

Business Law Reform Bill

Government Bill

Explanatory note

General policy statement

By order of the House of Representatives, the Business Law Reform Bill is introduced as an omnibus Bill.

The Government wants the law affecting the operation of businesses to be clear, efficient and effective. This Bill represents a stage in the incremental improvement of existing business law to achieve these goals. The Government is also concerned to effect amendments in a timely manner through an omnibus business law reform Bill.

The Bill contains various amendments to a number of business law statutes. Most of the amendments contained in the Bill are based upon suggestions from business law practitioners, enforcement agencies, and the business community. In general, the amendments—

- clarify and update various statutory provisions to give effect to the intended purpose of the provisions:
- remove unnecessary compliance costs:
- remove conflicts within and between legislation.

The Bill addresses concerns of the business community with business law legislation, as identified by consultation. These are the cumulative costs of complying with legislation and the difficulties in reconciling different legislative requirements. In aggregate, the amendments will reduce some of these costs to promote the efficient use of economic resources, and enterprise and innovation, in the economy.

Clause by clause analysis

Clause 1 relates to the Bill's title.

Clause 2 is the commencement clause. The commencement for all the amendments is the day after the date on which the Bill receives the Royal assent.

Part 1

Building Societies Act 1965

Clause 3 provides that, in this Part, the Building Societies Act 1965 is called "the principal Act".

Clause 4 inserts *new section 91A* into the principal Act to enable building societies to elect to prepare summary financial statements in addition to the annual financial statements required by section 91.

Clause 5 inserts *new subsection (1A)* into section 93 of the principal Act, which sets out requirements relating to the form and content of any summary financial statements.

Clause 6 amends the principal Act by substituting *new section 95*. The new section deals with the signing of financial statements and summary financial statements.

Clause 7 amends the principal Act by substituting *new sections 97A and 97B*. *New section 97A* deals with matters relating to the rights of a building society's members to receive copies of financial statements (including any summary financial statements) and reports. *New section 97B* provides that a member may elect to be sent any summary financial statements that have been prepared and a director's report in place of the financial statements prepared under section 91. If a member has not elected to receive summary financial statements or has elected to receive those statements but no statements have been prepared, then the member must be sent the financial statements prepared under section 91.

Part 2

Commerce Act 1986

Clause 8 provides that, in this Part, the Commerce Act 1986 is called "the principal Act".

Clause 9 amends section 11(3) of the principal Act to clarify the ability of associate members of the Commerce Commission to act on matters before the Commission that are governed by legislation

other than the principal Act. *Clause 9* also makes it clear that all existing and past warrants are valid and legitimate.

Clause 10 amends section 15 of the principal Act. The main amendment is to section 15(2), which will enable the Commerce Commission to convene meetings using telecommunication tools such as video conferencing. The amendment to subsection (1) arises as a consequence of the amendment to section 11(3) of the principal Act. The amendment to subsection (4) removes an unnecessary reference to separate Divisions of the Commission. Subsection (4) concerns the quorum at any meeting of the Commission. This requirement in relation to the quorum already applies to a Division of the Commission because **Commission** is defined in section 2(1) of the principal Act as including a Division.

Clause 11 amends section 16 of the principal Act as a consequence of the amendment to section 11(3) of that Act.

Part 3

Companies Act 1993

Clause 12 provides that, in this Part, the Companies Act 1993 is called “the principal Act”.

Clause 13 amends section 2(3)(b) of the principal Act in order to clarify the meaning of that section.

Clause 14 amends section 74(1)(c) of the principal Act to mirror the wording in section 75.

Clause 15 amends section 77(6) of the principal Act to specify that, when applying the solvency test under section 77,—

- assets exclude not only loans given under section 76 but also loans given under section 107(1)(e); and
- liabilities include not only liabilities incurred in connection with assistance given under section 76 but also liabilities incurred in connection with assistance given under section 107(1)(e).

Clause 16 amends section 108(5) of the principal Act to specify that, when applying the solvency test under section 107,—

- assets exclude loans given under section 76 or section 107(1)(e); and
- liabilities include liabilities incurred in connection with assistance given under section 76 or section 107(1)(e).

Clause 17 amends section 109 of the principal Act. Doubt has arisen as to whether the First Schedule governs the procedure where shareholders exercise their right under section 109 to pass a resolution relating to the management of the company notwithstanding anything in the principal Act. Accordingly, this section is amended to state that, except to the extent that the constitution of the company provides otherwise, the First Schedule governs the procedure for the exercise of a right under section 109.

Clause 18 amends section 129 of the principal Act. Confusion has arisen as to how contingent liabilities are valued. The amendment provides that matters similar to those in section 4 of the principal Act (which sets out the meaning of **solvency test** and provides guidance on determining the value of contingent liabilities) are to be considered when determining the value of contingent liabilities for the purposes of the definition of **major transaction**.

Clause 19 amends section 196 of the principal Act to clarify that an auditor may resign in the period between annual general meetings. The directors of a company commit an offence if they fail to notify the company's shareholders of any such resignation.

Clause 20 amends section 203 of the principal Act so that the section applies when an auditor resigns as well as when an auditor does not wish to be reappointed.

Clause 21 amends section 209 of the principal Act, which deals with the sending of the annual report to shareholders. Subsection (2) is repealed as it merely repeats matters dealt with in sections 212, 216, and 217. The reference to subsection (2) in subsection (1) is replaced with a reference to section 212, which covers the situation where shareholders may elect not to receive documents, including the annual report. This amendment is required as a consequence of the substitution of section 210 of the principal Act with a *new section 210* in *clause 22*.

Clause 22 replaces section 210 of the principal Act. It provides that a shareholder who elects not to receive an annual report may elect to receive any summary financial statements that may exist as well as the financial statements and auditor's report. This amendment recognises the common practice of companies to prepare summary financial statements in addition to full statements. In addition, *new section 210* provides that a shareholder who has elected not to receive an annual report but who has made no election in respect of financial statements or a shareholder who has elected to receive

summary financial statements, but none have been produced, must receive the full financial statements and any auditor's report. Summary financial statements must give a true and fair summary of the matters to which they relate, and every director commits an offence if he or she fails to comply with this section.

Clause 23 amends section 216(1)(b) of the principal Act so that summary financial statements are included in the documents that may be inspected by shareholders. This amendment is a consequence of the substitution of clause 210 of the principal Act with a new section 210 in clause 22.

Clause 24 amends section 318 of the principal Act by adding an additional ground for removal of a company from the register. The new ground is failure to pay the incorporation fee. This is necessary as 90% of all new company incorporations are now conducted on-line and occasionally payment for on-line registration is declined after the company has been incorporated.

Clause 25 amends section 319 as a consequence of the new ground for removal from the register introduced by the amendment to section 318. In particular, if this new ground of failure to pay the incorporation fee is relied on, then the notice required by subsection (1) must state that unless the fee is paid within 20 working days after the date of the notice the company will be removed from the register.

Clause 26 amends section 320 of the principal Act to encourage companies to apply to be removed from the register under section 318(1)(d) (which deals with the situations where the company has ceased to do business or the company has no surplus assets after paying its debts and there has been no creditor application to put the company into liquidation) by providing that the Registrar is responsible for giving public notice of the matters set out in section 320(4).

Clause 27 amends section 321 of the principal Act. The effect of this amendment is that an objection to the removal of a company from the New Zealand register cannot be made if the ground is that set out in new section 318(1)(f) (which allows for a removal of a company from the register if the application fee is not paid).

Clause 28 inserts new sections 360A and 360B. These provisions establish a 2-tier scheme providing for the New Zealand register and the overseas register to be rectified by either the Registrar or the Court.

Clause 29 amends section 374(2) of the principal Act, which imposes penalties on directors, to include within its ambit new

section 196(3B) (which relates to the new requirements that there be notification of the resignation of an auditor). Paragraph (22) is also amended to reflect the changes to the provisions in section 210 (which relates to the duty to send financial statements to shareholders who elect not to receive an annual report).

Clause 30 makes 2 amendments to the First Schedule of the principal Act, which deals with proceedings at meetings of shareholders. According to this schedule, when a board receives notice less than 5 working days before the board itself must give its notice to shareholders that a shareholder proposes to raise a matter at a meeting, the board may if practicable give notice of the proposal to all shareholders at the expense of the person making the proposal. The amendment now makes this requirement mandatory rather than discretionary. The First Schedule is further amended to clarify that a board is not required to publish any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory.

Clause 31 amends the Second Schedule of the principal Act, which lists directors' powers that cannot be delegated, to include the powers under section 49. Under section 49, the board must make certain decisions, pass certain resolutions, and sign a certificate in relation to terms and consideration for the issue of options and convertible securities. Section 49 is very similar in its terms to section 47.

Clause 32 amends the Sixth Schedule of the principal Act, which deals with the powers of liquidators, to expressly provide that the liquidator has the right to change a company's registered office or its address for service.

Part 4

Co-operative Companies Act 1996

Clause 33 provides that, in this Part, the Co-operative Companies Act 1996 is called "the principal Act".

Clause 34 amends the heading before section 29 of the principal Act to include a reference to the Securities Act 1978 as well as the Companies Act 1993. This amendment is a consequence of inserting *new section 29A*, which modifies the application of the Securities Act 1978 to co-operative companies.

Clause 35 amends section 29 of the principal Act, which modifies the application of the Companies Act 1993 to co-operative companies. Section 29(a) modifies section 43(1) of the Companies Act 1993 by extending the period required for the board of a company to

file notice of a share issue from 10 working days to 20 working days. The amendment extends the modification to section 47(5) of the Companies Act 1993. The period in which a copy of the certificate required under section 47(5) of the Companies Act 1993 must be delivered in the case of nominal value shares is also extended from 10 working days to 20 working days. This is desirable because of the logistics of co-operative company share issues.

Clause 36 inserts *new section 29A* into the principal Act. This amendment provides that section 54 of the Securities Act 1978 does not apply to listed co-operative companies. This means that those companies are not required to issue share certificates when issuing shares. The amendment replaces the need to provide for an exemption from this section in the Securities Act (Co-operative Companies) Exemption Notice 2002.

Part 5

Distress and Replevin Act 1908

Clause 37 provides that, in this Part, the Distress and Replevin Act 1908 is called “the principal Act”.

Clause 38 substitutes *new section 4* into the principal Act. *New section 4* relates to chattels that are the property of any tenant or person in possession of any messuages or lands. The amendment—

- replaces the reference to an instrument (as defined in the Chattels Transfer Act 1924) with a reference to a security interest (as defined in the Personal Property Securities Act 1999); and
- clarifies that chattels that are subject to a security interest are deemed, for the purposes of distraint for rent, to be the property of the tenant or person in possession of the messuages or lands in respect of which rent is due at the time distraint is made.

Security interest is defined in section 17 of the Personal Property Securities Act 1999 to mean an interest in personal property created or provided for by a transaction that, in substance, secures payment or performance of an obligation. This includes charges granted by companies that were excluded from the definition of instrument in the Chattels Transfer Act 1924. However, the definition of security interest is narrower than the definition of instrument in some respects. For example, while the definition of instrument included

documents that transferred the property in chattels by way of a gift, this type of document would not be a security interest.

Part 6

Financial Reporting Act 1993

Clause 39 provides that, in this Part, the Financial Reporting Act 1993 is called “the principal Act”.

Clause 40 amends section 2(1) of the principal Act to substitute a new definition of **exempt company** and a new definition of **turnover**. The new definition of **exempt company**—

- clarifies that the relevant time for considering the value of the total assets of the company, whether the company is a subsidiary, and whether the company has subsidiaries, is as at the balance date of the relevant accounting period; and
- clarifies that the value of the total assets of the company includes intangible assets.

The new definition of **turnover**—

- clarifies that the turnover of the company means the total annualised gross operating revenue of the company reported in its financial statements for the accounting period for which the financial statements are required; and
- clarifies that the turnover of the company must include any sales, fee income, grants, output appropriations, cost recoveries, donations, dividends, interest, and subscriptions.

Clause 41 amends section 8 of the principal Act, which relates to the definition of **financial statements**. The amendment clarifies that, if an applicable financial reporting standard requires a statement containing prospective, summary, or interim information for the entity, a statement of prospective, summary, or interim financial information will be a financial statement.

Clause 42 amends section 9 of the principal Act, which relates to the definition of **group financial statements**. The amendment clarifies that, if an applicable financial reporting standard requires a consolidated statement containing prospective, summary, or interim information for the group, a consolidated statement of prospective, summary, or interim financial information will be a group financial statement.

Clause 43 amends section 12 of the principal Act, which relates to the content of financial statements of exempt companies. The

amendment allows an exempt company to comply with section 11 (which relates to the content of financial statements of reporting entities) as if the exempt company were a reporting entity, instead of complying with the Order in Council made by the Governor-General that prescribes the form of, the particulars to be contained in, and the directions to be complied with in the preparation of financial statements of exempt companies.

Clause 44 amends section 24 of the principal Act, which relates to the functions of the Accounting Standards Review Board, to clarify that the Board may review and, if it thinks fit, approve financial reporting standards submitted to it for approval that relate to prospective, summary, or interim financial information.

Part 7

Friendly Societies and Credit Unions Act 1982

Clause 45 provides that, in this Part, the Friendly Societies and Credit Unions Act 1982 is called “the principal Act”.

Clause 46 amends section 78 of the principal Act, which provides for a binding dispute resolution process on, amongst others, members of friendly societies or people claiming through them. The amendment ensures that this provision does not apply to disputes with trustees. This is necessary as the dispute process may conflict with the duties of trustees appointed under the Securities Act 1978.

Clause 47 inserts *new section 109A* into the principal Act. Currently, section 101(2) states that a credit union has no power to do anything that is not authorised by its rules or the principal Act. This could be interpreted to mean that a credit union has no power to appoint a trustee or enter into a trust deed if this matter is not addressed by the credit union’s rules or if the rules expressly provide that a trustee cannot be appointed or a trust deed entered into. This amendment provides that, regardless of a credit union’s rules, it has the power to appoint a trustee and enter into a trust deed as required by the Securities Act 1978 for an issuer of debt securities.

Clause 48 amends section 112 of the principal Act. Section 112(1) provides that a credit union’s property vests in its trustees under the principal Act. The amendment makes it clear that, despite this provision, a trustee appointed under section 33(2) of the Securities Act 1978 is entitled to enforce a security given over a credit union’s assets.

Clause 49 amends the principal Act by repealing section 119, which requires a credit union to maintain general reserves at a specified level. Now that credit unions are required to comply with the Securities Act 1978, the requirements contained in section 119 are unnecessary.

Clauses 50 and 51 amend the Third and Fourth Schedules of the principal Act as a consequence of the amendment to section 78, which provides that the dispute resolution process does not apply to trustees.

Part 8

Life Insurance Act 1908

Clause 52 provides that, in this Part, the Life Insurance Act 1908 is called “the principal Act”.

Clause 53 amends section 34 of the principal Act to provide that, if an insurer is an overseas company registered under the Companies Act 1993 and has an agent appointed under section 336(2)(f) of that Act, it need not comply with section 34 (which requires any foreign insurance company doing business in New Zealand to appoint an agent to accept service of any legal proceedings). This avoids unnecessary duplication of provisions between the Companies Act 1993 and the principal Act.

Part 9

Personal Property Securities Act 1999

Clause 54 provides that, in this Part, the Personal Property Securities Act 1999 is called “the principal Act”.

Clauses 55 and 56 amend sections 5 and 9 of the principal Act to clarify that Part 5 concerns both goods and collateral. Part 5 relates to when buyers or lessees of goods or collateral take the goods or collateral free of security interests.

Clause 57 amends section 16(1) of the principal Act to—

- clarify that the interest of a lessor of goods under a lease for a term of 1 year or less may, in certain circumstances, be a **purchase money security interest**. A similar amendment is also made to the definition of **debtor**; and
- insert a definition for **related company** (which has the same meaning as in section 2(3) of the Companies Act 1993).

Clause 58 amends section 17 of the principal Act to clarify that certain beneficial interests in insolvent distributions are not security interests.

Clause 59 amends section 19(1) of the principal Act to specify when a government department has knowledge of a fact. A government department will be taken to have knowledge of a fact when the fact is brought to the attention of a senior employee in the relevant department under circumstances in which a reasonable person would take cognisance of it. This provision is similar to the equivalent provision in the Saskatchewan Personal Property Security Act 1993.

Clause 60 amends section 23(c) of the principal Act to confirm that, while the principal Act does not apply to any right of set-off, this does not limit section 102. Section 102 specifies that the rights of certain assignees are subject to a defence by way of a right of set-off by a debtor against an assignor.

Clause 61 amends the heading to section 25 of the principal Act to ensure that it better reflects the intent of that section.

Clause 62 amends section 28(1) of the principal Act to clarify that the temporary perfection of a security interest in collateral that is moved to New Zealand does not require registration to be effective.

Clause 63 amends section 48(b) of the principal Act. Section 48(b) relates to the temporary perfection of security interests in investment securities and negotiable instruments. The amendment replaces the word “delivered” with the words “gave possession of”. The concept of “possession” is more appropriate, as this term is defined in section 18 of the principal Act in the context of investment securities and negotiable instruments.

Clause 64 amends section 50(c) of the principal Act to clarify that the section does not permit a secured party to perfect its interest in goods in the possession of a bailee merely by obtaining a document of title in its name from a debtor in circumstances in which the debtor is also the bailee.

Clause 65 amends the heading to Part 5 of the principal Act to ensure that it better reflects the intent of that Part.

Clause 66 amends section 65(1)(a) of the principal Act to correct a reference to section 59 by replacing it with a reference to section 58.

Clause 67 amends section 68 of the principal Act to ensure that it is subject to sections 46 and 47. Section 68 provides that the time of

registration, possession, or perfection of a security interest in original collateral is also the time of registration, possession, or perfection of its proceeds. However, sections 46 and 47 specify when a security interest is continuously perfected and when it is temporarily perfected. The amendment clarifies that the time of perfection of a security interest in the original collateral is no longer relevant if the security interest is not continuously perfected under section 46 and after temporary perfection under section 47 has expired.

Clause 68 inserts *new section 75A* into the principal Act. *New section 75A* provides that a security interest in accounts receivable (being a security interest that is in the original collateral) that is given for new value has priority over a purchase money security interest in the accounts receivable as proceeds of inventory if a financing statement relating to the security interest is registered before the purchase money security interest is perfected or a financing statement relating to it is registered. This provision is based on an equivalent provision in the Saskatchewan Personal Property Security Act 1993.

Clause 69 amends the heading to section 93 of the principal Act to ensure that it better reflects the intent of that section.

Clause 70 amends section 102(1)(b) of the principal Act. Section 102(1)(b) specifies that the rights of certain assignees are subject to certain defences or claims that a debtor has against the assignor. The amendment confirms that the reference to defences includes a defence by way of a right of set-off.

Clause 71 amends section 103 of the principal Act. Section 103 relates to the priority that an execution creditor has over unperfected security interests at the time of execution. The amendment clarifies the definition of **time of execution** in various circumstances.

Clause 72 substitutes *new section 108* into the principal Act. *New section 108* relates to secured parties that apply certain collateral in the form of accounts receivable, investment securities, money, or negotiable instruments towards the satisfaction of secured obligations. The new section clarifies that—

- the collateral is applied towards the satisfaction of the obligation secured by the security interest; and
- the section applies even if the account receivable, investment security, money, or negotiable instrument is held by another person.

Clause 73 amends section 123 of the principal Act. Section 123 relates to the position where persons who are entitled to notice do not object to the retention of the collateral by the secured party. The amendment clarifies that, in these circumstances, the secured party is deemed to have taken the collateral towards the satisfaction of the obligation secured by it rather than in satisfaction of the obligation secured by it.

Clause 74 amends section 140(d) of the principal Act to remove an express reference to the register containing authorised serial numbers. The register will continue to contain serial numbers that are required by the Act.

Clause 75 amends section 142 of the principal Act. Section 142 relates to the data that is required to register a financing statement. The amendment—

- confirms that section 142 does not limit section 149. Section 149 confirms that the validity of a registration of a financing statement is not affected by any defect, irregularity, omission, or error in that statement unless the defect, irregularity, omission, or error is seriously misleading; and
- removes an express reference to the financing statement containing authorised serial numbers. Serial numbers that are required by the Act will continue to be required to be contained in a financing statement in order to register it.

Clause 76 amends section 148 of the principal Act to confirm that a financing statement or financing change statement may be registered on behalf of a secured party.

Clause 77 inserts *new section 169A* into the principal Act. *New section 169A* allows the Registrar to restore a registration to the register if the registration has been incorrectly discharged or removed. The registration is restored, rather than re-registered, to ensure that the registration does not lose its priority.

Clause 78 substitutes *new sections 170 and 170A* into the principal Act. *New section 170* allows data in a registration to be removed if the Registrar is satisfied that the data is frivolous or vexatious. Before the Registrar makes a decision to remove data for this reason, the Registrar must give the secured party 10 working days' notice to show cause why the data is not frivolous or vexatious. *New section 170A* allows the Registrar to correct any clerical error or omission.

Clause 79 amends section 172(e) of the principal Act to remove an express reference to authorised serial numbers as one of the register

search criteria. Serial numbers that are required by the Act will continue to be one of the register search criteria.

Clause 80 amends section 173(c) of the principal Act to insert 2 additional search purposes. The new search purposes allow a person to search the register in relation to a company that is related to a company to whom they are considering whether to provide credit to, or to obtain a guarantee or an indemnity from, or to invest in, with, or through.

Clause 81 amends section 177(1)(c) of the principal Act to change a reference to “personal property” to “collateral”.

Clause 82 amends section 196 of the principal Act. Section 196 relates to the deemed perfection of prior security interests during the transitional period. The amendment concerns the situation in which there is only 1 security interest at the time that the Act comes into force. The amendment clarifies that, in this situation, the security interest has priority during the transitional period.

Clause 83 amends section 197 of the principal Act to clarify that a prior security interest may be perfected both before and after the close of the transitional period. However, *clause 84* amends section 198 of the principal Act to provide that, if a prior security interest that is deemed to be an unperfected security interest (because it was not perfected during the transitional period) is subsequently perfected, then that perfection is only effective from the time of that perfection.

Clause 85 amends section 199(a) and (b) of the principal Act to replace the word “time” with the word “date”. Section 199(a) and (b) relates to when a security interest was registered under a prior registration law and when it was created. The amendment reflects the fact that, while the exact time of these events will in many cases be unknown, the date of these events will be known.

Part 10

Securities Act 1978

Clause 86 provides that, in this Part, the Securities Act 1978 is called “the principal Act”.

Clause 87 amends definitions in the principal Act. The main changes are to—

- amend the definition of **chattel** to exclude book debts and negotiable instruments (to avoid doubt that may be caused by

book debts and negotiable instruments being chattels for other legal purposes):

- insert a new definition of **employee superannuation scheme** for the purposes of a new exemption in section 5:
- omit references to specific professions from the definition of **expert** on the basis that they are unnecessary and may unduly restrict the interpretation of the definition:
- replace the definition of **manager** for participatory securities with a new definition intended to better reflect the role of a manager. Under the new definition, a manager is a person on whose behalf any money paid in consideration for the allotment of the securities is received or a person with an obligation to act in the continuing administration or management of the scheme. A promoter of a scheme will no longer be a manager.

In addition, *clause 87* updates the definition of **company**, corrects wrong cross-references in the definitions of **convertible note**, **date of a prospectus**, and **date of a registered prospectus**, and repeals the redundant definitions of **labour share** and **local authority**.

Clause 88 amends section 2A of the principal Act as a consequence of the exemption in section 3(6) being replaced by the exemption in *new section 5(2CA)*.

Clause 89 amends section 3 of the principal Act, which determines when an offer of securities is made to the public for the purposes of the Act. There are 2 main amendments.

The exemption for close business associates and relatives of the issuer is extended to cover also close business associates and relatives of directors of the issuer. The specific reference to “directors of the issuer” is not intended to limit the Court of Appeal’s decision in *Securities Commission v Kiwi Co-operative Dairies Ltd* as to when someone is a close business associate of an issuer.

A new exemption is included for persons who are wealthy and experienced in investing money on the basis that these persons should have enough experience in investment to evaluate the risks and merits of the investment without disclosure under Part II of the principal Act, should have substantial assets, and should be well placed to bear financial risk. A person is—

- **wealthy** if the person has net assets of at least \$2,000,000 and had an annual gross income for each of the last 2 financial

years of at least \$200,000 (as certified by a chartered accountant). These minimum amounts may be amended by Order in Council; and

- **experienced** if a reasonable person would think that the person, as a result of having experience in investing money, is able to assess the merits of the offer, the value of the securities, the risks in accepting the offer, the person's own information needs, and the adequacy of the information provided by the offeror.

A further new exemption is included for persons who are experienced in the industry or business to which the securities relate on the basis that these persons should have enough experience to access information they need to evaluate the risks and merits of the investment without disclosure under Part II. A person is **experienced** if a reasonable person would think that the person, as a result of having experience of that kind, is able to assess the merits of the offer, the value of the securities, the risks in accepting the offer, the person's own information needs, and the adequacy of the information provided by the offeror.

Clause 90 amends a number of the exemptions in section 5 of the principal Act.

The exemption for labour shares is repealed, as labour shares no longer exist under the Companies Act 1993.

An exemption is inserted as *new section 5(2CA)* to replace the pre-prospectus advertising exemption that was previously in section 3(6). The revised exemption continues to exempt advertisements that state only limited information. But the exemption is changed in the following ways:

- the advertisement may also seek expressions of interest; and
- the advertisement must state that no money is currently being sought and that no applications will be accepted or money received unless the subscriber has received an investment statement; and
- the advertisement must be dated and must not be distributed later than 6 months after its date; and
- it is clarified that the advertisement does not have to state all of the listed information; and

- section 38B (Securities Commission's power to prohibit advertisements) and section 58 (criminal liability for mis-statements) will apply to the advertisement (and, accordingly, the statement will no longer be excluded from being an advertisement under section 2A).

The exemption in section 5(2E) from prospectus requirements for small employee superannuation schemes is replaced with an exemption from the same prospectus requirements for employee superannuation schemes whatever their size. There is no sunset clause for the new exemption.

The Securities Commission's exemption power in section 5(5) is amended to allow exemptions for transactions or classes of transactions, as well as persons or classes of persons. This change will clarify that exemptions may be granted based on the characteristics of the offer or the security itself, rather than on the characteristics of the issuer or intermediary.

Clause 91 updates a wrong cross-reference in section 27 of the principal Act.

Clause 92 inserts a new general requirement for subscriptions to be held in trust until securities are allotted or the subscriptions are repaid to the subscribers under the principal Act (*new section 36A*). Currently, sections 37, 38F, and 44 of the principal Act require subscriptions to be held in trust if securities are not able to be allotted. However, these requirements arguably do not apply until it is known that the securities cannot be allotted, which undermines the protection these requirements provide.

Clause 93 amends the minimum subscription requirement in section 37 of the principal Act so that it applies whenever an offer of securities is made for which the regulations require minimum subscription amounts to be stated (and not only to the first offer of securities). This change is made on the basis that the minimum subscription requirement is equally relevant to subsequent, as well as first, offers.

This clause also removes the requirement to hold subscriptions on trust if securities cannot be allotted under section 37, now that there is a general requirement to do so in *new section 36A*.

Clause 94 repeals section 37A(2) of the principal Act, which prohibits offers of equity securities and participatory securities being made unless the amount payable on application for the securities is at least

10% of the nominal amount of the security. The concept of nominal value does not exist for shares under the Companies Act 1993.

Clause 95 amends section 38F of the principal Act as a consequence of the general requirement to hold subscriptions on trust in *new section 36A*.

Clause 96 removes the requirement to deliver 2 copies of a memorandum of amendments to a prospectus to the Registrar of Companies, which is unnecessary with modern office facilities. Instead, only 1 copy is required.

Clause 97 amends section 44 of the principal Act as a consequence of the general requirement to hold subscriptions on trust in *new section 36A*.

Clauses 98, 99, 101, 102, and 104 repeal obsolete references in the principal Act to the Companies Act 1955.

Clause 99 also amends section 52 of the principal Act so that only the security holder, and not any person, has the right to inspect a copy of a unit trust register. This change will make the rights of access for unit trust registers the same as those that apply for superannuation and life insurance registers, on the basis that privacy concerns are equally applicable to unit trust registers.

Clause 100 amends section 53E of the principal Act so that audits are required annually for schemes to which participatory securities relate, and not only if the statutory supervisor requires the audit. This change makes the audit treatment of participatory securities consistent with other securities.

Clause 103 replaces section 61 of the principal Act with new provisions regulating the indemnities or insurance that may be given to directors, employees, and auditors of the issuer. The new provisions are more consistent with the indemnities and insurance permitted under the Companies Act 1993. The main changes from the current section 61 are as follows:

- insurance (as well as indemnities) for liability for negligence, default, breach of duty, or breach of trust is now prohibited unless permitted under *new section 61B*; and
- the prohibition applies to costs in defending or settling claims or proceedings (as well as the substantive liability); and
- directors who authorise insurance for a director or employee must certify that the cost of the insurance is fair to the issuer. The insured director or employee is personally liable for the

cost of insurance if no certificate is signed or if there are not reasonable grounds for the opinion in the certificate (unless the cost was in fact fair to the issuer).

Part 11

Securities Markets Act 1988

Clause 105 provides that, in this Part, the Securities Markets Act 1988 is called “the principal Act”.

Clause 106 amends the interpretation provision of the principal Act to update the definition of **company**.

Clauses 107, 108, 110, and 111 repeal obsolete references in the principal Act to the Companies Act 1955.

Clause 109 amends section 26 of the principal Act so that public issuers that are companies must send the note disclosing the identity of substantial securities holders with the annual report, or financial statements or summary financial statements, sent to shareholders (rather than presenting it at a general meeting).

Part 12

Superannuation Schemes Act 1989

Clause 112 provides that, in this Part, the Superannuation Schemes Act 1989 is called “the principal Act”.

Clauses 113 and 114 amend sections 14 and 17(1)(b) of the principal Act as a consequence of the amendment to the Second Schedule in *clause 118*, which permits trustees to include abridged accounts in their annual report instead of full accounts if the auditor’s report in respect of the full accounts is unqualified. The amendments are as follows:

- section 14, which deals with the annual reports, is amended to provide that, if only abridged accounts are contained in the annual report of a registered superannuation scheme (a **scheme**), a copy of the annual accounts must also be sent to the Government Actuary;
- section 17(1)(b), which relates to member’s rights to information, is amended to provide that the annual accounts and auditor’s report in relation to those accounts must be made available on request to members of a scheme. If there is no auditor’s report, then the certificates required under section 13(2) of the principal Act must be made available.

Clause 115 amends section 20A of the principal Act. At present, this section only enables a receiver or liquidator to designate or appoint an independent trustee if the employer was a trustee before being put into receivership or liquidation. The amendment provides that section 20A also applies if, before the appointment of a receiver or liquidator, the employer, although not a trustee, had the power to appoint a trustee. This amendment ensures that there is at least 1 independent trustee to protect the interests of the members and beneficiaries when the employer is in financial difficulties.

Clause 116 amends section 21 of the principal Act, which deals with the winding up of a scheme. The absence of time limits relating to the final accounts is resulting in lengthy delays in complying with this section. This amendment imposes express time limits.

Clause 117 amends section 25(2) of the principal Act by creating a new offence of failing to appoint an independent trustee under *new section 20A(1A)* if required to do so.

Clause 118 amends the Second Schedule of the principal Act to enable a trustee of a scheme to include abridged accounts in the annual report instead of full accounts if the auditor's report in respect of the full accounts is unqualified. The amendment sets out certain additional requirements that must be met if abridged accounts are used instead of full accounts. Some additional clauses are also added to the Second Schedule that relate to information to be included in the annual report and made available to members.

Part 13

Unit Trusts Act 1960

Clause 119 provides that, in this Part, the Unit Trusts Act 1960 is called "the principal Act".

Clause 120 amends section 4 of the principal Act to allow a bond to be released once the trustee and manager of a unit trust have given notice to the Registrar of Companies that the unit trust has been wound up according to the trust deed. At present, bonds are required to be given by an approved surety as a condition of acting as a manager of a unit trust. Unit trust managers usually either deposit a sum equivalent to the bond with the surety or pay an overdraft rate for the bond facility. However, the status of the bond after the winding up of the unit trust is not addressed in the principal Act. This amendment addresses this matter.

Clause 121 repeals section 20(1) of the principal Act as the information required by this section is largely a duplication of the information already required to be kept in a register by the issuers of unit trusts under section 51 of the Securities Act 1978. By repealing this section, compliance costs will be reduced.

Clause 122 removes some obsolete references to sections 13 and 7(2) in section 25 of the principal Act and increases the penalty amounts in section 25 as follows:

- the maximum penalty for offering or issuing units contrary to the Act, or continuing to act in relation to a unit trust after being removed as a manager, is increased from \$1,000 to \$1,000,000;
- the maximum penalty for breaches of sections 9, 11, 14, and 20 of the principal Act is increased from \$200 to \$10,000;
- the maximum financial penalty for the offence of acting, without the Minister's consent, as a director, officer or responsible employee of a company that is a manager of a unit trust where the person so acting has been previously convicted of an offence involving dishonesty is increased from \$200 to \$200,000.

Regulatory impact and compliance cost statement

Public policy objective

The Business Law Reform Bill is an omnibus bill that contains minor changes to a number of business law statutes that in their own right would not justify a single piece of legislation. In aggregate, the changes proposed in the Business Law Reform Bill will achieve the key public policy objective of ensuring that the law affecting the operation of business is clear, efficient, and effective.

The Bill represents the ongoing incremental improvement of existing business law to achieve these goals. In particular, the Bill will—

- remove unnecessary compliance costs associated with some legislation; and
- clarify various statutory provisions; and
- ensure consistency between different legislative requirements; and
- update various statutory provisions.

Statement of the problem and the need for action

The Ministry of Economic Development has responsibility for the administration of a large amount of technical and complex business law regulations. In total, the Ministry administers approximately 40 business law Acts.

It is important to ensure that the legislation provided to businesses facilitates business activity and does not impact adversely on either the ability of business to function or the effective and efficient operation of markets in which those businesses are a part. Given the amount and complexity of legislation that businesses operate under, it is inevitable that amendments will need to be made to ensure this aim continues to be met. As the business environment changes, legislation must be continually updated to keep pace with developments in the marketplace.

Though changes effected through the Business Law Reform Bill are individually small, in totality they will have a significant and positive impact on the body of business laws that the Ministry administers.

Statement of options for achieving the desired objectives

No non-regulatory measures exist that would be capable of achieving the specified objectives. Since the complications arise from the wording of the statutes they can only be addressed by Parliament amending those statutes.

Consultation with business law practitioners, enforcement agencies, and the business community has revealed 92 minor changes across 13 statutes that could achieve the broader policy objectives stated above. The following commentary provides several examples that are illustrative of measures proposed for the Business Law Reform Bill.

Compliance costs

As mentioned, one of the key aims of the Bill is to reduce compliance costs associated with administrative processes.

An example of this is section 5(2E) and (2F) of the Securities Act 1978 relating to employer-based superannuation schemes. A number of industry participants expressed their concern at the unnecessary compliance costs associated with having to register a prospectus for employer-sponsored superannuation schemes under the Act. Indeed, one submitter claimed that complying with this provision

cost up to \$100,000 annually. Industry participants commented that they seldom have enquiries for the prospectus and in light of the expense of preparing and publishing a prospectus, they consider that the costs outweigh the benefits. It is proposed to exempt employer-based superannuation schemes from the prospectus requirements in the Act. This will greatly reduce compliance costs for the operators of such schemes.

Another example is section 97A of the Building Societies Act 1965 and section 210 of the Companies Act 1993, where certain financial documents must be sent to all members of building societies or shareholders of companies. Consultation has revealed that in many cases the members or shareholders are not interested and indeed may not wish to receive all of the financial disclosure documents. In this instance, the cost of printing and posting such documents is an unnecessary compliance cost. It is proposed that members or shareholders be able to opt out of receiving certain information.

One further example is sections 10 and 12 of the Financial Reporting Act 1993, which set out the disclosure requirements for reporting entities and exempt companies. Exempt companies are those with, among other requirements, assets of less than \$450,000 and a turnover of less than \$1,000,000. Exempt companies have lesser disclosure requirements than reporting entities. Consultation has revealed that in some instances exempt companies will have prepared fuller disclosure, for other reasons, yet must prepare additional lesser disclosure documents under the exempt companies regime. It is proposed that exempt companies be able to opt into fuller disclosure. This will provide exempt companies with the flexibility to make compliance cost savings.

Clarifications

Another key aim of the Bill is to improve the clarity of our existing commercial law statutes.

One example of this is section 2 of the Securities Act 1978. The Act defines **expert** as any person who holds himself or herself out to be of a profession or calling that gives authority to a statement made by him or her; and includes an accountant, engineer, valuer, quantity surveyor, and geologist. It is considered that the inclusion of specific professions risks an unduly narrow interpretation being placed on this section to the exclusion of other sections. It is proposed to remove the reference to specific professions. This would avoid the

costs that could be generated by businesses and regulators requiring legal advice or resorting to the courts to interpret this section.

Consistency

The Bill also aims to remove anomalies in the law that have emerged over time.

For example, section 53E of the Securities Act 1978 provides that issuers of equity securities, debt securities, life insurance policies, unit trusts, and superannuation schemes must ensure that the financial statements are audited annually by a qualified auditor. In the case of participatory securities, annual audits are carried out only if the statutory supervisor so requires. It is proposed that all arrangements or schemes to which participatory securities relate be audited annually to remove this inconsistency.

Updating the law

This process is particularly important as, among other things, it allows business to take full advantage of the new information technology environment.

For example, section 15(2) of the Commerce Act 1986 prescribes that meetings of the Commerce Commission be held at such times and places as the Commission determines. This does not provide the Commission with sufficient flexibility to convene meetings using teleconferencing tools. It is proposed that section 15(2) be amended to allow the Commission to take advantage of technology to convene meetings.

Statement of the net benefits of the proposal

Amendments to business law statutes through the Business Law Reform Bill will achieve incremental improvement of business law, thereby causing a net reduction in compliance costs. This incremental improvement will also ensure that the body of business law has the following characteristics:

- clear statutory provisions, where money is not spent on legal fees to establish their meaning, and businesses and regulators can proceed with certainty; and
- up-to-date statutory provisions, where businesses and regulators can take full advantage of information technology; and

- technically correct regulation that ensures that business and the regulation thereof operate efficiently, for example, regulation that avoids duplicating the requirements placed on businesses; and
- regulation that is free from redundant provisions, ensuring that the body of law is uncluttered and credible; and
- statutory provisions that are meaningful, where effect is given to the intended purpose.

Business compliance cost statement

The Business Law Reform Bill is the outcome of the ongoing and close consultation between the Ministry of Economic Development and the business sector. This consultative relationship is continually identifying areas where minor amendments will create net benefit for business and New Zealand at large. In aggregate, the amendments will reduce some of the costs of compliance, thereby promoting the efficient use of economic resources, enterprise, and innovation within the economy.

Consultative programme

The Ministry has consulted with the Institute of Chartered Accountants, the New Zealand Law Society, the Securities Commission, the Accounting Standards Review Board, the New Zealand Society of Actuaries, the Association of Superannuation Funds of New Zealand, and a number of private business law practitioners.

The Treasury, the Ministry of Justice, the Department for Courts, the Privacy Commissioner, the Inland Revenue Department, the Department of Prime Minister and Cabinet, the Ministry of Consumer Affairs, and Te Puni Kōkiri have also been consulted.

Hon Lianne Dalziel

Business Law Reform Bill

Government Bill

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Business Law Reform

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Business Law Reform Act **2003**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- Part 1**
Building Societies Act 1965
- 3 Building Societies Act 1965 called principal Act in this Part**
In this Part, the Building Societies Act 1965¹ is called “the principal Act”. 10
¹ 1965 No 22
- 4 New section 91A inserted**
The principal Act is amended by inserting, after section 91, the following section:
- “91A Summary financial statements”** 15
- “(1) In addition to the financial statements required under section 91, a society may also prepare summary financial statements.**
- “(2) Any summary financial statements must be prepared within 4 months after the end of the financial year.**
- “(3) The directors of every society must lay any summary financial statements before the society at the annual general meeting.”** 20
- 5 Form and content of financial statements**
Section 93 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) Summary financial statements prepared under section 91A must—** 25
- “(a) give a true and fair view of the matters to which they relate; and**
- “(b) comply with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993; and** 30
- “(c) be in the form and contain the information that may be prescribed.”**

- 6 New section 95 substituted**
 The principal Act is amended by repealing section 95, and substituting the following section:
- “95 Signing of financial statements and summary financial statements** 5
- “(1) The financial statements required by sections 91 and 92 and any summary financial statements prepared under **section 91A** must be signed on behalf of the board of directors by 2 directors of the society.
- “(2) The financial statements referred to in **subsection (1)** must be approved by the board of directors before they are signed on their behalf. 10
- “(3) If the financial statements referred to in **subsection (1)** have not been signed and a copy of them is issued, circulated, or published, the society and every officer of the society who is in default is guilty of an offence.” 15
- 7 New sections 97A and 97B substituted**
 The principal Act is amended by repealing section 97A, and substituting the following sections:
- “97A Distribution of copies of financial statements and reports** 20
- “(1) Except as provided in **section 97B**, a copy of the financial statements required by section 91 to be laid before a society at the annual general meeting, together with a copy of the auditor’s report and of the directors’ report, or a copy of the summary financial statements prepared under **section 91A** (if any) and of the directors’ report, must, not less than 14 days before the date of the meeting,— 25
- “(a) be sent to the members of the society; or
- “(b) subject to the society’s rules and to any conditions or requirements that may be prescribed, published in major daily newspapers circulating generally in those parts of New Zealand where the members reside. 30
- “(2) Except in the case of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1993, 2 copies of the financial statements and reports referred to in **subsection (1)**, each having been certified both by a director and the manager or secretary of the society to be a true copy, must be sent at the same time to the Registrar, who must then 35

send 1 copy to the appropriate District Registrar of Companies.

- “(3) The directors of a society that is an issuer within the meaning of section 4 of the Financial Reporting Act 1993 must attach to the financial statements to be delivered to the Registrar of Companies under that Act any financial statements required by section 91(1)(d). 5
- “(4) Every depositor in or member of a society, including a depositor or member who has made an election under **section 97B**, is entitled, on demand and without charge, to be supplied a copy of the last financial statements required under section 91 and reports of the society required to be laid before that society at the annual general meeting. 10
- “(5) However, **subsection (4)** does not apply if the depositor in or member of a society,— 15
- “(a) has previously been sent a copy of the last financial statements required under section 91 and the reports referred to in **subsection (1)**; or
- “(b) has already demanded and received a copy of the financial statements and reports under **subsection (4)**. 20
- “(6) The society, and every officer of the society, is guilty of an offence if default is made—
- “(a) in complying with **subsection (1) or subsection (2)**; or
- “(b) in supplying to any depositor or member, within 7 days after a demand is made under **subsection (4)**, a copy of the financial statements and reports with which that depositor or member is entitled to be supplied. 25

“97B **Election to receive summary financial statements**

- “(1) A member of a society may, by written notice to the society, elect to be sent each year, in place of the financial statements prepared under section 91, summary financial statements prepared under **section 91A** (if any) and a directors’ report, and the society must cause those documents to be sent to the member in accordance with **section 97A(1)**. 30
- “(2) The society must cause to be sent to a member of the society financial statements prepared under section 91 and any reports required to be attached to those statements if the member— 35
- “(a) has not made any election under **subsection (1)**; or

“(b) has made an election under **subsection (1)** to receive summary financial statements prepared under **section 91A**, but the society has not produced any such statements.”

Part 2

Commerce Act 1986

- | | | |
|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| | | 5 |
| 8 | Commerce Act 1986 called principal Act in this Part
In this Part, the Commerce Act 1986 ² is called “the principal Act”. | |
| | ² 1986 No 5 | |
| 9 | Associate members | |
| (1) | Section 11(3) of the principal Act is amended— | 10 |
| | (a) by inserting, after the words “under this Act”, the words “or any other Act”; and | |
| | (b) by omitting the words “to a member shall”, and substituting the words “or in any other Act to a member of the Commission must”. | 15 |
| (2) | For the avoidance of doubt, any appointment made before the commencement of this Act under section 11 of the principal Act is valid and effective whether or not it relates to a matter or class of matters under an Act other than the principal Act. | |
| 10 | Meetings of Commission | 20 |
| (1) | Section 15(1) of the principal Act is amended by adding the words “or any other Act”. | |
| (2) | Section 15 of the principal Act is amended by repealing subsection (2), and substituting the following subsections: | |
| “(2) | Meetings of the Commission are to be held at the places, dates, and times, and by the methods, that the Chairman determines. | 25 |
| “(2A) | A meeting of the Commission may be held either— | |
| | “(a) by a quorum of members being assembled together at the place, date, and time appointed for the meeting; or | 30 |
| | “(b) by means of audio, or audio and visual, communication by which a quorum of members can simultaneously hear each other throughout the meeting.” | |
| (3) | Section 15(4) of the principal Act is amended by omitting the words “, or of any separate Division of the Commission acting under section 16(1) of this Act,”. | 35 |

- 11 Chairman may direct Commission to sit in Divisions**
- (1) Section 16(1) of the principal Act is amended by inserting, after the words “under this Act”, the words “or any other Act”. 5
- (2) Section 16(6) of the principal Act is amended by inserting, after the words “under this Act”, the words “or any other Act”. 5
- Part 3**
Companies Act 1993
- 12 Companies Act 1993 called principal Act in this Part** 10
In this Part, the Companies Act 1993³ is called “the principal Act”.
³ 1993 No 105
- 13 Interpretation**
- Section 2(3)(b) of the principal Act is amended by omitting the word “capital”, and substituting the word “capital,”. 15
- 14 Redemption at option of shareholder**
- Section 74(1)(c) of the principal Act is amended by omitting the word “sum”, and substituting the word “consideration”.
- 15 Company must satisfy solvency test** 20
Section 77(6) of the principal Act is amended—
- (a) by inserting in the definition of **assets**, after the expression “section 76”, the words “or section 107(1)(e)”; and
- (b) by inserting in the definition of **liabilities**, after the expression “section 76”, the words “or section 107(1)(e)”. 25
- 16 Company to satisfy solvency test**
- (1) Section 108(5)(a) of the principal Act is amended by inserting, after the words “at any time”, the words “under section 76 or section 107(1)(e)”. 30
- (2) Section 108(5)(b) of the principal Act is amended by omitting the words “the financial assistance”, and substituting the words “financial assistance under section 76 or section 107(1)(e)”.

17 Management review by shareholders

- (1) Section 109(2) of the principal Act is amended by omitting the words “subsection (3) of this section”, and substituting the words “subsections (2A) and (3)”.
- (2) Section 109 of the principal Act is amended by inserting, after subsection (2), the following subsection: 5
- “(2A) The provisions of the First Schedule govern proceedings at a meeting of shareholders at which a resolution under this section is passed except to the extent that the constitution of the company provides for matters that are expressed in that schedule to be subject to the constitution of the company.” 10

18 Major transactions

- Section 129 of the principal Act is amended by inserting, after subsection (2A), the following subsection:
- “(2B) In assessing the value of any contingent liability for the purposes of paragraph (c) of the definition of **major transaction** in subsection (2), the directors— 15
- “(a) must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability; and 20
- “(b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- “(c) may take account of—
- “(i) the likelihood of the contingency occurring; and
- “(ii) any claim the company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.” 25

19 Appointment of auditors

- Section 196 of the principal Act is amended by inserting, after subsection (3), the following subsections: 30
- “(3A) An auditor may resign at any time by giving written notice to the board of the company, and the company must, as soon as practicable, notify its shareholders of the auditor’s resignation.
- “(3B) If a company fails to comply with **subsection (3A)**, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).” 35

20 Auditor not seeking reappointment

- (1) The heading to section 203 of the principal Act is amended by adding the words “**or resigning**”.
- (2) Section 203 of the principal Act is amended by repealing subsection (1), and substituting the following subsection: 5
- “(1) If an auditor gives the board of a company written notice that he or she does not wish to be reappointed or of his or her resignation, the board must, if requested to do so by that auditor,—
- “(a) distribute to all shareholders, at the expense of the company, a written statement of the auditor’s reasons for his or her wish not to be reappointed or for his or her resignation; or 10
- “(b) permit the auditor or his or her representative to explain at a shareholders’ meeting the reasons for his or her wish not to be reappointed or for his or her resignation.” 15

21 Sending of annual report to shareholders

- (1) Section 209(1) of the principal Act is amended by omitting the words “Subject to subsection (2) of this section”, and substituting the words “Subject to section 212”. 20
- (2) Section 209(2) is repealed.

22 New section 210 substituted

The principal Act is amended by repealing section 210, and substituting the following section:

- “210 **Information for shareholders who elect not to receive annual report** 25
- “(1) A shareholder of a company who has elected under section 212 not to receive an annual report may, by written notice to the company, elect to be sent each year in place of the annual report any or all of the following documents, and the board of the company must cause those documents to be sent to the shareholder each year: 30
- “(a) financial statements, including any group financial statements and any auditor’s report required under Part XI: 35
- “(b) summary financial statements, if any.
- “(2) The board of a company must cause to be sent to a shareholder of the company who has elected under section 212 not to

receive an annual report, financial statements (including any group financial statements) and any auditor's report required under Part XI if the shareholder—

“(a) has not made any election under **subsection (1)**; or

“(b) has made an election under **subsection (1)(b)** to receive summary financial statements, but the company has not produced any such statements. 5

“(3) Any documents required to be sent under **subsection (1) or subsection (2)** must be sent not less than 20 working days before the annual meeting of the shareholders. 10

“(4) The financial statements and group financial statements required by this section to be sent to a shareholder must be for the most recently completed accounting period and must be completed and signed in accordance with section 10 or section 13 of the Financial Reporting Act 1993, as the case may be. 15

“(5) Any summary financial statements must give a true and fair summary of the matters to which they relate and must comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993).

“(6) If the board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).” 20

23 Inspection of company records by shareholders

Section 216(1)(b) of the principal Act is amended by inserting, after the words “financial statements,”, the words “summary financial statements (if any),”. 25

24 Grounds for removal from register

(1) Section 318(1) of the principal Act is amended by adding the word “; or”, and also by adding the following paragraph:

“(f) the company has failed to pay the fee prescribed by regulations for the application for registration of the company under section 12.” 30

(2) Section 318 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) The Registrar must remove a company from the New Zealand register under **subsection (1)(f)** if— 35

“(a) the Registrar has complied with section 319; and

“(b) the fee prescribed by regulations for the application for registration of the company under section 12 has not been paid in full to the Registrar within 20 working days after the date of the notice.”

- 25 Notice of intention to remove where company has ceased to carry on business** 5
- (1) The heading to section 319 of the principal Act is amended by adding the words “**or application fee not paid**”.
- (2) Section 319(1) of the principal Act is amended by inserting, after the expression “section 318(1)(b)”, the words “or (f)”. 10
- (3) Section 319(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(ab) if **section 318(1)(f)** applies, state that, unless the fee prescribed by regulations for the application for registration of the company under section 12 is paid in full to the Registrar within 20 working days after the date of the notice, the company will be removed from the New Zealand register; and”. 15
- (4) Section 319(2)(b) of the principal Act is amended by inserting, before the words “state that,”, the words “if section 318(1)(b) applies,”. 20
- 26 Notice of intention to remove in other cases**
- (1) Section 320(1) of the principal Act is amended by inserting, after the expression “section 318(1)(c)”, the words “or (d)”. 25
- (2) Section 320 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
- “(2) If a company is to be removed from the register under section 318(1)(e), the liquidator must give public notice of the matters set out in subsection (4).”
- 27 Objection to removal from register** 30
- Section 321 of the principal Act is amended by adding the following subsection:
- “(3) An objection to the removal of a company from the New Zealand register cannot be made under this section if the ground for removal is that specified in **section 318(1)(f)**.” 35

28 New sections 360A and 360B inserted

The principal Act is amended by inserting, after section 360, the following sections:

- “360A Rectification of New Zealand register and overseas register** 5
- register**
- “(1) The Registrar may,—
- “(a) on the application of any person, rectify the New Zealand register or the overseas register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the New Zealand register or the overseas register; or 10
- “(b) if it appears to the Registrar that any particulars have been incorrectly entered in the New Zealand register or the overseas register due to a clerical error by the Registrar, correct those particulars. 15
- “(2) Before the Registrar rectifies the New Zealand register or the overseas register under **subsection (1)(a)**, the Registrar must—
- “(a) give written notice to the company that an application has been made to rectify the New Zealand register or the overseas register and details of that application; and 20
- “(b) give public notice setting out—
- “(i) the name of the applicant; and
- “(ii) the name of the company; and
- “(iii) the reasons and details of the changes sought to be made to the New Zealand register or the overseas register; and 25
- “(iv) the date by which a written objection to the proposed rectification must be delivered to the Registrar, being a date not less than 20 working days after the date of the notice. 30
- “(3) Any person may deliver to the Registrar, not later than the date specified in accordance with **subsection (2)(b)(iv)**, a written objection to a proposed rectification of the New Zealand register or the overseas register, and the Registrar must give a copy of the objection to the applicant. 35
- “(4) The Registrar must not rectify the New Zealand register or the overseas register if the Registrar receives a written objection to the proposed rectification by the date specified unless the Registrar is satisfied that the objection has been withdrawn.

“360B Powers of Court

“(1) If an objection to a proposed rectification is received by the Registrar under **section 360A(3)**, the applicant for the rectification of the New Zealand register or the overseas register may apply to the Court for an order for rectification.

5

“(2) On an application for an order under **subsection (1)**, the Court may, if it is satisfied that any information has been wrongly entered in, or omitted from, the New Zealand register or the overseas register, make an order that the New Zealand register or the overseas register be rectified.”

10

29 Penalties that may be imposed on directors in cases of failure by board or company to comply with Act

(1) Section 374(2) of the principal Act is amended by inserting, after paragraph (16), the following paragraph:

“(16A) **section 196(3B)** (which relates to the notification of the resignation of an auditor):”

15

(2) Section 374(2) of the principal Act is amended by omitting from paragraph (22) the expression “210(2)”, and substituting the expression “**210(6)**”.

30 First Schedule amended

20

(1) Clause 9(4) of the First Schedule of the principal Act is amended by omitting the words “the board may”, and substituting the words “the board must”.

(2) Clause 9 of the First Schedule of the principal Act is amended by repealing subclause (6), and substituting the following subclause:

25

“(6) The board is not required to include in or with the notice given by the board—

“(a) any part of a statement prepared by a shareholder that the directors consider to be defamatory, frivolous, or vexatious; or

30

“(b) any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory.”

31 Second Schedule amended

The Second Schedule is amended by inserting, after paragraph (d), the following paragraph:

35

“(da) section 49 (which relates to the consideration for the issue of options and convertible securities):”.

32 Sixth Schedule amended

The Sixth Schedule is amended by adding the following paragraph:

5

“(o) change the registered office or address for service of the company.”

Part 4

Co-operative Companies Act 1996

33 Co-operative Companies Act 1996 called principal Act in this Part

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In this Part, the Co-operative Companies Act 1996⁴ is called “the principal Act”.

⁴ 1996 No 24

34 Heading before section 29 amended

The heading before section 29 of the principal Act is amended by adding the words “*and Securities Act 1978*”.

15

35 Modified application of Companies Act 1993

Section 29(a) of the principal Act is amended by inserting, after the expression “section 43(1)”, the words “and section 47(5)”.

20

36 New section 29A inserted

The principal Act is amended by inserting, after section 29, the following section:

“29A Modification of application of Securities Act 1978

Section 54 of the Securities Act 1978 does not apply in respect of any equity security offered by a co-operative company to any person who is or is to be a transacting shareholder.”

25

Part 5

Distress and Replevin Act 1908

- 37 Distress and Replevin Act 1908 called principal Act in this Part** 5
- In this Part, the Distress and Replevin Act 1908⁵ is called “the principal Act”.
- ⁵ 1908 No 47
- 38 New section 4 substituted**
- The principal Act is amended by repealing section 4, and substituting the following section:
- “4 Chattels subject to security interest property of tenant or person in possession** 10
- “(1) This section applies to chattels subject to a security interest that are the property of any tenant or person in possession of any messuages or lands.**
- “(2) All chattels to which this section applies are deemed, for the purposes of distress for rent, to be the property of the tenant or person in possession of the messuages or lands if the chattels are found in or on the messuages or lands in respect of which the rent is due at the time the distraint for the rent is made.** 15
- “(3) In this section, **security interest** has the same meaning as in section 17 of the Personal Property Securities Act 1999.”** 20

Part 6

Financial Reporting Act 1993

- 39 Financial Reporting Act 1993 called principal Act in this Part** 25
- In this Part, the Financial Reporting Act 1993⁶ is called “the principal Act”.
- ⁶ 1993 No 106
- 40 Interpretation**
- (1) Section 2(1) of the principal Act is amended by repealing the definition of **exempt company**, and substituting the following definition:** 30
- “**exempt company** means a company, other than an overseas company or an issuer, if,—**
- “(a) as at the balance date of the accounting period for which financial statements are required,—** 35

- “(i) the value of the total assets of the company (including intangible assets) reported in the statement of financial position did not exceed \$450,000 or any other amount that is, from time to time, prescribed by Order in Council for the purposes of this subparagraph; and 5
- “(ii) the company was not a subsidiary of another body corporate or association of persons; and
- “(iii) the company did not have any subsidiaries; and
- “(b) in the accounting period for which financial statements are required, the turnover of the company did not exceed \$1,000,000 or any other amount that is, from time to time, prescribed by Order in Council for the purposes of this paragraph”. 10
- (2) Section 2(1) of the principal Act is amended by repealing the definition of **turnover**, and substituting the following definition: 15
- “**turnover** means the total annualised gross operating revenue of the company (exclusive of any tax required to be collected) reported in the statement of financial performance, income and expenditure statement, or revenue and appropriation account, as the case may be, for the accounting period for which the financial statements are required; and includes (without limitation) any sales, fee income, grants, output appropriations, cost recoveries, donations, dividends, interest, and subscriptions of the company for that accounting period”. 20 25
- 41 Meaning of financial statements**
- Section 8(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraphs: 30
- “(c) if, in the case of a reporting entity, an applicable financial reporting standard requires a statement of cash flows for the reporting entity, a statement of cash flows for the reporting entity in relation to the accounting period ending at the balance date; and
- “(d) if an applicable financial reporting standard requires a statement that contains prospective, summary, or interim information for an entity, a statement of prospective, summary, or interim information, as the case may be, for the entity in relation to the accounting period ending at the balance date,—”. 35 40

42 Meaning of group financial statements

Section 9(1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraphs:

“(d) if an applicable financial reporting standard requires a consolidated statement of cash flows for the group, a consolidated statement of cash flows for the group in relation to the accounting period ending at that balance date; and 5

“(e) if an applicable financial reporting standard requires a consolidated statement that contains prospective, summary, or interim information for the group, a consolidated statement of prospective, summary, or interim information, as the case may be, for the group in relation to the accounting period ending at that balance date,—”. 10 15

43 Content of financial statements of exempt companies

(1) Section 12 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) The financial statements of an exempt company must either—

“(a) be in the form and contain the particulars and comply with the directions as to the preparation of those statements prescribed by the Governor-General by Order in Council; or 20

“(b) comply with section 11 as if the exempt company were a reporting entity.” 25

(2) Section 12(2) of the principal Act is amended by omitting the words “The Governor-General”, and substituting the words “For the purposes of **subsection (1)(a)**, the Governor-General”.

44 Functions of Board

Section 24 of the principal Act is amended by adding, as subsection (2), the following subsection: 30

“(2) For the avoidance of doubt, the function of the Board referred to in subsection (1)(a) includes the function of reviewing and, if the Board thinks fit, approving financial reporting standards submitted to it for approval that relate to prospective, summary, or interim financial information.” 35

Part 7

Friendly Societies and Credit Unions Act 1982

- 45 Friendly Societies and Credit Unions Act 1982 called principal Act in this Part**
 In this Part, the Friendly Societies and Credit Unions Act 1982⁷ is called “the principal Act”. 5
⁷ 1982 No 118
- 46 Settlement of disputes generally**
- (1) Section 78(2)(a) of the principal Act is amended by inserting, after the words “through a member”, the words “(unless that member or person is a trustee appointed under section 33(2)(a) of the Securities Act 1978)”. 10
- (2) Section 78(2)(b) of the principal Act is amended by inserting, after the words “such person aggrieved”, the words “(unless that person aggrieved or other person claiming through that person is a trustee appointed under section 33(2)(a) of the Securities Act 1978)”. 15
- 47 New section 109A inserted**
 The principal Act is amended by inserting, after section 109, the following section:
- “109A Power of credit union to appoint trustee for debt securities** 20
 Regardless of anything to the contrary in the rules of a credit union, a credit union may appoint a trustee and sign or amend a trust deed for the purposes of section 33(2) of the Securities Act 1978.” 25
- 48 Credit union property to vest in trustees**
 Section 112 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) However, regardless of the rules of a credit union, if a trustee has been appointed in respect of a security under section 33(2)(a) of the Securities Act 1978, then that trustee may exercise any rights it has under that Act in respect of the property of the credit union.” 30
- 49 Section 119 repealed**
 The principal Act is amended by repealing section 119. 35

- 50 Third Schedule amended**
 The Third Schedule of the principal Act is amended by repealing clause 9, and substituting the following clause:
 “9 The manner in which disputes of a kind referred to in section 78(2) must be settled.” 5
- 51 Fourth Schedule amended**
 The Fourth Schedule of the principal Act is amended by repealing clause 13, and substituting the following clause:
 “13 The manner in which disputes of a kind referred to in section 78(2) must be settled.” 10

Part 8

Life Insurance Act 1908

- 52 Life Insurance Act 1908 called principal Act in this Part**
 In this Part, the Life Insurance Act 1908⁸ is called “the principal Act”. 15
⁸ 1908 No 105

- 53 General agent to be appointed**
 Section 34 of the principal Act is amended by inserting, after subsection (1), the following subsection:
 “(1A) Subsection (1) does not apply if the foreign company is registered as an overseas company under the Companies Act 1993 and has complied with sections 336(2)(f) and 339(1)(d) of that Act in relation to the person or persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the company.” 20 25

Part 9

Personal Property Securities Act 1999

- 54 Personal Property Securities Act 1999 called principal Act in this Part**
 In this Part, the Personal Property Securities Act 1999⁹ is called “the principal Act”. 30
⁹ 1999 No 126

- 55 How Act arranged** 5
- Section 5(1) of the principal Act is amended by repealing the item relating to Part 5, and substituting the item “Part 5—When buyers or lessees of goods or collateral take goods or collateral free of security interest:”.
- 56 Part 5 (when buyers or lessees of goods take goods free of unperfected security interests)** 10
- (1) The heading to section 9 of the principal Act is amended by inserting, after the word “**goods**” in both places where it appears, the words “**or collateral**”.
- (2) Section 9 of the principal Act is amended by inserting, after the word “**goods**” in each place where it appears, the words “**or collateral**”.
- 57 Interpretation** 15
- (1) Section 16(1) of the principal Act is amended by repealing paragraph (a)(iii) of the definition of **debtor**, and substituting the following subparagraph: 20
- “(iii) a lessee under a lease for a term of—
- “(A) more than 1 year; or
- “(B) 1 year or less if the lessee is a person referred to in paragraph (a)(i); or”.
- (2) Section 16(1) of the principal Act is amended by inserting, after paragraph (a)(iii) of the definition of **purchase money security interest**, the following subparagraph: 25
- “(iiia) the interest of a lessor of goods under a lease for a term of 1 year or less if the interest is a security interest taken in the goods by the lessor as a seller of the goods, to the extent that it secures the obligation to pay all or part of the purchase price of the goods; or”.
- (3) Section 16(1) of the principal Act is amended by inserting, after the definition of **regulations**, the following definition: 30
- “**related company** has the same meaning as in section 2(3) of the Companies Act 1993”.
- 58 Meaning of security interest** 35
- Section 17 of the principal Act is amended by adding the following subsection:

- “(4) For the avoidance of doubt, a beneficial interest in personal property held by a creditor of a person is not a security interest if—
- “(a) that person has been adjudged bankrupt or is in liquidation; and 5
 - “(b) the personal property is property that has been distributed under the Insolvency Act 1967 or the Companies Act 1993; and
 - “(c) the interest was created or provided for under the terms of a security (as defined in section 2D of the Securities Act 1978); and 10
 - “(d) under those terms, the holder of that security must hold the personal property on trust for the creditor; and
 - “(e) the holder of that security has, in relation to the property or assets of the person referred to in **paragraph (a)**, the same priority as, or a higher priority than, the creditor under the order of priority established under section 104 of the Insolvency Act 1967 or sections 312 and 313 of the Companies Act 1993, as the case may be.” 15
- 59 Meaning of knowledge 20**
- (1) Section 19(1) of the principal Act is amended by adding the following paragraph:
- “(c) a government department knows or has knowledge of a fact in relation to a particular transaction when that fact has been brought to the attention of a senior employee of the government department with responsibility for the matters to which the fact relates, under circumstances in which a reasonable person would take cognisance of it.” 25
- (2) Section 19 of the principal Act is amended by adding the following subsection: 30
- “(3) For the purposes of this section,—
- “**government department** means an entity named in Part I of the First Schedule of the Ombudsmen Act 1975
 - “**organisation** does not include a government department”. 35

-
- 60 When Act does not apply**
Section 23(c) of the principal Act is amended by omitting the words “except as provided in”, and substituting the words “but without limiting the effect of”.
- 61 Rights or duties that apply to be exercised in good faith and in commercially reasonable manner** 5
The heading to section 25 of the principal Act is amended by omitting the words “commercially reasonable manner”, and substituting the words “accordance with reasonable standards of commercial practice”. 10
- 62 Temporary perfection of security interest in collateral moved to New Zealand in other cases**
Section 28(1) of the principal Act is amended by omitting the words “by registration”.
- 63 Temporary perfection of security interest in negotiable instrument or investment security returned to debtor** 15
Section 48(b) of the principal Act is amended by omitting the word “delivered”, and substituting the words “gave possession of”.
- 64 Perfection where goods in hands of bailee** 20
Section 50(c) of the principal Act is amended by inserting, after the word “bailee”, the words “(being a person who is not the debtor)”.
- 65 Heading to Part 5 amended** 25
The heading to Part 5 of the principal Act is amended by inserting, after the word “goods” in both places where it appears, the words “or collateral”.
- 66 Secured party subrogated to rights of dealer against buyer or lessee** 30
Section 65(1)(a) of the principal Act is amended by omitting the expression “section 59”, and substituting the expression “section 58”.

- 67 Time of registration, etc, of original collateral is also time of registration, etc, of proceeds**
Section 68 of the principal Act is amended by adding, as subsection (2), the following subsection:
- “(2) Subsection (1) is subject to sections 46 and 47.” 5
- 68 New section 75A inserted**
The principal Act is amended by inserting, before section 76, the following section:
- “75A Non-proceeds security interest in accounts receivable**
- “(1) A non-proceeds security interest in accounts receivable that is given for new value has priority over a purchase money security interest in the accounts receivable as proceeds of inventory if a financing statement relating to the security interest in the accounts receivable is registered before the purchase money security interest is perfected or a financing statement relating to it is registered. 10
15
- “(2) This section does not apply to an accounts receivable in the form of a deposit with a deposit-taking institution.
- “(3) In this section, **non-proceeds security interest** means a security interest in original collateral. 20
- “(4) Sections 73 to 75 are subject to this section.
Compare: Personal Property Security Act 1993, s 34(6), (7) (Saskatchewan)”.
- 69 Lien has priority over perfected security interest relating to same goods**
The heading to section 93 of the principal Act is amended by omitting the word “perfected”. 25
- 70 Priority of interests on assignment of account receivable or chattel paper**
Section 102(1)(b) of the principal Act is amended by inserting, after the words “the assignor”, the words “(including a defence by way of a right of set-off)”. 30
- 71 Execution creditor has priority over unperfected security interest**
- (1) Section 103(1) of the principal Act is amended by omitting the words “who has seized”, and substituting the words “in any”. 35

(2) Section 103 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) In this section, **time of execution** means,—

“(a) if the collateral is seized by an execution creditor or on an execution creditor’s behalf, the time of seizure; or 5

“(b) in any other case, the time when a charging order or a garnishee order is made.”

72 New section 108 substituted

The principal Act is amended by repealing section 108, and substituting the following section: 10

“108 Secured party may apply certain collateral towards satisfaction of secured obligation

“(1) A secured party with priority over all other secured parties may apply an account receivable, investment security, money, or a negotiable instrument in the form of a debt obligation taken as collateral towards the satisfaction of the obligation secured by the security interest if the debtor is in default. 15

“(2) If the account receivable, investment security, money, or negotiable instrument is held by another person, the secured party with priority over all other secured parties may— 20

“(a) give a notice to the other person to make the account receivable, investment security, money, or negotiable instrument available to the secured party; and

“(b) apply the account receivable, investment security, money, or negotiable instrument in accordance with **subsection (1)** after it is made available. 25

“(3) The other person must make the account receivable, investment security, money, or negotiable instrument available to the secured party within a reasonable time after receipt of the notice given under **subsection (2)(a)**. 30

Compare: Personal Property Security Act 1993, s 57(2)(c) (Saskatchewan)”.

73 Position where persons entitled to notice do not object to retention of collateral by secured party

Section 123(1) of the principal Act is amended by omitting the words “take the collateral in satisfaction”, and substituting the words “take the collateral towards the satisfaction”. 35

- 74 Contents of register**
Section 140(d) of the principal Act is amended by omitting the words “or authorised”.
- 75 Data required to register financing statement**
- (1) Section 142(e) of the principal Act is amended by omitting the words “or authorized”. 5
- (2) Section 142 of the principal Act is amended by adding, as subsection (2), the following subsection:
“(2) Subsection (1) does not limit section 149.”
- 76 When secured party to notify debtor about registration of financing statement** 10
Section 148 of the principal Act is amended by inserting, after the words “financing change statement”, the words “, or on whose behalf a financing statement or financing change statement has been registered,”. 15
- 77 New section 169A inserted**
The principal Act is amended by inserting, after section 169, the following section:
- “169A Restoration of registration**
- “(1) The Registrar may restore a registration if it appears to the Registrar that the registration has been incorrectly discharged or removed due to a clerical error made by the Registrar. 20
- “(2) A registration restored under **subsection (1)** must be regarded as having continued in force throughout the period during which it was incorrectly discharged or removed as if it had not been so discharged or removed.” 25
- 78 New heading and sections 170 and 170A substituted**
The principal Act is amended by repealing the heading before section 170 and section 170, and substituting the following heading and sections: 30
- “Removal of data from register and correction of errors or omissions*
- “170 Removal of data from register**
- “(1) Data in a registration may be removed from the register—
“(a) when the registration is no longer effective; or 35

- “(b) on the registration of a financing change statement discharging or partially discharging the registration; or
“(c) if the Registrar is satisfied that the data is frivolous or vexatious.
- “(2) The Registrar must, before he or she makes a decision under **subsection (1)(c)**, give the secured party notice to show cause, within 10 working days of the date on which the notice is given, why the data is not frivolous or vexatious. 5
- “(3) If the secured party fails within 10 working days to show cause to the Registrar’s satisfaction why the data is not frivolous or vexatious, the Registrar may, in the Registrar’s discretion, remove the data from the register. 10
- “(4) If data is removed from the register under **subsection (1)(c)**, the Court may, on the application of the secured party, make an order directing that the data be restored to the register if it is satisfied that the data is neither frivolous nor vexatious. 15
- “(5) The Court may make any other orders that it thinks proper for the purpose of giving effect to an order under **subsection (4)**.
- “(6) The Registrar must restore the data to the register in accordance with a court order made under **subsection (4)** as soon as reasonably practicable after receiving the order. 20
- Compare: Personal Property Security Act 1993, s 46 (New Brunswick)

“170A Correction of errors or omissions

The Registrar may, with the consent of the secured party, correct any clerical error or omission made by the Registrar in a registration.” 25

79 Search criteria

Section 172(e) of the principal Act is amended by omitting the words “or authorised”.

80 Search purposes, etc 30

- (1) Section 173(c) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraph:

“(iia) establishing whether to provide credit to, or to obtain a guarantee or an indemnity from, a related company of the company named in the search or of the company with an interest in the personal property described in the search:” 35

- (2) Section 173(c) of the principal Act is amended by adding the following subparagraph:
- “(iv) establishing whether to invest in, with, or through, a related company of the company named in the search or of the company with an interest in the personal property described in the search:”.
- 81 Secured party to provide certain information relating to security interest**
Section 177(1)(c) of the principal Act is amended by omitting the words “personal property” in the second place where they occur, and substituting the word “collateral”.
- 82 Certain other prior security interests deemed to be perfected during transitional period**
Section 196 of the principal Act is amended by omitting the words “any other prior security interest”, and substituting the words “every other prior security interest (if any)”.
- 83 New section 197 substituted**
The principal Act is amended by repealing section 197, and substituting the following section:
- “197 Prior security interests may be perfected**
An existing secured party may perfect that secured party’s prior security interest under this Act.”
- 84 Consequences of not perfecting certain security interests**
Section 198 of the principal Act is amended by adding, as subsection (2), the following subsection:
- “(2) If a prior security interest that is deemed to be an unperfected security interest under subsection (1) is perfected after the close of the transitional period, that perfection is only effective from the time of that perfection.”
- 85 Time of registration of certain prior security interests**
Section 199(a) and (b) of the principal Act is amended by omitting the word “time”, and substituting in each case the word “date”.

Part 10 Securities Act 1978

- 86 Securities Act 1978 called principal Act in this Part**
 In this Part, the Securities Act 1978¹⁰ is called “the principal Act”.
- ¹⁰ 1978 No 103
- 87 Interpretation**
- (1) Section 2(1) of the principal Act is amended by repealing the definition of **chattel**, and substituting the following definition:
 “**chattel** includes livestock, but does not include a book debt or negotiable instrument”.
- (2) Section 2(1) of the principal Act is amended by repealing the definition of **company**, and substituting the following definition:
 “**company** means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993”.
- (3) Section 2(1) of the principal Act is amended by omitting from the definition of **convertible note** the expression “section FZ 2”, and substituting the expression “section OB 1”.
- (4) Section 2(1) of the principal Act is amended by omitting from the definitions of **date of a prospectus** and **date of a registered prospectus** the words “section 39(a) of this Act”, and substituting in each case the expression “section 39(1)(a)”.
- (5) Section 2(1) of the principal Act is amended by inserting, in its appropriate alphabetical order, the following definition:
 “**employee superannuation scheme** means a superannuation scheme—
 “(a) entry to which is conditional on employment with 1 or more specified employers; and
 “(b) to which contributions have been made by or on behalf of 1 or more employees (or would have been required to be made if the assets of the scheme had not exceeded the accrued benefits payable from the scheme); and
 “(c) for which those employee contributions are (or would have been) no less than the total amount at the relevant time of the costs of administration, in addition to contributions made by members”.

- (6) Section 2(1) of the principal Act is amended by omitting from the definition of **expert** the words “and includes an accountant, engineer, valuer, quantity surveyor, and geologist;”.
- (7) Section 2(1) of the principal Act is amended by repealing the definitions of **labour share** and **local authority**. 5
- (8) Section 2(1) of the principal Act is amended by repealing paragraph (a) of the definition of **manager**, and substituting the following paragraph:
- “(a) in relation to a participatory security, means a person—
- “(i) on whose behalf any money paid in consideration of the allotment of the security is received; or 10
- “(ii) with an obligation to security holders to act in the continuing administration or management of the scheme to which the security relates; or
- “(iii) to whom both **subparagraphs (i) and (ii)** apply; and”. 15
- 88 Meaning of advertisement**
- Section 2A(3) of the principal Act is amended by repealing paragraph (b).
- 89 Construction of references to offering securities to the public** 20
- (1) Section 3(2)(a)(i) of the principal Act is amended by adding the words “or of a director of the issuer”.
- (2) Section 3(2)(a) of the principal Act is amended by inserting, after subparagraph (ii), the following subparagraphs:
- “(iia) persons who are wealthy and experienced in investing money (as defined in **subsections (8) and (9)**): 25
- “(iib) persons who are experienced in the industry or business to which the securities relate (as defined in **subsection (9)**):” 30
- (3) Section 3 of the principal Act is amended by repealing subsection (6).
- (4) Section 3 of the principal Act is amended by adding the following subsections:
- “(8) For the purposes of **subsection (2)**, a person is **wealthy** if a chartered accountant certifies, no more than 6 months before the offer is made, that the person— 35
- “(a) has net assets of at least \$2,000,000; and

- “(b) had an annual gross income of at least \$200,000 for each of the last 2 financial years.
- “(9) For the purposes of **subsection (2)**, a person is **experienced** in investing money or in the industry or business to which the securities relate (as the case may be) if a reasonable person would think that the person, as a result of having experience of that kind, is able to assess—
- “(a) the merits of the offer; and
 - “(b) the value of the securities; and
 - “(c) the risks involved in accepting the offer; and
 - “(d) that person’s own information needs; and
 - “(e) the adequacy of the information given by the person making the offer.
- “(10) The Governor-General may, by Order in Council, amend the amounts of minimum net assets and minimum annual gross income that apply under **subsection (8)**.”

90 Exemptions from this Act

- (1) Section 5(1)(h) of the principal Act is amended by omitting the words “a labour share or”.
- (2) Section 5 of the principal Act is amended by inserting, before subsection (2C), the following subsection:
- “(2CA) Nothing in Part II (except sections 38B and 58) or the regulations applies to an advertisement made by or on behalf of an issuer that—
- “(a) states that—
 - “(i) the issuer is considering making an offer of securities to the public; and
 - “(ii) no money is currently being sought and that no applications for securities will be accepted or money received unless the subscriber has received an investment statement; and
 - “(b) if the issuer wishes, states that the issuer is seeking preliminary indications of interest and, in this case, also states—
 - “(i) how indications of interest may be made; and
 - “(ii) that no indication of interest will involve an obligation or commitment of any kind; and
 - “(c) contains no other information, except any or all of the following:
 - “(i) the name of the issuer:

- “(ii) a description of the securities intended to be offered, including a brief description of any rights or privileges to be attached:
- “(iii) the rate or rates of interest (if any) that may be earned by holding the securities intended to be offered: 5
- “(iv) the total number of securities intended to be offered:
- “(v) a statement of the intended use of the subscriptions: 10
- “(vi) the terms of the intended offer:
- “(vii) a description of the class of persons to whom it is intended the offer will be made:
- “(viii) the date at which the issuer expects that the offer will be made; and 15
- “(d) is dated and is not distributed to any person later than 6 months after its date.”
- (3) Section 5 of the principal Act is amended by repealing subsections (2E) and (2F), and substituting the following subsection: 20
- “(2E) Nothing in sections 37, 37A(1)(c), and 39 to 44 applies to any interest in an employee superannuation scheme.”
- (4) Section 5(5) of the principal Act is amended by inserting, after the words “person or class of persons”, the words “or any transaction or class of transactions”.
- 91 Delegation of powers by Commission 25**
- (1) Section 27(1) of the principal Act is amended by inserting, after the expression “5(5),”, the expression “38B,”.
- (2) Section 27(1) of the principal Act is amended by omitting the expression “44A,”.
- 92 New section 36A inserted 30**
- The principal Act is amended by inserting, before section 37, the following section:
- “36A Subscriptions must be held in trust**
- An issuer must ensure that subscriptions for securities offered to the public are held in trust for the subscribers until the securities are allotted or until the subscriptions are repaid to the subscribers under this Act.” 35

- 93 Void irregular allotments**
- (1) Section 37(2) of the principal Act is amended by omitting the words “if the allotment is the first allotment of such security to the public”.
- (2) Section 37(5) of the principal Act is amended by repealing paragraph (a). 5
- 94 Voidable irregular allotments**
- Section 37A of the principal Act is amended by repealing subsection (2).
- 95 Suspension and prohibition of investment statement** 10
- (1) Section 38F of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) Subject to subsection (6), while an investment statement is suspended no allotment may be made of the securities subscribed for, whether before or after the suspension order is made.” 15
- (2) Section 38F(9) of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraph:
- “(b) all subscriptions received for securities to which the investment statement relates must be immediately repaid to the subscribers.” 20
- 96 Amendment of registered prospectus**
- Section 43(2)(ii) of the principal Act is amended by omitting the words “delivered in duplicate and”. 25
- 97 Suspension and cancellation of registration of registered prospectus**
- (1) Section 44 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) Subject to subsection (4A), while the registration of a registered prospectus is suspended no allotment may be made of the securities subscribed for, whether before or after the suspension order is made.” 30
- (2) Section 44(6) of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraph: 35

“(b) all subscriptions received for securities must be immediately repaid to the subscribers.”

98 Issuers to keep registers of securities

Section 51(11) of the principal Act is amended by omitting the words “or the Companies Act 1955”.

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99 Rights of inspection of registers of securities and to copies of registers and deeds

(1) Section 52(1) of the principal Act is amended by omitting the words “paragraphs (a) to (d) of section 51(1) of this Act”, and substituting the words “section 51(1)(a) to (c)”.

10

(2) Section 52(2) of the principal Act is amended by omitting the words “paragraphs (e) and (f) of section 51(1) of this Act”, and substituting the words “section 51(1)(d) to (f)”.

(3) Section 52(3) of the principal Act is amended by omitting the words “paragraphs (a) to (d) of section 51(1) of this Act”, and substituting the words “section 51(1)(a) to (c)”.

15

(4) Section 52(4) of the principal Act is amended by omitting the words “paragraph (e) or paragraph (f) of section 51(1) of this Act”, and substituting the words “section 51(1)(d) to (f)”.

(5) Section 52(6) of the principal Act is amended by omitting the words “or the Companies Act 1955”.

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100 Financial statements to be audited

(1) Section 53E of the principal Act is amended by repealing subsection (2).

(2) Section 53E of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

25

“(3) Every issuer of participatory securities, units in a unit trust, or interests in a superannuation scheme offered to the public must ensure that the financial statements for the scheme to which the securities relate are audited at least once a year by a qualified auditor.”

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101 Application of other Acts not affected

Section 53F of the principal Act is amended by omitting the words “the Companies Act 1955 or”.

- 102 Issuers to issue certificates evidencing securities**
 Section 54(4) of the principal Act is amended by omitting the words “section 90(2) of the Companies Act 1955 or section 95(2) of the Companies Act 1993, as the case may be,”, and substituting the words “section 95(2) of the Companies Act 1993”. 5
- 103 New sections 61 to 61C substituted**
 The principal Act is amended by repealing section 61, and substituting the following sections:
- “61 General prohibition on indemnities or insurance for directors, employees, and auditors of issuer** 10
- “(1) Except as provided in **section 61A** or **section 61B**, an issuer must not indemnify, or directly or indirectly effect insurance for, a director, employee, or auditor of an issuer in respect of—
- “(a) liability for any negligence, default, breach of duty, or breach of trust in his or her capacity as a director, employee, or auditor; or 15
- “(b) costs incurred by that director, employee, or auditor in defending or settling any claim or proceeding relating to that liability. 20
- “(2) An indemnity given in breach of this section is void.
- “61A Permitted indemnities for certain costs of directors, employees, and auditors of issuers**
- “(1) An issuer may indemnify a director, employee, or auditor of the issuer for— 25
- “(a) any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in **section 61(1)(a)** if—
- “(i) judgment is given in his or her favour or if he or she is acquitted; or 30
- “(ii) the proceeding is discontinued; or
- “(b) any costs incurred by him or her in connection with an application under section 63 in which he or she is relieved from liability by the Court.
- “(2) This section does not limit section 162 of the Companies Act 1993. 35

- “61B Permitted insurance for certain liability of directors and employees of issuer**
- “(1) An issuer may effect insurance for a director or employee of the issuer in respect of—
- “(a) liability (other than criminal liability) of a kind referred to in **section 61(1)(a)**; or
 - “(b) costs incurred by that director or employee in defending or settling any proceeding relating to that liability; or
 - “(c) costs incurred by that director, employee, or auditor in defending any criminal proceedings—
 - “(i) that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and
 - “(ii) in which he or she is acquitted.
- “(2) The directors of the issuer who vote in favour of authorising the insurance under **subsection (1)** must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the issuer.
- “(3) The director or employee who is insured is personally liable to the issuer for the cost of effecting insurance if—
- “(a) **subsection (2)** has not been complied with in effecting the insurance; or
 - “(b) reasonable grounds did not exist for the opinion set out in the certificate given under **subsection (2)**.
- “(4) However, **subsection (3)** does not apply to the extent that the director or employee proves that the insurance was fair to the issuer at the time the insurance was effected.
- “(5) A certificate signed for the purposes of section 162(6) of the Companies Act 1993 is effective also for the purposes of **subsection (2)**; but this section does not limit section 162 of the Companies Act 1993.
- “61C Interpretation for sections 61 to 61C**
- In **sections 61 to 61B**,—
- “**director** includes a former director
 - “**effect insurance** includes pay, whether directly or indirectly, the costs of the insurance
 - “**employee** includes a former employee
 - “**indemnify** includes relieve, exempt, or excuse from liability, whether before or after the liability arises.”

- 104 Registers to be kept by Registrar for purposes of this Act**
- (1) Section 66(2) of the principal Act is amended by omitting the words “Sections 7 and 9 of the Companies Act 1955 and sections 360, 361, and 363 of the Companies Act 1993, as the case may be, shall”, and substituting the words “Sections 360, 361, and 363 of the Companies Act 1993”. 5
- (2) Section 66(2) of the principal Act is amended by omitting the words “those Acts”, and substituting the words “that Act”.
- Part 11** 10
Securities Markets Act 1988
- 105 Securities Markets Act 1988 called principal Act in this Part**
- In this Part, the Securities Markets Act 1988¹¹ is called “the principal Act”. 15
- ¹¹ 1988 No 234
- 106 Interpretation**
- Section 2(1) of the principal Act is amended by repealing the definition of **company**, and substituting the following definition:
- “**company** means a company and an overseas company within the meaning of section 2(1) of the Companies Act 1993”. 20
- 107 Meaning of relevant interest**
- Section 5(7) of the principal Act is amended by repealing paragraphs (a) to (c), and substituting the following paragraphs: 25
- “(a) the other body corporate is its holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or
- “(b) more than half of its issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital) is held by the other body corporate and bodies corporate related to that other body corporate (whether directly or indirectly, but other than in a fiduciary capacity); or 30
- “(c) more than half of the issued shares of each of them (other than shares that carry no right to participate 35

beyond a specified amount in a distribution of profits or capital) is held by shareholders or members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or”.

- 108 Public issuers to maintain file of notices** 5
Section 25(5) of the principal Act is amended by omitting the words “the Companies Act 1955 or”.
- 109 Public issuers to publish identity of substantial security holders** 10
Section 26(1) of the principal Act is amended by omitting the words “shall, in a note accompanying its statement of financial position laid before the public issuer in general meeting, state—”, and substituting the words “must send a note stating the following matters to each shareholder with the annual report sent under section 209 of the Companies Act 1993 or the financial statements or summary financial statements sent under section 210 of that Act:” 15
- 110 Notice under this subpart not to affect incorporation of public issuer or constitute notice of trust**
- (1) Section 27(1) of the principal Act is amended by repealing paragraph (b). 20
- (2) Section 27(1)(c) of the principal Act is amended by inserting, before the word “sections”, the word “limits”.
- 111 Obligations of public issuer where order made to forfeit shares** 25
- (1) Section 33 of the principal Act is amended by repealing subsections (1) and (2).
- (2) Section 33(3) of the principal Act is amended by omitting the words “which is a company registered under the Companies Act 1993”, and substituting the words “that is a company”. 30

Part 12

Superannuation Schemes Act 1989

- 112 Superannuation Schemes Act 1989 called principal Act in this Part**
 In this Part, the Superannuation Schemes Act 1989¹² is called “the principal Act”. 5
¹² 1989 No 10
- 113 Annual reports**
 Section 14 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
 “(3) The trustees must send to the Government Actuary a copy of the completed report within 28 days after its completion, and, if only abridged accounts are contained in the report, a copy of the annual accounts.” 10
- 114 Members’ rights to information**
 Section 17(1)(b) of the principal Act is amended by adding the following subparagraph: 15
 “(v) to receive a copy of the annual accounts and any auditor’s report or, if that report is not required or produced, the certificates required by section 13(2).” 20
- 115 Receiver or liquidator to designate or appoint independent trustee if required**
 (1) Section 20A of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
 “(1) This section applies if a receiver has been appointed in respect of property of an employer or if a liquidator has been appointed for the employer and either— 25
 “(a) the receiver or liquidator is designated or appointed as a trustee of a relevant superannuation scheme; or
 “(b) before the appointment of the receiver or liquidator, the employer had the power to appoint a trustee of a relevant superannuation scheme. 30
 “(1A) The receiver or liquidator must be satisfied that, at all times, at least 1 of the trustees of the relevant superannuation scheme is an independent person and, if the receiver or liquidator is 35

not so satisfied, designate or appoint an independent person as trustee of the scheme.

“(1B) For the purposes of this section, a **relevant superannuation scheme** is one—

“(a) to which the employer has contributed in respect of the employees of the employer who are members of the scheme; or 5

“(b) for which the employer has paid any of the administration costs in respect of the employees of the employer who are members of the scheme.” 10

(2) Section 20A(2) of the principal Act is amended by omitting the words “of subsection (1)”.

116 Winding up of registered schemes

(1) Section 21(1)(b) of the principal Act is amended by omitting the word “shall”, and substituting the words “must, within 5 months of the date on which the winding up takes effect,”. 15

(2) Section 21(1)(c) of the principal Act is amended by omitting the word “shall”, and substituting the words “must, within 5 months of the date on which the winding up takes effect,”.

(3) Section 21(1)(d) of the principal Act is amended by omitting the words “shall, as soon as practicable”, and substituting the words “must, within 28 days”. 20

117 Offences

Section 25(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: 25

“(ab) fails to appoint an independent trustee, if required to do so under **section 20A(1A)**, within 28 days of failing to be satisfied of the matters set out in that subsection; or”.

118 Second Schedule amended

(1) The Second Schedule of the principal Act is amended by inserting, before paragraph (a), the following clause: 30

“1 The following matters must be specified in the annual report:”.

(2) The Second Schedule of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraph: 35

- “(b) the annual accounts of the scheme or, if the auditor’s report in respect of the annual accounts is unqualified and the trustees so wish, abridged annual accounts of the scheme in respect of the financial year: 5
- “(c) if the annual accounts are included in the annual report, the auditor’s report on the annual accounts or, if an auditor’s report is not required, the certificates required by section 13(2):”. 5
- (3) The Second Schedule of the principal Act is amended by adding the following paragraphs: 10
 - “(l) the names of, and any changes to, the directors of any corporate trustee since the last annual report:
 - “(m) if any of the benefits payable from the scheme are based on the investment return of scheme assets, a statement of the crediting rate or rates applied during the year: 15
 - “(n) the registration date of the most recent prospectus for the scheme if a prospectus is required by the Securities Act 1978.”
- (4) The Second Schedule of the principal Act is amended by adding the following clause: 20
 - “2 Abridged accounts included in the annual report must—
 - “(a) be prepared in accordance with generally accepted accounting practice, as defined in section 3 of the Financial Reporting Act 1993:
 - “(b) include a report by the auditor of the scheme that the abridged annual accounts have been correctly extracted from the annual accounts and that, in the opinion of the auditor, the information reported in the financial summary is consistent in all material respects with the annual accounts: 30
 - “(c) if the annual accounts have not been audited because section 13(2) applies, include a certificate by the auditor of the administration manager that adequate accounting systems, records, and methods of internal control are in place to ensure that the abridged accounts prepared by the administration manager in respect of each scheme fully managed by that manager correctly present each scheme’s financial affairs: 35
 - “(d) contain a statement that they are an abridged version of the annual accounts: 40

“(e) contain a statement advising where the member can obtain, at no charge, a copy of the annual accounts.”

Part 13 Unit Trusts Act 1960

- 119 Unit Trusts Act 1960 called principal Act in this Part** 5
In this Part, the Unit Trusts Act 1960¹³ is called “the principal Act”.
- ¹³ 1960 No 99
- 120 Restriction as to manager** 10
Section 4 of the principal Act is amended by adding the following subsection:
- “(5) A bond given under subsection (2) must be released if the unit trust has been wound up and the trustee and manager of the unit trust have given notice in writing of the winding up to the Registrar of Companies.” 15
- 121 Accounts, etc, to be filed**
Section 20 of the principal Act is amended by repealing subsection (1).
- 122 Offences**
- (1) Section 25(1) of the principal Act is amended— 20
- (a) by omitting the expression “\$1,000”, and substituting the expression “\$1,000,000”; and
- (b) by omitting from paragraph (b) the words “issues any form of application for an interest in a unit trust in contravention of subsection (2) of section 7 of this Act, or”. 25
- (2) Section 25(2) of the principal Act is amended—
- (a) by omitting the expression “\$200”, and substituting the expression “\$10,000”; and
- (b) by omitting the expression “13,”. 30
- (3) Section 25(3) of the principal Act is amended by omitting the expression “\$200”, and substituting the expression “\$200,000”.