Act 1955 is hereby consequentially amended—

- (a) By repealing the definition of the term “minimum subscription”, and substituting the following definition:

“‘Minimum subscription’ means the amount stated in a prospectus for the purposes of section 37 (2) (b) of the Securities Act 1978:”

- (b) By repealing the definition of the term “prospectus”, and substituting the following definition:

“‘Prospectus’ has the same meaning as in the Securities Act 1978:”

(3) Section 52 of the Companies Act 1955 is hereby consequentially amended by omitting the words “the prospectus, or statement in lieu of prospectus”, and substituting the words “a prospectus issued by it or on its behalf”.

(4) Section 61 (1) (c) of the Companies Act 1955 is hereby consequentially amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) In the case of shares not offered to the public for subscription and where a circular or notice (not being a prospectus) inviting subscription for the shares is issued, disclosed in that circular or notice; and”.

(5) Section 117 of the Companies Act 1955 is hereby consequentially amended—

(a) By repealing subsection (2) (a):

(b) By omitting from subsection (3) the words “and, in the case of a company which is required by this section to deliver a statement in lieu of prospectus, of such a statement,”.

(6) Section 157 (1) of the Companies Act 1955 (as substituted by section 10 of the Companies Amendment Act 1966) is hereby consequentially amended by omitting the words “section 48A of this Act”, and substituting the words “the Securities Act 1978”.

(7) Section 184 (1) of the Companies Act 1955 is hereby consequentially amended by omitting the words “or in a statement in lieu of prospectus delivered to the Registrar by or on behalf of a company,” and the words “or the delivery of the statement in lieu of prospectus,”.

(8) Section 354 (3B) (a) of the Companies Act 1955 (as inserted by section 2 (2) of the Companies Amendment Act 1969) is hereby consequentially amended by omitting the words “section 48A of this Act”, and substituting the words “the Securities Act 1978”.

(9) Section 360 (3) of the Companies Act 1955 (as inserted by section 3 (3) of the Companies Amendment Act 1960) is hereby consequentially amended by omitting the words “section 48A of this Act”, and substituting the words “the Securities Act 1978”.

(10) Section 403 of the Companies Act 1955 is hereby consequentially amended—

(a) By repealing paragraph (a); and

(b) By omitting from paragraph (d) the words “in every such prospectus as aforesaid and”.

(11) Section 458 (4) of the Companies Act 1955 (as amended by section 7 (1) of the Companies Amendment Act 1966) is hereby consequentially amended—

(a) By omitting the expression “407 to”; and

(b) By repealing the proviso.

(12) The Companies Amendment Act 1963 is hereby consequentially amended—

(a) By repealing subsection (3) of section 4, and substituting the following subsection:

“(3) No take-over offer shall be made which includes a statement purporting to be made by an expert within the meaning of section 2 of the Securities Act 1978, unless the requirements of section 40 of that Act are complied with. For the purposes of this subsection, the provisions of the said section 40 shall apply, with all necessary modifications, as if the making of the take-over offer were the issue of a prospectus and as if references in that section 40 to the delivery of a copy of the prospectus for registration were references to the making of the take-over offer.”:

(b) By repealing section 10, and substituting the following section:

“10. **Liability for mis-statements**—Sections 55 to 58 and 64 of the Securities Act 1978 shall, with all necessary modifications, apply in respect of any take-over offer as if it were a prospectus inviting persons to subscribe for securities, and as if—

“(a) The reference in the said sections 56 and 57 to persons who subscribe for any securities were a reference to persons who accept take-over offers; and

“(b) All references in the said sections 56 and 57 to the time of the subscription for any security were references to the acceptance of a take-over offer; and

“(c) All references in the said sections 56 and 57 to the delivery of a copy of a prospectus for registration were references to the making of the take-over offer; and

“(d) All references in the said sections 56 and 57 to the issuer were references to the offeror.”

(13) Section 24 (2) of the Private Savings Banks Act 1964 (as amended by section 7 (2) of the Companies Amendment Act 1966) is hereby further amended by omitting the words “section 48A (as substituted by section 3 of the Companies Amendment Act 1966), sections 48B and 95A to 95D (which were inserted by sections 4 and 5 of the Companies Amendment Act 1966)”.

(14) The following enactments are hereby consequentially repealed:

- (a) So much of Part II of the First Schedule to the Companies Act 1955 as relates to the fee for registering any prospectus:
- (b) So much of the Ninth Schedule to the Companies Act 1955 as relates to sections 57 to 59 of that Act:
- (c) So much of the Thirteenth Schedule to the Companies Act 1955 as relates to sections 48, 58, and 366 of that Act:
- (d) So much of the Third Schedule to the Crimes Act 1961 as relates to the Companies Act 1955:
- (e) Sections 2 to 9 of the Companies Amendment Act 1966:
- (f) Section 7 of the Companies Amendment Act 1975:
- (g) So much of the First Schedule to the Companies Amendment Act 1975 as relates to section 366 (6) of the Companies Act 1955:
- (h) Section 4 of the Companies Amendment Act 1977.

72. Amendment to Companies Special Investigations Act 1958—Section 3 (4) of the Companies Special Investigations Act 1958 (as inserted by section 2 of the Companies Special Investigations Amendment Act 1963) is hereby amended by omitting the words “a committee appointed under section 472 of the Companies Act 1955”, and substituting the words “the Securities Commission”.

73. Amendment to Unit Trusts Act 1960—Section 7 of the Unit Trusts Act 1960 is hereby amended by repealing subsection (3), and substituting the following subsection:
“(3) Every statement that is issued pursuant to the foregoing provisions of this section, and every notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any interest in a unit trust, shall be deemed to be a prospectus within the meaning of section 2 of the Securities Act 1978 and to have been issued by the manager; and sections 6 and 35 of that Act and all the provisions of that Act and all other enactments and rules of law relating to prospectuses and to liability in respect of statements in and omissions from prospectuses shall, with the necessary modifications, apply accordingly as if the interests in the unit trust were securities, and the required contents of any prospectus were those specified in the Schedule to this Act.”

74. Repeal of Protection of Depositors Act 1968—(1) The Protection of Depositors Act 1968 is hereby repealed.

(2) The Protection of Depositors Amendment Act 1972 is hereby consequentially repealed.

75. Repeal of Syndicates Act 1973—(1) The Syndicates Act 1973 is hereby repealed.

(2) Section 42H of the Public Trust Office Act 1957 (as inserted by section 4 of the Public Trust Office Amendment Act 1975) is hereby consequentially amended by omitting paragraph (c).

(3) The Summary Proceedings Act 1957 (as amended by section 56 (2) of the Syndicates Act 1973) is hereby further amended by omitting so much of Part II of the First Schedule as relates to the Syndicates Act 1973.

(4) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Syndicates Act 1973 shall not affect the amendment made by section 56 (1) of that Act.

76. Amendment to Higher Salaries Commission Act 1977—The Fourth Schedule to the Higher Salaries Commission Act 1977 is hereby consequentially amended by adding the words “The members and alternate members of the Securities Commission”.

SCHEDULES

Section 67

FIRST SCHEDULE

ACTS TO WHICH SECTION 67 APPLIES

The Building Societies Act 1965.
 The Charitable Trusts Act 1957.
 The Friendly Societies Act 1909.
 The Incorporated Societies Act 1908.
 The Industrial and Provident Societies Act 1908.
 The Trustee Companies Act 1967.
 The Unit Trusts Act 1960.

SECOND SCHEDULE

Section 5 (1) (e)

QUALIFICATIONS

1. A practising certificate under the Law Practitioners Act 1955.
2. Registration or conditional registration as a medical practitioner under the Medical Practitioners Act 1968.
3. A provisional certificate issued under section 32 of the Medical Practitioners Act 1968.
4. A certificate of temporary registration issued under section 33 of the Medical Practitioners Act 1968.
5. A qualification entitling the holder to practise the profession of accountancy in New Zealand (which qualification may consist of membership or provisional membership of the New Zealand Society of Accountants or a licence or certificate issued or granted under the New Zealand Society of Accountants Act 1958).
6. Registration as an engineer under the Engineers Registration Act 1924.
7. Registration as a valuer under the Valuers Act 1948.
8. Registration as a veterinary surgeon under the Veterinary Surgeons Act 1956.
9. Registration as a surveyor within the meaning of the Surveyors Act 1966.
10. Registration as an optometrist or dispensing optician under the Optometrists and Dispensing Opticians Act 1976.
11. Registration as an architect under the Architects Act 1963.
12. Registration as a dentist under the Dental Act 1963.

This Act is administered in the Department of Justice.
