

# **Business Law Reform Bill**

Government Bill

As reported from the Commerce Committee

## **Commentary**

### **Recommendation**

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

### **Introduction**

This bill aims to increase the clarity, efficiency, and effectiveness of the law regarding the operation of business. It focuses on clarifying and updating the intended purpose of various statutory provisions, removing unnecessary compliance costs, and ensuring consistency between legislative requirements.

This bill includes amendments to five Acts—the Companies Act 1993, the Dumping and Countervailing Duties Act 1988, the Financial Reporting Act 1993, the Friendly Societies and Credit Unions Act 1982, and the Insurance Companies' Deposits Act 1953. It also consequentially amends the Co-operative Companies Act 1996, the Corporations (Investigation and Management) Act 1989, the Reserve Bank of New Zealand Act 1989 and the Securities Markets Act 1988. Most of the amendments contained in the bill are based on suggestions from business law practitioners, enforcement agencies, and the business community.

This commentary addresses the key issues considered, and explains the substantive amendments recommended. The technical and minor amendments recommended are not discussed.

## **Companies Act 1993**

Part 1 of the bill contains proposed amendments to the Companies Act 1993.

### **Distribution of companies' annual reports**

In the bill as introduced, changes were made to provide for the distribution of annual reports by electronic means. Under new section 209, companies would be able to send a notice to shareholders informing them that they can be sent a copy of the annual report on request or obtain the annual report by electronic means. Shareholders would not need to reply to the notice if they preferred viewing the annual report on the company's website. We recommend further amendments to enhance the practicality of the proposal.

We are keen to ensure that shareholders could not waive the right to receive both an annual report and a notice that the annual report is available. Therefore, we recommend amending section 212 of the Companies Act to ensure that such a waiver is invalid and the company must send either the annual report or the notice.

In order to enhance the workability of the proposal, we recommend that a shareholder be required to elect to receive an annual report within 15 working days of receiving a notice, and that the board of the company must send the annual report to the shareholder as soon as practicable.

We recommend amending new section 209A, as inserted by clause 8, so that a shareholder is not required to make such a request every year. Instead, the recommended amendment provides that if a shareholder makes a request to receive an annual report, the board of a company must send an annual report to the shareholder each year until the shareholder revokes the request.

### **Qualifications of directors**

The bill as introduced proposed to amend section 151(2) of the Companies Act in clause 6 to disqualify from directorship those who are prohibited from being a director or participating in the management of a company in an overseas jurisdiction. We consider that a transitional provision is required. Therefore, we propose to insert clause 6(2), which provides that a current director who is subject to an overseas prohibition order is not automatically disqualified from directorship when this provision comes into force.

## **Dumping and Countervailing Duties Act 1988**

Part 2 of the bill contains amendments to the Dumping and Countervailing Duties Act 1988. We recommend some minor technical changes only in this Part.

## **Financial Reporting Act 1993**

In Part 3 of the bill, amendments are made to the Financial Reporting Act 1993. This part mainly includes changes which are intended to reduce compliance costs by simplifying financial reporting requirements. We are recommending various changes to improve the workability of those provisions.

### **Commencement of some provisions of Part 3**

We are concerned that after enactment of the bill the Registrar of Companies will need time to notify some of the changes to companies that currently have filing obligations under section 19 of the Financial Reporting Act. Therefore, in clause 24, we recommend changing the commencement date for clauses 31, 32, and 38 from the day after the date of the Royal assent to two months after the date of Royal assent.

### **Exemption power of Accounting Standards Review Board**

The bill as introduced proposed that the Accounting Standards Review Board could exempt a person or a class of persons from complying with a provision of an applicable financial reporting standard in exceptional circumstances (clause 34).

Some submitters opposed the inclusion of the proposed exemption power for two reasons. Firstly, submitters fear that such a power would undermine the broader principles underpinning the financial reporting standards system.

- New Zealand entities should be required to comply with one set of standards that are recognised and comparable internationally (the entity neutrality principle).
- There should be one coherent set of standards that are applicable to all New Zealand entities regardless of which sector they belong to (the sector neutrality principle).
- Reporting costs should not exceed the resulting benefits (the cost-benefit principle).

Nonetheless, we consider that these principles should be applied to the maximum extent possible, but not invariably. Moreover, at present, there are instances where these principles are not fully applied. For instance, some entities are permitted to elect to account for income tax in accordance with the standard on income taxes (NZIAS 12), or to use the taxes payable method. Thus, in this case, there is conflict between the cost-benefit and entity neutrality principles, and the former has been allowed to prevail. We believe that the proposed exemption power in clause 34 would undermine the principles no more than exceptions from the entity and sector neutrality principles already approved by the Board.

Secondly, submitters argued that the Financial Reporting Act already provides the Board with the requisite powers in the extremely rare circumstances where compliance with a standard by a class of entity, or even an individual entity, would be seriously prejudicial. We noted that this power is subject to an “if the Board thinks fit” test, and that the Board can approve a standard that includes a provision that does not apply to an entity or a class of entities. However, we argue that the power under sections 24 to 27 of the Financial Reporting Act lacks transparency because it has never been used for making individual exemptions. Moreover, it leads to weak accountability because the “if the Board thinks fit” test does not make clear the criteria the Board is using when exercising this power. Therefore, we consider that the exemption power in clause 34 is appropriate as it will strengthen the accountability of the Board in exercising its exemption powers.

### **Exemption power of the Securities Commission**

Submitters asserted that the current Financial Reporting Act impeded overseas companies offering share purchase and option plans to their New Zealand employees. At present, overseas companies that make such offers are regarded as issuers for the purposes of the Financial Reporting Act. This means they must prepare both consolidated and non-consolidated financial statements. In contrast other countries, such as the USA, do not require non-consolidated statements. Submitters informed us that the cost of preparing non-consolidated financial statements could be prohibitive.

To address the submitters’ concerns, we recommend inserting new clause 37A. This provides that the Securities Commission can exempt directors or classes of directors of issuers that are incorporated or constituted outside New Zealand from preparation, auditing, and filing requirements and associated offence provisions. We

are concerned about protecting the interests of the subscribers for the securities of the issuers, so we propose that the Securities Commission should not be able to grant an exemption under new section 35A of the Financial Reporting Act unless it is satisfied that the exemption does not cause significant detriment to subscribers in New Zealand.

### **Exemption power of the Registrar of Companies**

To complement the Securities Commission's proposed exemption powers for issuers, we propose that the Registrar of Companies should also have an exemption power for non-issuer overseas companies.

### **Recipients of money from conduit issuers**

We recommend providing explicitly that a person is a recipient of money from a conduit issuer only if he or she received 10 percent or more of the money raised by the conduit issuer from the public, and that the aggregate amount provided to the person and all related parties constituted 75 percent or more of the money raised from the public (clause 27). We recommend that the definition of "related person" in clause 27 be the same as that of "associated person" in section 2(2) of the Securities Markets Act 1988.

### **Accounting periods to which amendments apply**

In clause 42, we recommend that clauses 25(1) and (3), 28, 29, 31, 32, and 38 of the bill apply to and from the accounting periods that are in progress at the time of the commencement of these provisions. In the bill as introduced, these provisions would apply from the accounting periods that begin after the commencement of the provisions. This amendment will allow the relevant entities to take advantage of the reduction in compliance costs one year earlier.

### **Report from the Regulations Review Committee**

The Regulations Review Committee reported to us on the regulation-making powers contained in new section 6A, as inserted by clause 28, and new section 19A, as inserted by clause 31. New section 6A includes the criteria that define an exempt company. It also empowers the making of regulations to amend the maximum amount of assets, maximum turnover, or maximum number of full-time equivalent employees specified in those criteria. New section 19A contains a similar mechanism for defining large companies with an overseas ownership component, which are required to register financial statements.

The Committee informed us that these two regulation-making powers were undesirable, as they permit primary legislation to be amended by delegated legislation. It is a well-established principle that the power to amend Acts of Parliament should lie with Parliament itself. The Committee advised us that matters of policy should be determined in primary legislation and be subject to full parliamentary scrutiny. The Committee suggested that it would be more appropriate to make such amendments through a Statutes Amendment bill or other amending primary legislation.

We considered that the report of the Regulations Review Committee drew our attention to an important constitutional point, but we have not recommended any amendment to the bill because we consider the possible risks to be minimal.

### **Friendly Societies and Credit Unions Act 1982**

Part 4 of the bill seeks to improve the efficiency of the Friendly Societies and Credit Unions Act 1982, and give credit unions more room to grow their business without incurring unmanageable risks to their members.

We are concerned that clause 45, which relates to the qualifications for admission to membership of a credit union, is not wide enough to cover employment by a group of employers as common bond<sup>1</sup>. We therefore recommend an amendment so that employment with an employer or employers is a qualification for a common bond.

### **Insurance Companies' Deposits Act 1953**

Part 5 of the bill amends the Insurance Companies' Deposits Act 1953. The bill as introduced proposed to prohibit entities incorporated or established in New Zealand from using the word "insurance" or other similar terms in their names, or holding out overseas that they are New Zealand insurers, when they are not carrying on insurance business in New Zealand. This proposed ban would be subject to exemptions granted by the chief executive officer of the administering department (the Secretary). To help the Secretary administer this exemption power, we propose to allow the Secretary to grant, vary, or revoke the exemption on any terms and conditions that the Secretary thinks fit. Moreover, we are keen to ensure that the process of granting exemptions is transparent, so we recommend

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<sup>1</sup> Common bond means field of membership as set out in a credit union's rules.

that exemptions must be notified in the *Gazette* along with the Secretary's reasons for granting them. We also propose to provide for a regulation-making power to allow the charging of fees for vetting exemptions from clause 57.

We further recommend that insurance workers and insurance industry associations be automatically exempted from the ban under clause 57.

The bill as introduced proposed in clause 55 that any person who failed to comply with the Insurance Companies' Deposits Act would be liable to a fine not exceeding \$1,000 per day. We are aware that this proposed daily penalty clause would not be necessarily consistent with Chapter 12 of the Legislation Advisory Committee Guidelines. Hence, we recommend that the daily penalty be replaced with a fixed penalty for each breach, with a maximum fine of \$50,000 for individuals and a maximum fine of \$200,000 for companies and mutual insurance associations.

Submissions were made to us concerning the position of captive insurance companies who, whilst carrying on insurance business in New Zealand, insure risks occurring solely in overseas jurisdictions. We have been assured that the bill will not alter the status quo in that regard.

### **Issues requiring further policy development**

At present all companies with 25 percent or more overseas ownership are required to file financial statements with the Registrar of Companies. The proposed section 19 removes the filing requirements for small and medium-sized companies with 25 percent or more overseas ownership. We note that the Ministry of Economic Development proposes to consult further on this matter, and request that the 25 percent threshold be reviewed at that time.

Some submitters suggested various changes that are beyond the scope of this bill. For example, the Takeovers Panel recommended amending the Companies Act to remove a possible loophole regarding the application of the Takeovers Code. We would support additional measures being brought forward to address the Takeovers Panel's concerns at least in part.

Since these issues require further discussion, the Ministry of Economic Development will add them to its business law reform database. The Minister may address these issues in future legislation.

## **Appendix**

### **Committee process**

The Business Law Reform Bill was referred to the committee on 19 July 2006. The closing date for submissions was 25 August 2006. We received and considered 35 submissions from interested groups and individuals. We heard 11 submissions.

We received advice from the Ministry of Economic Development and the Regulations Review Committee.

### **Committee membership**

Katherine Rich (Chairperson)

Gordon Copeland (Deputy Chairperson)

Chris Auchinvole

Charles Chauvel (from 2 August 2006)

Shane Jones

Hon Luamanuvao Winnie Laban

Hon Mahara Okeroa (until 2 August 2006)

Maryan Street

Chris Tremain

Pansy Wong

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

#### New (unanimous)

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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*Hon Lianne Dalziel*

## **Business Law Reform Bill**

Government Bill

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**Consequential amendments**

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

**1 Title**

This Act is the Business Law Reform Act **2006**.

**2 Commencement**

**Struck out (unanimous)**

- (1) **Part 1** and **the Schedule** come into force as provided in **section 4**.
- (2) **Part 3** comes into force as provided in **section 24**.

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**New (unanimous)**

- (1) **Sections 25(3), 31, 32, and 38** come into force on the day that is 2 months after the date on which this Act receives the Royal assent.
- (2) **Sections 5(3), 6 to 14, 17, 25(2), 29, 33 to 37A, 39, and 41** and **the Schedule** come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

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**Part 1  
Companies Act 1993**

**3 Principal Act amended**

**This Part** amends the Companies Act 1993.

**Struck out (unanimous)**

- 4 Commencement of this Part**
- (1) **Sections 5(3), 6 to 14, and 17** and **the Schedule** come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (2) The rest of **this Part** comes into force on the day after the date on which this Act receives the Royal assent.

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**5 Interpretation**

- (1) Section 2(1) is amended by repealing the definition of **exempt company** and substituting the following definition:

“**exempt company** has the meaning set out in **section 6A** of the Financial Reporting Act 1993”.

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**Struck out (unanimous)**

- (2) **Subsection (1)** applies in respect of accounting periods that commence after the commencement of this subsection.

**New (unanimous)**

- (2) **Subsection (1)** applies in respect of—
- (a) accounting periods that have not ended at the commencement of that subsection; and
  - (b) accounting periods that commence after the commencement of that subsection.

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- (3) Section 2(1) is amended by inserting the following (*definition in its*) definitions in their appropriate alphabetical order:

“**annual report**—

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- “(a) means a report prepared under section 208; and  
“(b) does not include a concise annual report

**New (unanimous)**

“**concise annual report**, in relation to a company and an accounting period, means a report on the affairs of the company during that period that is prepared in accordance with the requirements prescribed in regulations made under this Act”.

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**6 Qualifications of directors**

- (1) Section 151(2) is amended by inserting the following paragraph before paragraph (f):

“(eb) a person who is prohibited from 1 or more of the following under an order made, or a notice given, under a law of a prescribed country, State, or territory outside New Zealand:

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- “(i) being a director of an overseas company:



“(2) **Subsection (1)** is subject to section 212.

“(3) The notice referred to in **subsection (1)(b)** must contain—

**Struck out (unanimous)**

“(a) a statement to the effect that the shareholder has a right to receive from the company, free of charge and on request, a copy of the annual report; and

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**New (unanimous)**

“(a) a statement to the effect that the shareholder has a right to receive from the company, free of charge, a copy of the annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the annual report; and

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“(b) a statement to the effect that the shareholder may obtain a copy of the annual report by electronic means; and

“(c) a statement as to how the shareholder may obtain a copy of the annual report by electronic means (for example, from a specified website address); and

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“(d) a statement as to whether the board of the company has prepared, in relation to the same accounting period (*of*) as the annual report, a concise annual report and, if so, a statement—

**Struck out (unanimous)**

“(i) to the effect that the shareholder has a right to receive from the company, free of charge and on request, a copy of the concise annual report; and

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**New (unanimous)**

“(i) to the effect that the shareholder has a right to receive from the company, free of charge, a copy

**New (unanimous)**

of the concise annual report if the shareholder, within 15 working days of receiving the notice, makes a request to the company to receive a copy of the concise annual report; and

- “(ii) to the effect that the shareholder may obtain a copy of the concise annual report by electronic means; and 5
- “(iii) as to how the shareholder may obtain a copy of the concise annual report by electronic means (for example, from a specified website address). 10

**Struck out (unanimous)**

- “(4) For the purposes of this section and **section 209B**, **concise annual report**, in relation to a company and an accounting period, means a report on the affairs of the company during that period that is prepared in accordance with the prescribed requirements (which may require the inclusion of financial statements, group financial statements, or summary financial statements prepared in accordance with 1 or more approved financial reporting standards). 15

**New (unanimous)**

- “(4) The notice referred to in **subsection (1)(b)** may be accompanied by any additional information or documentation that the board of the company thinks fit. 20
- “(4A) For the purposes of this section and **sections 209A and 209B**, every concise annual report for a company must, in relation to an accounting period, include,—
  - “(a) in relation to a company that has, on the balance date of the company, no subsidiaries,—
    - “(i) financial statements for the accounting period and any auditor’s report on those financial statements required under Part 11; or 25
    - “(ii) summary financial statements for the accounting period: 30

**New (unanimous)**

- “(b) in relation to a company that has, on the balance date of the company, 1 or more subsidiaries,—
- “(i) group financial statements for the accounting period and any auditor’s report on those group financial statements required under Part 11; or 5
  - “(ii) summary financial statements for the accounting period prepared in relation to the group comprising the company and its subsidiaries.
- “(4B) For the purposes of **subsection (4A)**,—
- “(a) financial statements must be completed and signed in accordance with section 10 of the Financial Reporting Act 1993: 10
  - “(b) group financial statements must be completed and signed in accordance with section 13 of the Financial Reporting Act 1993: 15
  - “(c) summary financial statements must give a true and fair view of the matters to which they relate and comply with generally accepted accounting practice (as defined in section 3 of the Financial Reporting Act 1993).
- “(5) 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

**Struck out (unanimous)**

- “209A Board must send copy of annual report on request**
- “(1) If the board of a company has sent a notice to a shareholder under **section 209(1)(b)** and the shareholder makes a written request to the company to receive a copy of the annual report, the board of the company must send to the shareholder, free of charge, a copy of that annual report within 5 working days of receiving the request. 25
  - “(2) 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). 30

## New (unanimous)

- “209A Board must send copy of annual report or concise annual report on request**
- “(1) If the board of a company has sent a notice to a shareholder under **section 209(1)(b)** and the shareholder, within 15 working days of receiving that notice, makes a request to the company to receive a copy of the annual report, the board of the company must, as soon as practicable, send to the shareholder, free of charge, a copy of that annual report. 5
- “(2) If a shareholder makes a request under **subsection (1)**,—
- “(a) the request must be treated as a request by the shareholder to send to the shareholder each year a copy of the annual report under **section 209(1)(a)**; and 10
- “(b) the board of the company must send to the shareholder each year a copy of the annual report under **section 209(1)(a)** until the shareholder revokes the request by notice to the company. 15
- “(3) **Subsection (4)** applies if—
- “(a) the board of a company has sent a notice to a shareholder under **section 209(1)(b)**; and
- “(b) that notice states that the board has prepared a concise annual report; and 20
- “(c) the shareholder, within 15 working days of receiving that notice, makes a request to the company to receive a copy of the concise annual report.
- “(4) The board of the company must send to the shareholder a copy of the concise annual report, free of charge, as soon as practicable after receiving the request. 25
- “(5) 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). 30
- “209B Annual report and concise annual report made available by electronic means**
- “(1) If the board of a company has sent a notice to a shareholder under **section 209(1)(b)**, the board must ensure that—
- “(a) a copy of the annual report is available in the manner described in the notice under **section 209(3)(c)** at all reasonable times during the period beginning on the date 35

the notice is sent and ending on the (*earlier of—*) date the board acts under **section 209(1)** in relation to the next accounting period; and

**Struck out (unanimous)**

- “(i) the date the board sends to the shareholders a copy of a more recent annual report; or  
 “(ii) the date the board sends to the shareholders a notice under **section 209(1)(b)** in relation to a more recent accounting period; and

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- “(b) the manner described in the notice under **section 209(3)(c)** allows a copy of the annual report to be readily accessible so as to be usable for subsequent reference.

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- “(2) If the board of a company has sent a notice to a shareholder under **section 209(1)(b)** and that notice states that the board has prepared a concise annual report, the board must—

**Struck out (unanimous)**

- “(a) send to the shareholder a copy of the concise annual report, free of charge, within 5 working days of receiving a written request from the shareholder to receive that copy; and

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- “(b) ensure that a copy of the concise annual report is available in the manner described in the notice under **section 209(3)(d)(iii)** at all reasonable times during the period beginning on the date the notice is sent and ending on the (*earlier of—*) date the board acts under **section 209(1)** in relation to the next accounting period; and

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**Struck out (unanimous)**

- “(i) the date the board sends to the shareholders a copy of a more recent annual report or concise annual report; or  
 “(ii) the date the board sends to the shareholders a notice under **section 209(1)(b)** in relation to a more recent accounting period; and

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- “(c) ensure that the manner described in the notice under **section 209(3)(d)(iii)** allows a copy of the concise annual report to be readily accessible so as to be usable for subsequent reference.
- “(3) 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).” 5

**Struck out (unanimous)**

- 9 Information for shareholders who elect not to receive annual report**
- (1) The heading to section 210 is amended by omitting “**elect not to receive annual report**” and substituting “**waive right to receive annual report or notice**”. 10
- (2) Section 210 is amended by repealing subsections (1) to (4) and substituting the following subsections:
- “(1) A shareholder of a company who has waived under section 212 the right to receive any or all documents under **section 209** may, by written notice to the company, elect to be sent each year in place of the document or documents any or all of the following documents, and the board of the company must send those documents to the shareholder each year: 15
- “(a) financial statements (including any group financial statements) and any auditor’s report required under Part 11: 20
- “(b) summary financial statements, if any.
- “(2) The board of a company must send the documents referred to in **subsection (1)(a)** to a shareholder of the company who has waived under section 212 the right to receive any or all documents under **section 209** if the shareholder— 25
- “(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 summary financial statements. 30
- “(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 shareholders.” 35

## New (unanimous)

- 9 Section 210 repealed**  
Section 210 is repealed.

**10 New section 211A inserted**

The following section is inserted after section 211:

- “211A Obligations to prepare and make available annual reports or financial statements do not apply to non-active companies** 5
- If, under **section 10A** of the Financial Reporting Act 1993, the directors of a company are not required to comply with section 10 of that Act in respect of an accounting period, the board of the company is not required to— 10
- “(a) prepare an annual report under section 208 in respect of that accounting period; or
- “(b) send or make available under **sections 209 to (210) 209B** any annual report, notice, (*financial statement*,) or other document in respect of that accounting period.” 15

## New (unanimous)

- 10A Shareholders may elect not to receive documents**
- (1) Section 212 is amended by omitting “Subject to section 210, a” and substituting “A”. 20
- (2) Section 212 is amended by adding the following subsection as subsection (2):
- “(2) However, if a shareholder of a company purports to waive the right to receive both a copy of the annual report and a notice under **section 209(1)(b)**,— 25
- “(a) the purported waiver is invalid; and
- “(b) the board of the company must, in accordance with **section 209(1)**, send to the shareholder a copy of the annual report or a notice under **section 209(1)(b)**.”

**Struck out (unanimous)****11 New section 213 substituted**

Section 213 is repealed and the following section substituted:

**“213 Failure to disclose**

Subject to the constitution of a company, if this Act requires an annual report, notice, financial statement, or other document to be sent to a shareholder, the failure to send the annual report, notice, financial statement, or other document to the shareholder in accordance with this Act does not affect the validity of proceedings at a meeting of the shareholders of the company if the failure to do so was accidental.”

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**12 New section 332A inserted**

The following section is inserted after section 332:

**“332A Registrar may approve use of different form**

“(1) The Registrar may, on the application of any person, approve the use, by the overseas company or companies that the Registrar may specify, of a form for the purposes of this Part that is different from that prescribed.

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“(2) The Registrar may at any time revoke, in whole or in part, any approval given under **subsection (1)**.

“(3) An application, notice, or other document given to the Registrar by an overseas company must be treated as having been given in the prescribed form if the Registrar has approved the use of the form by the overseas company under this section.”

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**13 New section 343A inserted**

The following section is inserted after section 343:

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**“343A Overseas company not required to provide information, notice, or document in certain circumstances**

An overseas company is not required to give information, notice of information, or a copy of a document to the Registrar under this Part if—

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“(a) the overseas company is incorporated in a prescribed country, State, or territory outside New Zealand; and

“(b) the information or a copy of the document has been given to, or is held by, a body or person in that country,

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State, or territory whose functions correspond to those of the Registrar; and

“(c) the information or document is of a class that is prescribed for the purposes of this section.”

**Struck out (unanimous)**

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|-----------|--|----|
| <b>14</b> | <b>Penalties that may be imposed on directors in cases of failure by board or company to comply with Act</b>   | 5  |
|           | Section 374(2) is amended by repealing paragraphs (21) and (22) and substituting the following paragraphs:   |    |
|           | “(21) <b>section 209(5)</b> (which relates to the obligation to make the annual report available to shareholders):   | 10 |
|           | “(21A) <b>section 209A(2)</b> (which relates to the obligation to send copies of annual reports to shareholders on request):   |    |
|           | “(21B) <b>section 209B(3)</b> (which relates to making annual reports and concise annual reports available by electronic means and concise annual reports available on request):           | 15 |
|           | “(22) section 210(7) (which relates to the obligation to send financial statements to shareholders who waive the right to receive an annual report or notice under <b>section 209</b> ):”. |    |

**New (unanimous)**

- |           |   |    |
|-----------|---|----|
| <b>14</b> | <b>Penalties that may be imposed on directors in cases of failure by board or company to comply with Act</b>  | 20 |
|           | Section 374(2) is amended by repealing paragraphs (21) and (22) and substituting the following paragraphs:  |    |
|           | “(21) <b>section 209(5)</b> (which relates to the obligation to make the annual report available to shareholders):                                    | 25 |
|           | “(22) <b>section 209A(5)</b> (which relates to the obligation to send copies of annual reports or concise annual reports to shareholders on request): |    |
|           | “(22A) <b>section 209B(3)</b> (which relates to making annual reports and concise annual reports available by electronic means):”.                    | 30 |

- 15 Court may disqualify directors**  
 Section 383(1) is amended by inserting the following paragraph after paragraph (c):  
 “(ca) a person has been prohibited in a country, State, or territory outside New Zealand from carrying on activities that the Court is satisfied are substantially similar to being a director or promoter of or being concerned or taking part in the management of a body corporate; or”.
- 16 Regulations**  
 (1) Section 395 is amended by inserting the following paragraphs after paragraph (c):  
 “(ca) prescribing countries, States, or territories outside New Zealand for the purposes of **section 151(2)(eb)**:  
 “(cb) prescribing requirements for the preparation of concise annual reports (*for the purposes of sections 209 and 209B*):  
 “(cc) prescribing countries, States, or territories outside New Zealand for the purposes of **section 343A**:  
 “(cd) prescribing classes of information or documents for the purposes of **section 343A**.”  
 (2) Section 395 is amended by adding the following subsection as subsection (2):  
 “(2) Different forms for the purposes of this Act may be prescribed for different classes of persons.”
- 17 Consequential amendments**  
 The enactments specified in the Schedule are amended in the manner set out in that Schedule.

## Part 2

### Dumping and Countervailing Duties Act 1988

- 18 Principal Act amended**  
**This Part** amends the Dumping and Countervailing Duties Act 1988.
- 19 Interpretation**  
 (1) Section 3(1) is amended by inserting the following definition in its appropriate alphabetical order:  
 “**day**, except in sections 14(2), (and) 17, and 17B(3A), means any day of the week other than a day in the period beginning

- with 25 December in any year and ending with 15 January in the following year”.
- (2) **Subsection (1)** does not apply to investigations initiated before the commencement of this Act.
- 20 Anti-dumping and countervailing duties** 5  
Section 14(1) is amended by omitting “section 17 of this Act” and substituting “**section 17, 17A, or 17B**”.
- 21 New sections 17 to 17B substituted**  
(1) Section 17 is repealed and the following sections are substituted: 10
- “**17 Date on and from which duty payable**  
The *(day)* date on and from which anti-dumping duty or countervailing duty is payable or must be secured is—  
“**(a)** for a provisional direction under section 16(1) or (2), the day after the date of that direction: 15  
“**(b)** for a final determination under section 13(1),—  
“**(i)** the day after the date of that determination; or  
“**(ii)** a specified day after the day in **subparagraph (i)**:  
“**(c)** for a reassessment determination under section 14(6),—  
“**(i)** the day after the date of that reassessment determination; or 20  
“**(ii)** a specified day after the day in **subparagraph (i)**.”
- “**17A Duty may be levied retrospectively to cover period of provisional measures if certain conditions met**  
“**(1)** This section applies if the Minister makes a provisional direction and later makes a final determination on the grounds of— 25  
“**(a)** material injury to an industry; or  
“**(b)** a threat of material injury where there would have been material injury if there had not been provisional measures. 30  
“**(2)** The Minister may impose anti-dumping duty or countervailing duty retrospectively for all or part of the period covered by the earlier provisional direction.  
“**(3)** This section overrides **section 17** if *(its)* this section’s conditions are met. 35

**“17B Duty may be levied retrospectively to cover period of up to 60 days before provisional measures if certain conditions met**

- “(1) This section applies if the Minister determines that it is necessary to impose retrospective anti-dumping duty or countervailing duty to preclude recurrence of material injury and the Minister determines either of the following: 5
- “(a) for dumped goods,—
- “(i) either that— 10
- “(A) there is a history of dumping causing material injury; or
- “(B) the importer was or should have been aware that the goods were dumped and that the dumping would cause material injury; and 15
- “(ii) material injury has been caused by substantial dumped imports of the goods in a relatively short period; or
- “(b) for subsidised goods, critical circumstances apply and there have been massive imports in a relatively short period of goods that— 20
- “(i) benefit from export subsidies paid or bestowed inconsistently with the WTO Agreement; and
- “(ii) have caused material injury that is difficult to repair. 25
- “(2) The Minister may impose duty retrospectively for all or part of the 60-day period before the application of the provisional direction.
- “(3) If the exporter or the Government of the country of export violates an undertaking under section 15 and then the Minister gives a provisional direction under section 16, the Minister may impose duty retrospectively for all or part of the 60-day period before the application of the provisional direction. 30

**New (unanimous)**

- “(3A) If the period in **subsection (2) or (3)** includes a day in the period beginning with 25 December in any year and ending with 15 January in the following year, duties can be collected for each day that falls— 35

**New (unanimous)**

- “(a) in the period beginning with 25 December in any year and ending with 15 January in the following year; and  
 “(b) in the period in **subsection (2) or (3)**.”

- “(4) No retrospective duty may be imposed under **subsection (3)** before the date of the violation of the undertaking. 5
- “(5) This section overrides **section 17** if *(its)* this section’s conditions are met.”
- (2) Paragraph (c) of the definition of **duty** in section 2(1) of the Customs and Excise Act 1996 is amended by omitting “or 17” and substituting “**17, 17A, or 17B**”. 10
- 22 Third country anti-dumping and countervailing duties**  
 Section 18 is amended by omitting “and 17” and substituting “**17, 17A, and 17B**”.

**Part 3**  
**Financial Reporting Act 1993**

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- 23 Principal Act amended**  
**This Part** amends the Financial Reporting Act 1993.

**Struck out (unanimous)**

- 24 Commencement of this Part**
- (1) **Sections 25(2), 29, 33 to 37, 39, and 41** come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates. 20
- (2) The rest of **this Part** comes into force on the day after the date on which this Act receives the Royal assent.
- 25 Interpretation** 25
- (1) Section 2(1) is amended by repealing the definition of **exempt company** and substituting the following definition:  
 “**exempt company** has the meaning given to it by **section 6A**”.
- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order: 30

- “**infringement fee**, in relation to an infringement offence, means \$7,000
- “**infringement notice** means a notice issued under **section 41B**
- “**infringement offence** means an offence against section 38(b) or 39”. 5
- (3) Section 2(1) is amended by repealing the definition of **turnover** and substituting the following definition:
- “**turnover**—
- “(a) means, in relation to a company, 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: 10 15
- “(b) means, in relation to a group, the total annualised gross operating revenue of the group (exclusive of any tax required to be collected) reported in the consolidated statement of financial performance or consolidated income and expenditure statement, 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 group for that accounting period”. 20 25
- 26 Meaning of issuer** 30
- Section 4(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) every recipient of money from a conduit issuer (within the meaning of **section 4A**):”.

**27 New sections 4A to 4D inserted**

The following sections are inserted after section 4:

**“4A Recipients of money from conduit issuers**

“(1) In section 4, a person is a **recipient of money from a conduit issuer** if—

“(a) the person is related to another person (the **conduit issuer**); and

“(b) the conduit issuer has raised an amount of money by the issue of securities offered to the public within the meaning of the Securities Act 1978; and

**Struck out (unanimous)**

“(c) that money is raised as part of a scheme or arrangement under which all or a substantial part of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of any of the following:

“(i) the person; or

“(ii) 1 or more third persons that are subsidiaries of the person; or

“(iii) 1 or more third persons that act, or are accustomed to act, in accordance with the wishes of the person; or

“(iv) any combination of the persons referred to in **subparagraphs (i) to (iii)**; and

**New (unanimous)**

“(c) that money is raised as part of a scheme or arrangement under which 75% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—

“(i) the person; or

“(ii) the person and 1 or more third persons that are related to the person; and

“(ca) the money that is provided to the person under **paragraph (c)** is 10% or more of the money that is raised under **paragraph (b)**; and

- “(d) all or part of the money that is provided under **paragraph (c)** has not yet been repaid or returned to the conduit issuer.

**Struck out (unanimous)**

- “(2) In **subsection (1)**, a person is related to another person if—
- “(a) the persons are acting jointly or in concert; or 5
  - “(b) the first person acts, or is accustomed to acting, in accordance with the wishes of the other person; or
  - “(c) the persons are related companies (within the meaning of section 2(3) of the Companies Act 1993); or
  - “(d) the persons have a business relationship, a personal relationship, or an ownership relationship such that they should, under the circumstances, be regarded as related; or 10
  - “(e) the first person is related to a third person who is related to the other person (in both cases under any of **paragraphs (a) to (d)**), and the nature of the relationships between the first person, the third person, and the other person (or any of them) is such that, under the circumstances, the first person should be regarded as related to the other person. 15 20

**New (unanimous)**

- “(2) In **subsection (1)**,—
- “(a) a person is related to another person if—
    - “(i) they are acting jointly or in concert; or
    - “(ii) either person acts, or is accustomed to act, in accordance with the wishes of the other person; 25
    - or
    - “(iii) they are related bodies corporate within the meaning of section 5(7) of the Securities Markets Act 1988; or
    - “(iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or 30
    - “(v) they are both, directly or indirectly, under the control of the same person; but

**New (unanimous)**

“(b) a director of a company or other body corporate is not related to that company or body corporate merely because he or she is a director of that company or body corporate.

- “**4B Exemption from being issuer under section 4(1)(ba)** 5
- “(1) The Securities Commission may, by notice in the *Gazette*, exempt—
- “(a) a person from being an issuer under **section 4(1)(ba)**; or
- “(b) a class of persons from being issuers under **section 4(1)(ba)**. 10
- “(2) The exemption may be granted on any terms and conditions that the Securities Commission thinks fit.
- “(3) The Securities Commission may vary or revoke an exemption in the same way as an exemption may be granted under this section. 15
- “(4) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.
- “**4C Exemption may apply to accounting period before exemption is granted** 20
- An exemption under **section 4B** may, if the Securities Commission thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period are required to be completed. 25
- “**4D Securities Commission must notify reasons for exemption**
- “(1) The Securities Commission’s reasons for granting an exemption under **section 4B** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 30

“(2) However, the Securities Commission may defer notifying or not notify the reasons for granting an exemption if the Commission is satisfied that it is proper to do so on the ground of commercial confidentiality.”

**New (unanimous)**

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|------------|--|----|
| <b>27A</b> | <b>Persons ceasing to be issuers during accounting period</b>  | 5  |
|            | Section 5 is amended by adding the following subsection as subsection (2):   |    |
|            | “(2) However, this section does not apply to a person who ceases to be an issuer as a result of an exemption under <b>section 4B</b> .”  |    |
| <b>28</b>  | <b>New section 6A inserted</b>   | 10 |
|            | The following section is inserted after section 6:   |    |
|            | <b>“6A Meaning of exempt company</b>   |    |
|            | “(1) In this Act, <b>exempt company</b> means a company, other than an overseas company or an issuer, if—  |    |
|            | “(a) at least 2 of the following subparagraphs apply:  | 15 |
|            | “(i) as at the balance date of the accounting period for which financial statements are required, the value of the total assets of the company (including intangible assets) reported in the statement of financial position did not exceed \$1,000,000: | 20 |
|            | “(ii) in the accounting period for which financial statements are required, the turnover of the company did not exceed \$2,000,000:  |    |
|            | “(iii) as at the balance date of the accounting period for which financial statements are required, the company has 5 or fewer full-time equivalent employees; and   | 25 |
|            | “(b) as at the balance date of the accounting period for which financial statements are required, the company—   |    |
|            | “(i) was not a subsidiary of another body corporate or association of persons; and   | 30 |
|            | “(ii) did not have any subsidiaries.   |    |
|            | “(2) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:   |    |
|            | “(a) amending the maximum amount of assets that applies under <b>subsection (1)(a)(i)</b> :  | 35 |

- “(b) amending the maximum amount of turnover that applies under **subsection (1)(a)(ii)**:  
“(c) amending the maximum number of full-time equivalent employees that applies under **subsection (1)(a)(iii)**.  
“(3) In counting employees for the purposes of **subsection (1)**, part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.” 5
- 29 New section 10A inserted**  
The following section is inserted after section 10:
- “10A Non-active entities not required to prepare financial statements” 10**
- “(1) The directors of an entity do not have to comply with section 10 in respect of an accounting period if the entity—  
“(a) was a non-active entity in respect of that accounting period; and 15  
“(b) has, within the specified period, delivered to the Registrar a declaration, in the prescribed form, stating that it was a non-active entity in respect of that accounting period.
- “(2) For the purposes of this section, an entity is a **non-active entity** in respect of an accounting period if the entity is not an issuer and, during that period, the entity—  
“(a) has not derived, or been deemed to have derived, any income; and  
“(b) has no (*deductions*) expenses; and 25  
“(c) has not disposed of, or been deemed to have disposed of, any assets; and
- Struck out (unanimous)**
- “(d) has not been a party to, perpetuated, or continued with, any transactions that, during the period,—  
“(i) give rise to income in any person’s hands; or 30  
“(ii) give rise to fringe benefits to any employee or to any former employee; or  
“(iii) give rise to a debit in the entity’s imputation credit account or dividend withholding payment account. 35

**New (unanimous)**

“(d) has not been a party to, perpetuated, or continued with, any transactions that, during the period, give rise to obligations under the Income Tax Act 2004 in relation to the company or any other person (or both).

- “(3) In determining whether a company is a non-active entity, no account may be taken of any—
- “(a) statutory company filing fees or associated accounting or other costs; or
  - “(b) bank charges or other minimal administration costs totalling not more than \$50 in the accounting period; or
  - “(c) interest earned on any bank account during the accounting period, to the extent that the total interest does not exceed the total of any charges or costs incurred by the entity to which **paragraph (b)** applies.

**Struck out (unanimous)**

“(4) In this section, **deduction, income, imputation credit account, and dividend withholding payment account** have the same meanings as in section OB 1 of the Income Tax Act 2004.

“(5) In this section, **specified period**, in relation to an accounting period, means the period within which the directors of the entity would, but for this section, be required to ensure that financial statements are completed under section 10.”

**Struck out (unanimous)**

**30 Obligation to prepare group financial statements**  
Section 13(2) is amended by inserting “the company is not an issuer and” after “balance date if”.

## New (unanimous)

- |           |   |    |
|-----------|---|----|
| <b>30</b> | <b>Obligation to prepare group financial statements</b><br>Section 13(2) is amended by omitting “and a balance date if the only shareholders of the company at that balance date” and substituting “if, on the balance date of the company, the company is not an issuer and the only shareholders of the company”. | 5  |
| <b>31</b> | <b>New sections 19 and 19A substituted</b><br>Section 19 is repealed and the following sections are substituted:  |    |
|           | <b>“19 Overseas companies and certain other companies to register financial statements</b>  | 10 |
|           | “(1) This section applies to—   |    |
|           | “(a) any company, other than an issuer, that is an overseas company; or   |    |
|           | “(b) any company, other than an issuer,—  | 15 |
|           | “(i) that is large; and   |    |
|           | “(ii) in which shares that in aggregate carry the right to exercise or control the exercise of 25% or more of the voting power at a meeting of the company are held by—   | 20 |
|           | “(A) a subsidiary of a company or body corporate incorporated outside New Zealand; or   |    |
|           | “(B) a company or body corporate incorporated outside New Zealand; or   |    |
|           | “(C) a person not ordinarily resident in New Zealand; or  | 25 |
|           | “(c) any company, other than an issuer, that is a subsidiary of a company ( <i>referred to in <b>paragraph (a) or paragraph (b)</b> or body corporate incorporated outside New Zealand.</i>   |    |
|           | “(2) However, this section does not apply to a company ( <b>company A</b> ) if the following requirements are satisfied:  | 30 |
|           | “(a) company A is a subsidiary of a company that is incorporated in New Zealand ( <b>company B</b> ); and   |    |
|           | “(b) financial statements in relation to company B that comply with section 11 are completed and signed within the time specified in section 10; and  | 35 |

- “(c) group financial statements in relation to a group comprising company B, company A, and all other subsidiaries of company B that comply with section 14 are completed and signed within the time specified in section 13; and 5
- “(d) a copy of the financial statements referred to in **paragraph (b)** and a copy of the group financial statements referred to in **paragraph (c)**, together with the auditor’s report on those statements, are delivered to the Registrar for registration. 10
- “(3) The directors of every company to which this section applies must—
- “(a) ensure that, within 20 working days after the financial statements of the company and any group financial statements in relation to a group comprising that company and its subsidiaries are required to be signed, copies of those statements, together with a copy of the auditor’s report on those statements, are delivered to the Registrar for registration; and 15
- “(b) pay to the Registrar the prescribed registration fee at the same time. 20
- “19A Interpretation for section 19**
- “(1) For the purposes of **section 19**,—
- “(a) a person is ordinarily resident in New Zealand if that person— 25
- “(i) is domiciled in New Zealand; or
- “(ii) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period: 30
- “(b) a company is large if at least 2 of the following subparagraphs apply:
- “(i) as at the balance date of the accounting period for which financial statements are required, the total assets (including intangible assets) of the company and its subsidiaries (if any) reported in the statement of financial position or consolidated 35

	statement of financial position (as the case may be) exceeds \$10,000,000:	
	“(ii) in the accounting period for which financial statements are required, the total turnover of the company and its subsidiaries (if any) exceeds \$20,000,000:	5
	“(iii) as at the balance date of the accounting period for which financial statements are required, the company and its subsidiaries (if any) have 50 or more full-time equivalent employees:	10
“(c)	<b>auditor’s report</b> , in relation to an overseas company, means a report by a person qualified for appointment as auditor in accordance with section 199 of the Companies Act 1993:	
	<b>New (unanimous)</b>	
	“(d) a subsidiary does not include any company or body corporate or association of persons that is classified as a subsidiary in any applicable financial reporting standard.	15
“(2)	The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:	20
	“(a) amending the amount of assets that must be exceeded under <b>subsection (1)(b)(i)</b> :	
	“(b) amending the amount of turnover that must be exceeded under <b>subsection (1)(b)(ii)</b> :	
	“(c) amending the minimum number of full-time equivalent employees that applies under <b>subsection (1)(b)(iii)</b> .	25
“(3)	In counting employees for the purposes of <b>subsection (1)</b> , part-time employees must be taken into account as an appropriate fraction of a full-time equivalent.”	
<b>32</b>	<b>Fees</b>	30
	Section 20(b) is amended by omitting “section 19(2)” and substituting “ <b>section 19(3)</b> ”.	
<b>33</b>	<b>Functions of Board</b>	
	Section 24(1) is amended by inserting the following paragraph after paragraph (e):	35

“(ea) to grant exemptions under **section 29A**.”.

### 34 New sections 29A to 29D inserted

The following sections are inserted after section 29:

#### “29A Board may grant exemptions

##### Struck out (unanimous)

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|--|----|
| “(1) The Board may, by notice in the <i>Gazette</i> , exempt—  | 5  |
| “(a) any person or class of persons from ensuring that financial statements or group financial statements comply with a provision of an applicable financial reporting standard: |    |
| “(b) any directors of an overseas company, or any directors of a class of overseas company, from compliance with either or both of the following provisions:                     | 10 |
| “(i) section 15 (which requires financial statements and group financial statements of issuers to be audited):   | 15 |
| “(ii) <b>section 19</b> (which requires overseas companies and certain other companies to register financial statements).  |    |

##### New (unanimous)

- |  |    |
|--|----|
| “(1) The Board may, by notice in the <i>Gazette</i> , exempt any person or class of persons from ensuring that financial statements or group financial statements comply with a provision of an applicable financial reporting standard. | 20 |
|--|----|

- “(2) The Board must not grant an exemption under this section unless it is satisfied that,—

##### Struck out (unanimous)

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| “(a) in the case of an exemption under <b>subsection (1)(a)</b> , due to exceptional circumstances, compliance with the relevant provision would be inappropriate; and | 25 |
| “(b) in the case of an exemption under <b>subsection (1)(b)</b> , compliance with the relevant provision would require the   |    |

**Struck out (unanimous)**

directors of the overseas company to comply with requirements that are—

- “(i) materially different from the financial reporting requirements that the overseas company must comply with under the law in force in the country, State, or territory in which the overseas company is incorporated; and
- “(ii) unduly onerous or burdensome; and

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**New (unanimous)**

“(a) due to exceptional circumstances, compliance with the relevant provision would be inappropriate; and

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“(c) the extent of the exemption is not broader than what is reasonably necessary to address the matters specified in **paragraph (a) (or paragraph (b))**; and

“(d) the person who applied for the exemption (if any) has taken reasonable steps to consult with persons or organisations or representatives of persons or organisations who, in the opinion of the Board, would be affected by the exemption; and

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“(e) granting the exemption is, in the circumstances, fit and proper.

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“(3) The exemption may be granted on any terms and conditions that the Board thinks fit.

“(4) The Board may give notice of the exemption in any publications it thinks fit (in addition to notifying the exemption in the *Gazette*).

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“(5) The Board may vary or revoke an exemption in the same way as an exemption may be granted under this section.

**“29B Exemption may apply to accounting period before exemption is granted**

An exemption under **section 29A** may, if the Board thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if,—

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- “(a) in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 18 or (**section**) **19**, the exemption is granted before those documents are required to be delivered for registration under those sections; or 5
- “(b) in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed.
- “29C Failure to comply with applicable financial reporting standard must be disregarded if directors of reporting entity are exempt 10**
- In considering whether the financial statements of a reporting entity, or group financial statements of a group comprising a reporting entity and its subsidiaries, comply with generally accepted accounting practice or applicable financial reporting standards (or both), a failure of the financial statements or group financial statements to comply with a provision of an applicable financial reporting standard must be disregarded if the directors of the reporting entity— 15
- “(a) are exempted under **section 29A(1)(a)** from ensuring that the financial statements or group financial statements comply with the provision of the applicable financial reporting standard; and 20
- “(b) comply with the terms and conditions of that exemption. 25
- “29D Board must notify reasons for exemption**
- “(1) The Board’s reasons for granting an exemption under **section 29A** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 30
- “(2) However, the Board may defer notifying or not notify the reasons for granting an exemption if the Board is satisfied that it is proper to do so on the ground of commercial confidentiality.”
- 35 Consultation 35**
- (1) Section 30(1) is amended by repealing paragraph (c) and substituting the following paragraphs:

- “(c) revoke the approval of any approved financial reporting standard; or
- “(d) grant, amend, or revoke an exemption under **section 29A.**”

**Struck out (unanimous)**

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|-----|---|----|
| (2) | Section 30 is amended by inserting the following subsection after subsection (1):   | 5  |
|     | “(1A) The Board must, in deciding whether or not to grant, amend, or revoke an exemption under <b>section 29A</b> , consult with—                                   |    |
|     | “(a) the Commissioner of Inland Revenue; and  |    |
|     | “(b) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).” | 10 |

**New (unanimous)**

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|-----|---|----|
| (2) | Section 30 is amended by inserting the following subsection after subsection (1):   | 15 |
|     | “(1A) The Board must, in deciding whether or not to grant, amend, or revoke an exemption under <b>section 29A</b> , consult with the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989).” | 20 |

**36 New section 33 substituted**

Section 33 is repealed and the following section substituted:

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|------------|--|----|
| <b>“33</b> | <b>Disallowance of determinations and exemptions by House of Representatives</b>   |    |
| “(1)       | The Regulations (Disallowance) Act 1989 applies to—  | 25 |
|            | “(a) the following determinations of the Board as if the determination were a regulation within the meaning of that Act: |    |
|            | “(i) any approval of a financial reporting standard and any amendment to an approved financial reporting standard:       | 30 |
|            | “(ii) any revocation of an approval of an approved financial reporting standard:   |    |

“(iii) any determination made under section 27(3A):	
“(b) any notice published in the <i>Gazette</i> under <b>section 29A</b> (which relates to exemptions) as if the notice were a regulation within the meaning of that Act.	
“(2) The determinations and notices referred to in <b>subsection (1)</b> are not regulations for the purposes of the Acts and Regulations Publication Act 1989.”	5
<b>37 Certificates of Board</b>	
Section 34(1) is amended by inserting the following paragraph after paragraph (b):	10
“(ba) the granting, amendment, or revocation of an exemption under <b>section 29A</b> or the accounting period or interim accounting period in relation to which an exemption under that section applies; or”.	
<b>New (unanimous)</b>	
<b>37A New sections 35A to 35E inserted</b>	15
The following sections are inserted before section 36:	
<b>“35A Securities Commission may grant exemptions to directors of issuers that are incorporated or constituted outside New Zealand</b>	
“(1) The Securities Commission may, by notice in the <i>Gazette</i> , exempt any directors of an issuer that is incorporated or constituted outside New Zealand, or any directors of a class of those issuers, from compliance with any provision of sections 8 to 11, 13 to 16, 18, 36, 36A, or 38.	20
“(2) The Securities Commission must not grant an exemption under this section unless it is satisfied that—	25
“(a) the exemption would not cause significant detriment to subscribers for the securities of the issuer that are members of the public in New Zealand, having regard to the financial reporting requirements that must be complied with in relation to the issuer under the law in force in the country where the issuer is incorporated or constituted; and	30
“(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption; and	35

**New (unanimous)**

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|--|----|
| “(c) granting the exemption is, in the circumstances, fit and proper.  |    |
| “(3) The exemption may be granted on any terms and conditions that the Securities Commission thinks fit.   |    |
| “(4) The Securities Commission may vary or revoke an exemption in the same way as an exemption may be granted under this section.  | 5  |
| “(5) Each notice published in the <i>Gazette</i> under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.   | 10 |
| <b>“35B Registrar of Companies may grant exemptions to directors of overseas companies</b>   |    |
| “(1) The Registrar of Companies may, by notice in the <i>Gazette</i> , exempt any directors of an overseas company that is not an issuer, or any directors of a class of those overseas companies, from compliance with any provision of sections 8 to 11, 13, 14, 19, 36, 36A, or 39. | 15 |
| “(2) The Registrar of Companies must not grant an exemption under this section unless he or she is satisfied that—   |    |
| “(a) compliance with the relevant provision would require the directors of the overseas company to comply with requirements that are unduly onerous or burdensome; and   | 20 |
| “(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption; and  | 25 |
| “(c) granting the exemption is, in the circumstances, fit and proper.  |    |
| “(3) The exemption may be granted on any terms and conditions that the Registrar of Companies thinks fit.  | 30 |
| “(4) The Registrar of Companies may give notice of the exemption in any publications he or she thinks fit (in addition to notifying the exemption in the <i>Gazette</i> ).   |    |
| “(5) The Registrar of Companies may vary or revoke an exemption in the same way as an exemption may be granted under this section.   | 35 |

## New (unanimous)

- “(6) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- “**35C Consultation** 5
- “(1) In deciding whether or not to grant, amend, or revoke an exemption under **section 35A or 35B**, the Securities Commission or the Registrar of Companies (as the case may be)—
- “(a) may consult any persons or organisations that the Commission or Registrar thinks fit; but 10
- “(b) must consult with—
- “(i) the Commissioner of Inland Revenue if the exemption is under **section 35B** and involves any provision of section 10; and
- “(ii) the Reserve Bank of New Zealand if the exemption concerns a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989). 15
- “(2) This section does not limit section 16 or 17 of the Crown Entities Act 2004. 20
- “**35D Exemption may apply to accounting period before exemption is granted**
- An exemption under **section 35A or 35B** may, if the Securities Commission or the Registrar of Companies (as the case may be) thinks fit, apply to an accounting period that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if,— 25
- “(a) in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 18 or **19**, the exemption is granted before those documents are required to be delivered for registration under those sections; or 30
- “(b) in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed. 35

## New (unanimous)

- “35E Reasons for exemption must be notified**
- “(1) The Securities Commission’s reasons for granting an exemption under **section 35A** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption. 5
- “(2) The Registrar of Companies’ reasons for granting an exemption under **section 35B** (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.
- “(3) However, the Securities Commission or the Registrar of Companies (as the case may be) may defer notifying or not notify the reasons for granting an exemption if the Securities Commission or the Registrar of Companies is satisfied that it is proper to do so on the ground of commercial confidentiality.” 10
- 38 Offences by directors of overseas companies and subsidiaries of overseas companies** 15
- (1) The heading to section 39 is amended by omitting “**subsidiaries of overseas companies**” and substituting “**other companies to which section 19 applies**”.
- (2) Section 39 is amended by omitting “subsection (2) of that section” and substituting “**subsection (3)** of that section”. 20
- 39 New sections 41A to 41D inserted**
- The following sections are inserted after section 41:
- “41A Infringement offences**
- “(1) If a person is alleged to have committed an infringement offence, that person may either— 25
- “(a) be proceeded against summarily for the alleged offence under the Summary Proceedings Act 1957; or
- “(b) be served with an infringement notice as provided in **section 41B.** 30
- “(2) Despite section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or a Registrar of a Court to lay an information is not necessary where the Registrar proceeds with an infringement offence summarily.

**“41B Infringement notices**

- “(1) The Registrar may issue an infringement notice to a person if the Registrar believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- “(2) The Registrar may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a Court under section 21 of the Summary Proceedings Act 1957. 5
- “(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked. 10

**“41C Procedural requirements for infringement notices**

- “(1) An infringement notice may be served on a person—
- “(a) by delivering it, or a copy of it, personally to the person who appears to have committed the infringement offence; or 15
- “(b) by sending it, or a copy of it, by post, addressed to the person at the person’s last known place of residence or business.
- “(2) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under **subsection (1)(b)** must be treated as having been served on the person on the date it was posted. 20
- “(3) An infringement notice must be in the prescribed form and must contain—
- “(a) details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged infringement offence; and 25
- “(b) the amount of the infringement fee; and
- “(c) an address at which the infringement fee may be paid; and
- “(d) the time within which the infringement fee must be paid; and 30
- “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
- “(f) a statement that the person served with the notice has a right to request a hearing; and 35
- “(g) a statement of what will happen if the person served with the notice does not pay the fee and does not request a hearing; and
- “(h) any other prescribed matters.

- “(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case,—
- “(a) reminder notices may be prescribed under regulations made under this Act; and 5
- “(b) in all other respects, section 21 of the Summary Proceedings Act 1957 applies with all necessary modifications.
- “(5) Reminder notices must contain the prescribed information. 10
- “41D Payment of infringement fee**  
The Registrar must pay all infringement fees received into a Crown Bank Account.”
- 40 New section 42B inserted**  
The following section is inserted after section 42A: 15
- “42B Regulations**
- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- “(a) prescribing fees and charges that—
- “(i) the Securities Commission may require to be paid to it in connection with an application to the Securities Commission to grant or amend an exemption under **section 4B or 35A:** 20
- “(ii) the Board may require to be paid to it in connection with an application to the Board to grant or amend an exemption under **section 29A:** 25
- New (unanimous)**
- “(iii) the Registrar of Companies may require to be paid to him or her in connection with an application to him or her to grant or amend an exemption under **section 35B:** 30
- “(b) prescribing the amounts of those fees or charges or the method by which they are to be calculated:
- “(c) prescribing forms for the purposes of **section 10A** and forms of infringement notices and reminder notices:

- “(d) prescribing the information that must be included in infringement notices or reminder notices.
- “(2) The amounts payable under regulations made under this section are recoverable by the Securities Commission or the Board or the Registrar of Companies (as the case may be) in any court of competent jurisdiction as a debt due to the Securities Commission or the Board or the Registrar of Companies.” 5
- 41 Consequential amendment to Summary Proceedings Act 1957**
- (1) This section amends the Summary Proceedings Act 1957. 10
- (2) The definition of **infringement notice** in section 2(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) **section 41B** of the Financial Reporting Act 1993; or”.

*Transitional provision* 15

**Struck out (unanimous)**

- 42 Amendments apply to accounting periods after commencement**
- (1) **Sections 25(1) and (3), 26 to 28, 30 to 32, and 38** apply in respect of accounting periods that commence after the commencement of those sections. 20
- (2) The requirements and provisions that would have applied if the provisions referred to in **subsection (1)** had not been enacted continue to apply in respect of each accounting period that commenced before the commencement of the provisions referred to in **subsection (1)**. 25
- (3) **Sections 25(2), 29, 39, and 41** apply in respect of accounting periods that commence after the commencement of those sections.
- (4) The requirements and provisions that would have applied if the provisions referred to in **subsection (3)** had not been enacted continue to apply in respect of each accounting period that commenced before the commencement of the provisions referred to in **subsection (3)**. 30

**Struck out (unanimous)**

- (5) Nothing in this section limits **sections 4C and 29B** of the principal Act (which allow an exemption to apply to an accounting period before the exemption is granted).

**New (unanimous)**

- 42 Accounting periods to which amendments apply**
- (1) **Sections 25(1) and (3), 28, 29, 31, 32, and 38** apply in respect of— 5
- (a) accounting periods that have not ended at the respective commencement of those provisions; and
- (b) accounting periods that commence after the respective commencement of those provisions.
- (2) The requirements and provisions that would have applied if the provisions referred to in **subsection (1)** had not been enacted continue to apply in respect of accounting periods that ended on or before the respective commencement of those provisions. 10
- (3) **Sections 25(2), 26 to 27A, 30, 39, and 41** apply in respect of accounting periods that commence after the respective commencement of those provisions. 15
- (4) The requirements and provisions that would have applied if the provisions referred to in **subsection (3)** had not been enacted continue to apply in respect of accounting periods that commenced on or before the respective commencement of those provisions. 20
- (5) Nothing in **this Part** limits **sections 4C, 29B, and 35D** of the principal Act (which allow an exemption to apply to an accounting period before the exemption is granted regardless of whether that accounting period commences before or after the respective commencement of those provisions). 25

**Part 4****Friendly Societies and Credit Unions Act 1982**

- 43 Principal Act amended** 30
- This Part** amends the Friendly Societies and Credit Unions Act 1982.

- 44 Society may register as credit union**
- (1) Section 100 is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) the society has no fewer than 21 members who are—
- “(i) adults; or 5
- “(ii) charitable entities as defined by the Charities Act 2005; or
- “(iii) incorporated societies registered under the Incorporated Societies Act 1908; and”.
- (2) Section 100 is amended by repealing paragraph (d) and substituting the following paragraph: 10
- “(d) the rules of the society specify a common bond (as defined in **section 102**).”
- 45 Qualifications for admission to membership of credit union** 15
- Section 102 is amended by repealing subsections (1) and (2) and substituting the following subsections:
- “(1) For the purposes of this **Part**, a credit union has a **common bond** if the qualification for membership is—
- “(a) following a particular occupation or particular occupations: 20
- “(b) residing in a particular locality or particular localities;
- “(c) being employed in a particular locality or particular localities;
- “(d) being employed by a particular employer or particular employers: 25
- “(e) being a member of a bona fide organisation or bona fide organisations or being otherwise associated with members of the organisation or organisations for a purpose other than that of forming a society to be registered as a credit union: 30
- “(f) any other qualification that can be objectively determined:
- “(g) a mixture of any qualifications in **paragraphs (a) to (f)**.
- “(2) For the purposes of **subsection (1)**, a qualification can be objectively determined if it— 35
- “(a) includes every person who fulfills the qualification; and
- “(b) is able to be determined by a person who is not a member of the credit union; and

“(c) does not depend on any person’s subjective judgement.”

**46 Registration and rules of credit union**

Section 104(1) is amended by repealing paragraph (b) and substituting the following paragraph: 5

“(b) the reference in section 12(1) to 7 adult members were a reference to 21 members and each of the 21 members is—

“(i) an adult; or

“(ii) a charitable entity as defined by the Charities Act 2005; or 10

“(iii) an incorporated society registered under the Incorporated Societies Act 1908; and”.

**47 Effect of rules on members of credit union**

Section 105 is amended by repealing subsection (4) and substituting the following subsection: 15

“(4) Fees for admission to membership, or levies, or charges for management or other services are payable by a member to a credit union only if the rules of the credit union set out—

“(a) the amount of the fees, levies, or charges; or 20

“(b) the mechanism for charging the fees, levies, or charges.”

**48 Membership of credit union, voting rights**

Section 106 is amended by repealing subsections (1) and (2) and substituting the following subsections: 25

“(1) An individual, a charitable entity as defined by the Charities Act 2005, or an incorporated society registered under the Incorporated Societies Act 1908 can be a member of a credit union, except that—

“(a) section 39 (which relates to the membership of minors) applies to any credit union as if it were a society registered under Part 2; and 30

“(b) no charitable entity as defined by the Charities Act 2005 or incorporated society registered under the Incorporated Societies Act 1908 can be an officer of a credit union. 35

- “(2) Members need have no more than \$10 in fully paid-up shares, although a credit union’s rules may allow for a deposit of more or less than \$10 in fully paid-up shares.”
- 49 Amalgamation of credit unions and transfer of engagements** 5  
Section 135 is amended by repealing subsection (4) and substituting the following subsections:
- “(4) For the purposes of this section, section 83, as far as it is applicable and with any necessary modification, applies in respect of a credit union as if it were a society registered under Part 2. 10
- “(4A) The Registrar must not register a special resolution under section 82 if the proposed amalgamation or transfer of engagements would result in a breach of any provision of this Act.” 15
- 50 New section 138 substituted**  
Section 138 is repealed and the following section substituted:
- “138 Registrar may apply to put credit union into liquidation** 20  
On the application of the Registrar, the High Court may appoint a liquidator of a credit union for the liquidation of the credit union in accordance with the Companies Act 1993 if—
- “(a) the credit union is unable to pay sums due and payable to its members, or is able to pay such sums only by obtaining further subscriptions for shares or by defaulting in its obligations to creditors; or 25
- “(b) there has been, in relation to that credit union, failure to comply with any provision of, or any direction given under, this Act; or
- “(c) there is no longer a common bond between the members of the credit union; or 30
- “(d) the liquidation of the credit union is in the public interest or is just and equitable having regard to the interests of all members of the credit union.”
- 51 Cancellation or suspension of registration, and dissolution of credit union** 35  
Section 140 is amended by repealing subsection (1) and substituting the following subsections:

- “(1) The Registrar may suspend a credit union’s registration for any term not exceeding 3 months, and may from time to time renew the suspension for any term not exceeding 3 months, or may cancel a credit union’s registration if there is no longer a common bond between the credit union’s members or the Registrar is satisfied that— 5
- “(a) registration has been obtained for the credit union by fraud or mistake; or
- “(b) the credit union exists for an illegal purpose; or
- “(c) the credit union has wilfully, and after notice from the Registrar, breached any of the provisions of this Act; or 10
- “(d) the credit union has not commenced business within 1 year of registration or has voluntarily suspended business for more than 6 months; or
- “(e) the credit union has fewer than 21 members; or 15
- “(f) the credit union has ceased to exist; or
- “(g) at the request of the credit union, there is good reason for the cancellation or suspension; or
- “(h) there has been a failure by the credit union to comply with any direction of the Registrar given under this Act. 20
- “(1A) **Subsection (1)** is subject to the following provisions (as far as they are applicable and with any modifications necessary so that they apply to a credit union as if it were a society registered under Part 2):
- “(a) section 92(2) to (9): 25
- “(b) section 93(1):
- “(c) section 94(1) to (4) and (6):
- “(d) section 95:
- “(e) section 96.”
- 52 Associations of credit unions to be registered 30**
- (1) Section 143(3) is amended by repealing paragraph (e) and substituting the following paragraph:
- “(e) to provide any other services specified in **subsection (4)**.”
- (2) Section 143 is amended by repealing subsection (4) and substituting the following subsection: 35
- “(4) Specified services for the purposes of **subsection (3)(e)** are—
- “(a) receiving deposits or subscriptions (other than subscriptions solely of an annual or periodic nature to be used for the Association’s purposes) from its component members for purposes specified in its rules: 40

- “(b) making loans to its component members:
- “(c) establishing and maintaining a central funding scheme for the benefit of its component members:
- “(d) levying its component members the amount or amounts for purposes and in the manner specified in its rules: 5
- “(e) providing, or administering any scheme providing, fidelity insurance, savings insurance, or loan protection insurance:
- “(f) undertaking training or education programmes for its component members or members of credit unions or the public: 10
- “(g) providing advisory services for its component members:
- “(h) arranging, providing, or co-ordinating data processing or computer services for its component members.” 15

*Transitional provision*

- 53 Proceedings in relation to section 135(4)(b), 138(c), or 140(1)(c)(ii)**
- Every application, investigation, proceeding, action, or other matter concerning a common bond that was commenced under section 135(4)(b), 138(c), or 140(1)(c)(ii) before the commencement of this **Part** may continue as if this **Part** had not been passed. 20

**Part 5**

**Insurance Companies’ Deposits Act 1953** 25

- 54 Principal Act amended**
- This Part** amends the Insurance Companies’ Deposits Act 1953.

- 55 Penalty for non-compliance**

**Struck out (unanimous)**

Section 20(1) is amended by omitting “\$100” and substituting “\$1,000”.	30
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**New (unanimous)**

Section 20 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A person who defaults in complying with any of the requirements of this Act and, if that person is a company or mutual insurance association, every officer of that company or mutual insurance association that is in default, commits an offence and is liable on summary conviction,—
- “(a) in the case of a company or a mutual insurance association, to a fine not exceeding \$200,000:
- “(b) in the case of an individual, to a fine not exceeding \$50,000.”

**56 Further penalty for carrying on business after notice prohibiting**

Section 22(1) is amended by omitting “\$200” and substituting “\$2,000”.

**57 New sections 22A to 22E inserted**

The following sections are inserted after section 22:

**“22A Interpretation**

In sections 22A to 22E,—

**New (unanimous)**

“**industry association** means a non-profit association of members who work in the insurance industry that performs 1 or more of the following functions:

- “(a) representing members’ views to non-members including the Government:
- “(b) providing dispute resolution:
- “(c) providing education and training for members:
- “(d) providing social events for members:
- “(e) establishing rules or codes of conduct

“**New Zealand person** means any of the following:

- “(a) a company registered in New Zealand under the Companies Act 1993:

- “(b) an association within the meaning of the Mutual Insurance Act 1955:
- “(c) an incorporated or unincorporated body established in New Zealand:
- “(d) a New Zealand resident within the meaning of section OE 1 of the Income Tax Act 2004 5
- “**overseas company** means an overseas company registered on the overseas register kept under the Companies Act 1993
- “**specified insurance business** means any of the following:

**Struck out (unanimous)**

- “(a) any class of insurance business carried on under this Act: 10

**New (unanimous)**

- “(a) business for which a person is liable to pay a deposit under this Act:
- “(b) insurance provided by an association under the Mutual Insurance Act 1955: 15
- “(c) the business of insurance under the Life Insurance Act 1908 (*upon human life or the grant of annuities, or of reinsurance in respect of policies of insurance upon human life or the grant of annuities under the Life Insurance Act 1908*). 20

**“22B Certain New Zealand persons and overseas companies prohibited from holding out New Zealand connection**

No New Zealand person or overseas company may hold out outside New Zealand that the person carries on a specified insurance business in New Zealand, or that the person is regulated by New Zealand law in respect of a specified insurance business, if the person does not carry on that specified insurance business in New Zealand. 25

**“22C Certain New Zealand persons and overseas companies prohibited from using certain words in their name**

- “(1) If a New Zealand person or overseas company does not carry on specified insurance business in New Zealand, the person cannot— 5
- “(a) be formed, incorporated, or registered using a name or title that includes a restricted word; or
  - “(b) change the person’s name or title to a name or title that includes a restricted word; or
  - “(c) carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) using a name or title that includes a restricted word. 10
- “(2) The restricted words are the following in any language:
- “(a) insurance:
  - “(b) assurance: 15
  - “(c) underwriter:
  - “(d) re-insurance:

**Struck out (unanimous)**

“(e) any term that has the same or similar meaning as the terms in **paragraphs (a) to (d)**.

**New (unanimous)**

“(e) any term whose meaning is the same as, or similar to, that of any term in **paragraphs (a) to (d)**. 20

**“22D Exception for certain (*brokers*) insurance workers and industry associations**

- “(1) **Sections 22B and 22C** do not apply (*if the person is a broker offering a specified insurance business that is provided by a person carrying on that specified insurance business in New Zealand.*) to a person if, in relation to specified insurance business carried on in New Zealand, that person does any 1 or more of the following: 25

**New (unanimous)**

- “(a) assists in issuing or administering policies, or in collecting premiums:
- “(b) arranges, negotiates, solicits, or promotes contracts of insurance or the renewals of contracts of insurance (or both).

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**Struck out (unanimous)**

- “(2) **Sections 22B and 22C** do not apply if the person—
- “(a) is an agent who is authorised to make a deposit under section 4B; and
- “(b) is offering specified insurance business in New Zealand.

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**New (unanimous)**

- “(2) **Sections 22B and 22C** do not apply to industry associations.

**“22E Exemption from section 22C granted by Secretary**

- “(1) The Secretary may issue exemptions from **section 22C** if the Secretary is satisfied that the person who will be subject to the exemption—
- “(a) will not (*be offering or providing*) be carrying on specified insurance business in New Zealand; and
- “(b) has a legitimate reason to use the particular word in the person’s name.

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**New (unanimous)**

- “(2) The Secretary may grant an exemption to a person or class of persons on any terms and conditions that the Secretary thinks fit.
- “(3) As soon as practicable, the exemption must be notified in the *Gazette* along with the Secretary’s reasons for granting an exemption (including why the exemption is appropriate).
- “(4) However, the Secretary may defer notifying or not notify the reasons for granting an exemption if the Secretary is satisfied

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**New (unanimous)**

that it is proper to do so on the ground of commercial confidentiality.

“(5) The Secretary may vary or revoke an exemption in the same way as an exemption may be granted under this section.

“(6) Each notice published in the *Gazette* under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.” 5

**57A New section 26 added**

The following section is added: 10

**“26 Regulations**

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

“(a) prescribing fees and charges that the Secretary may require to be paid to the Secretary in connection with an application to the Secretary to grant or vary an exemption: 15

“(b) prescribing the amounts of those fees or charges or the method by which they are to be calculated.”

**58 Transitional provision** 20**Struck out (unanimous)**

**This Part** does not affect any entity in existence when **this Part** comes into force until 3 months after **this Part** comes into force.

**New (unanimous)**

(1) **Section 22B** of the principal Act (as inserted by **section 57 of this Act**) does not apply to a person that is in existence when **this Part** comes into force until 3 months after **this Part** comes into force. 25

**New (unanimous)**

- (2) **Section 22C** of the principal Act (as inserted by **section 57 of this Act**) does not apply to a person that is in existence when **this Part** comes into force until 6 months after **this Part** comes into force.

- 59 Consequential amendment to Life Insurance Act 1908** 5
- (1) This section amends the Life Insurance Act 1908.
- (2) The following section is inserted after section 36:
- “36A Overseas business**  
**Sections 22A to 22E and 26** of the Insurance Companies’ Deposits Act 1953 apply to certain business in New Zealand and overseas.” 10
- 60 Consequential amendment to Mutual Insurance Act 1955**
- (1) This section amends the Mutual Insurance Act 1955.
- (2) The following section is inserted after section 43: 15
- “43A Overseas business**  
**Sections 22A to 22E and 26** of the Insurance Companies’ Deposits Act 1953 apply to certain business in New Zealand and overseas.”
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## Schedule Consequential amendments

### Co-operative Companies Act 1996 (1996 No 24)

#### Struck out (unanimous)

Section 29(j): omit “210(1)” and substitute “210(3)”.

#### New (unanimous)

Section 29(j) and (k): repeal and substitute:

“(j) the reference in **section 209(1)** to 20 working days must be construed as a reference to 10 working days:

“(k) except in the case of a shareholder, other than a transacting shareholder, who gives notice in writing to the company that the shareholder wishes to be sent copies of the annual reports of the company under **section 209**, the reference in that section to every shareholder must be construed as a reference to every transacting shareholder:”.

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Heading to section 32: omit “**and 210**” and substitute “**to (210) 209B**”.

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Section 32: omit “and 210” and substitute “to **(210) 209B**”.

#### New (unanimous)

### Corporations (Investigation and Management) Act 1989 (1989 No 11)

Section 71(5): omit “210” and substitute “**209B**”.

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

Section 153(4): omit “210” and substitute “**209B**”.

### Securities Markets Act 1988 (1988 No 234)

#### Struck out (unanimous)

Section 26(1): insert “or notice” after “annual report” in each place where it appears.

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**Securities Markets Act 1988 (1988 No 234)—continued****New (unanimous)**

Section 26(1): repeal and substitute:

- “(1) Every public issuer that is a company (but not an overseas company) must send a note stating the following matters to each shareholder with the annual report or notice sent under **section 209** of the Companies Act 1993: 5
- “(a) the names of all persons who, according to the file kept under section 25 of this Act, are substantial security holders in the public issuer, as at a date not earlier than 3 months before the annual report or notice is sent under **section 209** of the Companies Act 1993; and 10
- “(b) the number of voting securities of the public issuer in which, according to the file, each substantial security holder has a relevant interest as at that date; and
- “(c) the total number of issued voting securities of the public issuer as at that date.” 15

**Legislative history**

27 June 2006	Introduction (Bill 64-1)
19 July 2006	First reading and referral to Commerce Committee