

**Reprint  
as at 3 June 2017**



## **New Zealand Stock Exchange Restructuring Act 2002**

Private Act      2002 No 1  
Date of assent    22 February 2002  
Commencement    see section 2

New Zealand Stock Exchange Restructuring Act 2002: repealed, on 3 June 2017, by section 3(1) of the Statutes Repeal Act 2017 (2017 No 23).

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

18	Amendments	12
	<b>Schedule 1</b>	12
	<b>Acts amended</b>	
	<i>[Repealed]</i>	
	<b>Schedule 2</b>	12
	<b>Regulations amended</b>	
	<i>[Repealed]</i>	
	<b>Schedule 3</b>	13
	<b>Order in Council amended</b>	

## Preamble

- (1) The New Zealand Stock Exchange (**NZSE**) is a body corporate established by the Sharebrokers Amendment Act 1981:
- (2) The NZSE wishes to give the NZSE members the right to determine whether the NZSE should be converted into a company. If converted into a company, the NZSE will continue as the same body corporate:
- (3) Legislation is necessary to—
  - (a) enable the determination of the qualifying members' ownership entitlements in the NZSE, provide a mechanism for the conversion of the NZSE into a company, if the NZSE members so determine, and enable the NZSE members to determine whether all the property, rights, and liabilities of the NZSE will vest in either that company or a named wholly-owned subsidiary of that company; and
  - (b) ensure the continuity of the body corporate on conversion into a company; and
  - (c) make appropriate amendments to, and repeal, existing legislation:
- (4) The objects of this Act cannot be achieved without the authority of Parliament.

## 1 Title

This Act is the New Zealand Stock Exchange Restructuring Act 2002.

## 2 Commencement

- (1) Sections 17 and 18 come into force on the restructuring day.
- (2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

Section 2(1): sections 17 and 18 brought into force, on 31 December 2002, by clause 5 of the New Zealand Stock Exchange (Conduct Rules, Control Limit, and Restructuring Day) Order 2002 (SR 2002/377).

### 3 Purpose

The purpose of this Act is to—

- (a) enable the determination of the qualifying members' ownership entitlements in the NZSE; and
- (b) provide a mechanism for the conversion of the NZSE into a company, if the NZSE members so determine; and
- (c) enable the NZSE members to determine whether all the property, rights, and liabilities of the NZSE will vest on the restructuring day in the Company or a named wholly-owned subsidiary of the Company.

### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**Board** means the board of directors of the NZSE constituted under the NZSE rules

**business rules** means the rules made by the NZSE or the Company that will govern the conduct of—

- (a) the business on the stock exchange to be operated by the vesting entity; and
- (b) the sharebrokers who will be authorised to undertake activities on that stock exchange

**chairman** means the chairman of the Board

**Company** means the company that the NZSE becomes on the restructuring day under section 10

**conduct rules** means the business rules and the listing rules of the stock exchange to be operated by the vesting entity

**control**, in relation to a voting right, means having directly or indirectly effective control of the voting right

**control limit** means the highest percentage of voting rights in the Company that may be held or controlled directly or indirectly by any person

**instrument** includes—

- (a) any instrument (other than an enactment) of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and
- (b) any judgment, order, or process of a court

**liabilities** means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere)

**listing rules** means the rules made by the NZSE or the Company that will relate to—

- (a) the governance of the persons who are parties to listing agreements with the vesting entity; and
- (b) the entry into, and revocation of, listing agreements with the vesting entity

**Minister** means the Minister of Commerce

**NZSE** means the New Zealand Stock Exchange established by section 3 of the Sharebrokers Amendment Act 1981

**NZSE member** means a member of the New Zealand Stock Exchange as defined in the NZSE rules

**NZSE rules** means the rules approved by the Governor-General and published in the *Gazette* under section 7 of the Sharebrokers Amendment Act 1981

**ownership entitlement** means an entitlement to share in the ownership of the NZSE

**property** means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal, and, without limitation, includes—

- (a) choses in action and money; and
- (b) goodwill; and
- (c) any copyright, patent, registered design, trademark, know-how, service marks, or other intellectual property, and any applications pending for patents, trademarks, copyright, and other intellectual or industrial property; and
- (d) rights, interests, and claims of every kind in or to property, whether arising from, accruing under, created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

**qualifying member** means a person—

- (a) who was an NZSE member on 16 August 2000 or 15 February 2001; or
- (b) whose application to be an NZSE member was lodged with the NZSE on or before 15 February 2001, and is approved by the NZSE before the date of the first meeting convened under section 7—

and includes that person's nominee

**restructuring day** means the day specified as the restructuring day by the Governor-General by Order in Council, being a day after the—

- (a) publication in the *Gazette* of a notice under section 8(c); and
- (b) approval under section 11(2) of the conduct rules of the stock exchange to be operated by the vesting entity; and

- (c) determination of a control limit in respect of the Company under section 12(2); and
- (d) documents and fee referred to in section 9(1) have been delivered to the Registrar of Companies

**restructuring proposal** means the restructuring proposal referred to in section 6, or an amended or new restructuring proposal prepared under section 7(4)

**rights** means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective

**Secretary** has the same meaning as in section 2 of the Sharebrokers Act 1908

**subsidiary** has the same meaning as in sections 5 to 8 of the Companies Act 1993

**vesting entity** means the Company, or the wholly-owned subsidiary of the Company, in which all of the NZSE's property, rights, and liabilities vest on the restructuring day in accordance with the restructuring proposal referred to in section 8

**voting right** means a currently exercisable right to cast a vote at meetings of members or shareholders of a person, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:
  - (b) on a proposal that affects rights attached to the security that confers the voting right:
  - (c) during the liquidation of the person:
  - (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the person.
- (2) A person is an **associated person** of another person if—
- (a) they are acting jointly or in concert; or
  - (b) either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
  - (c) they are related companies; or
  - (d) either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
  - (e) they are both, directly or indirectly, under the control of the same person.
- (3) For the purposes of subsection (2), a director of a company or other body corporate is not an associated person of that company or body corporate merely because he or she is a director of that company or body corporate.

## **5 Act binds the Crown**

This Act binds the Crown.

## **6 Restructuring proposal**

- (1) The Board may prepare a restructuring proposal which must include—
  - (a) a method for establishing, or a statement as to,—
    - (i) which qualifying members have an ownership entitlement; and
    - (ii) the extent of those qualifying members' ownership entitlements; and
  - (b) a statement to the effect that the NZSE convert into a company, and the name of the Company; and
  - (c) a statement specifying whether all the property, rights, and liabilities of the NZSE will vest on the restructuring day in the Company or in a named wholly-owned subsidiary of the Company; and
  - (d) a statement to the effect that, immediately on conversion of the NZSE into the Company, shares in the Company be issued to the qualifying members in accordance with their ownership entitlements determined under the method or statement referred to in paragraph (a).
- (2) The restructuring proposal may include any other matters that the Board considers appropriate and that are not inconsistent with this Act.

## **7 Member approval of restructuring proposal**

- (1) The Board may convene a meeting of the NZSE members to determine whether there is sufficient support for the restructuring proposal.
- (2) The meeting must be convened under the NZSE rules.
- (3) There is sufficient support for the restructuring proposal if 75% or more of all NZSE members entitled to vote under the NZSE rules and voting on the restructuring proposal approve the restructuring proposal.
- (4) If there is not sufficient support for the restructuring proposal the Board may—
  - (a) amend or replace the restructuring proposal in a manner consistent with section 6; and
  - (b) convene another meeting or meetings of the NZSE members under the NZSE rules for the purpose of determining whether there is sufficient support for the amended or new restructuring proposal.

## **8 Effect of member approval**

If there is sufficient support for a restructuring proposal,—

- (a) the qualifying members' ownership entitlements are those determined under the restructuring proposal; and

- (b) no person has any ownership entitlement except under the restructuring proposal; and
- (c) the chairman must, no later than 30 days after the date of the meeting of NZSE members that approved the restructuring proposal, publish a notice in the *Gazette* confirming that the NZSE members have, under this Act, approved the conversion of the NZSE into a company, and including such other information as the Board considers appropriate.

## **9 Registration of company**

- (1) The chairman must ensure that, before the restructuring day, there is delivered to the Registrar of Companies—
  - (a) the application for registration of the Company under the Companies Act 1993; and
  - (b) a copy of any constitution of the Company that was included in the restructuring proposal referred to in section 8; and
  - (c) the fee that is payable under the Companies Act 1993 for registration of a company.
- (2) The application for registration of the Company under the Companies Act 1993 must comply with section 12 of that Act, except that—
  - (a) the chairman may be the applicant on behalf of the persons who are to receive initial shares in the Company;
  - (b) the chairman may sign the application and any other documents required to accompany it;
  - (c) section 12(1)(d)(i) of that Act does not apply to a person named as a shareholder in the application for registration.

## **10 Conversion of NZSE into company**

- (1) On the restructuring day—
  - (a) the NZSE becomes a company registered under the Companies Act 1993; and
  - (b) all the property, rights, and liabilities of the NZSE become those of the vesting entity; and
  - (c) if a constitution is delivered to the Registrar of Companies under section 9(1)(b), the Registrar must register that constitution as the constitution of the Company; and
  - (d) the Company must issue shares to the qualifying members in accordance with the ownership entitlements determined under the restructuring proposal referred to in section 8 (except that shares may not be issued to an extent that would result in a breach of section 36T of the Securities Markets Act 1988); and

- (e) the stock exchange operated by the vesting entity has conduct rules which are those that have been approved by the Governor-General by Order in Council under section 11(2); and
  - (f) the Registrar of Companies must issue a certificate of registration for the Company.
- (2) The certificate of registration is conclusive evidence that the Company is, on the restructuring day, registered as a company under the Companies Act 1993.

Section 10(1)(d): amended, on 1 December 2002, by section 28(1) of the Securities Markets Amendment Act 2002 (2002 No 44).

## 11 Conduct rules

- (1) The chairman must before the restructuring day forward to the Secretary—
- (a) the conduct rules of the stock exchange to be operated by the vesting entity.
  - (b) *[Repealed]*
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, approve the conduct rules received by the Secretary.
- (3) The Minister must recommend that the conduct rules be approved unless satisfied that it is not in the public interest to do so.
- (4) The conduct rules approved under subsection (2) come into force on, and have contractual effect on and from, the restructuring day.
- (5) Conduct rules that are approved under subsection (2) must be treated as—
- (a) having been approved under section 36O of the Securities Markets Act 1988 on the restructuring day; and
  - (b) having effect in contract and for the purposes of section 36G of that Act on the restructuring day, in place of the conduct rules previously in effect for the purposes of that section.
- (6) *[Repealed]*
- (7) *[Repealed]*
- (8) *[Repealed]*
- (9) *[Repealed]*
- (10) *[Repealed]*
- (11) An Order in Council made under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act, but the conduct rules are neither a legislative instrument nor a disallowable instrument for the purposes of that Act.
- (12) *[Repealed]*
- (13) *[Repealed]*

Section 11(1)(b): repealed, on 1 December 2002, by section 27(1) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(5): substituted, on 1 December 2002, by section 27(2) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(6): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(7): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(8): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(9): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(10): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(11): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 11(12): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 11(13): repealed, on 1 December 2002, by section 27(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

## **12 Control limit on Company**

(1) There must be a control limit under section 344 of the Financial Markets Conduct Act 2013 in respect of the Company on and from the commencement of this subsection.

(2) *[Repealed]*

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

(8) *[Repealed]*

(9) Nothing in this section limits any takeovers code that is in force under the Takeovers Act 1993 or any other enactment.

Section 12(1): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 12(2): repealed, on 1 December 2002, by section 28(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(3): repealed, on 1 December 2002, by section 28(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(4): repealed, on 1 December 2002, by section 28(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(5): repealed, on 1 December 2002, by section 28(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(6): repealed, on 1 December 2002, by section 28(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(7): repealed, on 1 December 2002, by section 28(3) of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 12(8): repealed, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 12(9): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

### **13 Effect of conversion to company**

- (1) The Company is the same body corporate as the NZSE.
- (2) Section 10 does not—
  - (a) create a new legal entity; or
  - (b) prejudice or affect the identity of the body corporate that becomes the Company or its continuity as a legal entity.
- (3) On and from the restructuring day—
  - (a) a reference (express or implied) in any instrument to the NZSE is to be read and construed as a reference to the vesting entity; and
  - (b) all money payable to the NZSE is payable to the vesting entity; and
  - (c) any action, arbitration, proceeding, or cause of action that was pending or that existed by, against, or in favour of, the NZSE or to which the NZSE was a party before the restructuring day may, on and after the restructuring day, be continued and enforced by, against, or in favour of, the vesting entity, and it is not necessary to amend an application, notice, or other document to do so.
- (4) All transactions entered into by, and acts of, the NZSE before the restructuring day are to be regarded as having been entered into by, or to be those of, the vesting entity and to have been entered into or performed by the vesting entity at the time when they were entered into or performed by the NZSE.
- (5) All contracts, agreements, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether or not in writing), entered into by, made with, given to or by, or addressed to the NZSE (whether alone or with any other person) and existing immediately before the restructuring day are, to the extent that they were previously binding on and enforceable by, against, or in favour of, the NZSE, binding on and enforceable by, against, or in favour of, the vesting entity as fully and effectually in every respect as if, instead of the NZSE, the vesting entity had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be.
- (6) Nothing effected or authorised by this Act—

- (a) is to be regarded as placing the NZSE, the Company, or the vesting entity, or any other person, in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) is to be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or
- (c) is to be regarded as placing the NZSE, the Company, or the vesting entity, or any other person, in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
- (d) releases any surety wholly or in part from any obligation; or
- (e) invalidates or discharges any contract.

#### **14 Employees of NZSE**

- (1) On the restructuring day each employee of the NZSE (a **transferred employee**) ceases to be an employee of the NZSE and becomes an employee of the vesting entity.
- (2) For the purposes of every enactment, law, determination, contract, and agreement relating to the employment of each transferred employee, his or her contract of employment is to be regarded as having been unbroken and the period of his or her service with the NZSE is to be regarded as having been a period of service with the vesting entity.
- (3) The terms and conditions of the employment of each transferred employee with the vesting entity on the restructuring day (and after that until varied) are identical to the terms and conditions of his or her employment with the NZSE immediately before the restructuring day and are capable of variation in the same manner.
- (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of his or her ceasing by virtue of this Act to be an employee of the NZSE.

#### **15 Taxation**

- (1) The issue by the Company of shares on the restructuring day to qualifying members in accordance with their ownership entitlements is not a dutiable gift for the purposes of the Estate and Gift Duties Act 1968.
- (2) For the purposes of the Income Tax Act 1994, a qualifying member who is issued shares by the Company on the restructuring day is to be regarded as having—
  - (a) acquired the shares for a cost equal to the value immediately before the restructuring day of the member's ownership entitlement, determined under the method or statement referred to in section 6(1)(a); and
  - (b) held those shares at all times prior to the restructuring day; and

- (c) subject to section OD 5(5) of the Income Tax Act 1994, held the voting interest attributable to those shares at all times prior to the restructuring day.

## **16 Registered exchange**

On the restructuring day, the Secretary must register the vesting entity as a registered exchange under section 36F of the Securities Markets Act 1988.

Section 16: substituted, on 1 December 2002, by section 29 of the Securities Markets Amendment Act 2002 (2002 No 44).

## **17 Repeal**

The Sharebrokers Amendment Act 1981 is repealed.

## **18 Amendments**

- (1) The Acts specified in Schedule 1 are amended in the manner indicated in that schedule.
- (2) The regulations specified in Schedule 2 are amended in the manner indicated in that schedule.
- (3) The Order in Council specified in Schedule 3 is amended in the manner indicated in that schedule.

### **Schedule 1 Acts amended**

*[Repealed]*

s 18(1)

Schedule 1: repealed, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

### **Schedule 2 Regulations amended**

*[Repealed]*

s 18(2)

Schedule 2: repealed, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

**Schedule 3**  
**Order in Council amended**

s 18(3)

**Securities Transfer (Approval of FASTER System) Order 2001 (SR 2001/238)**

*Amendment(s) incorporated in the order(s).*

## Reprints notes

### 1 *General*

This is a reprint of the New Zealand Stock Exchange Restructuring Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Statutes Repeal Act 2017 (2017 No 23): section 3(1)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Legislation Act 2012 (2012 No 119): section 77(3)

New Zealand Stock Exchange (Conduct Rules, Control Limit, and Restructuring Day) Order 2002 (SR 2002/377): clause 5

Securities Markets Amendment Act 2002 (2002 No 44): sections 27–30