

Companies (Levies) Amendment Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Companies (Levies) Amendment Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

Introduction

The Companies Office maintains and administers several registers, such as the Companies Register, the Incorporated Societies Register, the Charitable Trusts Register, the Auditors Register, the Retirement Villages Register, and the Personal Property Securities Register. Each register is established under a different Act, and each Act requires the register to be funded from fees charged to the users of that particular register.

This bill would amend the Companies Act 1993 to allow regulations to be made so that the Companies Office could impose levies on register users, in addition to specific fees. The levies would fund shared services that support the Companies Office and its register system as a whole. The levies would promote a whole-of-registry-system approach to funding some shared services (such as ICT infrastructure and human resources). This approach would benefit users of register services by enabling the Companies Office to run more efficiently than if it operated on a register-by-register basis.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Reclassifying the regulations as “confirmable instruments”

In clause 4 as introduced, proposed section 405(6) states that the regulations would be secondary legislation for the purposes of the Legislation Act 2019. The Regulations Review Committee recommended that we consider strengthening the procedural safeguards in the bill’s regulation-making process by expressly allowing for parliamentary scrutiny of the regulations.

We agree. We recommend amending proposed section 405(6), and inserting section 405(7), to make these regulations “confirmable instruments” for the purposes of the Legislation Act. Confirmable instruments are automatically revoked at a particular date unless confirmed by an Act of Parliament. This contrasts with “disallowable instruments”, which are assumed to be valid unless specifically disallowed by the House.

Clarify that fees and levies can be combined in one payment

In clause 4, we recommend inserting new paragraphs (ia) and (ib) into proposed section 405(5) to make it clear that the regulations may require users to pay levies and fees in the same transaction. Our amendment would still require the levy to be an identifiable part of the overall charge. In our view, this approach to collecting charges would be more efficient for users and the Companies Office.

As an example, rather than charging users a \$14 fee (for the register-specific services), and a separate \$7 levy (towards shared services that benefit the whole registry system), the Companies Office could charge users \$21 and separate the fee and levy afterwards. The Companies Office would need to tell users what portion was for the purpose of the levy.

Strengthening consultation provisions

Proposed section 408(1) would require that, before recommending regulations, the Minister must consult representatives of the classes of people who would be liable to pay a levy under the proposed regulations (the classes are listed in proposed Schedule 15). The Minister must also consult representatives of any other persons likely to be significantly affected by the regulations.

In the bill as introduced, proposed section 408(2)(a) states that the regulations would not be invalid on the grounds that the Minister did not comply with the above consultation requirement. This type of “validating provision” is not uncommon; they ensure that regulations are not challenged on minor or technical grounds.¹ However, the bill

¹ Further discussion about the use of validating provisions can be found on the Legislation Design and Advisory Committee website.

would confer relatively broad regulation-making powers on the Executive branch, so we believe it is important to ensure that proper consultation is undertaken before those powers are exercised.

We do not consider it appropriate to include a validating provision in this instance. Consequently, we recommend deleting proposed section 408(2)(a). We also recommend inserting sections 408(3)–(4) to promote better public consultation by expressly requiring that any proposals for regulations be made publicly available on the relevant government department website.

Statutory review of levy system

We consider that the bill should contain a statutory requirement for the Minister to review whether the regulations and levy system are operating as intended. In our view, this is important for accountability to Parliament and public transparency.

We recommend inserting section 409 accordingly. It would require a review to be conducted within 5 years of the date that the first regulations were made, and the report to be made publicly available.

Appendix

Committee process

The Companies (Levies) Amendment Bill was referred to the committee on 21 June 2022.

We called for submissions on the bill with a closing date of 27 July 2022. We received and considered 3 written submissions from interested groups and individuals.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

The Regulations Review Committee reported to us on the powers contained in clause 4.

Committee membership

Barbara Edmonds (Chairperson)

Andrew Bayly

Glen Bennett

Shanan Halbert

Ingrid Leary

Anna Lorck

Damien Smith

Chlöe Swarbrick

Simon Watts

Helen White

Nicola Willis

Simon Court participated in our consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr David Clark

Companies (Levies) Amendment Bill

Government Bill

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Part 2

New Schedules 14 and 15 inserted

5 New Schedules 14 and 15 inserted	5
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Schedule

New Schedules 14 and 15 inserted

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies (Levies) Amendment Act **2022**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Companies Act 1993.

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Part 1

Amendment to allow levies to be imposed in relation to certain persons using services of certain registers

4 New sections 404 to 408 409 inserted

After section 403, insert:

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404 Purpose of imposing levies

(1) The purpose of imposing levies by regulations under **section 405** is to recognise that—

(a) the different registers listed in **Schedule 14** operate financially as a single system of registers and not as separate registers; and

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(b) all those registers should be funded, in part, through a levy imposed on specified users of each ~~registry~~ register, in a manner that is equitable, efficient, and justified; and

(c) applying the principles of equity, efficiency, and justification is properly undertaken having regard to the cost of administering the whole system of registers, not on the basis of the costs of administering individual registers; and

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(d) money collected from specified users of 1 register can legitimately be used to meet the costs of operating any or all of ~~these~~ the registers; and

(e) using money collected from specified users of 1 or more registers in the way provided in **paragraph (d)** is the most efficient way of financing the registers.

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(2) In **subclause (1)**, **specified users** means persons in a class of persons listed in **Schedule 15** that are liable to pay a levy.

405 Regulations relating to levies

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(1) Every person that is included in a prescribed class of persons listed in **Schedule 15 (Schedule 15 persons)** must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations that applies to that class of persons.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies.

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- (3) Levies must be prescribed on the basis that the following costs should be met fully out of the levies:
- (a) a portion of the costs of a Registrar in performing or exercising the Registrar's functions, powers, and duties under this Act, or any of the Acts listed in **Schedule 14**, where the size of the portion to be met by levies under this Act is determined by the Minister; and 5
 - (b) the costs of collecting the levy money.
- (4) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years. 10
- (5) The regulations may—
- (a) specify the class or classes of persons that are required to pay a levy:
 - (b) specify the amount of levies, or the method of calculating or ascertaining the amount of levies:
 - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs: 15
 - (d) refund, or provide for refunds of, any over-recovery of the actual costs:
 - (e) provide for the payment and collection of levies:
 - (f) provide different levies for different classes of persons:
 - (g) specify the financial year or part of a financial year to which a levy applies, and apply that levy to that financial year or part of a financial year and each subsequent financial year until the levy is revoked or replaced: 20
 - (h) require payment of a levy for a financial year or part of a financial year, irrespective of the fact that the regulations may be made after that financial year has commenced: 25
 - (i) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases:
 - (ia) require the payment of levies for every transaction or any specific transaction (for example an annual return) undertaken by a person involving a register or registers: 30
 - (ib) require the levy to be paid as an identifiable part of the overall charge for each transaction or any specific transaction for which a fee is payable:
 - (j) specify the timing or circumstances of the requirement to pay levies (including at different times or in different circumstances for the payment of levies for different classes of registered persons): 35
 - (k) specify penalty payments for the late payment of a levy:
 - (l) require the payment of interest on overdue levies.

- (6) Regulations made under this section are ~~secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements)~~.—
- (a) ~~secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements); and~~
- (b) ~~must be confirmed by an Act (see subpart 3 of Part 5 of the Legislation Act 2019).~~ 5
- (7) Schedule 4 of the Legislation Act 2019 is amended by inserting in the appropriate alphabetical order—
- Companies Act 1993 405
- 406 Implementation of levies**
- (1) A Registrar may refuse to perform or exercise a function, power, or duty until the prescribed levy is paid. 10
- (2) If a person is in 2 or more classes of **Schedule 15** persons in respect of which different levies have been prescribed, the person must pay each of those levies (unless regulations provide otherwise).
- (3) The amount of any unpaid levy is recoverable from a **Schedule 15** person in any court of competent jurisdiction as a debt due to the relevant Registrar, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown. 15
- 407 Matters to which Minister must have regard**
- Before recommending the making of regulations under **section 405**, the Minister must have regard to the following matters: 20
- (a) the purpose of imposing levies set out in **section 404**:
- (b) levies should be set at a level to recover no more than—
- (i) ~~the costs of operating the registers under the Acts listed in **Schedule 14**; and~~ 25
- (ii) the portion of ~~additional~~ costs set by the Minister under **section 405(3)** in relation to the costs of a Registrar performing or exercising their functions, duties, and powers under any of those Acts; and
- (iii) the costs of recovering the levy moneys. 30
- 408 Minister must consult**
- (1) Before recommending the making of regulations under **section 405**, the Minister must consult—
- (a) the persons that the Minister considers are able to represent the views of **Schedule 15** persons that will be liable to pay a levy under the proposed regulations; and 35

- (b) any other representatives of persons who the Minister believes will be significantly affected by the proposed regulations.
- (2) Regulations made under **section 405** are not invalid on the grounds that—the consultation carried out was about a specific rate or amount of a fee, charge, or levy, or a method of calculating or ascertaining those things, that differs from the rate, charge, or amount, or the method of calculating or ascertaining those things, set out in the regulations. 5
- (a) ~~subsection (1) was not complied with before the Minister recommended the making of the regulations; or~~
- (b) ~~the consultation carried out was about a specific rate or amount of a fee, charge, or levy, or a method of calculating or ascertaining those things, that differs from the rate, charge, or amount, or the method of calculating or ascertaining those things, set out in the regulations.~~ 10
- (3) The chief executive must ensure that proposals sent out for consultation (including any proposed amount of levy or method of calculating that levy) are available to the public on an Internet site maintained by or on behalf of the chief executive. 15
- (4) In this section and **section 409** chief executive means the chief executive of the department of state for the time being responsible for the administration of this Act. 20
- 409** Review of sections 404 to 408 and levies
- (1) The Minister must, not later than 5 years after the date on which the first regulations are made under **section 405**, review the operation of **sections 404 to 408** and the levies imposed by regulations made under **section 405**.
- (2) The chief executive must ensure that the report resulting from review carried out under **subsection (1)** is available to the public on an Internet site maintained by or on behalf of the chief executive. 25

Part 2

New Schedules 14 and 15 inserted

- 5 **New Schedules 14 and 15 inserted** 30
- After Schedule 13, insert the **Schedules 14 and 15** set out in the **Schedule** of this Act.

Schedule New Schedules 14 and 15 inserted

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Schedule 14 List of relevant Acts and registers

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List of Acts**List of registers**

(a) Companies Act 1993:	(a) New Zealand register and overseas register:
(b) New Zealand Business Number Act 2016:	(b) New Zealand Business Number Register:
(c) Incorporated Societies Act 1908 and Incorporated Societies Act 2022:	(c) Register of incorporated societies:
(d) Insolvency Practitioners Regulation Act 2019:	(d) Register of licensed insolvency practitioners:
(e) Limited Partnerships Act 2008:	(e) Registers of limited partnerships and overseas limited partnerships:
(f) Friendly Societies and Credit Unions Act 1982:	(f) Register maintained by the Registrar of Friendly Societies and Credit Unions:
(g) Retirement Villages Act 2003:	(g) Register of retirement villages:
(h) Financial Markets Conduct Act 2013:	(h) Registers kept under Schedule 2 of that Act (otherwise known as the Disclose Register (encompassing a register of offers of financial products and a register of managed investment schemes)):
(i) Financial Reporting Act 2013:	(i) Registers kept under section 36N of that Act which relate to Approved Overseas Auditors and Associations of Accountants:
(j) Financial Service Providers (Registration and Dispute Resolution) Act 2008:	(j) Register of financial service providers:
(k) Personal Property Securities Act 1999:	(k) Register of Personal property securities register:
(l) Auditor Regulation Act 2011:	(l) Register of licensed auditors and registered audit firms:
(m) Industrial and Provident Societies Act 1908:	(m) Registers kept under section 3D of the Industrial and Provident Societies Act 1908:
(n) Building Societies Act 1965:	(n) Register of building societies:
(o) Securities Act 1978 (as preserved in part for certain purposes).	(o) <u>Register of contributory mortgage brokers Register.</u>

Schedule 15

Registered persons that may be subject to levy

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Part 1

Classes of persons that may be subject to levy

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The following classes of persons may be subject to a levy:

- (a) licensed auditors (within the meaning of section 6(1) of the Auditor Regulation Act 2011):
- (ab) registered audit firms (within the meaning of section 6(1) of the Auditor Regulation Act 2011): 10
- (b) building societies (within the meaning of section 2(1) of the Building Societies Act 1965):
- (c) NZBN entities (within the meaning of section 5 of the New Zealand Business Number Act 2016):
- (d) companies (within the meaning of section 2(1) of the Companies Act 1993) and overseas companies that are required to register their financial statements under section 207E of the Companies Act 1993: 15
- (e) financial service providers (within the meaning of section 4 of the Financial Service Providers (Registration and Dispute Resolution Act) 2008):
- (f) approved associations (within the meaning of section 5 of the Financial Reporting Act 2013): 20
- (g) credit unions (within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982):
- (h) registered societies or branches (within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982): 25
- (i) societies (within the meaning of section 3 of the Incorporated Societies Act 1908 or section 5(1) of the Incorporated Societies Act 2022):
- (j) registered societies (within the meaning of section 2 of the Industrial and Provident Societies Act 1908):
- (k) licensed insolvency practitioners (within the meaning of section 5(1) of the Insolvency Practitioners Regulation Act 2019): 30
- (l) limited partnerships (within the meaning of section 6 of the Limited Partnerships Act 2008):
- (la) Overseas limited partnership (within the meaning of section 4 of the Limited Partnerships Act 2008): 35
- (m) operator (within the meaning of section 5 of the Retirement Villages Act 2003):

- (n) contributory mortgage brokers (within the meaning of section 2(1) of the Securities Act 1978 (as preserved in part for certain purposes)).

Part 2

Persons registering documents who may be subject to levy

The following classes of persons may be subject to a levy:

- (a) issuers (within the meaning of section 11 of the Financial Markets Conduct Act 2013): 5
- (b) managers (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):
- (c) supervisors (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013): 10
- (d) persons who register a financing statement or a financing change statement under section ~~144~~ 141 of the Personal Property Securities Act 1999 or renew the registration of that statement under section 154 of that Act.

Legislative history

2 June 2022
21 June 2022

Introduction (Bill 133–1)
First reading and referral to Finance and Expenditure Committee