

Companies Amendment Bill (No 4)

(Divided from the Companies and Limited Partnerships Amendment Bill)

Government Bill

As reported from the committee of the whole House

This bill was formerly part of the Companies and Limited Partnerships Amendment Bill as reported from the Commerce Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- this bill comprising clauses 1 and 2, Part 1, and Schedules 1 and 2
- the Limited Partnerships Amendment Bill (No 2), comprising Part 2 and Schedules 2A, 2B, and 3.

Companies Amendment Bill (No 4)

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

text deleted

Hon Craig Foss

Companies Amendment Bill (No 4)

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Companies Amendment Act **2014**.

2 Commencement

- (1) Except as provided in **subsection (2), Parts 2 and 4** come into force 365 days after the date on which this Act receives the Royal assent unless they are earlier brought into force on a date appointed by the Governor-General by Order in Council. 5
- (2) **Sections 43 and 43A and Schedule 2** come into force on a date appointed by the Governor-General by Order in Council. 10
- (3) For the purpose of **subsection (2)**,—
- (a) 1 or more orders may be made bringing different provisions into force on different dates and for different purposes; and
- (b) **provision** includes any item, or any part of an item, in **Schedule 2**. 15
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Companies Act 1993. 20

Part 1

Criminalisation of breaches of certain directors' duties

4 New section 138A inserted

The following section is inserted after section 138: 25

“138A Offence for serious breaches of certain duties breach of director's duty to act in good faith and in best interests of company

- “(1) Every director of a company who acts, or omits to act, in breach of the duty in section 131 (duty of directors to act in good faith and in best interests of company) commits an offence if he or she knows that that conduct is seriously detrimental to the interests of the company.** 30

- “(1) A director of a company commits an offence if the director exercises powers or performs duties as a director of the company—
- “(a) in bad faith towards the company and believing that the conduct is not in the best interests of the company; and 5
- “(b) knowing that the conduct will cause serious loss to the company.
- “(1A) However, a director does not commit an offence under **subsection (1)** if the power or duty in question is exercised or performed under any of section 131(2) to (4) or is a power exercised under section 132. 10
- “(2) Every director of a company who acts, or omits to act, in breach of the duty in section 135 (reckless trading) commits an offence if he or she knows that that conduct will result in serious loss to the company’s creditors. 15
- “(3) A person who commits an offence under this section is liable on conviction to the penalties set out in section 373(4).”

4AAA Penalty for failure to comply with Act

Section 373(4)(f) is amended by inserting “or dishonestly incurring debt” after “fraudulently”. 20

4AAB Fraudulent use or destruction of property

Section 378(a) is amended by inserting “, or for the use or benefit of a person other than the company” after “use or purpose of the company”.

4AAC Carrying on business fraudulently

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- (1) The heading to section 380 is amended by adding “**or dishonestly incurring debt**”.
- (2) Section 380 is amended by adding the following subsections:
- “(4) Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4) if— 30
- “(a) the company incurs a debt (the **debt**); and
- “(b) the company—
- “(i) is insolvent at the time that it incurs the debt; or
- “(ii) becomes insolvent by incurring the debt; or

- “(iii) is insolvent at the time that it incurs debts that include the debt; or
“(iv) becomes insolvent by incurring debts that include the debt; and
 “(c) the director knows, at the time when the company incurs the debt, that the company is insolvent or will become insolvent as a result of incurring the debt or other debts that include the debt; and 5
 “(d) the director’s failure to prevent the company incurring the debt is dishonest. 10
- “(5) In **subsection (4), insolvent** means that the company is unable to pay its debts.”

4A Consequential amendment to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957. 15
 (2) The item relating to the Companies Act 1993 in Part 2 of Schedule 1 is amended by inserting the following item in its appropriate numerical order:
- 138A(3)** Offence for serious breaches of certain duties

Part 2

One or more directors to live in New Zealand and other measures 20

5 Interpretation

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**enforcement country** means a country, State, or territory outside New Zealand prescribed for the purposes of **section 10(d)** 25

“**limited partnership** has the meaning set out in section 6 of the Limited Partnerships Act 2008

“**overseas limited partnership** has the meaning set out in section 4 of the Limited Partnerships Act 2008 30

“**ultimate holding company**, in relation to a company, means a body corporate that—

“(a) is a holding company of the company; and

“(b) is itself not a subsidiary of any body corporate

“**ultimate holding company information** has the meaning set out in **section 94A**”.

6 Essential requirements

Section 10 is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) 1 or more directors, of whom at least 1 must— 10

“(i) live in New Zealand; or

“(ii) live in an enforcement country and be a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country.” 15

7A Application for registration

(1) Section 12(2) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) in relation to every director of the proposed company,—

“(i) his or her full name and date and place of birth; 20
and

“(ii) his or her residential address; and

“(iii) if the residential address is in an enforcement country, whether the director is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country and, if so, the prescribed information; 25
and”.

(2) Section 12(2) is amended by inserting the following paragraph after paragraph (c): 30

“(ca) the proposed company’s ultimate holding company information; and”.

7B New heading and sections 94A and 94B inserted

The following heading and sections are inserted after section 94: 35

*“Ultimate holding company***“94A Meaning of ultimate holding company information**

For the purposes of this Act, **ultimate holding company information** means information about whether a company has an ultimate holding company and, if the company does, the following information: 5

“(a) the name of the ultimate holding company:

“(b) the ultimate holding company’s country of registration:

“(c) the ultimate holding company’s registration number or code (if any): 10

~~“(d) the ultimate holding company’s address for service:~~

“(d) the registered office of the ultimate holding company:

“(e) any other prescribed information.

“94B Notice of ultimate holding company changes

“(1) The board of a company must ensure that notice (in the form and manner required by the Registrar) of any changes in the company’s ultimate holding company information is delivered to the Registrar for registration. 15

“(2) A notice under **subsection (1)** must—

“(a) specify the date of the change; and 20

“(b) include the new ultimate holding company information; and

“(c) be delivered to the Registrar within 20 working days of the date of the change.

“(3) If a board of a company fails to comply with this section, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).” 25

7C Number of directors

Section 150 is amended by omitting “at least 1 director” and substituting “1 or more directors (*see section 10(d)*)”. 30

7D Notice of change of directors

Section 159(2) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) include, in relation to every person who is a director of the company from the date of the notice, the information required by **section 12(2)(b)(i) to (iii)**; and”.

7E Public inspection of company records

Section 215(1) is amended by inserting the following paragraph after paragraph (c):

“(ca) the company’s ultimate holding company information.”.

7F Amalgamation proposal

(1) Section 220(1) is amended by repealing paragraph (c) and substituting the following paragraph:

~~“(c) in relation to every director of the amalgamated company, the information required by **section 12(2)(b)(i) to (iii)**;~~

“(c) in relation to every director of the amalgamated company, his or her full name and the information required by **section 12(2)(b)(ii) and (iii)**.”.

(2) Section 220(1) is amended by inserting the following paragraph after paragraph (e):

“(ea) the ultimate holding company information of each of the amalgamating companies and of the amalgamated company.”.

7FA Registration of amalgamation proposal

Section 223 is amended by inserting the following paragraph after paragraph (b):

“(ba) the date and place of birth of every director of the amalgamated company; and”.

7G Inspection and evidence of registers

Section 363 is amended by adding the following subsection:

“(6) This section is subject to **section 367A**.”

7H New section 367A inserted

The following section is inserted after section 367:

“367A Confidentiality of director information

“(1) The Registrar must treat director information as confidential and must not make it available to a member of the public.

“(2) The Official Information Act 1982 does not apply to director information. 5

“(3) In this section, **director information** means a director’s date and place of birth.

“Compare: 2008 No 1 s 115”.

18 New section 387A inserted

The following section is inserted after section 387: 10

“387A Service of documents on directors in legal proceedings

“(1) A document, including a writ, summons, notice, or order, in any legal proceedings involving a director in his or her capacity as director may be served on the director as follows:

“(a) by delivery to the director; or 15

“(c) by leaving it at the director’s residential address (as that address is shown in the register); or

“(e) by leaving it at the company’s registered office or address for service; or

“(f) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or 20

“(g) in accordance with an agreement made with the director; or

“(h) by serving it at an address for service given in accordance with the rules of the court having jurisdiction in the proceedings or by such means as a solicitor has, in accordance with those rules, stated that the solicitor will accept service. 25

“(2) The methods of service specified in **subsection (1)** are the only methods by which a document in legal proceedings may be served on a director in New Zealand.” 30

19 Service of other documents on companies

Section 388(1) is amended by adding “; or” and also by adding the following paragraph: 35

“(e) by sending it by email to an electronic address used by the company.”

20 New section 388A inserted

The following section is inserted after section 388:

“388A Service of other documents on directors 5

A document, other than a document in any legal proceedings, may be served on a director as follows:

“(a) by any of the methods set out in **paragraphs (a), (c), (e), and (g) of section 387A**; or

“(b) by posting it to the director at the director’s residential address (as that address is shown in the register) or delivering it to a box at a document exchange that the director is using at the time; or 10

“(d) by posting it to the company’s registered office or address for service or delivering it to a box at a document exchange that the company is using at the time; or 15

“(e) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the director’s residential address (as that address is shown in the register); or 20

“(g) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the company’s registered office or address for service or its head office or principal place of business; or

“(h) by sending it by email to an electronic address used by the director; or 25

“(j) by sending it by email to an electronic address used by the company.”

21 Additional provisions relating to service

(1) Section 392(1) is amended by inserting the following paragraph after paragraph (c): 30

“(ca) a document sent by email is deemed to have been received on the working day following the day on which it was sent.”

(2) Section 392(1) is amended by adding the following paragraph: 35

- “(f) in proving service of a document by email, it is sufficient to prove that—
- “(i) the document was properly addressed; and
- “(ii) the document was properly sent to the email address.”

5

22 Regulations

Section 395(1) is amended by inserting the following paragraphs after paragraph (b):

- “(ba) prescribing a country, State, or territory outside New Zealand as an enforcement country for the purposes of **section 10(d)** if the country, State, or territory has an agreement with New Zealand that allows for the recognition and enforcement there of New Zealand judgments imposing regulatory regime criminal fines: 10
- “(bb) prescribing information required for the purposes of **section 12(2)(b)(iii) and paragraph (gaaa) of Schedule 4**: 15
- “(bc) prescribing information required for the purposes of **section 94A(e)**.”.

22A Schedule 4 amended

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- (1) Paragraph (g) of Schedule 4 is amended by inserting “, dates and places of birth,” after “names”.
- (2) Schedule 4 is amended by inserting the following ~~paragraph~~ paragraphs after paragraph (g):
- “(gaaa) if a director is resident in an enforcement country, the prescribed information in respect of the company or companies in that country of which the director is a director: 25
- “(ga) the company’s ultimate holding company information:”.

30

*Transitional provision relating to requirement
for 1 or more directors to live in New Zealand,
etc*

- 22B Transitional provision relating to requirement for 1 or more directors to live in New Zealand, etc** 5
- (1) ~~Until the expiry of 6 months~~ Before the close of the 180th day after the commencement of this section, **section 10(d)(i) and (ii)** of the principal Act do not apply to a company incorporated before the commencement of this section.
- (2) A company incorporated before the commencement of this section that does not comply with the requirements in **section 10(d)(i) or (ii)** of the principal Act must, ~~within 6 months~~ before the close of the 180th day after the commencement of this section, do the following in order to comply with those requirements: 10
- (a) arrange for a director who complies with the requirements in **section 10(d)(i) or (ii)** of the principal Act; and 15
- (b) in the manner required by the Registrar, notify the Registrar of the following: 20
- (i) that a director complies with the requirements in **section 10(d)(i) or (ii)** of the principal Act; and
- (ii) the information required under **section 12(2)(b)(i) to (iii)** in relation to that director.
- (3) If a company fails to comply with **subsection (2)**, the company does not comply with section 10 of the principal Act (*see section 318(1)(aaa)* of the principal Act). 25

*Transitional provision relating to directors' date
and place of birth information and company's
ultimate holding company information*

- 22C Transitional provision relating to directors' date and place of birth information and company's ultimate holding company information** 30
- (1) A company incorporated before the commencement of this section must provide the Registrar with the following information (at the time and in the manner required by the Registrar): 35
- (a) the date and place of birth of each director; and

- (b) the company’s ultimate holding company information.
- (2) If a company fails to comply with **subsection (1)**,—
- (a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2) of the principal Act; and 5
- (b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of the principal Act.
- (3) Sections 373(2), 374(2), and 375 to 380 of the principal Act apply as if this section were a section of the principal Act. 10

Part 3

Arrangements and amalgamations of code companies

No long-form amalgamations of code company under Part 13 of principal Act 15

23 Interpretation

Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**code company** has the meaning set out in section 2(1) of the Takeovers Act 1993”. 20

24 Amalgamations

- (1) Section 219 is amended by omitting “Two or more” and substituting “Except as provided in **subsection (2)**, 2 or more”.
- (2) Section 219 is amended by adding the following subsection as subsection (2): 25
- “(2) A code company may not amalgamate under sections 220 and 221.”

Transitional provision relating to amendments to Part 13 of principal Act

24A Transitional provision relating to amendments to Part 13 of principal Act 30

- (1) An amalgamation proposal involving 1 or more code companies that has been approved by the boards of all amalgamating companies in accordance with section 221(1) of the principal

Act before the commencement of **section 24** of this Act is to be continued as if **section 24** of this Act had not been enacted, except if the amalgamation takes effect on or after the 180th day after the commencement of **section 24** of this Act.

- (2) **Section 24** of this Act applies to both— 5
- (a) an amalgamation described in **subsection (1)** that takes effect on or after the 180th day after the commencement of **section 24**; and
- (b) any other amalgamation proposal that has not been approved by the boards of all companies in accordance with section 221(1) of the principal Act before the commencement of **section 24**. 10
- (3) In this section, **takes effect**, in respect of an amalgamation, means the date when the amalgamation takes effect in accordance with sections 224 and 225 of the principal Act. 15

No court approval of arrangement or amalgamation involving code company under Part 15 of principal Act except in certain circumstances

- 25 New sections 236A and 236B inserted** 20
- The following sections are inserted after section 236:
- “236A Arrangement or amalgamation involving code company**
- “(1) If a proposed arrangement or amalgamation affects the voting rights of a code company, the applicant for an order under section 236(1) must, at the same time as filing the application, notify the Takeovers Panel of the application. 25
- “(2) The court may not make an order under section 236(1) that affects the voting rights of a code company unless—
- “(a) the code company’s shareholders approve the arrangement or amalgamation in accordance with **subsection (4)**; and 30
- “(b) either of the following applies:
- “(i) the court is satisfied that the shareholders of the code company will not be adversely affected by the use of section 236(1) rather than the takeovers code to effect the change involving the code company; or 35

- “(ii) the applicant has filed a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to an order being made under section 236(1).
- “(3) The court need not approve a proposed arrangement or amalgamation merely because the Takeovers Panel has no objection to an order being made under section 236(1). 5
- “(4) For the purposes of **subsection (2)(a)**, the code company’s shareholders may only approve the arrangement or amalgamation in the following way: 10
- “(a) by a resolution approved by a majority of 75% of the votes of the shareholders in each interest class entitled to vote and voting on the question; and
- “(b) by a resolution approved by a simple majority of the votes of those shareholders entitled to vote. 15
- “(5) For the purposes of this section and **section 236B**,—
- “**affects the voting rights**, in respect of an arrangement or amalgamation, means an arrangement or amalgamation that involves a change in the relative percentage of voting rights held or controlled by 1 or more shareholders 20
- “**interest class** may be determined in accordance with the principles set out in **Schedule 10**
- “**voting right** has the meaning set out in section 2(1) of the Takeovers Act 1993.
- “**236B Takeovers code does not apply where court order under section 236** 25
- The takeovers code does not apply where the court has made an order under section 236(1) that affects the voting rights of a code company.”
- 26 Consequential amendments to Takeovers Act 1993** 30
- (1) This section amends the Takeovers Act 1993.
- (1A) Section 2(1) is amended by repealing the definition of **director** and substituting the following definition:

- “**director**,—
- “(a) in relation to a company, means a person occupying the position of a director of the company, by whatever name called; and
- “(b) in relation to a partnership (other than a special partnership or a limited partnership), means a partner; and 5
- “(c) in relation to a special partnership or a limited partnership, means a general partner; and
- “(d) in relation to a body corporate or unincorporate not referred to in **paragraphs (a) to (c)**, means a person occupying a position in the body corporate that is comparable with that of a director of a company; and 10
- “(e) in relation to any other person, means that person; and
- “(f) includes a person in accordance with whose directions or instructions a person referred to in **paragraphs (a) to (e)** may be required or is accustomed to act in respect of the performance or exercise of duties or powers as, or comparable to those of, a director” 15
- (2) Section 8(1) is amended by inserting the following paragraph after paragraph (ea): 20
- “(eb) to consider applications for an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in **section 236A** of the Companies Act 1993), and to indicate whether or not it has an objection to such an order.” 25
- (3) The following section is inserted after section 23:
- “**23A Takeovers code does not apply where court order under section 236 of Companies Act 1993**
- The takeovers code does not apply where the court has made an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in **section 236A** of the Companies Act 1993).” 30
- 26A Consequential amendments to takeovers code** 35
- (1) This section amends the takeovers code set out in the Schedule of the Takeovers Code Approval Order 2000.

- (2) Paragraphs (b) and (c) of the definition of **director** in rule 3(1) are amended by inserting “or a limited partnership” after “special partnership”.
- (3) The definition of **director** in rule 3(1) is amended by repealing paragraph (d) and substituting the following paragraph: 5
 “(d) in relation to a body corporate or unincorporate not referred to in paragraphs (a) to (c), means a person occupying a position in the body corporate that is comparable with that of a director of a company; and”.
- (4) The definition of **director** in rule 3(1) is amended by repealing paragraph (f) and substituting the following paragraph: 10
 “(f) includes a person in accordance with whose directions or instructions a person referred to in **paragraphs (a) to (e)** may be required or is accustomed to act in respect of the performance or exercise of duties or powers as, 15
 or comparable to those of, a director”.

26B Consequential amendment to Takeovers (Fees)

Regulations 2001

- (1) This section amends the Takeovers (Fees) Regulations 2001.
- (2) Regulation 4(2) is amended by inserting the following paragraph after paragraph (a): 20
 “(aa) considering an application for an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in **section 236A** of the Companies Act 1993), and indicating whether or not the Panel has an objection to such an order:” 25

Transitional provision relating to amendments to Part 15 of principal Act

- 27 Transitional provision relating to amendments to Part 15 of principal Act** 30
- (1) An application for an order under section 236(1) of the principal Act that has been made before the commencement of **section 25** of this Act is to be continued and determined as if **section 25** of this Act had not been enacted. 35

- (2) **Section 236A** of the principal Act, as inserted by **section 25** of this Act, applies to any application for an order under section 236(1) of the principal Act that is made after the commencement of **section 25** of this Act.

New Schedule 10 added

5

28 New Schedule 10 added

The **Schedule 10** set out in **Schedule 1** of this Act is added.

Part 4

Enhanced powers of Registrar

28A Interpretation

10

Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“control interest has the meaning set out in **sections 365B to 365E**”.

28B Meaning of director

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(1) Section 126(1)(b) is amended by inserting “**318(1)(bab)**,” after “301,”.

(2) Section 126(1)(c) is amended by inserting “**318(1)(bab)**,” after “301,”.

29 Grounds for removal from register

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(1AAA) Section 318(1) is amended by inserting the following paragraph before paragraph (a):

“(aaa) the company does not comply with section 10; or”.

(1) Section 318(1) is amended by repealing paragraph (b) and substituting the following paragraphs:

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“(b) the Registrar has reasonable grounds to believe that—
 “(i) the company is not carrying on business; and
 “(ii) there is no proper reason for the company to continue in existence; or

“(ba) the company has failed to respond to a requirement made under **section 365(1)(caaa)** or (c); or

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“(bab) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or sharehold-

- ers, has failed to respond to a requirement made in relation to that or another company under **section 365F or 365G**; or
- “(bb) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information; or 5
- ~~“(bc) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed to comply with duties relating to the company under this Act or the Financial Reporting Act 1993 in a persistent or serious way; or 10~~
- “(bc) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed in a persistent or serious way to comply with duties relating to the company— 15
- “(i) under this Act; or
- “(ii) under the Financial Reporting Act 1993 while in force, except that the Registrar may not rely on this ground after 5 years have elapsed after this subparagraph came into force; or” 20
- (2) Section 318 is amended by inserting the following subsection after subsection (1):
- “(1A) The Registrar may choose not to proceed with the removal of a company from the New Zealand register despite **subsection (1)(aaa), (bab), (bb), or (bc)** applying.” 25
- (3) Section 318(4)(b) is amended by omitting “reason” and substituting “a proper reason”.
- (4) Section 318 is amended by inserting the following subsection after subsection (4): 30
- “(4A) The Registrar may remove a company from the New Zealand register under **subsection (1)(aaa), (ba), (bab), (bb), or (bc)** only if—
- “(a) the Registrar has complied with section 319; and
- “(b) the Registrar— 35
- “(i) is satisfied that no person has objected to the removal under section 321; or
- “(ii) if an objection to the removal has been received, has complied with section 322.”

- 30 Notice of intention to remove where company has ceased to carry on business or application fee not paid**
- (1) The heading to section 319 is amended by omitting “**where company has ceased to carry on business or application fee not paid**” and substituting “**company under paragraph (aaa), (b), (ba), (bab), (bb), (bc), or (f) of section 318(1)**”.
- (2) Section 319(1) is amended by omitting “section 318(1)(b)” and substituting “section 318(1)(**aaa), (b), (ba), (bab), (bb), (bc)**”.
- (4A) Section 319 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) The notice to be given under subsection (1)(a) must state the section under, and the grounds on which, it is intended to remove the company from the New Zealand register and must include the following information in respect of the relevant grounds:
- “(a) if **section 318(1)(aaa)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that it complies with section 10:
- “(b) if **section 318(1)(b)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that it is carrying on business or that there is a proper reason for it to continue in existence:
- “(c) if **section 318(1)(ba)** applies, that the company will be removed from the New Zealand register unless—

- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company (by notice in writing)— 5
- “(A) responds to the requirement made under **section 365(1)(caaa)** or (c) to the Registrar’s satisfaction; or
- “(B) satisfies the Registrar that there is a proper reason for it to continue in existence: 10
- “(ca) if **section 318(1)(bab)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or 15
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that— 20
- “(A) information has been disclosed as required by the Registrar under **section 365F or 365G** (in accordance with any specification under **section 365H**); or
- “(B) there is a proper reason for the company to continue in existence: 25
- “(d) if **section 318(1)(bb)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or 30
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that— 35
- “(A) the information provided is accurate; or
- “(B) the inaccurate information was provided unintentionally; or

- “(C) accurate information has since been supplied; or
- “(D) there is a proper reason for the company to continue in existence:
- “(e) if **section 318(1)(bc)** applies, that the company will be removed from the New Zealand register unless— 5
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that— 10
- “(A) there has been no persistent or serious failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993; or 15
- “(B) there is a proper reason for the company to continue in existence:
- “(f) if section 318(1)(f) applies, that the company will be removed from the New Zealand register unless the fee prescribed by regulations for the application for registration of the company under section 12 is paid in full to the Registrar within 20 working days after the date of the notice.” 20 25
- (5) Section 319(3)(c) is amended by omitting “section 318(1)(b) applies” and substituting “section 318(1)(**aaa**), **(b)**, **(ba)**, **(bab)**, **(bb)**, or **(bc)** applies”.
- 30A Notice of intention to remove in other cases**
- The heading to section 320 is amended by omitting “**in other cases**” and substituting “**company under paragraph (c), (d), or (e) of section 318(1)**”. 30
- 31 Objection to removal from register**
- (1) Section 321(1)(a) is amended by—
- (a) omitting “still”; and 35
- (b) omitting “other” and substituting “a proper”.

- (2) Section 321(1) is amended by inserting the following paragraphs after paragraph (c):
- “(ca) that the company complies with section 10; or
 - “(cb) that the company has responded to the requirement made under **section 365(1)(caaa)** or (c); or 5
 - “(cc) that the company has provided accurate information or that inaccurate information was provided unintentionally; or
 - “(cd) that there has been no serious or persistent failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993; or”.

- (2) Section 321 is amended by adding the following subsection:

- “(4) Where a notice is given of an intention to remove a company from the New Zealand register, in addition to an objection to the removal on 1 or more of the grounds identified in subsection (1), in relation to any of the grounds for removal specified in the first column of the following table, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any of the corresponding grounds specified in the second column of the following table: 15 20

Grounds for removal

The company does not comply with section 10

The company has failed to respond to a requirement made under **section 365(1)(caaa)** or (c)

The Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed to respond to a requirement made in relation to that or another company under **section 365F or 365G**

Grounds for objection

The company complies with section 10

The company has responded to the requirement made under **section 365(1)(caaa)** or (c)

Information has been disclosed as required by the Registrar under **section 365F or 365G** (in accordance with any specification under **section 365H**)

The Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information

The company has provided accurate information or inaccurate information was provided unintentionally

The Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed to comply with duties relating to the company under this Act or the Financial Reporting Act 1993 in a serious or persistent way

There has been no serious or persistent failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993

- (3) Section 321 is amended by inserting the following subsection after subsection ~~(2)~~ **subsection (4)**:

~~“(2A5)~~ An objection on the grounds described in subsection (1) or **(4)** must, if required by the Registrar, be verified by the production of original documents or certified copies of original documents or by statutory declaration.” 5

32 Duties of Registrar if objection received

~~(1AAA) Section 322(1) is amended by omitting “section 321(1)(a), (b), or (c)” and substituting “section 321(1)(a), (b), (c), **(ea)**, **(eb)**, **(ec)**, or **(ed)**”.~~ 10

(1AAA) Section 322(1) is amended by inserting “or **(4)**” after “or (c)”.

- (1) Section 322(1) is amended by inserting the following paragraph after paragraph (b):

“(ba) despite the objection, **section 318(1)(aaa), (ba), **(bab)**, **(bb)**, or **(bc)**** applies; or” 15

33 Registrar may restore company to New Zealand register

- (1) Section 328(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) the grounds for the removal did not exist at the time the company was removed; or” 20

- (2) Section 328 is amended by inserting the following subsection after subsection (1):

- “(1A) The Registrar may, on the application of a person referred to in subsection (2), or on his or her own motion, restore a company that has been removed from the register to the register if the Registrar is satisfied that the company was carrying on business at the time of its removal and there is a proper reason for the company to continue in existence.” 5
- (3) Section 328(3)(a) is amended by omitting “paragraph (b) or paragraph (c) of section 318(1)” and substituting “section 318(1)(**aaa**), **(b)**, **(ba)**, **(bab)**, **(bb)**, **(bc)**, or (c)”.
- 34 Court may restore company to New Zealand register** 10
- (1) Section 329(1)(a)(i) is amended by—
- (a) omitting “still”; and
- (b) omitting “other” and substituting “a proper”.
- (2) Section 329 is amended by inserting the following subsection after subsection (1): 15
- “(1A) In considering whether to restore a company to the register on the ground referred to in subsection (1)(a)(i) or (b), the court must have regard to the reasons for the company’s removal and whether those grounds existed at the time of removal or exist at the time of the hearing of the application.” 20
- 35 Rectification or correction of New Zealand register and overseas register**
- (1) Section 360A(1)(b) is amended by omitting “due to a clerical error by the Registrar”.
- (2) Section 360A(2) is amended by omitting “Before the Registrar rectifies the New Zealand register or the overseas register under subsection (1)(a)” and substituting “Unless a rectification or correction relates solely to the individual who provided it”. 25
- (2) Section 360A(2) is amended by omitting “Before the Registrar rectifies the New Zealand register or the overseas register under subsection (1)(a), the Registrar must” and substituting “Unless the rectification or correction relates solely to the person who provided it, the Registrar, before rectifying the register under subsection (1)(a), must”. 30 35

36 Registration of documents

Section 362(2) is amended by inserting the following paragraph after paragraph (b):

“(ba) is involved in a requirement made under **section 365(1)(caaa)** or (c), **365F, or 365G**; or”.

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37 Registrar’s powers of inspection

(2) Section 365(1)(a) is amended by inserting the following subparagraph before subparagraph (i):

“(iaa) ascertaining whether information provided to the Registrar is correct; or”.

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(3) Section 365(1) is amended by inserting the following paragraph before paragraph (c):

“(caaa) require a person, in relation to information provided to the Registrar, to—

“(i) confirm that the information is correct; or

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“(ii) correct the information; or”.

(4) Section 365 is amended by inserting the following subsection after subsection (1):

“(1A) When exercising the powers described in **subsection (1)(caaa)** or (c), the Registrar may specify—

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“(a) a particular form in which the confirmation or correction must be provided; and

“(b) a date by which the confirmation or correction must be provided; and

“(c) whether the confirmation or correction must be verified by the production of original documents or certified copies of original documents or by a statutory declaration.”

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(5) Section 365(5)(a) is amended by omitting “subsection (1)(c)” and substituting “**subsection (1)(caaa)** or (c)”.

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37A New sections 365A to 365H and headings inserted

The following sections and headings are inserted after section 365:

*“Registrar’s powers to identify controllers of
company*

“365A Purpose of sections 365B to 365H

“(1) The purpose of **sections 365B to 365H** is to ensure that the Registrar may, for law enforcement purposes, obtain adequate, accurate, and timely information on the beneficial ownership and control of companies in order to conform with New Zealand’s obligations under the FATF Recommendations. 5

“(2) In this section,—

“**FATF** means the Financial Action Task Force on Money Laundering established in Paris in 1989 10

“**FATF Recommendations** means the revised Recommendations adopted by FATF at its plenary meeting on 15 to 17 February 2012.

“365B Control interests in shares (basic rule) 15

“(1) In **sections 365D to 365F**, a person has a **control interest** in a share if the person—

“(a) is a shareholder; or

“(b) is a beneficial owner of the share; or

“(c) has the power to exercise, or to control the exercise of, a right to vote attached to the share; or 20

“(d) has the power to acquire or dispose of, or to control the acquisition or disposal of, the share.

“(2) **Subsection (1)** applies regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular share or not, exercisable presently or in the future, or exercisable alone or jointly with another person or persons (but a power to cast merely 1 of many votes is not, in itself, a joint power of this kind). 25

“(3) **Subsection (1)** applies regardless of whether or not the power or control is or can be made subject to restraint or restriction or is exercisable only on the fulfilment of a condition. 30

“(4) If 2 or more persons can jointly exercise a power, each of those persons is taken to have that power.

“Compare: 1988 No 234 s 5 35

“365C Extension of basic rule to powers or controls exercisable through trust, agreement, etc

“(1) A person has a power or control referred to in **section 365B if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust or an agreement (or any combination of them).** 5

“(2) **Subsection (1) applies regardless of whether or not the trust or agreement is legally enforceable or whether or not the person is a party to it.** 10

“Compare: 1988 No 234 s 5A

“365D Extension of basic rule to interests held by other persons under control or acting jointly

“(1) A person (A) has a control interest in a share that another person (B) has if— 15

“(a) B or B’s directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A’s directions, instructions, or wishes in relation to a power or control referred to in **section 365B; or**

“(b) A has the power to exercise, or control the exercise of, 20% or more of the votes that may be cast at a meeting of shareholders of B; or 20

“(c) A has the power to acquire or dispose of, or to control the acquisition or disposal of, shares that have 20% or more of votes that may be cast at a meeting of shareholders of B; or 25

“(d) A and B are related bodies corporate; or

“(e) A and B have an agreement, arrangement, or understanding to act in concert in relation to a power or control referred to in **section 365B.** 30

“(2) For the purposes of **subsection (1),—**

“share includes—

“(a) a share in a company;

“(b) a share in an industrial and provident society;

“(c) a share in a building society; 35

“(d) a partnership interest in a partnership

“shareholder means a holder of a share.

- “(3) For the purposes of **subsection (1)(a)**, **director** means,—
- “(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- “(b) in relation to a partnership (other than a limited partnership), any partner: 5
- “(c) in relation to a limited partnership, any general partner:
- “(d) in relation to a body corporate or unincorporate other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company. 10
- “(4) For the purposes of **subsection (1)(d)**, a body corporate (A) is **related** to another body corporate (B) if—
- “(a) B is A’s holding company or subsidiary; or
- “(b) more than half of A’s issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or 15
- “(c) more than half of the issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or 20
- “(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; 25
- or 30
- “(e) there is another body corporate to which A and B are both related.
- “Compare: 1988 No 234 s 5B(1)

“**365E Situations not giving rise to control interests**

- A person (A) does not have a control interest in a share under **section 365B** merely because— 35
- “(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services,

- or both, and A has the control interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or
- “(b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the share on behalf of that person in the ordinary course of A’s business of carrying out those trading activities; or 5
- “(c) A has been authorised by resolution of the directors of a company to act as its representative at a particular meeting of shareholders, or of a class of shareholders, of the company, and a copy of the resolution is deposited with the company before the meeting; or 10
- “(d) A is appointed as a proxy to vote at a particular meeting of shareholders, or of a class of shareholders, of a company and the instrument of A’s appointment is deposited with the company before the meeting; or 15
- “(e) A is a shareholder of a company and the company’s constitution gives the shareholder pre-emptive rights on the transfer of the shares, if all shareholders have pre-emptive rights on the same terms. 20

“Compare: 1988 No 234 s 6

“365F Registrar may require persons to disclose control interests and powers to get control interests

- “(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in **section 365A**, require a specified person to disclose full details of all (or any class of)— 25
- “(a) control interests that the specified person has in shares of a company and of the circumstances that give rise to those interests; or 30
- “(b) powers that the specified person has or may at any time have to acquire a control interest in shares of a company and of the circumstances that give rise to that interest; or
- “(c) control interests that any other person (whom the specified person must identify by name and with current contact details) has in shares of a company and of the circumstances that give rise to the other person’s interests. 35

- “(2) However, a matter referred to in **subsection (1)(c)** need only be disclosed to the extent to which it is known to the specified person required to make the disclosure.
- “(3) **Subsection (1)** applies regardless of whether the shares referred to in **subsection (1)** have voting rights or not or are issued or yet to be issued. 5
- “(4) **Sections 365B to 365E** apply in determining whether or not a person has a power referred to in **subsection (1)(b)** (and for this purpose every reference in those sections to a control interest must be read as including a reference to the power to acquire a control interest). 10
- “(5) The person must disclose the information required under **subsection (1)** in accordance with any specifications under **section 365H**.
- “(6) For the purposes of this section, **specified person**, in relation to the company to which the requirement under **subsection (1)** relates, means— 15
- “(a) a shareholder in the company;
- “(b) a director of the company;
- “(c) a person named in a previous disclosure under **subsection (5)** as having a control interest in shares of the company. 20
- “(7) If a person fails to comply with **subsection (5)**, he or she commits an offence and is liable on conviction to the penalty set out in section 373(2). 25
- “Compare: 1988 No 234 ss 34, 35; Corporations Act 2001 ss 672A, 672B (Aust)

“**365G Registrar may require disclosure about controllers or delegates of directors**

- “(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in **section 365A**, require a specified person to disclose control information in relation to a company. 30
- “(2) However, the following types of control information need only be disclosed to the extent to which they are known to the specified person: 35
- “(a) directions or instructions given to any other person;
- “(b) directions or instructions—

- “(i) given to the board that were not provided to the specified person; or
- “(ii) given to the board when the specified person was not a director.
- “(3) A specified person must disclose the information required under **subsection (1)** in accordance with any specifications under **section 365H**. 5
- “(4) If a specified person fails to comply with **subsection (3)**, he or she commits an offence and is liable on conviction to the penalty set out in section 374(2). 10
- “(5) For the purposes of this section,—
- “control information, in relation to the company to which the requirement under **subsection (1)** relates, means—
- “(a) any directions or instructions relating to the management and administration of the company given to a specified person (A) (or to the board or to any other person who is responsible for the management and administration of the company) by another person (B); or 15
- “(b) any delegation of powers relating to the management and administration of the company by a specified person to another person 20
- “specified person, in relation to the company to which the requirement under **subsection (1)** relates, means—
- “(a) a director of the company;
- “(b) a person named in a previous disclosure under **subsection (3)** concerning that company. 25
- “365H Registrar may specify deadlines, form, and verification for information required under section 365F or 365G
- When exercising a power described in **section 365F or 365G**, the Registrar (or a person authorised by the Registrar) may specify— 30
- “(a) a particular form in which the information must be provided; and
- “(b) a date by which the information must be provided; and
- “(c) whether the information must be verified by the production of original documents or certified copies of original documents or by a statutory declaration. 35

“Other matters relating to Registrar’s powers”.**38AAA Disclosure of information and reports**

- (1) Section 366(1) is amended by—
- (a) omitting “purpose” and substituting “purposes”; and
 - (b) inserting “**365F, 365G, or 365H**” after “section 365”. 5
- (2) Section 366(1)(g) is amended by inserting “except in the case of an authorisation under **section 365F, 365G, or 365H,**” before “any person”.
- (3) Section 366 is amended by inserting the following subsections after subsection (1): 10
- “(1A) The Registrar or any person authorised by the Registrar may give information disclosed to the Registrar under **section 365F or 365G** to a government agency for law enforcement purposes if the Registrar is satisfied that the agency has a proper interest in receiving the information. 15
- “(1B) For the purposes of **subsection (1A)**,—
- “**government agency** means—
 - “(a) the Crown Law Office:
 - “(b) the Department of Internal Affairs:
 - “(c) the Financial Markets Authority: 20
 - “(d) the Government Communications Security Bureau:
 - “(e) the Inland Revenue Department:
 - “(f) the Ministry of Business, Innovation and Employment:
 - “(g) the Ministry of Justice:
 - “(h) the New Zealand Customs Service: 25
 - “(i) the New Zealand Security Intelligence Service:
 - “(j) the New Zealand Police:
 - “(k) the Reserve Bank of New Zealand:
 - “(l) the Serious Fraud Office:
 - “(m) any international counterpart of the entities in 30
paragraphs (a) to (l)
 - “**law enforcement purposes** means—
 - “(a) the administration of this Act and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: 35
 - “(b) the detection, investigation, and prosecution of—
 - “(i) any offence under this Act; or

- “(ii) any offence under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; or
- “(iii) a money laundering offence (within the meaning of section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009); or 5
- “(iv) any offence under section 143B of the Tax Administration Act 1994; or
- “(v) any serious offence (within the meaning of section 243(1) of the Crimes Act 1961): 10
- “(c) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009:
- “(d) the enforcement of the Misuse of Drugs Act 1975:
- “(e) the enforcement of the Terrorism Suppression Act 2002:
- “(f) the administration of the Mutual Assistance in Criminal Matters Act 1992: 15
- “(g) the investigation of matters relating to security under the New Zealand Security Intelligence Service Act 1969:
- “(h) any action referred to in **paragraphs (a) to (g)** taken in respect of legislation of an overseas jurisdiction that is broadly equivalent to the enactments listed in those paragraphs.” 20
- (4) Section 366(2) and (3) are amended by inserting “, **365F, 365G, or 365H**” after “section 365”. 25
- (5) Section 366(3)(c) is amended by omitting “(1) or subsection (2)” and substituting “(1), **(1A), (1B)**, or (2)”.

38 New sections 366A to 366C inserted

The following sections are inserted after section 366:

- “**366A Registrar’s powers to insert note of warning in register** 30
- “(1) The Registrar may, if the Registrar thinks it is appropriate, insert a note of warning in the register in relation to a company in any of the following circumstances:
- “(a) information or documents relating to the company are subject to a requirement made under **section 365(1)(caaa)** or (c), **365F, 365G, or 365H:** 35
- “(b) any of the grounds described in section 318(1)(**aaa**) or (b) to (f) apply to the company.

“(2) If the Registrar has inserted a note of warning in relation to a company (**company A**) under **subsection (1)**, the Registrar may, if the Registrar thinks it is appropriate, also insert a note of warning in relation to any other company that shares a director with company A.

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“366B Registrar must remove note of warning

The Registrar must remove a note of warning inserted under **section 366A** if the Registrar is satisfied that the reasons for inserting it do not exist.

“366C Immunity of Registrar

Civil proceedings (other than an application for judicial review or an appeal under section 370) may not be brought against the Registrar in respect of things done in good faith in the performance or intended performance of the Registrar’s functions under **section 366A or 366B**.”

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38A Inspector’s report admissible in liquidation proceedings

Section 369 is amended by inserting “, or in relation to a disclosure under **section 365F, 365G, or 365H,**” after “section 365”.

38B Exercise of powers under section 365 not affected by appeal

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(1) The heading to section 371 is amended by inserting “, **365F, 365G, or 365H**” after “**section 365**”.

(2) Section 371(1) is amended by inserting “, **365F, 365G, or 365H**” after “section 365”.

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Additional power for Registrar or FMA to prohibit persons from managing companies

39AAA Persons prohibited from managing companies

Section 382(1) is amended by repealing paragraph (a) and substituting the following paragraph:

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“(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a

company (being an offence that is punishable by a term of imprisonment of not less than 3 months); or”.

39AAB Court may disqualify directors

Section 383(1) is amended by repealing paragraph (a) and substituting the following paragraph: 5

“(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months), or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or”.

39 New section 385AA inserted

The following section is inserted after section 385:

“385AA Additional power for Registrar or FMA to prohibit persons from managing companies

“(1) This section applies in relation to a company that has been removed from the New Zealand register on any of the grounds described in **section 318(1)(ba), (bab), (bb), or (bc)**. 15

“(2) The Registrar or the FMA may, by notice in writing given to a person, prohibit that person from being a director or promoter of a company, or being concerned in, or taking part (whether directly or indirectly) in the management of a company, during such period not exceeding 5 10 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*. 20 25

“(3) The power conferred by **subsection (2)** may be exercised in relation to any person who the Registrar or the FMA is satisfied was, within a period of 5 years before a notice was given to that person under **subsection (4)** (whether that period commenced before or after the commencement of this section), a director of, or concerned in, or a person who took part in, the management of, a company to which this section applies, unless that person satisfies the Registrar or the FMA— 30

“(a) that the acts or omissions of that person were not wholly or partly responsible for the company being a company to which this section applies; or 35

- “(b) that it would not be just or equitable for the power to be exercised.
- “(4) The Registrar or the FMA must not exercise the power conferred by **subsection (2)** unless—
- “(a) not less than 10 working days’ notice of the fact that the Registrar or the FMA intends to consider the exercise of it is given to the person; and
- “(b) the Registrar or the FMA considers any representations made by the person.
- “(5) No person to whom a notice under **subsection (2)** applies may be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.
- “(6) Where a person to whom the Registrar or the FMA has issued a notice under **subsection (2)** appeals against the issue of the notice under this Act or otherwise seeks judicial review of the notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.
- “(7) The Registrar or the FMA may, by notice in writing to a person to whom a notice under **subsection (2)** has been given,—
- “(a) revoke that notice; or
- “(b) exempt that person from the notice in relation to a specified company or companies.
- “(8) The Registrar or the FMA must publish a notice under **subsection (7)** in the *Gazette*.
- “(9) Every person to whom a notice under **subsection (2)** is given who fails to comply with the notice commits an offence and is liable on conviction to the penalties set out in section 373(4).”
- 40 Appeals from FMA’s exercise of power under section 385**
- (1) The heading to section 385A is amended by inserting “or **section 385AA**” after “**section 385**”.
- (2) Section 385A(1) is amended by inserting “or **section 385AA**” after “section 385”.
- 41 Liability for contravening section 385**
- (1) The heading to section 386 is amended by inserting “or **section 385AA**” after “**section 385**”.

- (2) Section 386 is amended by omitting “section 385 of this Act” and substituting “section 385 or **385AA**”.

42 Consequential amendment to Summary Proceedings Act 1957

- (1) This section amends the Summary Proceedings Act 1957. 5
 (2) The item relating to the Companies Act 1993 in Part 2 of Schedule 1 is amended by adding the following item:

385AA(9) Additional power for Registrar or FMA to prohibit persons from being involved in management of companies

Consequential amendments to principal Act

43 Consequential amendments to principal Act

The principal Act is consequentially amended in the manner indicated in **Schedule 2**. 10

43A Section 207R amended

Section 207R is amended by repealing subsection (2) and substituting the following subsection:

- “(2) If a company fails to comply with subsection (1),— 15
 “(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and
 “(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).” 20

Schedule 1**s 28****New Schedule 10 added****Schedule 10****s 236A****Interest class: principles**

For the purposes of **section 236A**, an **interest class** may be determined in accordance with the following principles: 5

- (a) shareholders whose rights are so dissimilar that they cannot sensibly consult together about a common interest are in different interest classes:
 - (b) shareholders whose rights are sufficiently similar that they can consult together about a common interest are in the same interest class: 10
 - (c) the issue is similarity and dissimilarity of shareholders' legal rights against the company (not similarity or dissimilarity of any interest not derived from legal rights against the company): 15
 - (d) if the rights of different shareholders will be different under a proposed arrangement or amalgamation, then those shareholders are in different interest classes.
-

Schedule 2

s 43

Consequential amendments to Companies Act 1993

Section 63(10)

Repeal and substitute:

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“(10) If a company fails to comply with subsection (6),—

“(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(1); and

“(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1).”

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Section 126(1)(b) and (c)

Insert “**385AA**,” after “385,”.

Section 151(2)(e)

Omit “section 382 or section 383 or section 385” and substitute “section 382, 383, 385, or **385AA**”.

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Section 151(2)

Insert the following paragraph after paragraph (e):

“(eaa) a person who is prohibited from being a general partner or promoter of, or being concerned or taking part in the management of, a limited partnership under **section 103A, 103B, 103D, or 103E** of the Limited Partnerships Act 2008:”.

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Insert the following paragraph after paragraph (eb):

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

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“(i) being a general partner of an overseas limited partnership:

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“(ii) being a promoter of an overseas limited partnership:

“(iii) being concerned or taking part in the management of an overseas limited partnership:”.

Section 196(3B)

Repeal and substitute:

“(3B) If a company fails to comply with subsection (3A),—

- “(a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2); and 5
- “(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).”

Section 206(2)

Repeal and substitute:

“(2) Directors and employees of a company must provide an auditor of the company with the information and explanations the auditor thinks necessary for the performance of the auditor’s duties.” 10

Section 241(4)

Insert after paragraph (b):

- “(ba) the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information; or
- “(bb) the company, or 1 or more of its directors or shareholders has failed to comply with duties relating to the company under this Act or the Financial Reporting Act 1993 in a persistent or serious way; or 20
- “(bb) the company, or 1 or more of its directors or shareholders, has in a persistent or serious way failed to comply with duties relating to the company— 25
 - “(i) under this Act; or
 - “(ii) under the Financial Reporting Act 1993 while in force, except that this subparagraph does not apply after 5 years have elapsed after this subparagraph came into force; or” 30

Section 280(1)(k)

Omit “section 382 or section 383 or section 385” and substitute “section 382, 383, 385, or **385AA**”.

Section 280(1)

Insert after paragraph (k):

“(kaa) a person who is prohibited from being a general partner or promoter of, or being concerned or taking part in the management of, a limited partnership under **section 103A, 103B, 103D, or 103E** of the Limited Partnerships Act 2008:”.

Section 373(1)

Insert after paragraph (8):

“(8A) Section **63(10)(a)** (which relates to stock exchange acquisitions of a company’s own shares subject to prior notice to shareholders):”.

Paragraph (27A): omit “239AEA(3)” and substitute “239AEB(3)”.

Paragraph (28): replace “duty of a liquidator to summon meetings of creditors” with “failure of a director to sign a certificate as to solvency”.

Section 373(2)

Insert after paragraph (h):

“(ha) **section 196(3B)(a)** (which relates to the notification of the resignation of an auditor):”.

Insert after paragraph (i):

“(ia) **section 207R(2)(a)** (which relates to notification of the resignation of an auditor):”.

Insert after paragraph (s):

“(sa) **section 365F(7)** (which relates to the Registrar’s powers to require disclosure in relation to control interests):”.

Section 373(4)

Section 373(4) is amended by inserting the following paragraph before paragraph (a):

“(aaa) **section 138A(3)** (which relates to breaching certain directors’ duties):”.

Section 373(4)—*continued*

“(aaa) **section 138A(1)** (which relates to serious breach of director’s duty to act in good faith and in best interests of company):”.

Paragraph (h): omit “383(5)” and substitute “383(6)”.

Section 374(1)

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Paragraph (c): insert “**(b)**” after “63(10)”.

Section 374(2)

Paragraph (5): omit “44(5)” and substitute “44(6)”.

Insert after paragraph (10):

“(10A) **section 94B(3)** (which relates to the obligation to give notice of a change in ultimate holding company information):”.

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~~Paragraph (16A): insert “**(b)**” after “196(3B)”.~~

Paragraph (17): insert “**(b)**” after “207R(2)”.

Paragraph (20): omit “208(2)” and substitute “208(3)”.

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Insert after paragraph (31):

“(32) **section 365G(4)** (which relates to the Registrar’s powers to require directors to disclose their controllers):”.

Section 395

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Insert after paragraph (ca):

“(caa) prescribing countries, States, or territories outside New Zealand for the purposes of **section 151(2)(ec)**.”.

Schedule 4

Paragraph (j): omit “within the meaning of section 2 of the Takeovers Act 1993”.

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Third paragraph of the notes to Schedule 4: omit “within the meaning of section 2 of the Takeovers Act 1993”.

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Companies Amendment Bill (No 4)

Legislative history

18 June 2014

Divided from Companies and Limited Partnerships
Amendment Bill as Bill 344–3A
