

# **Business Law Reform Bill**

Government Bill

As reported from the Commerce Committee

## **Commentary**

### **Recommendation**

The Commerce Committee has examined the Business Law Reform Bill and recommends that the bill be passed with the amendments shown.

### **Introduction**

This commentary discusses the background to the bill, significant amendments, the addition of substantial new parts, matters of considerable interest to submitters, and general issues raised during our consideration.

The bill contains various amendments to a number of business law statutes and as referred was divided into nine separate parts. Most of the amendments contained in the bill are based upon suggestions from business law practitioners, enforcement agencies, and the wider business community. The bill also includes still outstanding recommendations of the Company Law Monitoring Group. In general, the amendments:

- clarify and update various statutory provisions
- remove unnecessary compliance costs

- ensure consistency between different legislative requirements.

## Summary

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

- subjecting certain reports and communications of liquidators and receivers to absolute privilege in the context of their duty to report on suspected offences
- addition of a substantial new part relating to the Personal Property Securities Act 1999
- addition of a new part relating to the Receiverships Act 1993
- widening the pool of potential candidates for membership of the Securities Commission
- a threshold test for transfer of members or beneficiaries under the Superannuation Schemes Act 1989
- removal of one clause with controversial policy content
- a number of minor or technical amendments
- addition of two new schedules replacing the existing schedules to the Personal Property Securities Act 1999 incorporating amended definitions.

## Policy content of some clauses

The purpose of the bill is to enable the passage of certain policy and technical amendments in a timely manner that ensure business law is clear, efficient and effective. Under Standing Order 259 (c) the Business Committee, which makes decisions based on the principle of near-unanimity, agreed to the introduction of the bill. This procedure to us implies that the proposed provisions are non-controversial in nature or at least accepted by all major political parties.

We were surprised to see several substantive policy clauses contained in the bill and sought advice from our advisers on this matter. We were informed that all of the clauses in the bill contain policy to a certain degree. Some of the amendments are classified as “technical” and others have a more substantive policy content. By “policy” it is meant that there is an underlying strategy that changes to some extent the original intent of the law.

We have some concerns about the level of policy content in some clauses of the bill. We have identified six clauses in the bill with

substantive policy content and after detailed consideration recommend that two of them should be omitted. The reasons for omitting these clauses are discussed in more detail later in this commentary. We consider that care should be taken when deciding what matters to include in future business law reform bills. Items of a controversial policy nature would be better suited to being included in separate bills rather than an omnibus type bill. Omnibus bills address so many different and possibly unrelated matters that interest groups and potential submitters could miss an issue with significant policy ramifications.

### **Consultation with key stakeholders**

Overall the level of support within the business community for the concept of a business law reform bill is high and subsequently the process of gathering suggestions for business law reform is ongoing. A large number of amendments contained in the bill were through ad hoc suggestions to the Ministry of Economic Development (the ministry) or in response to discussion documents.

During formulation of the bill officials from the ministry consulted with those who made suggestions and others on the bill's content. As part of the consultation process the ministry organised a forum on business law reform in March 1999. There were 42 participants from a wide range of organisations. The forum provided an opportunity for the ministry to inform stakeholders about the bill and its business law monitoring strategy. In addition, the ministry maintains a mailing list for consultation in relation to business law reform, with 15 interested groups and organisations listed. We suggest enlargement of its mailing list to ensure a consistent approach across consultative mechanisms.

## **Part 2—Companies Act 1993**

### **Another ground for refusing or delaying registration of share transfers**

Clause 7 adds another ground on which a company may refuse to complete or delay registration of share transfers. This is that the company may refuse to complete or delay the registration or transfer of shares if the form of transfer of shares does not contain any identification number. An identification number must be assigned to the shares or issued to the holder of the shares under a system of transfer approved under section 7 of the Securities Transfer Act 1991.

Chapman Tripp Sheffield Young submitted that a confidential Financial Institution Number (FIN) be used in the same way as a Personal Identification Number (PIN) for a bank account. Adding the words “or otherwise communicated in writing to the company by or on behalf of the transferor” would recognise that confidentiality and give the transferor the option of communicating the FIN in writing to the share registry or including it on the transfer form.

We recommend the adoption of the submission as it improves confidentiality but does not change the intent of the clause. It should be noted that the FIN is only disclosed to the company or an individual’s sharebroker.

### **New clause 9A**

We recommend the addition of a new clause 9A. Simpson Grierson submitted that section 122(3A) be amended because the current wording may frustrate the intention of the subsection, which is to allow a written resolution under section 122 to consist of one or more documents in similar form including letters, telegraphs, cables, facsimiles, telex messages, electronic mail, or similar means of communication. We consider that the suggested amendment will provide additional clarification to the intent of the section and recommend that the bill be amended accordingly.

### **Reporting suspected offences**

Clause 13 inserts a new section 258A in the Companies Act 1993 that requires a liquidator who considers that an offence has been committed against that Act or certain other Acts to report that fact to the Registrar of Companies (the Registrar). A liquidator who does not comply with that requirement commits an offence and is liable to the penalty set out in section 373(2), a fine not exceeding \$10,000. There is a similar requirement in respect of receivers (see section 28 of the Receiverships Act 1993).

Two submitters endorsed the intent of the proposal but suggested it was deficient in not including a safe harbour provision for liquidators who notify the Registrar of suspected offences. Both submitters believed the term “considers” is unclear and suggested the compulsory whistle-blowing clause in section 218 of the Accident Insurance Act 1998 be used as a model for a revised clause. This would make it clear that the liquidator is forming an opinion in the course of the performance of his or her duties rather than considering that an offence has been committed.

Submitters agreed that the liquidator should notify the Registrar of any breaches of the Acts specified and suggested this should be extended to include any breach of the regulations made under those Acts. However, they believed that there should be a safe harbour provision to protect the liquidator from retaliatory action such as civil proceedings or removal from office. They noted that the Accident Insurance Act and the Protected Disclosures Act 2000 includes safe harbour provisions.

We consider that the safe harbour amendment proposed in submissions is unnecessarily broad, as it creates little onus on a liquidator to investigate a suspected offence. However, we consider that there should be a provision that protects the reports made by liquidators and any communication between the liquidators and the Registrar relating to those reports. Such reports and communications should be protected by absolute privilege, and we recommend that the bill be amended accordingly. A similar provision is currently included in clause 42 of the bill (Securities Amendment Act 1988).

Also, we consider that the addition of a comparable clause in the Receiverships Act 1993 would provide a suitable solution to the concerns raised regarding the potential liability of receivers. We also consider that a liquidator or receiver must report suspected offences that are “material” to a liquidation or receivership and recommend the inclusion of a threshold test. Such a test will further assist to reduce the potential liability of liquidators and receivers, while ensuring that the policy that offences be notified to the relevant enforcement agencies by the party in the best position to identify those offences is retained.

We consider that the list of Acts, relating to the requirement to notify of both liquidators and receivers, be expanded to include the Crimes Act 1961 and that the bill be amended accordingly.

### **Power to obtain documents and information**

The purpose of clause 14 is to create an incentive for people to comply with the request of a liquidator for certain information or documents in the course of a liquidation. It is considered that this will benefit liquidators, as it will reduce the number of people who fail to comply, and remove the necessity of enforcing such requests by a court order at high cost and significant delay.

In its submission the New Zealand Law Society (the Law Society) opposed the clause, considering it inappropriate for a liquidator, as a private person with no special qualifications, to have his or her

request backed by criminal sanctions. We consulted on the clause with the wider liquidation profession and on the scope of the provision.

The Office of the Insolvency and Trustee Service (the Office) deals with around 810 liquidations annually. We found that seven out of ten liquidations dealt with by the Office involve situations of insufficient assets. Therefore, any additional time and cost in the liquidation significantly reduces the assets available to creditors. Furthermore, in approximately 30 percent of liquidations problems were created by directors or their solicitors refusing to comply with requests for information or documents.

Difficulties exist because there is no incentive for directors to comply, as they can wait with relative immunity until a court order is served. In addition, other than the cost of seeking a court order, the assets of the company could be hidden or the director may no longer be found. Significant time and cost could be avoided by requiring prompt compliance.

It was suggested that it may be more appropriate to achieve the underlying policy of the clause through a full costs order, rather than an offence provision. We note that such a costs order has no precedent in commercial legislation. The courts already have the power to award costs against a party to an action.

We recommend that clause 14 should be retained and we note that the process of obtaining a court order can be long and costly, and may drain the funds that would otherwise have been available to creditors. We note that the offence created would be a summary offence. A summary offence will create an incentive for compliance, and provides a low cost and timely means of enforcement.

#### **Part 4—Fair Trading Act 1986**

Clause 20 replaces section 43(5) of the Fair Trading Act 1986 (which sets out the limitation period for making a civil court application for relief under the Act). At present, section 43(5) provides that the application may be made within three years from the time when the matter that gave rise to the application occurred. The new section 43(5) effectively extends that limitation period by commencing with the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.

There is a range of different limitation periods in legislation. The Limitation Act 1950 provides that the standard limitation period is

six years from the date on which the cause of action occurred. The courts have interpreted this to mean that the standard limitation period is six years from the date on which a person discovered the loss or damage, or ought reasonably to have discovered the loss or damage. The Fair Trading Act provides that the standard limitation period is three years from the date on which the cause of action occurred. The courts have not followed the interpretation given to the Limitation Act. Therefore, the limitation period in the Fair Trading Act is not construed as being three years from the time of discovery, or when the person ought reasonably to have discovered the loss or damage.

We received a submission from the Law Commission on this issue and heard oral evidence. The Law Commission requested that the committee delay any recommendation concerning clause 20 until publication of its report *Tidying the Limitation Act*. The Law Commission report recommended a five-year “long stop” provision limiting claims under the Fair Trading Act. Following the release of the report we asked our advisers to prepare advice with options.

We do not consider that the clause should be amended in the way suggested by the Law Commission and uphold the clause as contained in the bill. To pursue the Law Commission submission would unduly restrict the ability of consumers to bring claims under the Fair Trading Act in respect of long-term assets and contracts, such as superannuation and health insurance.

We also considered the Law Commission recommendation with respect to reversing the onus of proof in the Limitation Act. It recommended that the plaintiff would have to establish that the limitation period has not been exceeded. The same issues may be relevant to the Fair Trading Act limitation period. We consider this is an area that requires further work by the Government and should be revisited when the Limitation Act is next reviewed, and urge that this be expedited.

### **Part 5—Financial Reporting Act 1993**

Clause 23 amends the definition of “exempt company” in section 2 of the Financial Reporting Act 1993 (which relates to interpretation) by removing a reference to an overseas company. The clause represents a policy that overseas companies should have the same financial reporting requirements as local companies. We received and accepted a late submission from Simpson Grierson on behalf of the Guinness Peat Group in relation to the clause.

The Business Committee of the previous Parliament removed most amendments relating to the policy from a draft version of the bill before the bill was introduced. Clause 23 remained because there were no objections to it. We recommend that the clause be omitted as it relates to a controversial policy that overseas companies have the same financial reporting requirements as local ones. We consider that the issues raised by clause 23 are important and need to be considered in the broader context of foreign investment as a whole.

### **Part 6—Insolvency Act 1967**

Clause 32 repeals section 43 of the Insolvency Act 1967, which effectively treats loans between spouses differently from other loans. We recommend that the clause be omitted. A similar clause has also been included in the Matrimonial Property Amendment Bill, which is currently being considered by the Justice and Electoral Committee.

Clause 34 replaces section 62 of the Insolvency Act that, among other things, prohibits a bankrupt from entering into or carrying on a business and we recommend a minor amendment to the clause.

### **New Part 6A—Personal Property Securities Act 1999**

Leave was given under Standing Order 302 (1) to add new Part 6A. This part relates to proposed amendments to the Personal Property Securities Act 1999 (the Act) and technical correction of several drafting errors. Standing Orders allow the committee of the whole House, in considering a law reform or other omnibus bill, to add substantive amendments to an Act not originally amended by the bill as originally introduced only by leave. This rule is also applicable to select committees.

The Act reformed the law relating to security interests in personal property. The personal property securities regime established by the Act is intended to set out priority rules for determining disputes between holders of competing interests in personal property, and creating a single register of security interests in personal property. The Act arose out of a Law Commission report, *A Personal Property Securities Act for New Zealand* and is based on legislation in British Columbia and some other Canadian provinces. It is scheduled to come into force in the first half of 2001.

The amendments we recommend in this part stem from suggestions to the ministry from the Law Society. It pointed out the urgent

requirement for a number of technical and non-controversial amendments that need to be made before the Act comes into force.

We recommend amendments to the following sections:

- section 57 clarifying the components of the definition of “consumer” for the purposes of Part 6, special priority rules in relation to motor vehicles
- section 59 relating to the reimbursement of a secured party by a motor vehicle dealer with knowledge of a security interest
- section 61 relating to the procedure for making claims for reimbursement from the Motor Vehicle Dealer Fidelity Guarantee Fund
- section 71 relating to security agreements that provide for future advances
- section 106 relating to the rights and obligations of a receiver not being limited by the Personal Property Securities Act
- section 107 relating to when parties to security agreements may contract out of the enforcement provisions of the Personal Property Securities Act
- section 133 relating to the application of the reinstatement right of debtors
- section 167 relating to the grounds on which a secured party may obtain a court order to preserve the registration of a security interest
- section 199 relating to a new transitional provision.

### **Contracting out of enforcement provisions**

We carefully considered all the proposed amendments listed above, particularly amendments to section 107. The section provides that the parties to a security agreement may contract out of certain enforcement provisions in Part 9 of the Act that do not relate to the rights of third parties. Part 9 contains a list of default enforcement rules. These default rules will be implied into a security agreement, unless the parties contract out of them. The current provision in section 107 was intended to clarify that the provisions in Part 9 could be contracted out of except where they affected third party rights.

The Government considered it was unnecessary to list which provisions gave rise to third party rights in the Act. Following further consultation between the Law Society and the ministry, we recommend that the provisions that are capable of being contracted out of

be listed explicitly. This will reduce any confusion that could have been caused by the existing provision. It will also accurately reflect the policy of that provision; namely the parties to a commercial contract should retain the flexibility to tailor their dealings in their own circumstances.

### **Preferential creditor provisions**

We recommend amendments with respect to the preferential creditor provisions to provide greater certainty and better protection for preferential creditors than currently provided in the legislation. Preferential creditors are creditors with a statutory priority ahead of floating charge creditors and unsecured creditors in a liquidation or receivership. Preferential creditors include the Inland Revenue Department for unpaid PAYE or GST, and employees for unpaid wages or holiday pay.

One of the key features of the Act is that it treats all security interests equally by doing away with the distinction between fixed and floating charges. A consequence of this change is that it will no longer be possible to provide for preferential creditors to rank behind fixed charges and ahead of floating charges.

The issue was addressed in the Act by defining a floating charge without using the term, and giving preferential creditors priority over security interests that fit that definition. The problem with that approach is that the definition was based on the High Court *Brumark*<sup>1</sup> case under which a bank had been able to achieve a charge over book debts that ranked ahead of preferential creditors. The Court of Appeal has since reversed the High Court decision in *Brumark* making it harder for banks to gain priority over book debts ahead of preferential creditors.<sup>2</sup>

The concern is that the current formulation in the Act based on the High Court finding is too loose and is out of line with the later decision of the Court of Appeal. It will be easier for creditors to use the wording in schedule 1 of the Act to gain priority ahead of preferential creditors than it would be under the latest common law authority.

The solution proposed by the ministry looks to substance over form. Inventory and accounts receivable (each a defined term under the Act) are constantly changing assets that may be described as “classic floating charge assets”. The policy before the Act was passed,

<sup>1</sup> (1999) 19 NZTC 15, 159.

<sup>2</sup> *CIR v AGNEW* [2000] INZLR 223

and that is continuing while the Act is not yet in force, is that assets subject to a floating charge should be available to preferential creditors. The proposed amendments are intended to give preferential creditors priority over all security interests over inventory and accounts receivable.

We invited submissions from three organisations on the proposed changes to the provisions to allow expert comment in order to tidy up the amendments proposed by the ministry. The Law Society and Institute of Chartered Accountants of New Zealand (ICANZ) each agreed with the proposal to give preferential creditors priority ahead of security interests over inventory and accounts receivable. The Law Society describes the proposal as the “best approximation of the status quo”. The Financial Services Federation agrees that the Act as it currently stands could lead to “some secured creditors gaining priority over preferential creditors in circumstances where they would not have done so previously.” The Law Society and ICANZ made various detailed drafting comments and we have incorporated most of these suggestions into the new part and schedule 1.

We recommend the amendment of the formulation of the rule in the seventh schedule of the Companies Act 1993 to provide that preferential creditors have priority over security interests that are not purchase money security interests, and that are over inventory and accounts receivable. There are also similar amendments to the other legislation dealing with preferential creditors referred to in schedule 1.<sup>3</sup> These amendments will avoid the uncertainties created by trying to precisely mirror the current law, and will remove the possibility for avoidance that the current formulation may allow.

### **Concerns about process for making amendments**

We have some concerns about the process used to bring these amendments to the committee. We received a request asking for a new part to be added to the bill on 31 May 2000. At the time our report on the bill was due on or before 30 June 2000. The request delayed our report on the bill by several months. However, we note that it was made clear to us that it was important for the proposed amendments to be passed before the Act comes into force in order for earlier drafting problems to be corrected.

<sup>3</sup> Corporations (Investigation and Management) Act 1989, Goods and Services Tax Act 1985, Industrial and Provident Societies Amendment Act 1952, Layby Sales Act 1971, Property Law Act 1952, Radiocommunications Act 1989, and Reserve Bank of New Zealand Act 1989.

While the public did not have an opportunity to make submissions on the new amendments, once they were drafted we invited submissions on the preferential creditor provisions from the Law Society, the Financial Services Federation and ICANZ, and heard the first two submitters. The submissions were generally favourable and we gave careful consideration to the issues they raised.

In conclusion, we consider it unfortunate that new parts were required to be added to the bill at such a late stage in the select committee process. Such amendments should really be introduced as part of a new bill or as a separate bill. As a last resort Standing Order 302 (1) may be used but only where the amendments are available for consideration at an early stage in the committee process. It is important that an appropriate amount of time is allowed for thorough consultation on all proposed amendments to future business law reform bills.

### **New Part 6B—Receiverships Act 1993**

Leave was also given under Standing Order 302 (1) to add new Part 6B. This part relates to proposed amendments to the Receiverships Act 1993 and are complementary to the recommended amendments to the Personal Property Securities Act. Accordingly, we recommend a number of amendments to the Receiverships Act as a result of the addition of new Part 6A. We have also recommended some amendments in relation to the requirement on receivers to notify suspected offences against certain other Acts, as mentioned earlier in this commentary.

Part 9 of the Personal Property Securities Act deals with the enforcement of security interests. Section 106 provides that Part 9 does not limit the rights, powers and obligations of a receiver, and that in the event of a conflict between Part 9 and the Receiverships Act the latter shall prevail. This was intended to ensure that a receiver appointed under the Receiverships Act would be able to sell and deal with assets despite any subsequent security interests, notwithstanding the enactment of the Personal Property Securities Act.

There is concern that this result may not have been achieved and would significantly limit the powers of receivers if they were not able to sell or deal with property that is subject to a subsequent security interest. We recommend that section 106 of the Personal Property Securities Act be amended to provide that Part 9 does not apply to a receiver under the Receiverships Act. As a consequence

we also recommend that the Receiverships Act be amended to provide that a sale by a receiver will extinguish all subordinate security interests.

## **Part 7—Securities Act 1978**

The Securities Act 1978 establishes the Securities Commission as the Crown entity responsible for ensuring compliance with New Zealand's securities regime and monitoring activity in the country's securities market.

### **Membership of the Securities Commission**

We recommend the addition of clause 41A relating to the membership of the Securities Commission and the addition of clause 41B. Under the current legislation, the chairman of the Securities Commission must be a barrister or solicitor of at least seven years' practice. This requirement unnecessarily precludes the appointment of suitably qualified persons from other professions such as accountants, auditors, economists, company directors and sharebrokers, and can result in succession problems that are potentially detrimental to the on-going operational capacity of the Securities Commission.

We recommend an amendment to section 11 of the principal Act to widen the pool of potential candidates and the way in which the chairperson is appointed. We consider that persons should be appointed as members who have suitable knowledge of and experience in industry, commerce, economics, law, accountancy, public administration, or securities. At least one member should be a barrister or solicitor with a minimum of seven years' practice. This amendment would bring the criteria for membership into line with other business law Crown entities, such as the Commerce Commission, which have a similar quasi-judicial function. We consider that one member should be appointed as chairperson by the Governor-General on the recommendation of the Minister of Commerce.

We recommend an amendment to section 19 of the Securities Act relating to certain proceedings before the Securities Commission to provide for at least one person who is a barrister or solicitor of not less than seven years' practice to attend every meeting of the Securities Commission.

We note that the amendments above were suggested by the Securities Commission itself and are relatively urgent, due to the fact that the term of the current chairman is due to expire on 30 June 2001.

### **Gender references updated**

We recommend the addition of clause 41C to update the usage of gender in the legislation. Current practice in New Zealand legislation is for statutes to use gender neutral terminology, which is the approach taken in the Standing Orders of the House of Representatives.

### **Amendments to Securities Amendment Act 1988**

The Securities Amendment Act 1988 (the Act) prohibits insider trading. Insider trading is dealing or promoting dealing by others in the securities of a public issuer based on information that is not available to the wider market. Insiders can avoid liability if they acted in accordance with an arrangement, established by the public issuer with whom they have a relationship, that is designed to ensure that no insider trading occurs. The arrangement must be approved by the Securities Commission and notified in the Gazette. This and similar exceptions are known as “Chinese wall” exceptions.

Clause 42 makes a number of amendments to the Securities Amendment Act. We initially received no submissions on the clause. However, during our consideration of the bill we received and accepted a late submission from the Securities Commission on clauses 42(1) and 42(2).

Clause 42(1) seeks to amend section 8(3) of the Securities Amendment Act that exempts an insider from liability. The amendment would require every individual who took part in the decision to buy or sell the securities to act in accordance with an approved arrangement. Concerns have been raised by various members of the business community and the Securities Commission about the current wording of the legislation. It requires companies to ensure that the arrangement established would prevent insider trading. The concern is that this threshold is unreasonably high and may stop some arrangements that would prevent insider trading.

The Securities Commission submitted that the clause should be modified to provide for an amendment introducing an objective test for the effectiveness of any “Chinese wall” arrangements. This type of test would ensure that a firm’s arrangements themselves could be objectively measured as effective.

We note that amendments to section 8 of the Securities Amendment Act designed to meet the concerns of the business community and the Securities Commission were included in a draft version of the bill. However, the Business Committee removed the proposed

amendments from the bill following an objection. We found no grounds to suggest the reversal of the decision of the Business Committee on this matter.

We recommend the addition of new subclauses (1A) to (1C), which make minor amendments of a technical nature to the Act.

Clause 42(2) replaces the words “member or members” with the words “holder or holders of securities” in certain sections of the Act. In its submission the Securities Commission considered that the amendment should be extended to apply to sections 28(1) and 29(1) of the Act as well. The amendment proposed in the clause will remove superfluous language in the Act, and we support the submission of the Securities Commission and recommend that the bill be amended accordingly.

### **Part 8—Superannuation Schemes Act 1989**

Clause 44 repeals section 9B(2) of the Superannuation Schemes Act 1989 and replaces it with new subsections (2) and (2A). They require the trustees of each registered superannuation scheme affected by a transfer of members or beneficiaries to notify, in writing, all members and beneficiaries of the scheme and the Government Actuary. The trustees must do this at least one month before the date by which the written consent of members and beneficiaries to the proposed transfer is received. The amendment sets out the content of the written notification.

At present, the notification must be given at least one month before the implementation of the proposed transfer. Most submissions supported the provision. Watson Wyatt New Zealand Limited was concerned that the longer period may delay decision-making. The Investment Savings and Insurance Association recommended that notification should apply only to the scheme for which the transfer represents a substantial proportion of its membership.

We consider that a threshold test is appropriate and recommend that the bill be amended accordingly. There are a number of pieces of legislation where the term “materially affected” is used to deal with such issues, for example the Income Tax Act 1994.

### **Conclusion**

We support a regular place on the legislative agenda for business law reform bills. Parliament should be more responsive to the needs of business and ensure that all that can be done is done to reduce compliance costs where possible and to make sure that business law

is clear, consistent and transparent. The then Acting Minister of Commerce told us that he also strongly supports the concept of regular business law reform bills as a way to achieve the incremental improvement of business law. Furthermore, we believe there is widespread support in the business community for the continuation of such bills and the efficiency they inject into the parliamentary process. Business law practitioners are strong advocates of such bills, as evidenced in the positive comments made in a number of submissions. We expect the next Business Law Reform bill to be introduced before the end of the year with a view to enactment in 2001.

## **Appendix**

### **Conduct of the examination**

The Business Law Reform Bill was introduced on 27 July 1999 and referred to the Commerce Committee on 5 October 1999 for consideration. The closing date for submissions was 14 April 2000. In addition, we also invited submissions at a later date on a particular matter. The committee received and considered 13 submissions from organisations and other interested groups and individuals. We heard eight submitters. Hearing evidence on the bill took two hours and 55 minutes and consideration took seven hours and 45 minutes. We received advice from the Ministry of Economic Development and the Ministry of Consumer Affairs.

### **Committee membership**

David Cunliffe (Chairperson)  
Kevin Campbell (Deputy Chairperson)  
Steve Chadwick  
Hon Ruth Dyson  
Gerrard Eckhoff  
Warren Kyd  
Dr the Hon Lockwood Smith  
Pansy Wong

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## Key to symbols used in reprinted bill

### As reported from a select committee

**Struck out (unanimous)**

**Subject to this Act,**

Text struck out unanimously

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

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*Hon Paul Swain*

# Business Law Reform Bill

Government Bill

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## Business Law Reform

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	<b>Part 9</b>	<b>Schedule</b>	
	<b>Unit Trusts Act 1960</b>	<b>New Schedules 1 and 2 substituted</b>	
49	Unit Trusts Act 1960 called principal Act in this Part		
50	Accounts, etc, to be filed		

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act may be cited as the Business Law Reform Act **1999**.

**1A Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

**Part 1  
Companies Act 1955**

**2 Companies Act 1955 called principal Act is this Part**

In this Part, the Companies Act 1955<sup>1</sup> is called “the principal Act”. 10

<sup>1</sup> 1955 No 63

**3 New sections 108 to 108C substituted**

(1) The principal Act is amended by repealing sections 108 and 108A, and substituting the following sections: 15

**“108 Registrar may extend time for registration of charge or correct register of charges**

“(1) The Registrar may, on the application of the company or any person interested, extend the time for registration of a charge, or correct a mistake in the register of charges, if— 20

“(a) the Registrar is satisfied that the failure to register the charge within the time required by this Act or the mistake in the register of charges—

“(i) was accidental or due to inadvertence or to some other good reason; or 25

“(ii) is not likely to prejudice the position of creditors or shareholders of the company; and

“(b) the Registrar has given public notice setting out—

“(i) the name of the company; and

“(ii) the name and address of the applicant; and 30

- “(iii) the proposed action that the Registrar will take; and
- “(iv) the date by which an objection to the Registrar’s proposed action must be delivered to the Registrar, not being less than 20 working days after the date of the notice; and 5
- “(c) the Registrar has not received any objection to the Registrar’s proposed action within the time specified in the notice.
- “(2) Nothing in this section limits or affects **section 108A**. 10
- “108A **Court may order extension of time for registration of charge or correction of register of charges**
- The Court may, on the application of the company or any person interested, and on any terms that the Court considers are just and expedient, order that the time for registration of a charge be extended or that the register of charges be corrected, if— 15
- “(a) the Court is satisfied that the failure to register the charge within the time required by this Act or the mistake in the register of charges— 20
- “(i) was accidental or due to inadvertence or to some other good reason; or
- “(ii) is not likely to prejudice the position of creditors or shareholders of the company; or
- “(b) on other grounds it is just and equitable to grant relief. 25
- “108B **Application of sections 108 and 108A**
- Sections 108 and 108A** apply to every charge created before the commencement of the **Business Law Reform Act 1999** and registrable under this Part in the same way as those sections apply to every charge created after the commencement of that Act. 30
- “108C **Form of certificates**
- For the purposes of sections 102 and 104, a single form of certificate may be prescribed that is adaptable for use under either of those sections.”
- (2) Section 122ZH(5) of the Local Government Act 1974 is consequentially amended by inserting, after the expression “section 108”, the expression “or **section 108A**”. 35

## Part 2 Companies Act 1993

- 4 Companies Act 1993 called principal Act in this Part**  
 In this Part, the Companies Act 1993<sup>2</sup> is called “the principal Act”. 5  
<sup>2</sup> 1993 No 105
- 5 Rights and powers attaching to shares**  
 Section 36(2) of the principal Act is amended by inserting, after the expression “section 44”, the expression “or section 107(2)”. 10
- 6 New section 40 substituted**  
 The principal Act is amended by repealing section 40, and substituting the following section:
- “**40 Contracts for issue of shares**  
 A contract or deed under which a company is or may be required to issue shares, whether on the exercise of an option or on the conversion of securities or otherwise, is an illegal contract for the purposes of the Illegal Contracts Act 1970 unless— 15
- “(a) the board is entitled to issue the shares; and 20  
 “(b) either—
- “(i) the board has complied with section 47 or section 49; or  
 “(ii) all entitled persons agree or concur with the issue of the shares under section 107(2); or 25  
 “(iii) the contract or deed expressly provides that the contract or deed is subject to—
- “(A) the board complying with section 47 or section 49; or  
 “(B) all entitled persons agreeing to or concurring with the issue of the shares under section 107(2).” 30
- 7 Transfer of shares under approved system**  
 Section 85(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph: 35  
 “(c) either—

- “(i) the Act or the constitution expressly permits the board to refuse or delay registration for the reasons stated; or
- “(ii) any identification number assigned to the shares or issued to the holder of the shares under a system of transfer approved under section 7 of the Securities Transfer Act 1991 is not recorded on the form of transfer of the shares or otherwise communicated in writing to the company by or on behalf of the transferor.”

## 8 Share certificates

Section 95(2) of the principal Act is amended by omitting the words “of this section”, and substituting the expression “or subsection (5)”.

## 9 Unanimous assent to certain types of action

Section 107(1)(c) of the principal Act is amended by omitting the expression “58”, and substituting the expression “59”.

### New (unanimous)

## 9A Resolution in lieu of meeting

Section 122(3A) of the principal Act is amended by omitting the words “For the purposes of subsection (2), any such resolution”, and substituting the words “Any resolution in writing under this section”.

## 10 Meaning of director

Section 126(1) of the principal Act is amended by omitting from paragraphs (b) and (c) the words “and 301 of this Act”, and substituting in each case the expression “301, 383, and 385”.

## 11 Major transactions

Section 129(2A) of the principal Act is amended by inserting, before the word “paragraph”, the words “paragraph (b) or”.

**12 Disclosure of interest**

Section 140(2) of the principal Act is amended by omitting the word “or” in the first place where it appears, and substituting the words “and, if the company has more than 1 director,”.

**13 New section 258A inserted**

5

The principal Act is amended by inserting, after section 258, the following section:

**“258A Duty to notify suspected offences**

“(1) A liquidator of a company who considers that an offence that is material to the liquidation has been committed by the company or any director of the company against this Act or any of the following Acts must report that fact to the Registrar:

10

“(a) the Companies Act 1955:

**New (unanimous)**

“(aa) the Crimes Act 1961:

“(b) the Securities Act 1978:

15

“(c) the Financial Reporting Act 1993:

“(d) the Takeovers Act 1993.

**New (unanimous)**

“(1A) A report made under **subsection (1)**, and any communications between the liquidator and Registrar relating to that report, are protected by absolute privilege.

20

“(2) A liquidator who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(2).”

**14 Power to obtain documents and information**

Section 261 of the principal Act is amended by inserting, after subsection (6), the following subsection:

25

“(6A) A person who fails to comply with a notice given under this section commits an offence and is liable on conviction to the penalty set out in section 373(3).”

- 15 Penalty for failure to comply with Act**
- (1) Section 373(2) of the principal Act is amended by inserting, after paragraph (m), the following paragraph:
- “(ma) section 258A(2) (which relates to the duty of liquidators to notify suspected offences):” 5
- (2) Section 373(3) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:
- “(a) section 261(6A) (which relates to the power of liquidators to obtain documents and information): 10
- “(b) section 273(2) (which relates to certain prohibited conduct):
- “(c) section 274(2) (which relates to the duty to identify and deliver property).”
- 16 Registrar may prohibit persons from managing companies** 15
- Section 385 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:
- “(5) The Registrar must not exercise the power conferred by subsection (3) unless— 20
- “(a) not less than 10 working days’ notice of the fact that the Registrar intends to consider the exercise of it is given to the person; and
- “(b) the Registrar considers any representations made by the person.” 25

### Part 3

#### Companies (Registration of Charges) Act 1993

- 17 Companies (Registration of Charges) Act 1993 called principal Act in this Part**
- In this Part, Companies (Registration of Charges) Act 1993<sup>3</sup> is called “the principal Act”. 30
- <sup>3</sup> 1993 No 125

- 18 Savings**
- Section 6(1) of the principal Act is amended by adding the words “, and may be amended as if they had not been repealed.” 35

## Part 4 Fair Trading Act 1986

- 19 Fair Trading Act 1986 called principal Act in this Part**  
In this Part, the Fair Trading Act 1986<sup>4</sup> is called “the principal Act”.
- 5
- <sup>4</sup> 1986 No 121
- 20 Other orders**  
Section 43 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:
- “(5) An application under subsection (1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.”
- 10
- 21 Provisions as to proceedings already barred and pending proceedings**
- 15
- Nothing in this Act—
- (a) enables any proceedings to be brought which were barred before the commencement of this Act; or
- (b) affects any proceedings commenced before the commencement of this Act.
- 20

## Part 5 Financial Reporting Act 1993

- 22 Financial Reporting Act 1993 called principal Act in this Part**  
In this Part, the Financial Reporting Act 1993<sup>5</sup> is called “the principal Act”.
- 25

<sup>5</sup> 1993 No 106

### Struck out (unanimous)

- 23 Interpretation**  
Section 2 of the principal Act is amended by omitting from the definition of the term “exempt company” in subsection (1) the words “an overseas company or”.
- 30

- 24 Obligation to prepare group financial statements**  
 Section 13(2) of the principal Act is amended by inserting, after the word “comprise”, the words “a reporting entity that is”.
- 25 Registration of financial statements by issuers** 5  
 Section 18 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:  
 “(3) Any person may, on payment of the prescribed fee (if any), inspect the copies of an issuer’s financial statements and auditor’s report on those statements delivered to the Registrar under subsection (1).” 10
- 26 Fees**  
 Section 20(a) of the principal Act is amended by inserting, after the expression “18(2)”, the expression “or **section 18(3)**”.
- 27 Consultation** 15  
 (1) Section 26 of the principal Act is amended by inserting, after subsection (1), the following subsection:  
 “(1A) The Board must not approve a financial reporting standard, or an amendment to an approved financial reporting standard, that is likely to require the disclosure of personal information unless— 20  
 “(a) the Board is satisfied that,—  
 “(i) in the case of a standard or amendment based on a standard or amendment adopted by the Institute of Chartered Accountants of New Zealand or the organisation or person by whom it was submitted to the Board, the Institute or organisation or person, as the case may be, consulted with the Privacy Commissioner before the standard or amendment was adopted; or 25  
 “(ii) in the case of a standard or amendment based on a standard or amendment that was not adopted by the Institute of Chartered Accountants of New Zealand or organisation or person by whom it was submitted to the Board, the Institute or organisation or person, as the case may be, consulted with the Privacy Commissioner before the 30  
 35

- standard or amendment was submitted to the Board; or
- “(b) the Board has consulted with the Privacy Commissioner.”
- (2) Section 26(2) of the principal Act is amended by omitting the words “of this section shall”, and substituting the words “or **subsection (1A)** does”. 5
- (3) Section 26 of the principal Act is amended by adding the following subsection:
- “(3) In **subsection (1A)**, **personal information** and **Privacy Commissioner** have the same meanings as in section 2 of the Privacy Act 1993.” 10
- 28 New section 33 substituted**
- The principal Act is amended by repealing section 33, and substituting the following section: 15
- “**33 Disallowance of determinations by House of Representatives**
- The Regulations (Disallowance) Act 1989 applies to the following determinations of the Board as if the determination were a regulation within the meaning of that Act: 20
- “(a) any approval of a financial reporting standard and any amendment to an approved financial reporting standard:
- “(b) any revocation of an approval of an approved financial reporting standard:
- “(c) any determination made under section 27(3A).” 25
- 29 Offences by directors of issuers**
- Section 38 of the principal Act is amended—
- (a) by omitting from paragraph (b) the expression “section 18(1) of this Act; or”, and substituting the expression “section 18(1),—”: 30
- (b) by repealing paragraph (c).
- 30 New section 42A inserted**
- The principal Act is amended by inserting, after section 42, the following section:
- “**42A Privacy Act 1993** 35
- The disclosure of personal information (as defined in section 2 of the Privacy Act 1993) is not a breach of principle 10 or

principle 11 of that Act, if the disclosure is required for compliance with an applicable financial reporting standard that was approved after the commencement of the Business Law Reform Act 1999.”

## **Part 6 Insolvency Act 1967**

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- 31 Insolvency Act 1967 called principal Act in this Part**  
In this Part, the Insolvency Act 1967<sup>6</sup> is called “the principal Act”.

<sup>6</sup> 1967 No 54

10

### **Struck out (unanimous)**

- 32 Repeal of section 43**  
Section 43 of the principal Act is repealed.

- 33 New sections 45 to 45B substituted**  
The principal Act is amended by repealing section 45, and substituting the following sections:

15

- “45 Assignee may require bankrupt to contribute towards payment of debts**
- “(1) A bankrupt must pay any amount, or make periodic payments, to the Assignee as required by the Assignee during the bankruptcy. 20
- “(2) The Assignee may impose conditions in respect of those payments.
- “(3) Before the Assignee may require the bankrupt to make those payments, the Assignee must—
- “(a) have regard to all the circumstances of the bankruptcy and the bankrupt’s conduct, earning power, responsibilities, and prospects; and 25
- “(b) make reasonable allowance for the maintenance of the bankrupt, the bankrupt’s spouse, and the bankrupt’s family. 30
- “(4) The Court may, on the application of the bankrupt or any creditor,—
- “(a) vary, suspend, or cancel the bankrupt’s obligation to make the payments under this section:

“(b) remit any arrears owing by the bankrupt.

**“45A Court may order that money due to bankrupt be assigned to Assignee**

“(1) The Court may, on the application of the Assignee, make an order assigning or charging to or in favour of the Assignee any money due to the bankrupt or to become due or payable to the bankrupt. 5

“(2) That assignment or charge operates as a discharge to the person who pays the Assignee.

**“45B Application of section 104 to payments by bankrupt or assignments by Court 10**

The Assignee must apply the following payments in accordance with section 104:

“(a) any amount paid by the bankrupt under **section 45:**

“(b) any amount paid to the Assignee under an order made under **section 45A.**” 15

**34 New section 62 substituted**

The principal Act is amended by repealing section 62, and substituting the following section:

**“62 Prohibition of bankrupt entering business 20**

“(1) An undischarged bankrupt must not, without the consent of the Assignee or the Court either directly or indirectly,—

“(a) enter into, carry on, or take part in the management or control of, any business:

“(b) be employed by a relative of the bankrupt or by any company, trust, trustee, or incorporated society, that is managed or controlled by a relative of the bankrupt. 25

“(2) Nothing in this section restricts section 151 of the Companies Act 1993.”

**35 Court may order debtor to be arrested 30**

Section 63(1) of the principal Act is amended by inserting, after the word “residence”, the words “either temporarily or permanently”.

- 36 Court may order debtor’s property to be seized**  
Section 64(1)(b) of the principal Act is amended by inserting, after the word “residence”, the words “either temporarily or permanently”.
- 37 New section 68A inserted** 5  
The principal Act is amended by inserting, after section 68, the following section:
- “68A Assignee may obtain documents**  
The Assignee may, by notice in writing, require the bankrupt, the bankrupt’s spouse, or any other person to deliver to the Assignee any book, paper, or document relating to the dealings or property of the bankrupt in that person’s possession or under that person’s control as the Assignee requires.” 10
- 38 Crimes by bankrupt**  
Section 126(1)(k) of the principal Act is amended by inserting, after the words “New Zealand” wherever they appear, the words “either temporarily or permanently”. 15
- 39 Summary offences**
- (1) Section 128 of the principal Act is amended— 20
- (a) by omitting from subsection (1) the expression “3 months”, and substituting the expression “12 months”:
- (b) by inserting in subsection (1)(f), after the words “New Zealand” wherever they appear, the words “either temporarily or permanently”.
- (2) Section 128 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsection: 25
- “(2) Despite anything in section 14 of the Summary Proceedings Act 1957, any information for any of the offences in paragraphs (a) to (g) of subsection (1) may be laid against a bankrupt at any time within 2 years after the time when the matter of the information arose.” 30

- 40 Offences by undischarged bankrupts in relation to management of companies**
- Section 128A(1) of the principal Act is amended—
- (a) by omitting the expression “6 months”, and substituting the expression “12 months”: 5
  - (b) by omitting the expression “\$1,000”, and substituting the expression “\$5,000”.

New (unanimous)

**Part 6A**  
**Personal Property Securities Act 1999**

- 40A Personal Property Securities Act 1999 called principal Act in this Part** 10
- In this Part, the Personal Property Securities Act 1999<sup>7</sup> is called “the principal Act”.
- <sup>7</sup> 1999 No 126
- 40B Commencement** 15
- This Part comes into force on a date to be appointed by the Governor-General by Order in Council.
- 40C New sections 9 and 9A substituted** 20
- The principal Act is amended by repealing section 9, and substituting the following sections:
- “9 **Part 5 (when buyers or lessees of goods take goods free of unperfected security interests)**
- Part 5 sets out when buyers of goods or lessees of goods get the goods without being subject to a prior security interest.
- “9A **Part 6 (additional provisions relating to when buyers or lessees of motor vehicles take motor vehicles free of security interest)** 25
- Part 6 sets out when buyers or lessees of motor vehicles get the motor vehicles without being subject to a prior security interest.” 30
- 40D Interpretation**
- Section 57 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

**New (unanimous)**

“**finance company** has the same meaning as in section 2(1) of the Motor Vehicle Dealers Act 1975

“**manufacturer** means a person who engages in the business of manufacturing or assembling motor vehicles

“**wholesaler** means— 5

“(a) a person who engages in the business of selling new motor vehicles to dealers, or to other persons who engage in that business; or

“(b) a person who engages in the business of selling second-hand motor vehicles to dealers” 10

**40E New section 59 substituted**

The principal Act is amended by repealing section 59, and substituting the following section:

“59 **Reimbursement of secured party by dealer**

“(1) A dealer must pay to a secured party the relevant amount referred to in **subsection (2)** if— 15

“(a) the dealer sold or leased a motor vehicle that, immediately before its sale or lease, was subject to the secured party’s security interest that was perfected by registration; and 20

“(b) the buyer or lessee of the motor vehicle takes the motor vehicle free of the security interest under section 58; and

“(c) the secured party has served a claim for payment on the dealer. 25

“(2) The dealer must, within 7 working days of the date on which the secured party served a claim for payment on the dealer, pay to the secured party the lesser of the following amounts:

“(a) the amount outstanding in respect of the debt or other obligation secured by the secured party’s security interest in the motor vehicle: 30

“(b) the payment received or to be received by the dealer from the sale or the lease of the motor vehicle.”

**New (unanimous)**

**40F New section 61 substituted**

The principal Act is amended by repealing section 61, and substituting the following section:

**“61 Procedure for making claims for reimbursement**

Every claim for payment made by a secured party under section 59 or section 60 must be accompanied by— 5

“(a) a printed search result issued by the register under section 175; and

“(b) a statutory declaration by the secured party, or, if the secured party is a company, by any director or other officer authorised in writing for the purpose, declaring— 10

“(i) the amount of the debt or other pecuniary obligation secured by the security interest; and

“(ii) the amount received by the secured party in satisfaction of that debt or other obligation; and 15

“(iii) the amount outstanding in respect of that debt or other obligation at the date when the declaration is made; and

“(iv) the amount recoverable from the buyer or lessee of the vehicle under section 65, if applicable.” 20

**40G New section 71 substituted**

The principal Act is amended by repealing section 71, and substituting the following section:

**“71 Security agreement may provide for future advances 25**

A security agreement may provide for future advances.”

**40H New section 106 substituted**

The principal Act is amended by repealing section 106, and substituting the following section:

**“106 Part not to apply to receivers 30**

This Part does not apply to a receiver within the meaning of section 2(1) of the Receiverships Act 1993.”

**New (unanimous)****40I New section 107 substituted**

The principal Act is amended by repealing section 107, and substituting the following section:

- “107 When contracting out of certain provisions in this Part permitted 5**
- “(1) The parties to a security agreement may contract out of sections 108, 109, 111(1), 112, 114(1)(a), 117(1)(c), 120(1), 122, 133, and 134.
- “(2) The parties to a security agreement may contract out of the debtor’s right to— 10
- “(a) receive a statement of account under section 116:
- “(b) recover surplus under section 119:
- “(c) receive notice of a secured party’s proposal to retain collateral under section 120(2):
- “(d) object to a secured party’s proposal to retain collateral under section 121: 15
- “(e) not have goods damaged when a secured party removes an accession under section 125:
- “(f) not be reimbursed for damage caused when a secured party removes an accession under section 126: 20
- “(g) refuse permission to remove an accession under section 127:
- “(h) receive notice of the removal of an accession under section 129:
- “(i) apply to the Court for an order concerning the removal of an accession under section 131: 25
- “(j) redeem collateral under section 132.
- “(3) The parties to a security agreement may contract out of the secured party’s right to apply to a court for an order in respect of the removal of an accession under section 128.” 30

**40J Debtor may reinstate security agreement**

Section 133 of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) Subsection (1) does not apply to any security agreement made or entered into before the commencement of this Act.” 35

## New (unanimous)

- |   |    |
|---|----|
| <b>40K Secured party may obtain court order in cases not involving security trust deed</b>  |    |
| Section 167(1) of the principal Act is amended by omitting the words “1 or more”, and substituting the word “none”.   |    |
| <b>40L New section 199 substituted</b>  | 5  |
| The principal Act is amended by repealing section 199, and substituting the following section:  |    |
| “199 <b>Time of registration of certain prior security interests</b>  |    |
| For the purposes of this Act, the time of registration of a prior security interest that is deemed to be perfected by registration under this Act is—   | 10 |
| “(a) the time that, under the relevant prior registration law, determined the priority of the security interest (where the prior security interest is deemed to be perfected by registration under section 195):                  | 15 |
| “(b) the time that the security interest was created (where the prior security interest is deemed to be perfected by registration under section 196).”  |    |
| <b>40M New Schedules 1 and 2 substituted</b>  |    |
| The principal Act is amended by repealing Schedules 1 and 2, and substituting the schedules set out in the Schedule of this Act.  | 20 |
| <b>40N Schedules 3 and 4 amended</b>  |    |
| (1) Schedule 3 of the principal Act is amended by inserting in the item relating to the Statutes Amendment Act 1945, after the expression “1945”, the expression “: Section 5”.   | 25 |
| (2) Schedule 4 of the principal Act is amended by omitting the item relating to the Motor Vehicle Securities (Fees) Regulations 1990, and substituting the item “Motor Vehicle Securities (Fees) Regulations 1999 (SR 1999/148)”. | 30 |

## New (unanimous)

## Part 6B Receiverships Act 1993

- 40O Receiverships Act 1993 called principal Act in this Part** 5  
 In this Part, the Receiverships Act 1993\* is called “the principal Act”.
- \* 1993 No 122
- 40P Commencement**  
 This Part comes into force on a date to be appointed by the Governor-General by Order in Council.
- 40Q Interpretation** 10  
 Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:
- “**account receivable** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999
- “**inventory** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999 15
- “**proceeds** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999
- “**purchase money security interest** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999 20
- “**security agreement** has the same meaning as in section 16(1) of the Personal Property Securities Act 1999
- “**security interest** has the same meaning as in section 17 of the Personal Property Securities Act 1999”.
- 40R Duty to notify suspected offences against other Acts** 25
- (1) Section 28(1) of the principal Act is amended by inserting, after the word “offence”, the words “that is material to the receivership”.
- (2) Section 28(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: 30  
 “(aa) the Crimes Act 1961; or”.
- (3) Section 28 of the principal Act is amended by inserting, after subsection (1), the following subsection:

**New (unanimous)**

“(1A) A report made under subsection (1), and any communications between the receiver and Registrar relating to that report, are protected by absolute privilege.”

**40S Preferential claims**

(1) Section 30 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 5

“(1) This section applies to a receiver of the property of a grantor that is a company, other than a company in liquidation at the time of the receiver’s appointment, and who was appointed under a security agreement that created or provided for a security interest, other than a purchase money security interest, over all or any part of the company’s accounts receivable and inventory or all or any part of either of them.” 10

(2) Section 30(2) of the principal Act is amended by— 15

(a) omitting the words “property that is subject to the charge”, and substituting the words “accounts receivable and inventory that are subject to the security interest or their proceeds”: 15

(b) inserting, before the words “any claim”, the words “from those assets”: 20

(c) inserting, after the word “security”, the word “interest”. 20

(3) Section 30 of the principal Act is amended by adding the following subsection:

“(5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.” 25

**40T New section 30A inserted** 30

The principal Act is amended by inserting, after section 30, the following section:

**“30A Extinguishment of subordinate security interests**

If property has been disposed of by a receiver, all security interests in the property and its proceeds that are subordinate 35

**New (unanimous)**

to the security interest of the person in whose interests the receiver was appointed are extinguished on the disposition of the property.”

Compare: 1999 No 126 s 115.

## **Part 7 Securities Act 1978**

5

**Struck out (unanimous)****41 Part to be part of Securities Act 1978**

This Part is part of the Securities Act 1978<sup>9</sup>.

<sup>9</sup>RS Vol 33, p. 587

Amendments: 1996, No 100; 1997, Nos 16, 54; 1998, No 59

10

**New (unanimous)****41 Securities Act 1978 called principal Act in this Part**

In this Part, the Securities Act 1978<sup>10</sup> is called “the principal Act”.

<sup>10</sup>1978 No 103

*Amendments to principal Act*

15

**41A New section 11 substituted**

The principal Act is amended by repealing section 11, and substituting the following section:

**“11 Membership of Commission**

“(1) The Commission must consist of not less than 5, and not more than 10, members, of whom at least 1 must be a barrister or solicitor of at least 7 years’ practice.

20

“(2) The members of the Commission must be appointed by the Governor-General on the recommendation of the Minister.

“(3) One member must be so appointed as Chairperson of the Commission.

25

“(4) No person may be recommended for appointment as a member of the Commission, unless, in the opinion of the Minister,

**New (unanimous)**

the person is qualified for appointment, having regard to the functions and powers of the Commission, by virtue of the person's knowledge of, or experience in, industry, commerce, economics, law, accountancy, public administration, or securities." 5

**41B Provisions relating to certain proceedings before Commission**

Section 19 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- "(2) At least 1 person who is a barrister or solicitor of the High Court of not less than 7 years' practice must attend at every meeting of the Commission for the purposes of section 44(1)(b), 44B(2), or section 69." 10

**41C References to chairperson, etc**

The principal Act and the Securities Amendment Act 1988 are amended by— 15

- (a) omitting the word "Chairman" wherever it appears, and substituting in each case the word "Chairperson":
- (b) omitting the word "Chairman's" wherever it appears, and substituting in each case the word "Chairperson's": 20
- (c) inserting, after the word "he" wherever it appears without being immediately followed by the words "or she", the words "or she":
- (d) inserting, after the word "his" wherever it appears without being immediately followed by the words "or her", the words "or her": 25
- (e) inserting, after the word "him" wherever it appears without being immediately followed by the words "or her", the words "or her":
- (f) inserting, after the word "himself" wherever it appears, the words "or herself". 30

**New (unanimous)***Amendments to Securities Amendment Act 1988***42 Amendments to Securities Amendment Act 1988**

- (1) Section 8(3) of the Securities Amendment Act 1988 is amended by adding the expression “; and” to the end of paragraph (b), and also by adding the following paragraph: 5

“(c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).”

**New (unanimous)**

- (1A) Section 10 of the Securities Amendment Act 1988 is amended 10  
by adding the expression “; and” to paragraph (b), and also by  
adding the following paragraph:

“(c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).” 15

- (1B) Section 12(2) of the Securities Amendment Act 1988 is amended by adding the expression “; and” to paragraph (b), and also by adding the following paragraph:

“(c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).” 20

- (1C) Section 14 of the Securities Amendment Act 1988 is amended by adding the expression “; and” to paragraph (b), and also by adding the following paragraph: 25

“(c) every individual who had the information and every individual who took part in the decision to buy or sell the securities acted in accordance with the arrangements referred to in paragraph (a).” 30

- (2) Sections 17, 18, and ~~(19(2)(a))~~ 19(2)(a), 28(1), and 29(1) of the Securities Amendment Act 1988 are amended by omitting

the word “member” wherever it appears, and substituting in each case the words “holder of securities”.

- (3) Section 17 of the Securities Amendment Act 1988 is amended by inserting, after subsection (4), the following subsection:

“(4A) Any confidential communications between the solicitor or barrister and any other person for the purposes of establishing whether the public issuer has a cause of action against the insider, are protected by absolute privilege.”

## Part 8

### Superannuation Schemes Act 1989

#### 43 Superannuation Schemes Act 1989 called principal Act in this Part

In this Part, the Superannuation Schemes Act 1989<sup>11</sup> is called “the principal Act”.

<sup>11</sup> 1989 No 10

#### 44 Implied provision as to transfer of members, etc

Section 9B of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- “(2) The trustees of each registered superannuation scheme affected must notify (*all members and beneficiaries of the scheme and the Government Actuary*) the persons described in **subsection (2AA)** in accordance with **subsection (2A)** if it is proposed to transfer (whether at the same time or over an extended period) all or a substantial number of members or beneficiaries—
- “(a) from a registered superannuation scheme to any other superannuation scheme; or
- “(b) from a superannuation scheme to a registered superannuation scheme.

#### New (unanimous)

- “(2AA) The persons referred to in **subsection (2)** are—
- “(a) all members and beneficiaries of each registered superannuation scheme that are likely to be materially affected by the proposed transfer referred to in that subsection; and
- “(b) the Government Actuary.

- “(2A) At least 1 month before the date by which the written consent of members and beneficiaries to a proposed transfer referred to in **subsection (2)** must be received by the trustees of each registered superannuation scheme affected,—
- “(a) the trustees must notify all members and beneficiaries of the scheme in writing of—
- “(i) the proposed transfer and its implications for members and beneficiaries; and
  - “(ii) the date on which the proposed transfer is to occur; and
  - “(iii) the date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees; and
  - “(iv) the fact that a copy of the notice has been forwarded to the Government Actuary; and
- “(b) the trustees must notify the Government Actuary in writing of—
- “(i) the proposed transfer and its implications for members and beneficiaries; and
  - “(ii) the date on which the proposed transfer is to occur; and
  - “(iii) the date by which the written consent of members and beneficiaries to the proposed transfer must be received by the trustees.”
- 45 New section 9BA inserted**
- The principal Act is amended by inserting, after section 9B, the following section:
- “9BA Government Actuary may exempt trustees from requirement to obtain written consent of all members and beneficiaries**
- “(1) The Government Actuary may exempt trustees of a registered superannuation scheme from the requirement to obtain the written consent of all members and beneficiaries of the scheme under sections 9 and 9B if the Government Actuary is satisfied that—
- “(a) the trustees have not been able to contact all members or beneficiaries of the scheme despite having taken all reasonable steps to do so; and

- “(b) the proposed action is not unreasonable in relation to the best interests of any member or beneficiary who has not been contacted.
- “(2) To avoid doubt, any exemption given by the Government Actuary under this section is subject to section 23.” 5
- 46 Accounts**
- (1) Section 13(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:  
“(b) annual accounts in respect of the scheme are prepared in accordance with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and” 10
- (2) Section 13(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:  
“(b) that administration manager has prepared annual accounts in respect of the scheme that comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993); and” 15
- 47 Annual reports**
- (1) Section 14(1) of the principal Act is amended by omitting the expression “6 months”, and substituting the expression “5 months”. 20
- (2) Section 14 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:  
“(3) The trustees must send a copy of the completed report to the Government Actuary within 28 days after its completion.” 25
- 48 Actuarial examination**
- (1) Section 15(2) of the principal Act is amended by omitting the expression “9 months”, and substituting the expression “7 months”. 30
- (2) Section 15 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:  
“(3) The trustees must send a copy of the report of the actuary to the Government Actuary within 28 days after the date of its receipt by the trustees.” 35

**Part 9**  
**Unit Trusts Act 1960**

- 49 Unit Trusts Act 1960 called principal Act in this Part**  
In this Part the Unit Trusts Act 1960<sup>12</sup> is called “the principal Act”.
- 5
- <sup>12</sup> 1960 No 99
- 50 Accounts, etc, to be filed**  
Section 20 of the principal Act is amended—
- (a) by omitting from subsection (2) the words “of each unit trust, not being”, and substituting the words “, in relation to each unit trust, that is not”:
- 10
- (b) by omitting from subsection (2A) the words “of each unit trust”, and substituting the words “, in relation to each unit trust,”.
-

## New (unanimous)

**Schedule**  
**New Schedules 1 and 2 substituted**

s 40M

**Schedule 1**  
**Acts amended**

s 191(1)

<b>Administration Act 1969</b> (1969 No 52)	5
Omit from the definition of <b>personal chattels</b> in section 2(1) the words “grantor under an instrument by way of security” and substitute the words “debtor under a security interest as defined in the Personal Property Securities Act 1999”.	
<b>Building Societies Act 1965</b> (1965 No 22)	10
Omit from the definition of <b>security</b> in section 2(1) the words “instrument by way of security,”.	
<b>Child Support Act 1991</b> (1991 No 142)	
Omit from section 169(3)(b) the words “section 57 of the Chattels Transfer Act 1924” and substitute the words “the Personal Property Securities Act 1999”.	
Repeal section 169(5) and substitute:	
“(5) For the purposes of this section, the term <b>registration Act to which the property is subject</b> , in relation to any property, means—	20
“(a) the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require, in every case where the property is land or an interest in land (including a mortgage):	
“(b) the Personal Property Securities Act 1999, in every case where the property is subject to a security interest within the meaning of that Act.”	25
<b>Companies Act 1993</b> (1993 No 105)	
Repeal section 319(1)(b) and substitute:	
“(b) give notice of the matters set out in subsection (3) to any person who is entitled to a security interest in respect of which a financing statement has been registered under the Personal Property Securities Act 1999; and”.	30
Repeal section 320(3)(b) and substitute:	35

## New (unanimous)

**Schedule 1**—continued**Companies Act 1993** (1993 No 105)—continued

“(b) a person who is entitled to a security interest in respect of which a financing statement has been registered under the Personal Property Securities Act 1999.” 5

Repeal clause 9 of the Seventh Schedule and substitute:

“9 The claims listed in each of clauses 2, 3, 4, and 5—

“(a) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and 10

“(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them,—

“(i) have priority over the claims of any person under a security interest, other than a purchase money security interest, to the extent that the security interest is over all or any part of the company’s accounts receivable and inventory or all or any part of either of them; and 15

“(ii) must be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds). 20

For the purposes of this clause, the terms **account receivable**, **inventory**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999. 25

“9A Clause 9, as in force immediately before the commencement of the Personal Property Securities Act 1999, continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.” 30

**Corporations (Investigation and Management) Act 1989**

(1989 No 11)

Repeal section 51(2) and substitute: 35

“(2) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of that corporation under section 50(1), being property or assets subject to a security

## New (unanimous)

## Schedule 1—continued

**Corporations (Investigation and Management) Act 1989**

(1989 No 11)—continued

interest, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than— 5

“(a) the costs of the statutory manager in selling or disposing of the property or assets; and

“(b) in the case of proceeds of accounts receivable or inventory that are subject to a non-purchase money security interest, claims in respect of preferential payments made under section 312 of the Companies Act 1993 (as applied by section 55).” 10

Repeal section 51(4) and (5) and substitute:

“(4) Where a statutory manager of a corporation sells or otherwise disposes of any shares in a body corporate formed and registered under section 50(2)(a), any property or assets of which are subject to a security interest, other than a non-purchase money security interest over all or any part of the corporation’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares. 15 20

“(5) Where a statutory manager of a corporation sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 50(2)(a), being property or assets subject to a security interest, other than a non-purchase money security interest over all or any part of the corporation’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets. 25 30

“(6) In subsections (2), (4), and (5), the terms **account receivable**, **inventory**, **non-purchase money security interest**, **proceeds**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.” 35

## New (unanimous)

**Schedule 1**—continued**Criminal Justice Act 1985** (1985 No 120)

Omit from the definition of **encumbrance** in section 84(1) the words “an instrument by way of security.”

Repeal the definition of **instrument by way of security** in section 84(1). 5

Omit from section 86(2A) the words “motor vehicle securities register maintained under the Motor Vehicle Securities Act 1989” and substitute the words “personal property securities register kept under the Personal Property Securities Act 1999”. 10

**Designs Act 1953** (1953 No 65)

Insert, after section 27:

**“27A Application of Personal Property Securities Act 1999**

Nothing in sections 25 to 27 affects the operation of the Personal Property Securities Act 1999.” 15

**Goods and Services Tax Act 1985** (1985 No 141)

Repeal section 42(2)(c) and substitute:

“(c) where a person is a body (as defined in section 57(1)), upon the appointment of a receiver on behalf of any person under any order by the Court, the amount of any tax payable ranks immediately after any preferential claims for any wages or other sums payable to or on account of any servant, worker, apprentice, or artiled clerk, and in priority over any claims of any person under a security interest, other than a purchase money security interest, to the extent that the security interest is over all or any part of the body’s accounts receivable and inventory or all or any part of either of them, and be paid accordingly out of any accounts receivable or inventory subject to that security interest (or their proceeds).” 20 25 30

Repeal section 42(4) and substitute:

“(4) In subsection (2)(c), the terms **account receivable, inventory, proceeds, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999. 35

“(5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a person that is a body

## New (unanimous)

**Schedule 1**—continued

- Goods and Services Tax Act 1985** (1985 No 141)—continued  
 whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.” 5
- Income Tax Act 1994** (1994 No 164)  
 Omit from paragraph (a) of the definition of **commercial bill**, or **bill**, in section OB 1 the words “chattels (as defined in section 2 of the Chattels Transfer Act 1924)” and substitute the words “goods (as defined in section 16 of the Personal Property Securities Act 1999)” 10
- Industrial and Provident Societies Amendment Act 1952**  
 (1952 No 45)  
 Repeal section 13(1) and substitute:
- “(1) The debts that in every liquidation are under the provisions of Part XVI and the Seventh Schedule of the Companies Act 1993 relating to preferential payments to be paid in priority to all other debts must, if a registered society is not in liquidation at the time, be paid in priority to any claim for principal or interest in respect of the security interest, out of— 15
- “(a) any accounts receivable and inventory (or their proceeds) coming into the hands of the receiver who is appointed on behalf of the persons who have a security interest, other than a purchase money security interest, over those assets; or 20
- “(b) any accounts receivable or inventory (or their proceeds) coming into the hands of any other person who has taken possession of all or any part of the society’s property by or on behalf of the persons who have that security interest.” 25
- Repeal section 13(5) and substitute: 30
- “(5) In this section, the terms **account receivable**, **inventory**, **proceeds**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999. 35
- “(6) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a registered society’s property that was subject to a floating charge that, before the

## New (unanimous)

**Schedule 1**—continued**Industrial and Provident Societies Amendment Act 1952**

(1952 No 45)—continued

commencement of that Act, became a fixed or specific charge.”

5

**Layby Sales Act 1971** (1971 No 80)

Omit from section 11(1) the words “floating charge” and substitute the words “security interest, other than a purchase money security interest, over all or any part of the seller’s accounts receivable and inventory or all or any part of either of them”.

10

Add to section 11:

“(4) In subsection (1), the terms **account receivable, inventory, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999.

15

“(5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a seller’s property that was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.”

20

**Legal Services Act 1991** (1991 No 71)

Repeal section 42(1) and substitute:

“(1) If—

“(a) a charge arising under section 40 relates to land, the charge may be registered against that land in accordance with the Statutory Land Charges Registration Act 1928:

25

“(b) a charge arising under section 40 relates to any other property, a financing statement may, in accordance with any regulations made under this Act, be registered under the Personal Property Securities Act 1999.”

30

Repeal section 93(k)(i) and substitute:

“(i) for the registration of a financing statement in respect of any such charge under the Personal Property Securities Act 1999:”.

35

## New (unanimous)

**Schedule 1**—continued**Legal Services Act 1991** (1991 No 71)—continued

Repeal section 93(m) and substitute:

“(m) providing for the registration of legal aid charging agreements under the Land Transfer Act 1952, where appropriate: 5

“(ma) providing for the registration of financing statements in respect of legal aid charging agreements under the Personal Property Securities Act 1999, where appropriate:” 10

**Mercantile Law Act 1908** (1908 No 117)

Repeal section 3(1A) and substitute:

“(1A) Where a mercantile agent is, with the consent of the owner, in possession of goods, or documents of title to the goods, that are subject to a perfected security interest under the Personal Property Securities Act 1999, the person taking under any disposition of the goods is deemed to have notice that the person making the disposition has no authority to make it, unless it is proved that the authority did exist.” 15

**Motor Vehicle Dealers Act 1975** (1975 No 127) 20

Omit from sections 30(3)(c) and 31(1)(f) the expression “Motor Vehicle Securities Act 1989” and substitute the expression “Personal Property Securities Act 1999”.

Repeal section 39(g) and substitute:

“(g) a claim under section 60 of the Personal Property Securities Act 1999.” 25

Omit from section 40(2)(b)(iv) the words “section 34 or section 38 of the Motor Vehicle Securities Act 1989” and substitute the words “section 59 of the Personal Property Securities Act 1999”.

Omit from the second proviso to section 40(3) the words “section 43 of the Motor Vehicle Securities Act 1989” and substitute the words “section 65 of the Personal Property Securities Act 1999”. 30

**Patents Act 1953** (1953 No 64)

Insert, after section 85:

“85A **Application of Personal Property Securities Act 1999** 35  
Nothing in sections 83 to 85 affects the operation of the Personal Property Securities Act 1999.”

## New (unanimous)

**Schedule 1**—continued**Privacy Act 1993** (1993 No 28)

Omit from Part I of the Second Schedule the items relating to the Industrial and Provident Societies Amendment Act 1952 and to the Motor Vehicle Securities Act 1989. 5

Add to Part I of the Second Schedule:

Personal Property Securities Act 1999      Sections 139 and 171 to 174.

**Property Law Act 1952** (1952 No 51)

Add to section 80A:

“(4) Nothing in this section applies to a security interest to which the Personal Property Securities Act 1999 applies.” 10

Repeal section 104PPA(1) and substitute:

“(1) This section applies to a mortgagee, to which this Part applies, of the property of a company, other than a company in liquidation at the time the mortgagee became such a mortgagee, if the mortgagee became such a mortgagee under a security interest, other than a purchase money security interest, over all or any part of the company’s accounts receivable and inventory or all or any part of either of them.” 15

Omit from section 104PPA(2) the words “property that is subject to the charge” and substitute the words “accounts receivable and inventory that are subject to the security interest or their proceeds”. Insert in section 104PPA(2), before the words “any claim”, the words “from those assets”. 20

Add to section 104PPA: 25

“(5) In this section, the terms **account receivable, inventory, proceeds, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999.

“(6) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a company’s property that was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.” 30

**Radiocommunications Act 1989** (1989 No 148) 35

Omit from section 183(4)(b) the words “debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge” and substitute the words “security interest, other than a purchase money

## New (unanimous)

**Schedule 1**—continued**Radiocommunications Act 1989** (1989 No 148)—continued

security interest, over all or any part of the company's accounts receivable and inventory or all or any part of either of them, and be paid accordingly out of any accounts receivable or inventory comprised in or subject to that security interest (or their proceeds)".  
Add to section 183:

- "(5) In subsection (4)(b), the terms **account receivable, inventory, proceeds, purchase money security interest, and security interest** have the same meanings as in the Personal Property Securities Act 1999.
- "(6) Subsection (4)(b), as in force immediately before the commencement of the Personal Property Securities Act 1999, continues to apply in respect of a company whose property was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge."

**Reserve Bank of New Zealand Act 1989** (1989 No 157)

Repeal section 134(2) and substitute:

- "(2) Where the statutory manager of a registered bank sells or otherwise disposes of any property or assets of that bank under section 132(1), being property or assets subject to a security interest, other than a non-purchase money security interest over all or any part of the bank's accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets."

Repeal section 134(4) and (5) and substitute:

- "(4) Where a statutory manager of a registered bank sells or otherwise disposes of any shares in a body corporate formed and registered under section 132(2)(a), any property or assets of which are subject to a security interest, other than a non-purchase money security interest over all or any part of the body corporate's accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares."

## New (unanimous)

**Schedule 1**—continued**Reserve Bank of New Zealand Act 1989** (1989 No 157)—  
continued

- “(5) Where a statutory manager of a registered bank sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 132(2)(a), being property or assets subject to a security interest, other than a non-purchase money security interest in all or any part of the body corporate’s accounts receivable and inventory or all or any part of either of them, the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets. 5 10
- “(6) In subsections (2), (4), and (5), the terms **account receivable, inventory, non-purchase money security interest, proceeds, and security interest** have the same meanings as in the Personal Property Securities Act 1999.” 15

**Resource Management Act 1991** (1991 No 69)

Repeal section 122(4) and substitute: 20

- “(4) Subject to the provisions of this Act, and in particular to subsection (3), the Personal Property Securities Act 1999 applies in relation to a resource consent as if—
- “(a) the resource consent were goods within the meaning of that Act; and 25
- “(b) the resource consent were situated in the Provincial District in which the activity permitted by the consent may be carried out (or, where it may be carried out in more than 1 Provincial District, in those Provincial Districts).” 30

**Rural Intermediate Credit Act 1927** (1927 No 45)

Repeal section 73 and substitute:

- “73 **When securities over chattels may take priority over existing securities** 35
- Despite anything to the contrary in the Personal Property Securities Act 1999, any security interest within the meaning of that Act given for the purpose of securing a loan granted by the Corporation, or by any association under this Act, has priority over any security interest that has previously been

## New (unanimous)

**Schedule 1**—continued

<b>Rural Intermediate Credit Act 1927</b> (1927 No 45)—continued	
perfected by registration (as defined in that Act), comprising in whole or in part any of the same chattels, as regards the title to or right to the possession of those chattels, if the secured party under the previously perfected security interest agrees that the security interest given for the purposes of this Act has priority over the previously perfected security interest.”	5
<b>Sale of Goods Act 1908</b> (1908 No 168)	
Repeal section 23(2)(c) and substitute:	10
“(c) the provisions of the Personal Property Securities Act 1999 enabling a purchaser of goods to acquire good title to the goods.”	
Insert, after section 27(1):	
“(1A) Subsection (1) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 1999, in possession of the goods or documents of title to the goods.”	15 20
Repeal both provisos to section 27(2).	
Insert, after section 27(2):	
“(2A) Subsection (2) does not apply to a delivery or transfer of goods or documents of title to the goods by a person who is, with the consent of the holder of a security interest that has been perfected under the Personal Property Securities Act 1999, in possession of the goods or documents of title to the goods.”	25
Repeal section 27(3) and substitute:	
“(3) In this section,—	30
“ <b>mercantile agent</b> has the same meaning as in Part I of the Mercantile Law Act 1908	
“ <b>security interest</b> has the same meaning as in section 17 of the Personal Property Securities Act 1999.”	

## New (unanimous)

**Schedule 1**—continued**Summary Proceedings Act 1957 (1957 No 87)**

Repeal section 94A and substitute:

**“94A Personal property securities register to be checked**

- “(1) If a motor vehicle is seized under a warrant to seize property, the Registrar must, on the day after the vehicle is seized, check whether a financing statement has been registered in respect of the vehicle on the personal property securities register kept under the Personal Property Securities Act 1999. 5
- “(2) If a financing statement has been registered, the Registrar must forthwith notify the person named as the secured party in the financing statement— 10
- “(a) that the Registrar may, under section 95, sell the vehicle after the expiration of 7 days from the date of seizure, if the fine remains unpaid and no claim has been made by a person other than the defendant in respect of the property: 15
- “(b) of that person’s rights under sections 96 and 97.”

Omit from Part II of the First Schedule the item relating to the Chattels Transfer Act 1924. 20

**Tax Administration Act 1994 (1994 No 166)**

Repeal the definition of **floating charge** in section 3(1).

Repeal the definition of **floating charge** in section 167(4).

Repeal section 169(11) and substitute:

- “(11) In this section, **registration Act to which the property is subject**, in relation to any property, means— 25
- “(a) the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may require, in every case where the property is land or an interest in land (including a mortgage): 30
- “(b) the Personal Property Securities Act 1999, in every case where the property is subject to a security interest within the meaning of that Act.”

**New (unanimous)**

**Schedule 1**—continued

**Trustee Act 1956** (1956 No 61)

Repeal section 39A(3) and substitute:

“(3) A copy of any such inventory, signed by that person and by the trustee, is deemed to be a security interest within the meaning of the Personal Property Securities Act 1999, and a financing statement may be registered accordingly.”

## New (unanimous)

s 191(2)

## Schedule 2

### Regulations amended

#### **Domestic Violence (Public Registers) Regulations 1998** (1998/342)

Omit from Schedule 1 the items relating to the Industrial and Provident Societies Amendment Act 1952 and the Motor Vehicle Securities Act 1989. 5

Add to Schedule 1:

Personal Property Securities Act 1999 Section 139.

#### **Legal Services Regulations 1991** (1991/293) 10

Revoke regulation 42 and substitute:

##### “42 **Registration of charges**

If a charge arising under section 40 of the Act relates to personal property to which the Personal Property Securities Act 1999 applies, a financing statement may be registered 15  
under that Act as if the charge were a security interest within the meaning of that Act.”

**Legislative history**

27 July 1999  
5 October 1999

Introduction and first reading  
Second reading and referral to Commerce Committee  
(Bill 319-1)

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