



ANALYSIS

Title	28. Approval of takeovers code
1. Short Title and commencement	29. Order in Council deemed to be regulation
2. Interpretation	30. Minister may request formulation of further takeovers code
3. Act to bind the Crown	31. Revocation of takeovers code
4. Object of this Act	
PART I	
TAKEOVERS PANEL	
5. Establishment of Takeovers Panel	
6. Membership of Panel	
7. Associate members	
8. Functions of Panel	
9. Powers of Panel to take evidence	
10. Provisions relating to certain proceedings before Panel	
11. Proceedings privileged	
12. Meetings	
13. Power to prohibit disclosure of information, documents, and evidence	
14. Delegation of certain powers by Panel	
15. Powers	
16. Annual reports	
17. Annual fee in respect of funding of Panel	
18. Further provisions applying to Panel	
PART II	
TAKEOVERS CODE	
19. Panel to recommend takeovers code	
20. Objectives of takeovers code	
21. Matters to be considered by Panel in formulating takeovers code	
22. Specific provisions applying to takeovers code	
23. Takeovers code not to apply in certain cases	
24. Harmonisation with Australia	
25. Panel to allow opportunity for submissions	
26. Panel to consult with Minister	
27. Action taken by Takeover Panel Advisory Committee	
	PART III
	ENFORCEMENT AND MISCELLANEOUS PROVISIONS
	32. Panel's powers in respect of compliance with takeovers code
	33. Restraining orders
	34. Court may make orders
	35. Persons who may apply
	36. Orders
	37. Interim orders
	38. Court may have regard to determinations and recommendations by Panel
	39. Orders directing disposal of securities
	40. Revocation, variation, and suspension of orders
	41. Court may excuse contravention
	42. Court may require person to give evidence or produce documents relating to interests in securities
	43. Pecuniary penalties
	44. Offences
	<i>Miscellaneous Provisions</i>
	45. Panel may grant exemptions
	46. Regulations
	PART IV
	AMENDMENTS TO OTHER ACTS
	47. Amendment to Companies Amendment Act 1963
	48. Amendment to Securities Act 1978
	49. Amendment to Official Information Act 1982
	50. Amendment to Public Finance Act 1989 Schedule

An Act to establish a Takeovers Panel for the purpose of recommending a takeovers code in relation to takeovers of specified companies and for related purposes

[28 September 1993]

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

1. Short Title and commencement—(1) This Act may be cited as the Takeovers Act 1993.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of July 1994.

(3) Section 17, Part III, and sections 47 and 48 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council, being a date not earlier than the date on which an approved takeovers code comes into force under section 28 (4) of this Act.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Company” has the same meaning as in—

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

(b) Section 2 of the Companies Act 1993,—

as the case may be:

“Court” means the High Court; and includes a Judge of that Court:

“Director” means, in relation to a company or other body corporate, any person occupying the position of a director of the company or body by whatever name called:

“Document” has the same meaning as in section 2 of the Evidence Amendment Act (No. 2) 1980:

“Minister” means the Minister of Justice:

“Panel” means the Takeovers Panel established under Part I of this Act:

“Public issuer” means—

(a) A company that is a party to a listing agreement with a stock exchange:

(b) A company that is not a party to a listing agreement with a stock exchange but that was a party to a listing agreement with a stock exchange at any time during such period as may be specified in the takeovers code, being a period not exceeding 12 months prior to any date or the occurrence of any event referred to in the code:

“Security”, in relation to a specified company, means—

(a) An equity security within the meaning of section 2 of the Securities Act 1978, whether or not the security carries voting rights:

(b) A debt security within the meaning of section 2 of the Securities Act 1978 which carries the right to vote at any annual or general meeting of the specified company:

(c) A participatory security within the meaning of section 2 of the Securities Act 1978 which carries the right to vote at any annual or general meeting of the specified company,—

and includes a security that is convertible, at the option of the security holder, into a security of the type referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition:

“Specified company” means—

(a) A public issuer; or

(b) A company that has 50 or more members or shareholders and \$20,000,000 or more of assets:

“Stock exchange” means the New Zealand Stock Exchange; and includes a stock exchange registered under the Sharebrokers Act 1908.

(2) In this Act, unless the context otherwise requires, references to formulating and recommending a takeovers code include formulating and recommending amendments to a takeovers code approved under section 28 of this Act.

3. Act to bind the Crown—This Act binds the Crown.

4. Object of this Act—The object of this Act is to—

(a) Establish a panel to be called the Takeovers Panel for the purpose of formulating and recommending rules in the form of a proposed code applying to takeovers of specified companies:

(b) Empower the Panel, for that purpose, to—

(i) Define the transactions or classes of transactions in relation to which the proposed code applies; and

(ii) Prescribe the nature and content of the rules applying to those transactions:

(c) Empower the Minister to decide whether or not to advise the Governor-General to approve the recommended code, or to defer making such a decision for such period as the Minister thinks fit:

- (d) Provide that the recommended code will have the force of law if approved by the Governor-General by Order in Council:
- (e) Provide for the administration and enforcement of any code which has the force of law.

PART I

TAKEOVERS PANEL

5. Establishment of Takeovers Panel—(1) There is hereby established a panel to be called the Takeovers Panel.

(2) The Panel 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 entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

6. Membership of Panel—(1) The Panel shall consist of not less than 5 and not more than 8 members appointed from time to time by the Minister.

(2) One member shall be appointed by the Minister as Chairperson of the Panel, and another shall be appointed by the Minister as Deputy Chairperson of the Panel.

(3) At least 1 member of the Panel must be a barrister or solicitor of the High Court of not less than 7 years' practice.

(4) The Minister shall not appoint a person as a member of the Panel unless, in the opinion of the Minister, that person is qualified or experienced in business, accounting, or law.

7. Associate members—(1) The Minister may from time to time appoint a person to be an associate member of the Panel but shall not appoint more than 3 persons to be associate members of the Panel at any time.

(2) The Minister shall not appoint a person as an associate member of the Panel unless, in the opinion of the Minister, that person is qualified or experienced in business, accounting, or law.

(3) An associate member shall be appointed only in relation to a particular matter with which the Panel is or may become concerned and that is specified in that member's instrument of appointment.

(4) Subject to subsection (5) of this section, an associate member shall be deemed to be a member of the Panel for the purposes of the performance or exercise of any function, duty, or power of a member of the Panel under this Act; and, except

where this section or the context otherwise requires, a reference in this Act to a member shall be construed as including a reference to an associate member.

(5) An associate member may attend and vote only at a meeting of the Panel relating to the matter specified in that member's instrument of appointment (including a meeting relating to matters incidental to the matter so specified).

Cf. 1986, No. 5, s. 11

8. Functions of Panel—(1) The Panel has the following functions:

- (a) To formulate and recommend, from time to time, a takeovers code applying to takeovers of specified companies;
- (b) To formulate and recommend, from time to time, such amendments to the takeovers code as the Panel thinks fit;
- (c) For the purposes of paragraphs (a) and (b) of this section, to keep under review practices relating to takeovers of specified companies;
- (d) To investigate any act or omission or practice for the purpose of exercising its powers and functions under Part III of this Act;
- (e) To make determinations and orders and make applications to the Court in accordance with Part III of this Act;
- (f) To promote public understanding of the law and practice relating to takeovers;
- (g) To perform such other functions as are conferred on it by this Act.

(2) In the exercise of its functions and powers under Part III of this Act and the takeovers code, the Panel shall comply with the principles of natural justice.

9. Powers of Panel to take evidence—(1) The Panel may at any meeting receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with any matter before it, whether or not it would be otherwise admissible in a court of law.

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

(3) A member of the Panel may, by order served on the person, summon any person to appear before the Panel to give evidence as to any matter before it, and require any witness to

produce to the Panel any document in his or her possession or control relative to the matter. Every summons under this section shall be served either by delivering it to the person summoned or by leaving it at his or her usual place of abode or business at least 24 hours before his or her attendance is required.

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

(5) Where any person has appeared as a witness before the Panel pursuant to a summons, or has given evidence before the Panel, whether pursuant to a summons or not, the Panel may, if it thinks fit, order any sum to be paid to that witness on account of his or her expenses, not exceeding the amount that would be payable to him or her if his or her 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.

Cf. 1978, No. 103, s. 18 (1)-(5)

10. Provisions relating to certain proceedings before Panel—(1) At any meeting of the Panel held for the purposes of section 32 of this Act, the Panel shall allow to appear and be represented any person who applies to the Panel for leave to appear and be represented and who is a person to whom notice of a meeting of the Panel is given under subsection (1) of that section.

(2) Subject to subsection (1) of this section, at any meeting of the Panel held for the purposes of this Act the Panel shall allow to appear and be represented any person who applies to the Panel for leave to appear and be represented and who, in the opinion of the Panel, is a person who ought to be heard or whose appearance or representation will assist the Panel in its consideration of the matter before it.

(3) At every meeting of the Panel held for the purposes of section 13 or section 32 of this Act, the Chairperson, if he or she is a barrister or solicitor of not less than 7 years' practice, shall be the Chairperson of the Panel, but if not, a member of the Panel who is a barrister or solicitor of not less than 7 years' practice shall be the Chairperson of the Panel.

Cf. 1978, No. 103, s. 19 (1), (2)

11. Proceedings privileged—(1) No proceedings, civil or criminal, shall lie against the Panel 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 the Panel acted without reasonable care or in bad faith.

(2) No proceedings, civil or criminal, shall lie against any member or associate member of the Panel, or any officer or employee of the Panel, for anything that person may do or say or fail to do or say in the course of the operations of the Panel, unless it is shown that that person acted in bad faith.

(3) Nothing in subsections (1) and (2) of this section applies in respect of proceedings for—

- (a) An offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
- (b) The offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
- (c) The offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.

(4) A person shall not be excused from complying with any requirement to furnish information, produce documents, or give evidence under this Act, or, on appearing before the Panel, from answering any question or producing any document, on the ground that to do so might tend to incriminate that person or that person's spouse.

(5) A statement made by a person in answer to a question put by or before the Panel shall not in criminal proceedings be admissible against that person or that person's spouse.

(6) Nothing in subsection (5) of this section applies in respect of proceedings on a charge of perjury against the maker of the statement.

(7) No court or other person shall be entitled to require any member of the Panel or any officer or employee of the Panel or any other person present at any meeting of the Panel to divulge or communicate any information furnished or obtained, or any documents produced or obtained or tendered, or any evidence given, in connection with the operations of the Panel.

(8) Nothing in subsection (7) of this section applies in respect of—

- (a) Any proceedings referred to in subsection (3) or subsection (6) of this section; or
- (b) Any proceedings to which the Panel is a party.

(9) Anything said, or any information furnished, or any document produced or tendered, or any evidence given, by any person to the Panel, shall be privileged in the same manner as if that statement, information, document, or evidence were made, furnished, produced, or given in proceedings in a court.

(10) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any statement, document, determination, order, or decision made by the Panel in the exercise or intended exercise of any of its functions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

(11) Every member of the Panel and every officer or employee of the Panel shall be deemed, for the purposes of sections 105 and 105A of the Crimes Act 1961, to be officials.

Cf. 1986, No. 5, s. 106; 1990, No. 41, s. 39

12. Meetings—The Panel shall decide whether to hold any meeting or any part of a meeting in public or in private.

13. Power to prohibit disclosure of information, documents, and evidence—(1) The Panel may, of its own motion or on the application of any person,—

(a) Make an order (which may be expressed to have effect from the commencement of the consideration of any matter by the Panel to the determination of the consideration of the matter or the making of any order or decision in relation to the matter) prohibiting—

(i) The publication or communication of any information or document or evidence which is furnished or given or tendered to, or obtained by, the Panel in connection with that matter:

(ii) The giving of evidence involving any such information, document, or evidence.

(2) Notwithstanding subsection (1) of this section, at the conclusion of the consideration by the Panel of the matter or on the making of any such order or decision, as the case may be, the provisions of the Official Information Act 1982 shall apply in respect of any information or document or evidence that was the subject of an order made under that subsection.

Cf. 1978, No. 103, s. 19 (5), (6)

14. Delegation of certain powers by Panel—(1) The Panel may from time to time, by an instrument signed by the Chairperson, delegate the Panel's powers under this Act in connection with the carrying out of its functions under paragraphs (d) and (f) of section 8 of this Act.

(2) Nothing in subsection (1) of this section authorises the Panel to delegate any of its powers under section 9 or section 13 or section 32 of this Act.

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

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

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

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

(7) Any person purporting to exercise any power of the Panel by virtue of a delegation under this section shall, when required to do so, produce evidence of that person's authority to exercise the power.

Cf. 1978, No. 103, s. 27

15. Powers—In addition to the powers conferred on it by this Act, the Panel has such powers as are reasonably necessary or desirable to enable it to carry out its functions.

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

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

17. Annual fee in respect of funding of Panel—(1) Each specified company shall pay such annual fee in respect of the funding of the Panel as may be prescribed by regulations made under this Act.

(2) Any such fee shall be—

- (a) Payable to the Registrar of Companies upon delivery to the Registrar of the company's annual return; and
- (b) Payable in addition to any fee payable in respect of the annual return; and
- (c) Recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Crown.

(3) The Registrar of Companies shall, as soon as practicable, remit to the Panel the fees paid under this section.

18. Further provisions applying to Panel—The provisions set out in the Schedule to this Act apply in respect of the Panel.

PART II

TAKEOVERS CODE

19. Panel to recommend takeovers code—The Panel shall, in accordance with this Act, formulate and recommend a takeovers code.

20. Objectives of takeovers code—(1) In formulating a takeovers code the Panel shall consider the following objectives as the objectives for the code, namely,—

- (a) Encouraging the efficient allocation of resources:
- (b) Encouraging competition for the control of specified companies:
- (c) Assisting in ensuring that the holders of securities in a takeover are treated fairly:
- (d) Promoting the international competitiveness of New Zealand's capital markets:
- (e) Recognising that the holders of securities must ultimately decide for themselves the merits of a takeover offer:
- (f) Maintaining a proper relation between the costs of compliance with the code and the benefits resulting from it.

(2) Subject to subsection (3) of this section, in formulating a takeovers code it is for the Panel to determine the weight that should be given to any particular objective referred to in subsection (1) of this section.

(3) The Minister may, by notice in writing, give to the Panel an indication as to the weight that should be given to any particular objective or objectives referred to in subsection (1) of this section.

(4) A notice given under subsection (3) of this section shall be published in the *Gazette* forthwith after it is given to the Panel.

21. Matters to be considered by Panel in formulating takeovers code—Without limiting the matters that the Panel may consider, the Panel shall, in formulating a takeovers code, consider whether the code should provide—

- (a) That advance notice and publicity should be given of takeovers:

- (b) That in a takeover, the specified company and its security holders should be fully informed:
- (c) That in a takeover, offers should be made to all security holders, that the consideration offered should be the same for all security holders, and that all security holders should have the same opportunity for acceptance:
- (d) That incremental acquisitions and partial bids should be permitted:
- (e) That there should be rules to determine the price or prices payable for the acquisition of securities in a takeover:
- (f) For the compulsory acquisition of securities in a specified company at the option of offerors or security holders, or both:
- (g) For the regulation of defensive tactics.

22. Specific provisions applying to takeovers code—

Without limiting the power to formulate a takeovers code, but subject to section 23 of this Act, the Panel may—

- (a) Define the transactions or classes of transactions in relation to which the code applies and for that purpose define terms and expressions used in the code in such manner as it thinks fit:
- (b) Prescribe the requirements in relation to offers and the making of offers to acquire securities in a specified company in a takeover including requirements as to the form and content of those offers, variations of those offers, the time during which those offers are to remain open for acceptance, the persons to whom those offers are to be made, and the manner of acceptance:
- (c) Prescribe the information, statements, certificates, and documents or other matters that must be supplied to a specified company and the security holders of the specified company in a takeover:
- (d) Prescribe requirements for the registration by the Registrar of Companies of documents in connection with a takeover:
- (e) Prescribe the duties and obligations of a specified company and the directors of the specified company and other persons in a takeover.

23. Takeovers code not to apply in certain cases—

Nothing in the takeovers code shall require any person to comply with the code—

- (a) By reason only of the fact that, on the coming into force of the code, a particular proportion of securities have been acquired in a specified company, whether by that person or any other person, before the code comes into force; or
- (b) By reason of the acquisition of securities in a specified company, whether by that person or any other person, on or after the coming into force of the code, if the acquisition arises from the performance of a contractual obligation incurred, or the exercise of a right acquired, before the date on which an approved takeovers code comes into force under section 28 (4) of this Act.

24. Harmonisation with Australia—In formulating a takeovers code the Panel shall have regard, as far as practicable, to the principles applying to the harmonisation of business law contained in the Memorandum of Understanding between the Governments of Australia and New Zealand on the Harmonisation of Business Law signed at Darwin on the 1st day of July 1988.

25. Panel to allow opportunity for submissions—

(1) The Panel shall, in formulating a takeovers code, do everything reasonably possible to afford such persons and organisations as wish to do so a reasonable opportunity to make submissions to it as to the nature and scope of the code and the matters with which it should deal.

(2) Before recommending the takeovers code the Panel shall—

- (a) Do everything reasonably possible to afford such persons and organisations as wish to do so an opportunity to make submissions to it on the proposed code; and
- (b) Make copies of the proposed code available to any such person or organisation for that purpose.

(3) A failure to comply with this section does not affect the validity of any takeovers code that is approved under this Act.

26. Panel to consult with Minister—The Panel shall, in formulating a takeovers code, from time to time consult the Minister.

27. Action taken by Takeover Panel Advisory Committee—Any action taken by the committee appointed by the Minister and known as the Takeover Panel Advisory

Committee before the coming into force of this Act that would, if this Act had been in force and that committee had itself been the Panel, have constituted action taken under this Act, shall be treated as having been taken by the Panel under this Act.

28. Approval of takeovers code—(1) After formulating a proposed takeovers code, the Panel shall recommend the proposed takeovers code to the Minister.

(2) The Minister may, in his or her absolute discretion,—

(a) Decide to advise the Governor-General to approve the code:

(b) Decide not to advise the Governor-General to approve the code:

(c) Decide to defer, for such period and for such reasons as the Minister thinks fit, making a decision whether or not to advise the Governor-General to approve the code.

(3) The Governor-General may, on the advice of the Minister, by Order in Council, approve a takeovers code or any amendment to a takeovers code, as the case may be, recommended by the Panel.

(4) On the approval of a takeovers code or any amendments to a takeovers code, the code or the amendments, as the case may be, shall have the force of law and shall come into force on a date specified in the code or the amendments, not being a date earlier than 28 days after the approval of the code or the amendments.

29. Order in Council deemed to be regulation—Every Order in Council made under section 28 (3) of this Act—

(a) Shall set out the takeovers code or the amendments, as the case may be, in a Schedule to the order; and

(b) Is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

30. Minister may request formulation of further takeovers code—(1) The Minister may, by notice in writing, request the Panel to formulate and recommend a further takeovers code to replace—

(a) A proposed takeovers code that has been declined under section 28 (2) (b) of this Act; or

(b) A takeovers code that has been approved under this Act.

(2) A notice given under subsection (1) of this section, and the Minister's reasons for giving it, shall be published in the *Gazette* forthwith after it is given to the Panel.

(3) On receipt of a request under subsection (1) of this section, the Panel shall, in accordance with this Act, formulate and recommend a further takeovers code.

31. Revocation of takeovers code—(1) The Governor-General may, on the advice of the Minister, by Order in Council, revoke the approval of a takeovers code.

(2) On the revocation of the approval of a takeovers code, the code shall cease to have the force of law with effect from a date specified in the order.

(3) Any Order in Council may contain transitional and savings provisions relating to the revocation of the approval of the code.

PART III

ENFORCEMENT AND MISCELLANEOUS PROVISIONS

32. Panel's powers in respect of compliance with takeovers code—(1) The Panel may at any time, if it considers that a person may not have acted or may not be acting or may intend not to act in compliance with the takeovers code, after giving that person such written notice of the meeting as the Panel considers appropriate in the circumstances, but in no case exceeding 7 days, hold a meeting for the purpose of determining whether to exercise its powers under this section.

(2) Where the Panel gives a notice under subsection (1) of this section, it may make a restraining order that is expressed to expire with the close of the second day after the date for which the meeting was convened.

(3) Following the meeting specified in subsection (1) of this section, the Panel may make a determination—

(a) That it is satisfied that the person has acted or is acting or intends to act in compliance with the takeovers code; or

(b) That it is not satisfied that the person has acted or is acting or intends to act in compliance with the takeovers code.

(4) Where the Panel makes a determination on reasonable grounds under subsection (3) (b) of this section, the Panel may, at any time before the close of the second day after the date for which the meeting was convened,—

(a) Make a restraining order (relating to the non-compliance with the takeovers code) that is expressed to expire with the close of such day as shall be specified in the order, not being a day that is later than 21 days after the date on which the restraining order is made:

- (b) Make an order continuing any restraining order (relating to the non-compliance with the takeovers code) made under subsection (2) of this section until the close of such day as may be specified in the order, not being a day that is later than 21 days after the date on which the restraining order is made.

33. Restraining orders—For the purposes of section 32 of this Act, a restraining order is an order for one or more of the following:

- (a) Restraining a person from acquiring securities in the specified company concerned or any interest in or rights relating to such securities:
- (b) Restraining a person from disposing of securities in the specified company concerned or any interest in or rights relating to such securities:
- (c) Restraining a person from exercising the right to vote attaching to securities in the specified company concerned or any other right relating to such securities:
- (d) Restraining a person from taking any action that is or that may reasonably be expected to constitute a contravention of the takeovers code:
- (e) Directing the specified company concerned not to make any payments in respect of any securities:
- (f) Directing the specified company concerned not to register the transfer or transmission of any securities:
- (g) Directing the specified company concerned not to issue or allot securities to any person:
- (h) For the purpose of securing compliance with any such order, an order directing a person to do or refrain from doing a specified act.

34. Court may make orders—The Court may, on the application of a person referred to in section 35 of this Act, if it is satisfied on reasonable grounds that a person has not acted or is not acting or intends not to act in compliance with the takeovers code, make any one or more of the orders specified in section 36 of this Act.

35. Persons who may apply—(1) Where the Panel makes a determination under section 32 (3) (b) of this Act (a determination that the Panel is not satisfied that a person has acted or is acting or intends to act in compliance with the takeovers code) the following persons may, subject to

subsection (2) of this section, make an application to the Court under section 34 of this Act:

(a) The Panel:

(b) If the specified company's securities are, or were at any material time, quoted on a stock exchange, that stock exchange:

(c) The specified company concerned:

(d) A member or security holder of the specified company concerned:

(e) A person who was a member or security holder of the specified company concerned at the time that the conduct to which the application relates occurred:

(f) A person who, at any time within the period of 6 months before the making of the application, has made an offer or offers to acquire securities in the specified company in accordance with the takeovers code:

(g) With the leave of the Court, any other person.

(2) A person referred to in any of paragraphs (b) to (f) of subsection (1) of this section is not entitled to make an application to the Court unless—

(a) The Panel has consented to the making of the application; or

(b) That person has requested the Panel in writing to make an application to the Court itself and the Panel has not made such an application before the expiration of 10 days after receiving the request.

(3) Where a request is made to the Panel to hold a meeting under section 32 (1) of this Act and the Panel does not, within 14 days after receiving the request, make a determination under section 32 (3) of this Act, the following persons may make an application to the Court under section 34 of this Act—

(a) If the specified company's securities are, or were at any material time, quoted on a stock exchange, that stock exchange:

(b) The specified company concerned:

(c) A member or security holder of the specified company concerned:

(d) A person who was a member or security holder of the specified company concerned at the time that the conduct to which the application relates occurred:

(e) A person who, at any time within the period of 6 months before the making of the application, has made an offer or offers to acquire securities in the specified company in accordance with the takeovers code:

(f) With the leave of the Court, any other person.

(4) Notice of an application under this section shall be served on such persons as the Court directs.

36. Orders—(1) The Court may, on an application under section 34 of this Act, make, in relation to the specified company concerned and any securities in the specified company, any of the following orders:

- (a) An order prohibiting the exercise for such period as the Court thinks fit of any right to vote attaching to any such securities:
- (b) An order directing the specified company not to make payment, or to defer making payment for such period as the Court thinks fit, of any sum or sums due from the specified company in respect of any such securities:
- (c) An order directing the specified company not to register the transfer or transmission of all or any of such securities:
- (d) An order prohibiting the specified company from issuing or allotting any securities in addition to, or in substitution for, or in replacement of, any existing securities:
- (e) An order restraining the disposal of all or any of such securities or any interest in or rights relating to them:
- (f) An order directing the disposal of all or any of such securities or any interest in or rights relating to them:
- (g) An order directing the forfeiture of all or any of such securities:
- (h) An order vesting any such securities in a person as trustee for sale on such terms and conditions as the Court thinks fit:
- (i) An order declaring that the exercise of voting or other rights attaching to any such securities is void and of no effect:
- (j) An order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is void and of no effect:
- (k) An order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is voidable at the option of the person from whom the securities or the interest or rights were acquired:
- (l) An order restraining any person from engaging in conduct in contravention of the takeovers code:

- (m) An order restraining a person from, or doing any act for the purpose of, acquiring any such securities, or any interest in or rights relating, whether directly or indirectly, to any such securities:
 - (n) An order requiring a person to comply with any provision of the takeovers code even though the time for doing so may have expired:
 - (o) An order requiring a person specified in the order or the specified company concerned, as the case may be, to supply information or information of the kind specified in the order to a person or class of persons specified in the order:
 - (p) An order directing any person who has failed to comply with the takeovers code to pay compensation to any person who has suffered loss or damage as a result of the failure to comply:
 - (q) Where a contract is entered into in contravention of the takeovers code, or, as the case may be, a contract contains a provision which, if given effect to, would contravene the takeovers code, an order—
 - (i) Varying the contract, in such manner as the Court thinks fit:
 - (ii) Cancelling the contract:
 - (iii) Requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract:
 - (r) For the purposes of securing compliance with any of such orders, an order directing a person to do or refrain from doing a specified act.
- (2) Any order under subsection (1) of this section may be made on such terms and conditions as the Court thinks fit.

37. Interim orders—Where an application is made to the Court under section 34 of this Act, the Court may make, as an interim order, any order that it is empowered to make under section 36 of this Act.

38. Court may have regard to determinations and recommendations by Panel—(1) The Court may, in determining any application under section 34 of this Act, have regard to any determination made by the Panel under section 32 (3) of this Act relating to the matter concerned.

(2) The Court may, in determining whether to make any order under section 36 of this Act and the type of any such order, have regard to any recommendation made by the Panel

either at any meeting of the Panel held for the purposes of section 32 of this Act or at the request of the Court.

39. Orders directing disposal of securities—Without limiting section 36 of this Act, any order made under subsection (1) (f) of that section directing the disposal of securities or any interest in or rights relating to securities may require—

- (a) That the securities are, or any interest in them is, disposed of within a time specified by the Court:
- (b) That neither the securities are, nor any interest in them is, disposed of to any specified person or class of persons:
- (c) That the securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court:
- (d) That the proceeds of any disposition are—
 - (i) Applied towards the costs of the application; or
 - (ii) Paid in such amounts and to such persons as the Court specifies; or
 - (iii) Applied or paid partly towards the costs of the application and partly in such amounts and to such persons as the Court specifies.

40. Revocation, variation, and suspension of orders—Any order under section 36 or section 37 of this Act may be revoked or varied or suspended on such terms and conditions as the Court thinks fit.

41. Court may excuse contravention—(1) The Court may, if it is satisfied that a person has, by any act or omission, failed to comply with any provision of the takeovers code, but that the failure ought to be excused, by order, declare that the act or omission was not a failure to comply with the code and any such order has effect according to its tenor.

(2) In considering whether the failure should be excused, the Court may have regard to—

- (a) Inadvertence or mistake on the part of the person concerned:
- (b) Whether that person was aware of a relevant factor or circumstance:
- (c) Circumstances beyond that person's control:
- (d) Such other matters as the Court thinks fit.

42. Court may require person to give evidence or produce documents relating to interests in securities—

(1) The Court may, in any application under section 34 of this Act, for the purpose of ascertaining whether any person—

- (a) Has or had any direct or indirect interest in or right to any security in the specified company concerned; or
- (b) Has or had any direct or indirect right to exercise any voting rights attaching to any such security,—

order any person to—

- (c) Attend before the Court and be examined on oath or affirmation; or
- (d) Produce documents in that person's possession or under that person's control.

(2) An order under subsection (1) of this section may be made on the application of any person who is a party to the application under section 34 of this Act.

43. Pecuniary penalties—(1) If the Court is satisfied on the application of the Panel that a person—

- (a) Has contravened any of the provisions of this Act or the takeovers code; or
- (b) Has attempted to contravene such a provision; or
- (c) Has aided, abetted, counselled, or procured any other person to contravene such a provision; or
- (d) Has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene such a provision; or
- (e) Has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision; or
- (f) Has conspired with any other person to contravene such a provision,—

the Court may order the person to pay to the Crown such pecuniary penalty as the Court determines to be appropriate, not exceeding \$500,000 in the case of a person not being a body corporate, or \$5,000,000 in the case of a body corporate, in respect of each act or omission.

(2) In determining an appropriate penalty under this section, the Court shall have regard to all relevant matters, including—

- (a) The nature and extent of the act or omission:
- (b) The nature and extent of any loss or damage suffered by any person as a result of the act or omission:
- (c) The circumstances in which the act or omission took place:

(d) Whether or not the person has previously been found by the Court in proceedings under this Part of this Act to have engaged in any similar conduct.

(3) The standard of proof in proceedings under this section shall be the standard of proof applying in civil proceedings.

(4) In any proceedings under this section, the Panel, upon the order of the Court, may obtain discovery and administer interrogatories.

(5) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention arose.

(6) Where conduct by any person constitutes a contravention of 2 or more provisions of this Act or the takeovers code, proceedings may be instituted under this Act against that person in relation to the contravention of any one or more of the provisions; but no person shall be liable to more than one pecuniary penalty under this section in respect of the same conduct.

Cf. 1986, No. 5, s. 80; 1990, No. 41, s. 28

44. Offences—(1) No person shall—

(a) Furnish information or produce a document to, or give evidence at a meeting of, the Panel knowing it to be false or misleading; or

(b) Attempt to deceive or knowingly mislead the Panel in relation to any matter before it.

(2) No person, having been summoned to appear at any meeting of the Panel, shall—

(a) Without reasonable excuse, refuse or fail to appear before the Panel to give evidence; or

(b) Refuse to take an oath or affirmation as a witness; or

(c) Refuse to answer any question; or

(d) Refuse to produce to the Panel any document that that person is required to produce.

(3) No person shall act in contravention of any order made by the Panel under section 13 or section 32 of this Act.

(4) Any individual who contravenes subsection (1) or subsection (3) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.

(5) Any individual who contravenes subsection (2) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(6) Where a body corporate contravenes subsection (1) or subsection (3) of this section—

- (a) The body corporate commits an offence and is liable on summary conviction to a fine not exceeding \$100,000; and
- (b) Every director of the body corporate commits an offence and is liable on summary conviction to a fine not exceeding \$30,000.

(7) No person shall be convicted of an offence against subsection (1) or subsection (3) of this section if 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.

(8) No director of a body corporate shall be convicted of an offence against subsection (1) or subsection (3) of this section in relation to a contravention by the body corporate if, in the opinion of the court dealing with the case, the contravention took place without his or her knowledge and consent.

Miscellaneous Provisions

45. Panel may grant exemptions—(1) The Panel may from time to time, in its discretion and on such terms and conditions (if any) as it thinks fit, exempt any person from compliance with any provision of the takeovers code.

(2) An exemption may be granted in respect of past or proposed acts or omissions.

(3) An exemption shall have effect according to its tenor.

(4) An exemption, and the Panel's reasons for granting it, shall be notified in the *Gazette* as soon as practicable after being granted.

(5) The Panel may defer notifying an exemption in the *Gazette* if the Panel is satisfied that it is proper to do so on the ground of commercial confidentiality.

(6) The Panel may defer notifying, or omit to notify, the reasons for granting an exemption in the *Gazette* if the Panel is satisfied that it is proper to do so on the ground of commercial confidentiality.

(7) The Panel may vary any exemption granted under this section, and the provisions of this section shall apply, with necessary modifications, in all respects to the variation.

(8) The Panel may revoke any exemption granted under this section, and shall notify the revocation in the *Gazette* as soon as practicable.

46. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing that any provision of the takeovers code shall not apply to any class of persons or to any class of transactions or offers:
- (b) Prescribing an annual fee in respect of the funding of the Panel that is payable in accordance with section 17 of this Act:
- (c) Prescribing the fees payable, or the rate at which fees are to be calculated, in respect of—
 - (i) Any request made to the Panel under section 35 (3) of this Act for the Panel to hold a meeting under section 32 (1) of this Act:
 - (ii) Any application made to the Panel for the granting of an exemption under section 45 of this Act:
- (d) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

PART IV

AMENDMENTS TO OTHER ACTS

47. Amendment to Companies Amendment Act 1963—

(1) Section 3 of the Companies Amendment Act 1963 is hereby amended by inserting, after paragraph (a), the following paragraph:

“(ab) Any shares in a specified company within the meaning of section 2 of the Takeovers Act 1993; or”.

(2) Part I of the Companies Amendment Act 1963 shall, notwithstanding subsection (1) of this section, continue in force in respect of the acquisition of shares in a specified company within the meaning of section 2 of the Takeovers Act 1993 in any case where notice of a takeover scheme has, before the commencement of this section, been served on the specified company under section 4 of the Companies Amendment Act 1963.

48. Amendment to Securities Act 1978—Section 3 (2) of the Securities Act 1978 is hereby amended by adding the following paragraph:

“(d) An offer of securities made pursuant to any takeovers code that is in force under section 28 of the Takeovers Act 1993.”

49. Amendment to Official Information Act 1982—The Official Information Act 1982 is hereby amended by inserting, in the First Schedule to that Act, in its appropriate alphabetical order, the following item:

“Takeovers Panel.”

50. Amendment to Public Finance Act 1989—(1) The Public Finance Act 1989 is hereby amended by inserting, in the Fourth Schedule to that Act (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item:

“Takeovers Panel.”

(2) The Public Finance Act 1989 is hereby further amended by inserting, in the Sixth Schedule to that Act (as so added), in its appropriate alphabetical order, the following item:

“Takeovers Panel.”

Section 18

SCHEDULE

PROVISIONS APPLYING TO TAKEOVERS PANEL

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

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

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

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

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

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

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

(4) An extraordinary vacancy may be filled by the appointment of a person by the Minister in accordance with section 6 of this Act.

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

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

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

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

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

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

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

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

(4) A member of the Panel appointed to act for the Chairperson shall, while acting as such, be deemed to be the Chairperson, and shall have and

SCHEDULE—*continued*PROVISIONS APPLYING TO TAKEOVERS PANEL—*continued*

may exercise all the powers, functions, and duties of that office for the period or for the purpose stated in the appointment.

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

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

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

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

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

8. Employees of Panel—(1) Subject to subclause (2) of this clause, the Panel 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.

(2) Officers and employees appointed under subclause (1) of this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Panel 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 Panel and the State Services Commission fail to agree.

9. Employment of experts—(1) The Panel 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 Panel.

(2) The Panel 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 Panel.

10. Remuneration and travelling allowances—The members of the Panel shall be paid such fees, salaries, and allowances, and such travelling allowances and expenses, as the Panel may from time to time determine with the approval of the Minister.