



## COVERSHEET

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| <b>Minister</b>               | Hon Andrew Bayly                                                              | <b>Portfolio</b>            | Commerce and Consumer Affairs |
| <b>Title of Cabinet paper</b> | Modernising the Companies Act 1993 and Making Other Improvements for Business | <b>Date to be published</b> | 15 August 2024                |

### List of documents that have been proactively released

| <b>Date</b>  | <b>Title</b>                                                                                                                         | <b>Author</b>                                            |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 31 July 2024 | Modernising the Companies Act 1993 and Making Other Improvements for Business                                                        | Office of the Minister for Commerce and Consumer Affairs |
| 31 July 2024 | Modernising the Companies Act 1993 and Making Other Improvements for Business<br>ECO-24-MIN-0149 Minute                              | Cabinet Office                                           |
| 31 July 2024 | Appendix 1: Proposals in the Companies Act, Limited Partnerships Act, and Insolvency Act with a Regulatory Impact Analysis Exemption | MBIE                                                     |
| 31 July 2024 | Appendix 2: Amendments to RSB 3 proposals                                                                                            | MBIE                                                     |
| 31 July 2024 | Appendix 3: Regulatory Impact Statement: Companies Act 1993 Modernisation and Simplification Changes                                 | MBIE                                                     |
| 31 July 2024 | Appendix 4: Regulatory Impact Statement: Making it easier for government agencies to require an NZBN                                 | MBIE                                                     |
| 31 July 2024 | Appendix 5: Better Visibility of Individuals Who Control Companies and Limited Partnerships<br>CAB-21-MIN-0539.01 Minute             | Cabinet Office                                           |
| 31 July 2024 | Appendix 6: NZBN legislative proposals – additional detail                                                                           | MBIE                                                     |
| 31 July 2024 | Appendix 7: Business registers and associated legislation in scope for NZBN changes                                                  | MBIE                                                     |

### Information redacted

**YES / NO** (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Confidential advice to Government.

## APPENDIX 1: Table of indicative additional proposals that are exempt from Regulatory Impact Analysis

**Note:** all of the section numbers below refer to the Companies Act 1993 (unless otherwise stated)

| Item | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 1    | Amend public notice requirement to reflect decline in newspaper distribution.<br>With the increasing decline in newspaper distribution and the corresponding increasing reliance on on-line sources of information, this is now an expensive and outdated method of communicating this information. The same information is available online through The Gazette.                                                                                                                                            |
| 2    | Include a requirement for directors to provide an email address.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 3    | Address the concern that purpose statements in company constitutions may fall foul of s16(2). Many company constitutions include a purpose statement that is no more than a simple statement of what the company does. Section 16(2) only permits a constitution to contain provisions that restrict the capacity of the company and associated rights, powers, privileges. A purpose clause which positively states what a company can do may be caught by this.                                            |
| 4    | Amend the provisions relating to assessing whether or not a name may be reserved for a company to aid automation of the incorporation process.                                                                                                                                                                                                                                                                                                                                                               |
| 5    | Currently boards are required to notify the Registrar of a share issue as the Registrar collects information on the number of shares held by a company. However, the number of shares can also change by an issue of bonus shares and consolidation/subdivision of shares. This information should also be required to be notified to the Registrar.<br>Amend s48 to correct references to consolidation/subdivision of shares as those are not relevant for the purpose of s47 to which the section refers. |
| 6    | Consider how the solvency test is applied in relation to distributions where there are fixed preferential shares (s52).<br>The intention is that there is no associated debt or liability for preferential returns made at the discretion of the board (whether provided for in the constitution or not).                                                                                                                                                                                                    |
| 7    | Provide that the information required in the disclosure document for on-market acquisitions (s64) can be provided to the exchange rather than each individual shareholder to streamline this process.                                                                                                                                                                                                                                                                                                        |
| 8    | Remove requirement that names in the share register must be alphabetically arranged. This provision is unnecessary in the era of electronic filing and storage of information.                                                                                                                                                                                                                                                                                                                               |
| 9    | If a shareholder is holding shares on behalf of a trust, permit the share register to reflect this information if the shareholder chooses and the company consents. This amendment is purely to assist identification of different holdings held by the same person. It will be made clear that the named person is the legal shareholder and that it does not constitute notice of the trust to any person.                                                                                                 |
| 10   | Specify timeframe in which directors must call a meeting of shareholders requested by shareholders (s121).<br>Meeting must be called within 20 working days and held within further 20 working days. These timeframes are consistent with other timeframes provided in the Act.                                                                                                                                                                                                                              |

| Item | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11   | <p>Repeal s131(5).</p> <p>Section 131(5) of the Companies Act was added by the Companies (Directors' Duties) Amendment Act 2023; the result of a member's bill. Section 131 sets out the duty of directors to act in good faith and in best interests of company. Subsection (5) added an avoidance of doubt provision clarifying that, when considering the best interests of the company, a director may consider matters other than the maximisation of profit (for example, environmental, social and governance (ESG) matters).</p> |
| 12   | <p>Provide that a general notice of interest is only sufficient disclosure in relation to transactions entered into in the ordinary course of the company's business and on usual terms and conditions, and address drafting issue in s141(1) as the time needs to start from the disclosure of the transaction and the interest.</p>                                                                                                                                                                                                    |
| 13   | <p>Align provisions in s147 setting out exceptions to the requirement to disclose relevant interests with s238 in the Financial Markets Conduct Act to the extent that it makes sense to do so.</p>                                                                                                                                                                                                                                                                                                                                      |
| 14   | <p>Consistent with s259 in the Financial Markets Conduct Act introduce a defence relating to restrictions on share dealing by directors if they have equivalent information (s149).</p>                                                                                                                                                                                                                                                                                                                                                  |
| 15   | <p>Clarify that s149 also applies to shares held by a company under control of a director or where held jointly with other trustees.</p>                                                                                                                                                                                                                                                                                                                                                                                                 |
| 16   | <p>Provide other methods for how a director may resign (s157).</p> <p>Currently, the director of a company resigns office by signing a written notice of resignation and delivering it to the address for service of the company. However, this will often be the residential address of that director. Other methods could include emailing the company or another director.</p>                                                                                                                                                        |
| 17   | <p>Clarify that the definition of "indemnify" (s 162) does not invalidate shareholder ratification of director actions under s 177.</p> <p>Section 162 provides that a company must not indemnify a director in respect of liability for any act or omission as a director. The definition of "indemnify" includes "relieve or excuse from liability". However, s177 permits the ratification of certain actions of directors by shareholders, including potentially some actions that might be covered by the s162.</p>                 |
| 18   | <p>Provide that, in addition to a director or other person specified in the constitution, a director or other person authorised by the board can execute deeds on behalf of the company, and remove the limitation on when the rules in the Act apply to a company executing a deed (s180).</p>                                                                                                                                                                                                                                          |
| 19   | <p>Change reporting thresholds in the annual report in relation to employees to over \$200k and brackets of \$50k. These are currently set at \$100k, and then up in brackets of \$10k. These figures have not been updated in a long time.</p>                                                                                                                                                                                                                                                                                          |
| 20   | <p>Repeal schedule 4 and instead provide that content can be prescribed in regulations.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 21   | <p>Amend wording of prejudice to creditors in relation to amalgamation (s223).</p> <p>The current wording is narrow. The intent of the provision is that certification is required certifying that no creditor of an amalgamating company will be prejudiced by the amalgamation.</p>                                                                                                                                                                                                                                                    |
| 22   | <p>Proceedings at meetings of creditors (s239AK and Sch 5) amended to include remote attendance and e-voting.</p> <p>This will modernise the legislation and allow for better participation and representation from creditors who are not able to attend meetings in person.</p>                                                                                                                                                                                                                                                         |

| Item | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| 23   | Remove reference to “for a named district” in relation to the Official Assignee commencing liquidation (s241).<br>The Official Assignee is no longer appointed on the basis of districts.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 24   | Currently the grounds for restoring a company to the register (s328) are that the Registrar must be satisfied that (i) the company was carrying on business at the time of its removal and (ii) there is a proper reason for the company to continue.<br>Applicants often want the company to be restored where small amounts of money are owed to the company (for example, reclaiming tax losses, monies left in unknown bank accounts). Under the current settings, they would have to apply to the High Court for the company to be restored as they would not meet the ‘carrying on business’ limb. Provide a means for companies in this kind of situation to be restored to the register without needing to go court. |
| 25   | Remove requirement for register to be kept in New Zealand so that the Registrar can make use of modern digital technology such as cloud computing (s360).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 26   | Provide the Registrar more discretion about whether public notice needs to be given when rectifying or correcting the register and a better ability to correct minor errors on the register (s360A).<br>Currently, unless a correction relates solely to the person applying for it, the Registrar must give public notice of any correction to the register. This means even minor corrections must be notified and this is not cost effective as there are very few objections ever made to these.                                                                                                                                                                                                                         |
| 27   | Introduce a ‘notice of access’ regime so that companies can notify shareholders and creditors of a URL where all the relevant information about certain matters can be obtained.<br>A ‘notice of access’ regime would significantly simplify the sharing of certain documents and information with shareholders and creditors. Similar regimes have recently been introduced in the UK and Australia. They permit companies to notify shareholders and creditors of a URL where information (eg in relation to an annual report or an upcoming AGM) may be obtained rather than having to send all this information out to each individual shareholder/creditor.                                                             |
| 28   | Make it clear in the provisions relating to proceedings at meetings of shareholders (Sch 1) that the chair can postpone shareholders meetings previously called by the board.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 29   | Two amendments to the provisions relating to proceedings of board meetings (Sch 3): <ul style="list-style-type: none"> <li>• amend clause 2(2) to require notice to be given to all directors (not just those in New Zealand) given the ease of digital communication</li> <li>• change requirement that copies of written resolutions be included in a minute book to an obligation to keep records of those resolutions, as the minutes and resolutions of meetings will be recorded electronically.</li> </ul>                                                                                                                                                                                                            |

| Item | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 30   | <p>Reverse 'opt in' requirements in constitutions to 'opt out' requirements.</p> <p>Currently there are a number of actions which are only permitted "if expressly prohibited by a company's constitution". While at the time of enactment of the Act, these actions may have been novel, they are now invariably allowed in a constitution, and should be available to all companies regardless of whether they have a constitution or not.</p> <p>Instead, the following provisions would be permitted "unless expressly prohibited by the company's constitution":</p> <ul style="list-style-type: none"> <li>• ss59, 60 (relating to share buy backs)</li> <li>• ss67A, 67C (company can hold and reissue its own shares)</li> <li>• s88 (share register may be divided into 2 or more registers and kept in different places)</li> <li>• s162 (indemnity and insurance for directors).</li> </ul> <p>Suitable transitional provisions will need to be considered.</p> |
| 31   | Remove requirement for Registrar to sign documents in ss 188, 317, 330, 355 and s69(3)(d) of the Limited Partnerships Act. These provisions are unnecessary as these documents are now transmitted electronically.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 32   | Change reference to prescribed form (as we will likely be removing form from the regulations) and instead look to be consistent with recent changes to the Incorporated Societies Act to permit flexibility (particularly in relation to the use of modern technology). This change will permit regulations to prescribe information and the manner in which that information is provided to the Registrar.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 33   | Remove requirement for certificates to be provided to the Registrar following a resolution of the company in the following sections: ss 47(2), 47(4), 49(2). These certificates are still required to be kept as company records so there is no need to provide them to the Registrar too.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 34   | Remove references to District offices/registrar, as there are no longer district offices or registrars.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 35   | Mode of delivery of documents etc. Ensure that there is sufficient flexibility to reflect modern technology (eg though prescribing manner in regulations where possible) and delete obsolete form where it makes sense to do so (eg fax, telegram).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 36   | Form of documents etc. Ensure that there is sufficient flexibility to reflect modern technology, eg through permitting use of electronic documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 37   | Procedures at meetings. Ensure all procedures relating to all meetings are sufficiently flexible to permit the use of modern technology (eg attendance, voting, distribution of information etc).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 38   | References to physical locations for storage etc. Remove (where it makes sense to do so) if they limit the use of modern technology (eg cloud computing).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 39   | <p>Give the Official Assignee the same power as a liquidator to revoke or amend an incorrect decision on a creditor's claim (s234 of the Insolvency Act 2006).</p> <p>Unlike the case for a liquidator under s304(3) of the Companies Act, the Official Assignee cannot revoke or amend an incorrect decision on a claim under s234 of the Insolvency Act. Currently the only remedy is for the Official Assignee, the bankrupt, or a creditor to incur the considerable expense and inconvenience of applying to the High Court for the situation to be rectified.</p>                                                                                                                                                                                                                                                                                                                                                                                                    |