Reprint

as at 1 July 2011

Financial Reporting Amendment Act 2006

Public Act 2006 No 64
Date of assent 21 November 2006

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Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered by the Ministry of Economic Development.

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Financial Reporting Amendment Act 2006.

2 Commencement
(1) Sections 4(3), 11, 12, and 19 come into force on the day that is 2 months after the date on which this Act receives the Royal assent.

(2) Sections 4(2), 5 to 7, 9, 13 to 18, 20, and 22 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.

Sections 4(2), 6, 9, 18, 20, and 22: brought into force, on 18 June 2007, by clause 2(1) of the Financial Reporting Amendment Act 2006 Commencement Order 2007 (SR 2007/110).

Sections 5 and 7: brought into force, on 11 August 2007, by clause 2(2) of the Financial Reporting Amendment Act 2006 Commencement Order 2007 (SR 2007/110).

3 Principal Act amended
This Act amends the Financial Reporting Act 1993.

4 Interpretation
(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:

"**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".

(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:

"(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".

5 Meaning of issuer

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):".

6 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 raises an amount of money by the issue of securities offered to the public within the meaning of the Securities Act 1978 and that offer is made under that Act after the commencement of this section; and

"(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

"(d) 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

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

"(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; or

"(iii) they are related companies within the meaning of section 2(3) of the Companies Act 1993; or

"(iv) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or

"(v) they are both, directly or indirectly, under the control of the same person; but

"(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)**

"(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).

"(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.

"(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**

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.

"**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.

"(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."

7 Persons ceasing to be issuers during accounting period

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 section 4B."

8 New section 6A inserted

The following section is inserted after section 6:

"**6A Meaning of exempt company**

"(1) In this Act, **exempt company** means a company, other than an overseas company or an issuer, if—

"(a) 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 value of the total assets of the company (including intangible assets) reported in the statement of financial position did not exceed $1,000,000:

"(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

"(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

"(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 subsection (1)(a)(i):

"(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."

9 New section 10A inserted

The following section is inserted after section 10:

"**10A Non-active entities not required to prepare financial statements**

"(1) The directors of an entity do not have to comply with section 10 or 19 in respect of an accounting period if the entity—

"(a) was a non-active entity in respect of that accounting period; and

"(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 expenses; and

"(c) has not disposed of, or been deemed to have disposed of, any assets; and

"(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 entity or any other person (or both).

"(3) In determining whether an entity 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.

"(4) 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."

10 Obligation to prepare group financial statements

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".

11 New sections 19 and 19A substituted

Section 19 is repealed and the following sections are substituted:

"**19 Overseas companies and certain other companies to register financial statements**

"(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,—

"(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—

"(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

"(c) any company, other than an issuer, that is a subsidiary of a company or body corporate incorporated outside New Zealand.

"(2) However, this section does not apply to a company (**company A**) if the following requirements are satisfied:

"(a) company A is a subsidiary of a company that is incorporated in New Zealand (**company 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

"(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

"(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.

"(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

"(b) ensure that the company pays to the Registrar the prescribed registration fee at the same time.

"**19A Interpretation for section 19**

"(1) For the purposes of section 19,—

"(a) a person is ordinarily resident in New Zealand if that person—

"(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:

"(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 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:

"(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:

"(c) **auditor's report**, 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:

"(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.

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

"(a) amending the amount of assets that must be exceeded under subsection (1)(b)(i):

"(b) amending the amount of turnover that must be exceeded under subsection (1)(b)(ii):

"(c) amending the minimum number of full-time equivalent employees that applies under subsection (1)(b)(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."

12 Fees

Section 20(b) is amended by omitting "section 19(2)" and substituting "section 19(3)".

13 Functions of Board

[Repealed]

Section 13: repealed (without coming into force), on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

14 New sections 29A to 29D inserted

[Repealed]

Section 14: repealed (without coming into force), on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

15 Consultation

[Repealed]

Section 15: repealed (without coming into force), on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

16 New section 33 substituted

[Repealed]

Section 16: repealed (without coming into force), on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

17 Certificates of Board

[Repealed]

Section 17: repealed (without coming into force), on 1 July 2011, by section 12 of the Financial Reporting Amendment Act 2011 (2011 No 22).

18 New sections 35A to 35E inserted

The following sections are inserted before section 36:

"**35A Securities Commission may grant exemptions to directors of issuers that are incorporated or constituted outside New Zealand**

"(1) The Securities Commission may, by notice in the *Gazette*, 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.

"(2) The Securities Commission must not grant an exemption under this section unless it is satisfied that—

"(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

"(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.

"(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) 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.

"**35B Registrar of Companies may grant exemptions to directors of overseas companies**

"(1) The Registrar of Companies may, by notice in the *Gazette*, 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.

"(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

"(b) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.

"(3) The exemption may be granted on any terms and conditions that the Registrar of Companies thinks fit.

"(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 *Gazette*).

"(5) The Registrar of Companies 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.

"**35C Consultation**

"(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

"(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).

"(2) This section does not limit section 16 or 17 of the Crown Entities Act 2004.

"**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,—

"(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

"(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.

"**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 ap-

propriate) must be notified in the *Gazette* together with the exemption.

"(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."

19 Offences by directors of overseas companies and subsidiaries of overseas companies

(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 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—

"(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.

"(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.

"(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

"**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

"(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.

"(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

"(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

"(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

"(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

"(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.

"**41D Payment of infringement fee**

The Registrar must pay all infringement fees received into a Crown Bank Account".

21 New section 42B inserted

The following section is inserted after section 42A:

"**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:

"(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:

"(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:

"(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."

22 Consequential amendment to Summary Proceedings Act 1957

(1) This section amends the Summary Proceedings Act 1957.

(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

23 Accounting periods to which amendments apply

(1) Sections 4(1) and (3), 8, 9, 11, 12, and 19 apply in respect of—

(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.

(3) Sections 4(2), 5 to 7, 10, 20, and 22 apply in respect of accounting periods that commence after the respective commencement of those provisions.

(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.

(5) Nothing in this Act 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).

Contents

1 General
2 About this eprint
3 List of amendments incorporated in this eprint (most recent first)

Notes

1 General

This is an eprint of the Financial Reporting Amendment Act 2006. The eprint incorporates all the amendments to the Act as at 1 July 2011. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* http://www.pco.parliament.govt.nz/eprints/.

3 List of amendments incorporated in this eprint (most recent first)

Financial Reporting Amendment Act 2011 (2011 No 22): section 12

Financial Reporting Amendment Act 2006 Commencement Order 2007 (SR 2007/110)