

[AS REPORTED FROM THE JUSTICE AND LAW COMMITTEE]

House of Representatives, 1 April 1993.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. D. A. M. Graham

TAKEOVERS

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A BILL INTITULED

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

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

1. Short Title and commencement—(1) This Act may be cited as the Takeovers Act 1991.

No. 120—2

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(2) Except as provided in **section 20** of this Act, this Act shall come into force on the 1st day of April 1992.

New

(2) Except as provided in **subsection (3)** of this section, this Act shall come into force on the date on which it receives the Royal assent. 5

(3) Part III and **sections 20** and **20A** of this Act shall come into force on the 1st day of July 1993.

2. Interpretation—(1) In this Act, unless the context 10 otherwise requires,—

“Company” has the same meaning as in—

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

(b) **Section 2** of the Companies Act 1990,—

as the case may be, and includes an overseas 15 company:

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

“Director” means,—

(a) In relation to a company, any person occupying 20 the position of a director of the company by whatever name called:

(b) In relation to a partnership (other than a special partnership), any partner:

(c) In relation to a special partnership, any general 25 partner:

(d) In relation to a body corporate or unincorporate, other than a company, partnership, or special partnership, any person occupying a position 30 in the body that is comparable with that of a director of a company:

(e) In relation to any other person, that person:

New

“Document” has the same meaning as in section 2 of the Evidence Amendment Act (No. 2) 1980: 35

“Minister” means the Minister of Justice:

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

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5 “Public issuer” means a person that is a party to a listing agreement with a stock exchange:

New

“Public issuer” means—

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

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

“Security”, in relation to a public issuer, means—

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

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

25 (c) A participatory security within the meaning of section 2 of the Securities Act 1978 which carries the right to vote at any annual or general meeting of the public issuer:

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

(2) In this Act, unless the context otherwise requires, references to formulating and recommending a takeovers code include formulating and recommending amendments to a takeovers code approved under section 16 of this Act.

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

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

- (a) Establish a panel to be called the Takeovers Panel for the purpose of formulating and recommending rules in the form of a code that, on being approved by the Governor-General by Order in Council, will apply to takeovers of companies and other bodies whose *(shares)* securities are listed on a stock exchange: 5
- (b) For that purpose to confer on the Panel the function of determining the transactions or classes of transactions that constitute takeovers and to which the code will apply as well as the function of determining the nature of the rules that should apply to those transactions and the content of the rules themselves: 10

New

- (c) Provide for the administration and enforcement of the code. 15

PART I

TAKEOVERS PANEL

5. Establishment of Takeovers Panel—(1) There is hereby established a panel to be called the Takeovers Panel. 20

New

(2) The Panel shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer. 25

6. Membership of Panel—(1) The Panel shall consist of (7) not less than 5 and not more than 8 members appointed from time to time by the Minister. 30

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

New

(2A) At least 1 member of the Panel must be a barrister or solicitor of the High Court of not less than 7 years' practice.

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

New

10 **6A. Associate members**—(1) The Minister may from time to time appoint a person to be an associate member of the Panel but shall not appoint more than 3 persons to be associate members of the Panel at any time.

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

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

20 (4) Subject to subsection (5) of this section, an associate member shall be deemed to be a member of the Panel for the purposes of the performance or exercise of any function, duty, or power of a member of the Panel under this Act; and, except where this section or the context otherwise requires, a reference in this Act to a member shall be construed as including a reference to an associate member.

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

30 Cf. 1986, No. 5, s. 11

7. Functions of Panel—The Panel has the following functions:

- 35 (a) To formulate and recommend, from time to time, a takeovers code applying to takeovers of public issuers:
- (b) To formulate and recommend, from time to time, such amendments to the takeovers code as the Panel thinks fit:

- (c) For the purposes of paragraphs (a) and (b) of this section, to keep under review practices relating to takeovers of public issuers.

New

(d) To investigate any act or omission or practice for the purpose of exercising its powers and functions under Part III of this Act: 5

(e) To make determinations and orders and make applications to the Court in accordance with Part III of this Act: 10

(f) To promote public understanding of the law and practice relating to takeovers:

(g) To perform such other functions as are conferred on it by this Act.

7A. Powers of Panel to take evidence—(1) The Panel may at any meeting receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with any matter before it, whether or not it would be otherwise admissible in a court of law. 15

(2) The Panel may take evidence on oath and for that purpose a member or an officer or employee of the Panel may administer an oath. 20

(3) A member of the Panel may by order under the seal of the Panel served on the person, summon any person to appear before the Panel to give evidence as to any matter before it, and require any witness to produce to the Panel any document in his or her possession or control relative to the matter. Every summons under this section shall be served either by delivering it to the person summoned or by leaving it at his or her usual place of abode or business at least 24 hours before his or her attendance is required. 25 30

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

(5) Where any person has appeared as a witness before the Panel pursuant to a summons, or has given evidence before the Panel, whether pursuant to a summons or not, the Panel may, if it thinks fit, order any sum to be paid to that witness on account of his or her expenses, not exceeding the amount that would be payable to him or her if his or her attendance had been as a witness for the Crown in a criminal case in 35 40

New

accordance with the regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.

Cf. 1978, No. 103, s. 18 (1)–(5)

5 **7B. Provisions relating to certain proceedings before Panel**—(1) At any meeting of the Panel held for the purposes of section 18 of this Act, the Panel shall allow to appear and be represented any person who applies to the Panel for leave to appear and be represented and who is a person to whom notice
10 of a meeting of the Panel is given under subsection (1) of that section.

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

(3) At every meeting of the Panel held for the purposes of
20 section 7E or section 18 of this Act the chairperson, if he or she is a barrister or solicitor of not less than 7 years' practice, shall be the chairperson of the Panel, but if not, a member of the Panel who is a barrister or solicitor of not less than 7 years' practice shall be the chairperson of the Panel.

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

7C. Proceedings privileged—(1) No proceedings, civil or criminal, shall lie against the Panel for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that the Panel acted without
30 reasonable care or in a bad faith.

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

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

(a) An offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or

New

- (b) The offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
- (c) The offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961. 5
- (4) A person shall not be excused from complying with any requirement to furnish information, produce documents, or give evidence under this Act, or, on appearing before the Panel, from answering any question or producing any document, on the ground that to do so might tend to incriminate that person or that person's spouse. 10
- (5) A statement made by a person in answer to a question put by or before the Panel shall not in criminal proceedings be admissible against that person or that person's spouse. 15
- (6) Nothing in **subsection (5)** of this section applies in respect of proceedings on a charge of perjury against the maker of the statement.
- (7) No court or other person shall be entitled to require any member of the Panel or any officer or employee of the Panel or any other person present at any meeting of the Panel to divulge or communicate any information furnished or obtained, or any documents produced or obtained or tendered, or any evidence given, in connection with the operations of the Panel. 20 25
- (8) Nothing in **subsection (7)** of this section applies in respect of—
- (a) Any proceedings referred to in **subsection (3)** or **subsection (6)** of this section; or
- (b) Any proceedings to which the Panel is a party. 30
- (9) Anything said, or any information furnished, or any document produced or tendered, or any evidence given by any person to the Panel, shall be privileged in the same manner as if that statement, information, document, or evidence were made, furnished, produced, or given in proceedings in a court. 35
- (10) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any statement, document, determination, order, or decision made by the Panel in the exercise or intended exercise of any of its functions or powers shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand. 40

New

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

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

7D. Meetings—The Panel shall decide whether to hold any meeting or any part of a meeting in public or in private.

7E. Power to prohibit disclosure of information, documents, and evidence—(1) The Panel may, of its own motion or on the application of any person,—

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

15 prohibiting—

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

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

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

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

30 **7F. Delegation of certain powers by Panel**—(1) The Panel may from time to time, by an instrument signed by the chairperson, delegate the Panel's powers under this Act in connection with the carrying out of its functions under **paragraphs (d) and (f) of section 7** of this Act.

35 (2) Nothing in **subsection (1)** of this section authorises the Panel to delegate any of its powers under **section 7A** or **section 7E** or **section 18** of this Act.

(3) Any delegation under this section may be made to a specified person or persons or to the holder or holders for the

New

time being of a specified office or appointment or to the holders of offices or appointments of a specified class.

(4) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Panel. 5

(5) Any such delegation may be made subject to such restrictions and conditions as the Panel thinks fit, and may be made either generally or in relation to any particular case or class of cases. 10

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

(7) Any person purporting to exercise any power of the Panel by virtue of a delegation under this section shall, when required to do so, produce evidence of that person's authority to exercise the power. 15

Cf. 1978, No. 103, s. 27

8. Powers—In addition to the powers conferred on it by this Act, the Panel has such powers as are reasonably necessary or desirable to enable it to carry out its functions. 20

9. Annual reports—(1) As soon as practicable after the end of each year ending with the 30th day of June, the Panel shall furnish to the Minister a report of its operations during that year. 25

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

10. Further provisions applying to Panel—The provisions set out in the Schedule to this Act apply in respect of the Panel. 30

PART II
TAKEOVERS CODE

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11. Objectives of takeovers code—The Panel shall formulate and recommend a takeovers code that, as far as practicable,— 35

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- 5 (a) Encourages the efficient allocation of resources; and
 (b) Encourages competition for the control of public issuers;
 and
 (c) Assists in ensuring that shareholders in a takeover are
 treated fairly; and
 (d) Promotes the international competitiveness of New
 Zealand's capital markets; and
 10 (e) Recognises that shareholders must ultimately decide for
 themselves the merits of a takeover offer; and
 (f) Maintains a proper relation between the costs of
 compliance with the code and the benefits resulting
 from it.

15 *New*

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

- 20 **11A. Objectives of takeovers code**—(1) In formulating a takeovers code the Panel shall consider the following objectives as the objectives for the code, namely,—
- (a) Encouraging the efficient allocation of resources;
 (b) Encouraging competition for the control of public issuers;
 25 (c) Assisting in ensuring that the holders of securities in a takeover are treated fairly;
 (d) Promoting the international competitiveness of New Zealand's capital markets;
 (e) Recognising that the holders of securities must ultimately decide for themselves the merits of a takeover offer;
 30 (f) Maintaining a proper relation between the costs of compliance with the code and the benefits resulting from it.
- (2) In formulating a takeovers code it is for the Panel to determine the weight that should be given to any particular
 35 objective referred to in **subsection (1)** of this section.

12. Matters to be considered by Panel in formulating takeovers code—Without limiting the matters that the Panel

may consider, the Panel shall, in formulating a takeovers code, consider whether the code should provide—

- (a) That advance notice and publicity should be given of takeovers:
- (b) That in a takeover, the public issuer and its *(shareholders)* security holders should be fully informed: 5
- (c) That in a takeover, offers should be made to all *(shareholders)* security holders, that the consideration offered should be the same for all *(shareholders)* security holders, and that all *(shareholders)* security holders should have the same opportunity for acceptance: 10
- (d) That incremental acquisitions and partial bids should be permitted:
- (e) That there should be rules to determine the price or prices payable for the acquisition of *(shares)* securities in a takeover: 15
- (f) For the compulsory acquisition of *(shares)* securities in a public issuer at the option of offerors or *(shareholders)* security holders, or both: 20
- (g) For the regulation of defensive tactics.

13. Specific provisions applying to takeovers code—

Without limiting the power to formulate a takeovers code, but subject to section 13A of this Act, the Panel may—

- (a) Define the transactions or classes of transactions in relation to which the code applies and for that purpose define terms and expressions used in the code in such manner as it thinks fit: 25
- (b) Prescribe the requirements in relation to offers and the making of offers to acquire *(shares)* securities in a public issuer in a takeover including requirements as to the form and content of those offers, variations of those offers, the time during which those offers are to remain open for acceptance, the persons to whom those offers are to be made, and the manner of acceptance: 30
- (c) Prescribe the information, statements, certificates, and documents or other matters that must be supplied to a public issuer and the *(shareholders)* security holders of the public issuer in a takeover: 35
- (d) Prescribe requirements for the registration by the Registrar of Companies of documents in connection with a takeover: 40

- (e) Prescribe the duties and obligations of a public issuer and the directors of the public issuer and other persons in a takeover.

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- 5 **13A. Takeovers code not to apply in certain cases—**
Nothing in the takeovers code shall require any person to
comply with the code—
- 10 (a) By reason only of the fact that, on the coming into force
of the code, a particular proportion of securities have
been acquired in a public issuer, whether by that
person or any other person, before the code comes
into force; or
- 15 (b) By reason of the acquisition of securities in a public issuer,
whether by that person or any other person, on or
after the coming into force of the code, if the
acquisition arises from the performance of a
contractual obligation incurred or, the exercise of a
right acquired, before the 2nd day of April 1993.

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

- 30 **15. Consultation—**(1) The Panel shall, in formulating a
takeovers code, do everything reasonably possible to afford
such persons and organisations as wish to do so a reasonable
opportunity to make submissions to it as to the nature and
scope of the code and the matters with which it should deal.
- 35 (2) Before recommending the takeovers code the Panel
shall—
- (a) Do everything reasonably possible to afford such persons
and organisations as wish to do so an opportunity to
make submissions to it on the proposed code; and
- (b) Make copies of the proposed code available to any such
person or organisation for that purpose.
- (3) A failure to comply with this section does not affect the
validity of any takeover code that is approved under this Act.

New

15A. Action taken by Takeover Panel Advisory Committee—Any action taken by the committee appointed by the Minister and known as the Takeover Panel Advisory Committee before the coming into force of this Act that would, if this Act had been in force and that committee had itself been the Panel, have constituted action taken under this Act, shall be treated as having been taken by the Panel under this Act.

16. Approval of takeovers code—(1) The Panel shall recommend the proposed takeovers code to the Minister who may, *(if he or she is satisfied that the code meets the objectives set out in section 11 of this Act,)* advise the Governor-General to approve the code by Order in Council.

(2) If *(the Minister is not satisfied that the code meets the objectives set out in section 11 of this Act, or, if)* the Minister does not propose to advise the Governor-General to approve the code, *(as the case may be,)* the Minister shall, as soon as practicable,—

- (a) Advise the Panel in writing accordingly stating his or her reasons; and
- (b) Request the Panel to recommend a further code to the Minister.

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(3) The Minister may, if he or she is satisfied that a takeovers code recommended under **subsection (2)** of this section meets the objectives set out in **section 11** of this Act, advise the Governor-General to approve the code.

New

(3) The Minister may advise the Governor-General to approve any takeovers code that is recommended under **subsection (2)** of this section.

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

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

17. Order in Council deemed to be regulation—Every Order in Council made under **section 16 (4)** of this Act—

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

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(b) Is deemed to be a regulation for the purposes of—

(i) The Acts and Regulations Publication Act 1989; and

(ii) The Regulations (Disallowance) Act 1989 (except section 9 of that Act).

New

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

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18. Power to make regulations prescribing offences and civil remedies and for related purposes—The Governor-General may, from time to time, make regulations—

(a) Prescribing offences in respect of the contravention of, or non-compliance with, provisions of the takeovers code and the fines (not exceeding \$100,000 in the case of individuals and \$300,000 in the case of bodies corporate) or other penalties that may be imposed for those offences and prescribing defences available to persons charged with such offences:

(b) Conferring on the Court the power to make such orders as may be specified where shares or any interest in or rights relating, whether directly or indirectly, to shares in the public issuer concerned have been acquired in contravention of, or without complying

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- with, any of the provisions of the takeovers code, and without limiting the generality of the foregoing, conferring on the Court power to make any of the following orders: 5
- (i) An order prohibiting the exercise for such period as the Court thinks fit of any right to vote attaching to the shares:
- (ii) An order directing the public issuer not to make payment, or to defer making payment for such period as the Court thinks fit, of any sum or sums due from the public issuer in respect of the shares: 10
- (iii) An order directing the public issuer not to register the transfer or transmission of all or any of the shares: 15
- (iv) An order prohibiting the public issuer from issuing any shares in addition to, or in substitution for, or in replacement of, the shares:
- (v) An order restraining the disposal of all or any of the shares or any interest in or rights relating to them: 20
- (vi) An order directing the disposal of all or any of the shares or any interest in or rights relating to them:
- (vii) An order directing the forfeiture of all or any of the shares: 25
- (viii) An order vesting the shares in a person as trustee for sale on such terms and conditions as the Court thinks fit:
- (ix) An order declaring that the exercise of voting or other rights attaching to the shares is void and of no effect: 30
- (x) An order declaring any agreement for the acquisition of the shares or an interest in or rights relating to them to be void and of no effect: 35
- (xi) An order declaring any agreement for the acquisition of the shares or an interest in or rights relating to them to be voidable at the option of the person from whom the shares or the interest or rights were acquired: 40

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- (xii) For the purposes of securing compliance with any of such orders, an order directing any person to do or refrain from doing a specified act:
- 5 (c) Conferring on the Court the power to make such orders as may be specified in any other case which involves the contravention of, or non-compliance with, any of the provisions of the takeovers code and without limiting the generality of the foregoing, conferring on the
- 10 Court the power to make any of the following orders:
- (i) An order directing any person to comply with any provision of the takeovers code even though the time for doing so may have expired:
- (ii) An order requiring a person specified in the order or the public issuer concerned, as the case may be, to supply information specified in the order to a person or class of persons specified in the order:
- (iii) An order restraining a person from, or doing any act for the purpose of, acquiring shares, or any interest in or rights relating, whether directly or indirectly, to shares, in the public issuer concerned:
- (iv) For the purpose of securing compliance with any of such orders, an order directing a person to do or refrain from doing a specified act:
- 25 (d) Conferring on the Court the power to make any such orders on conditions:
- (e) Where the Court makes any such order, prescribing duties and obligations to be carried out by the public issuer concerned or such other persons as may be specified in consequence of the order:
- 30 (f) Specifying the persons who may apply to the Court for the making of any such orders:
- (g) Specifying the persons who are entitled to appear at the hearing of an application for any such orders:
- 35 (h) Prescribing requirements for the giving of notice of the making of any such application:
- (i) Conferring on the Court the power to make, as an interim order, any order that it is empowered to make on any such application:
- 40 (j) Limiting the type of order that the Court may make where the Court is satisfied that the contravention of, or failure to comply with, a provision of the takeovers

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code ought to be excused to such orders as may be specified:

- (k) Conferring on the Court, where it is satisfied that an act or omission that constituted a contravention of, or failure to comply with, any provision of the takeovers code ought to be excused, the power to declare that the act or omission did not have that effect. 5

New

PART III

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ENFORCEMENT

18. Panel's powers in respect of compliance with takeovers code—(1) The Panel may at any time, if it considers that a person may not have acted or may not be acting or may intend not to act in compliance with the takeovers code, after giving that person such written notice of the meeting as the Panel considers appropriate in the circumstances, but in no case exceeding 7 days, hold a meeting for the purpose of determining whether to exercise its powers under this section. 15

(2) Where the Panel gives a notice under **subsection (1)** of this section, it may make a restraining order that is expressed to expire with the close of the second day after the day on which the meeting is held. 20

(3) At any such meeting the Panel may make a determination— 25

- (a) That it is satisfied that the person has acted or is acting or intends to act in compliance with the takeovers code; or
 (b) That it is not satisfied that the person has acted or is acting or intends to act in compliance with the takeovers code. 30

(4) Where the Panel makes a determination under **subsection (3) (b)** of this section, it may, at any time before the close of the second day after the meeting,—

- (a) Make a restraining order that is expressed to expire with the close of such day as shall be specified in the order, not being a day that is later than 21 days after the date of the meeting; 35

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- 5 (b) Make an order continuing any restraining order made under **subsection (2)** of this section until the close of such day as may be specified in the order, not being a day that is later than 21 days after the date of the meeting.

18A. Restraining orders—For the purposes of **section 18** of this Act, a restraining order is an order for one or more of the following—

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

30 **18B. Court may make orders**—The Court may, on the application of a person referred to in **section 18c** of this Act, if it is satisfied that a person has not acted or is not acting or intends not to act in compliance with the takeovers code, make any one or more of the orders specified in **section 18D** of this Act.

35 **18c. Persons who may apply**—(1) Where the Panel makes a determination under **section 18(3)(b)** of this Act (a determination that the Panel is not satisfied that a person has acted or is acting or intends to act in compliance with the takeovers code) the following persons may, subject to **subsection**

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- (2) of this section, make an application to the Court under **section 18B** of this Act:
- (a) The Panel:
 - (b) The stock exchange on which the securities in the public issuer concerned are, or were at any material time, quoted: 5
 - (c) The public issuer concerned:
 - (d) A member or shareholder of the public issuer concerned:
 - (e) A person who was a member or shareholder of the public issuer concerned at the time that the conduct to which the application relates occurred: 10
 - (f) A person who, at any time within the period of 6 months before the making of the application, has made an offer or offers to acquire securities in the public issuer in accordance with the takeovers code: 15
 - (g) With the leave of the Court, any other person.
- (2) A person referred to in any of **paragraphs (b) to (f)** of **subsection (1)** of this section is not entitled to make an application to the Court unless— 20
- (a) The Panel has consented to the making of the application; or
 - (b) That person has requested the Panel in writing to make an application to the Court itself and the Panel has not made such an application before the expiration of 10 days after receiving the request. 25
- (3) Where a request is made to the Panel to hold a meeting under **section 18 (1)** of this Act and the Panel does not, within 14 days after receiving the request, make a determination under **section 18 (3)** of this Act the following persons may make an application to the Court under **section 18B** of this Act— 30
- (a) The stock exchange on which the securities of the public issuer concerned are, or were at any material time, quoted:
 - (b) The public issuer concerned: 35
 - (c) A member or shareholder of the public issuer concerned:
 - (d) A person who was a member or shareholder in the public issuer concerned at the time that the conduct to which the application relates occurred:
 - (e) A person who, at any time within the period of 6 months before the making of the application, has made an 40

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offer or offers to acquire securities in the public issuer in accordance with the takeovers code:

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

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

18D. Orders—(1) The Court may, on an application under section 18B of this Act, make, in relation to the public issuer concerned and any securities in the public issuer, any of the following orders:

10 (a) An order prohibiting the exercise for such period as the Court thinks fit of any right to vote attaching to any such securities:

15 (b) An order directing the public issuer not to make payment, or to defer making payment for such period as the Court thinks fit, of any sum or sums due from the public issuer in respect of any such securities:

20 (c) An order directing the public issuer not to register the transfer or transmission of all or any of such securities:

(d) An order prohibiting the public issuer from issuing any securities in addition to, or in substitution for, or in replacement of, any existing securities:

25 (e) An order restraining the disposal of all or any of the such securities or any interest in or rights relating to them:

(f) An order directing the disposal of all or any of such securities or any interest in or rights relating to them:

(g) An order directing the forfeiture of all or any of such securities:

30 (h) An order vesting any such securities in a person as trustee for sale on such terms and conditions as the Court thinks fit:

35 (i) An order declaring that the exercise of voting or other rights attaching to any such securities is void and of no effect:

(j) An order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is void and of no effect:

40 (k) An order declaring any agreement for the acquisition of any such securities or an interest in or rights relating to them is voidable at the option of the person from

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| whom the securities or the interest or rights were acquired: | |
| (l) An order restraining any person from engaging in conduct in contravention of the takeovers code: | 5 |
| (m) An order restraining a person from, or doing any act for the purpose of, acquiring any such securities, or any interest in or rights relating, whether directly or indirectly, to any such securities: | |
| (n) An order requiring a person to comply with any provision of the takeovers code even though the time for doing so may have expired: | 10 |
| (o) An order requiring a person specified in the order or the public issuer concerned, as the case may be, to supply information or information of the kind specified in the order to a person or class of persons specified in the order: | 15 |
| (p) An order directing any person who has failed to comply with the takeovers code to pay compensation to any person who has suffered loss or damage as a result of the failure to comply: | 20 |
| (q) Where a contract is entered into in contravention of the takeovers code, or, as the case may be, a contract contains a provision which, if given effect to, would contravene, the takeovers code, an order— | 25 |
| (i) Varying the contract, in such manner as the Court thinks fit: | |
| (ii) Cancelling the contract: | |
| (iii) Requiring any person who is a party to the contract to make restitution or pay compensation to any other person who is a party to the contract: | 30 |
| (r) For the purposes of securing compliance with any of such orders, an order directing a person to do or refrain from doing a specified act. | |
| (2) Any order under subsection (1) of this section may be made on such terms and conditions as the Court thinks fit., | 35 |

18E. Interim orders—Where an application is made to the Court under **section 18B** of this Act, the Court may make, as an interim order, any order that it is empowered to make under **section 18D** of this Act.

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18f. Court may have regard to determinations and recommendations by Panel—(1) The Court may, in determining any application under **section 18b** of this Act, have regard to any determination made by the Panel under **section 18(3)** of this Act relating to the matter concerned.

(2) The Court may, in determining whether to make any order under **section 18d** of this Act and the type of any such order, have regard to any recommendation made by the Panel either at any meeting of the Panel held for the purposes of **section 18** of this Act or at the request of the Court.

18c. Orders directing disposal of securities—Without limiting **section 18d** of this Act, any order made under **subsection (1) (f)** of that section directing the disposal of securities or any interest in or rights relating to securities may require—

(a) That the securities are, or any interest in them is, disposed of within a time specified by the Court:

(b) That neither the securities are, nor any interest in them is, disposed of to any specified person or class of persons:

(c) That the securities are, or any interest in them is, disposed of in a manner and on terms specified by the Court:

(d) That the proceeds of any disposition are—

(i) Applied towards the costs of the application; or

(ii) Paid in such amounts and to such persons as the Court specifies; or

(iii) Applied or paid partly towards the costs of the application and partly in such amounts and to such persons as the Court specifies.

18h. Revocation, variation, and suspension of orders—Any order under **section 18d** or **section 18e** of this Act may be revoked or varied or suspended and on such terms and conditions as the Court thinks fit.

18i. Court may excuse contravention—(1) The Court may, if it is satisfied that a person has, by any act or omission, failed to comply with any provision of the takeovers code, but that the failure ought to be excused, by order, declare that the act or omission was not a failure to comply with the code and any such order has effect according to its tenor.

New

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

- (a) Inadvertence or mistake on the part of the person concerned: 5
- (b) Whether that person was aware of a relevant factor or circumstance:
- (c) Circumstances beyond that person's control:
- (d) Such other matters as the Court thinks fit.

18j. Court may require person to give evidence or produce documents relating to interests in securities— 10

(1) The Court may, in any application under **section 18b** of this Act, for the purpose of ascertaining whether any person—

- (a) Has or had any direct or indirect interest in or right to any security in the public issuer concerned; or 15
- (b) Has or had any direct or indirect right to exercise any voting rights attaching to any such security,—

order any person to—

- (a) Attend before the Court and be examined on oath or affirmation; or 20
- (b) Produce documents in that person's possession or under that person's control.

(2) An order under **subsection (1)** of this section may be made on the application of any person who is a party to the application under **section 18b** of this Act. 25

18k. Offences—(1) No person shall—

- (a) Furnish information or produce a document to, or give evidence at a meeting of, the Panel knowing it to be false or misleading; or
- (b) Attempt to deceive or knowingly mislead the Panel in relation to any matter before it. 30

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

- (a) Without reasonable excuse, refuse or fail to appear before the Panel to give evidence; or 35
- (b) Refuse to take an oath or affirmation as a witness; or
- (c) Refuse to answer any question; or
- (d) Refuse to produce to the Panel any document that that person is required to produce.

New

(3) No person shall act in contravention of any order made by the Panel under **section 7E** or **section 18** of this Act.

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

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

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

(a) The body corporate commits an offence and is liable on summary conviction to a fine not exceeding \$100,000; and

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

(7) No person shall be convicted of an offence against **subsection (1)** or **subsection (3)** of this section if the contravention was in respect of matters which in the opinion of the court dealing with the case were immaterial, or was otherwise such as, in the opinion of the court, having regard to all the circumstances of the case, ought reasonably to be excused.

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

30 **19. Panel may grant exemptions—**(1) The Panel may, from time to time, in its discretion and on such terms and conditions as it thinks fit, by notice in the *Gazette*, exempt any person from compliance with any provision of the takeovers code and may in like manner vary or revoke any such exemption.

35 (2) Every such exemption shall have effect according to its tenor.

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PART IV
AMENDMENTS TO OTHER ACTS

20. Amendment to Companies Amendment Act 1963—

(1) Section 3 of the Companies Amendment Act 1963 is hereby amended by inserting, after paragraph (a), the following paragraph: 5

“(ab) Any shares in a public issuer within the meaning of section 2 of the Takeovers Act 1991; or”.

(2) Part I of the Companies Amendment Act 1963 shall, notwithstanding subsection (1) of this section, continue in force in respect of the acquisition of shares in a public issuer within the meaning of section 2 of the Takeovers Act 1991 in any case where notice of a takeover scheme has, before the commencement of this section, been served on the public issuer under section 4 of the Companies Amendment Act 1963. 15

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(3) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

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20A. Amendment to Securities Act 1978—Section 3 (2) of the Securities Act 1978 is hereby amended by adding the following paragraph:

“(d) An offer of securities made pursuant to any takeovers code that is in force under section 16 of the Takeovers Act 1993.” 25

21. Amendment to Official Information Act 1982—The Official Information Act 1982 is hereby amended by inserting, in the First Schedule to that Act, in its appropriate alphabetical order, the following item: 30

“Takeovers Panel”.

SCHEDULE

Section 10

PROVISIONS APPLYING TO TAKEOVERS PANEL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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7A. Employees of Panel—(1) Subject to **subclause (2)** of this clause, the Panel may from time to time appoint such officers and employees, including acting or temporary or casual officers and employees, as it thinks necessary for the efficient carrying out of its functions, powers, and duties under this Act.

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

7B. Employment of experts—(1) The Panel may appoint any person, who, in its opinion, possesses expert knowledge or is otherwise able to assist it in connection with the exercise of its functions, to make such inquiries or to conduct such research or to make such reports as may be necessary for the efficient carrying out of any functions of the Panel.

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

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

SCHEDULE—*continued*

PROVISIONS APPLYING TO TAKEOVERS PANEL—*continued*

9. Members not personally liable—No member of the Panel is personally liable for an act or default done or made by the Panel or by any member of the Panel in good faith in the course of carrying out its functions.