

Companies and Limited Partnerships Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill requires a New Zealand-resident administrative agent for companies and limited partnerships. It also enhances the Registrar's powers to regulate companies and limited partnerships. The Bill also creates new rules about the reconstruction of code companies under the Companies Act 1993. Finally, the breaches of certain directors' duties in that Act are criminalised. These policies aim to increase confidence in New Zealand's financial markets and in New Zealand's regulation of corporate forms, and to ensure New Zealand remains a trusted place to do business.

Resident agents

The resident agent changes seek to ensure that for each company and limited partnership, there is at least 1 person who lives in New Zealand who is legally responsible for the entity's administrative affairs. That person is not a de facto manager. However, he or she will have responsibility (along with the other relevant people) if the entity fails to comply with its reporting and record-keeping obligations.

The resident agent amendments to the Limited Partnerships Act 2008 (made in *subpart 1 of Part 2*) are of a similar nature to the amendments to the Companies Act 1993 (made in *subpart 2 of Part 1*).

In other words, the resident agent concept is being applied to both limited partnerships and companies in exactly the same way.

Enhanced powers of Registrar

The changes to enhance the Registrar's powers will allow the Registrar to take effective action where there are concerns that a company or limited partnership is not being used for legitimate business reasons. This is achieved by giving the Registrar enhanced investigative and removal powers, along with the power to warn the public about suspect entities by a note in the register.

Again, the amendments to the Limited Partnerships Act 2008 (made in *subpart 2 of Part 2*) are of a similar nature to the amendments to the Companies Act 1993 (made in *subpart 4 of Part 1*).

It is intended that this Bill be divided into 2 separate Bills at the committee of the whole House stage, namely a Companies Amendment Bill and a Limited Partnerships Amendment Bill.

Arrangements, amalgamations, and compromises of code companies

These changes aim to ensure that shareholders of companies that fall under the takeovers code (**code companies**) will not be disadvantaged if a change to the company is effected under the Companies Act 1993 rather than under the takeovers code. This aim is achieved by prohibiting code companies from using long-form amalgamations under Part 13 of the Companies Act 1993, as well as by providing more rigorous voting thresholds and additional judicial oversight for court-approved schemes of arrangement, amalgamation, or compromise under Part 15 of that Act. The changes also provide a mechanism for the scheme promoter to seek a preliminary "no objection" statement from the Takeovers Panel, which may assist the court to decide whether to approve the scheme.

Criminalisation of breaches of certain directors' duties

There is an additional change to the Companies Act 1993 that is not relevant to the Limited Partnerships Act 2008. This is to criminalise the breach of certain directors' duties.

Regulatory impact statement

The Ministry of Economic Development produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <http://www.med.govt.nz/upload/74580/Schemes%20of%20arrangement,%20amalgamations,%20and%20Code%20companies.pdf>
- <http://www.med.govt.nz/upload/78119/Cabinet%20Paper%20-%20New%20Zealand%20company%20registration%20process.pdf>
- <http://www.med.govt.nz/upload/76656/RIS-Securities%20law%20reform.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Part 1

Amendments to Companies Act 1993

Subpart 1—Criminalisation of breaches of certain directors' duties

Part 1 of the Bill amends the Companies Act 1993 (called the **principal Act** in this Part). *Subpart 1 of Part 1* amends the principal Act to criminalise serious breaches of 2 duties of directors.

Clause 4 inserts *new section 138A* into the principal Act. *New section 138A* provides for offences in relation to serious breaches of—

- the duty provided for in section 131 of the principal Act (the duty of directors to act in good faith and in the best interests of the company); and
- the duty provided for in section 135 of the principal Act (the duty of directors not to agree to, or cause or allow, company business to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors).

This means that a director who breaches the duty in section 131 of the principal Act commits an offence if he or she knows that the breach is seriously detrimental to the interests of the company. And a director

who breaches the duty in section 135 of the principal Act commits an offence if he or she knows that the breach will result in serious loss to the company's creditors. The penalty for both offences is provided for in the consequential amendment to section 373(4) of the principal Act (as set out in *Schedule 2*). The penalty is imprisonment for a term not exceeding 5 years or a fine not exceeding \$200,000.

Subpart 2—Resident agents

Subpart 2 provides that New Zealand registered companies must have a resident agent if they do not have a director who lives in New Zealand or in an enforcement country. (An enforcement country is one that can enforce New Zealand judgments imposing regulatory regime criminal fines, which include those arising under the principal Act. Such countries will be named in regulations when relevant agreements with the Registrar are in place.)

Clause 5 amends the interpretation section of the principal Act, inserting definitions of officer, resident agent, and enforcement country.

Clause 6 amends section 10 of the principal Act, which is about the essential requirements of a company. The amendment requires a company to have a director who lives in New Zealand or in an enforcement country—if the company does not, it must have a resident agent.

Clause 7 amends the meaning of director in section 126 of the principal Act. The amendment means that a person who acts only as a resident agent is not a deemed director. This is because the resident agent's role is administrative, rather than that of a manager. The role includes monitoring the compliance of the company and directors with their statutory obligations.

Clause 8 inserts provisions relating to resident agents into Part 10 of the principal Act. That Part relates to administration, which is appropriate given the nature of the resident agent's role.

New section 193B sets out the meaning of resident agent.

New section 193C provides that a company may not have more than 1 resident agent.

New section 193D provides for the qualifications of resident agents. Of particular note are the requirements that the resident agent must live in New Zealand, cannot be an auditor of the company, and must

be a natural person. The qualifications otherwise reflect the qualifications for a director (set out in section 151 of the principal Act), which specify a person who has not been banned (in New Zealand or overseas) from being a director, general partner, resident agent, or promoter of a company or limited partnership and is not bankrupt.

New section 193E requires that a person must consent to being appointed a resident agent, and must also certify on appointment that he or she is not disqualified from being appointed or holding office as a resident agent.

New section 193F sets out the requirements for an application for registration of a company that needs to have a resident agent.

New section 193G clarifies the term of a resident agency.

New section 193H describes when the office of resident agent is vacated, and requires that the Registrar must be notified if so. The board of a company must notify the Registrar if the resident agent's office is vacated because a resident agent has died, and every director commits an offence if the board does not do so. The ex-resident agent must notify the Registrar if he or she is no longer required or has resigned, been removed from office, or become disqualified. It is an offence not to do so.

New section 193I sets out the requirements for appointing a resident agent after a company is registered. If the company fails to comply, not only is that an offence for the company and every director, but also the Registrar may remove the company from the register under *new section 193K*.

New section 193J provides that a board must notify the Registrar of any appointment of a resident agent after a company is registered. In addition, the board must notify changes in the resident agent's name, residential address, or business address. Every director commits an offence if the board fails to comply with these notification requirements.

New section 193K provides that if a company is required to appoint a resident agent but has not done so, the Registrar may insert a note of warning against the company's entry in the register and then may remove the company from the register.

New sections 193L, 193M, and 193N provide that a resident agent commits an offence if a director, the board, or the company fails to comply with certain requirements in the principal Act. The liability

imposed on a resident agent does not limit or affect the liability of others. Defences are given so that if the resident agent proves that all reasonable and proper steps were taken to ensure a requirement would be complied with, the resident agent will not be liable. In addition, the resident agent is not liable for the correctness of the content of any document relevant to the requirements. This is in keeping with the resident agent's role as an administrative, not management, agent.

New section 193O provides that a resident agent has 2 of the same duties as a director has. The duties are those in section 145 (the duty not to disclose company information except for company purposes or as required by law) and in section 149 of the principal Act (the duty not to acquire or dispose of shares at other than fair value if there is inside information).

New section 193P provides that resident agents have a duty to notify the Registrar if, as described in section 154(1) of the principal Act, there are no directors or fewer than a quorum and it is not possible or practicable to appoint directors in accordance with the company's constitution. It is an offence not to so notify.

New section 193Q(1) requires directors and employees to provide the information to the resident agent that the resident agent thinks necessary for the performance of his or her functions. Not doing so is an offence: *new section 193Q(2)*.

New section 193R provides that the resident agent is covered by the same rules about insurance and indemnity as is a company employee.

New section 193S sets out the extent of a resident agent's liability. Of note is the fact that a resident agent is not liable in respect of acts, omissions, and decisions of other people that occur within 3 months before the resident agent resigns. This is to provide an incentive for a resident agent to resign if he or she becomes aware of the non-compliance of others.

New section 193T is a transitional provision applying the new rules about resident agents to companies that are already registered. Such companies must appoint a resident agent within 6 months after the commencement of the new rules. If a company fails to comply, the Registrar may take the same steps as in *new section 193I*, namely, to remove the company from the register under *new section 193K*. A

company that does not appoint a resident agent in accordance with this transitional provision commits an offence, as does every director. *Clauses 9 to 14* add resident agents into certain provisions of the principal Act. Section 261 is amended so that a liquidator can require a resident agent to deliver up company books, records, or documents in the resident agent's possession or control (*clause 9*). Section 274 is amended so that present or former resident agents are under a duty to identify and deliver company property to a liquidator (*clause 10*). Section 301 is amended to apply to past or present resident agents so that the court may order them to repay or restore company property or to compensate for it (*clause 11*). Section 377(2) is applied to resident agents, making them criminally liable if they make false or misleading statements or reports (*clause 12*). Section 378 is amended so that a resident agent is criminally liable if he or she fraudulently takes or applies company property or fraudulently conceals or destroys it (*clause 13*). Section 379 is amended to make a resident agent criminally liable who, with intent to defraud or deceive, falsifies company records (*clause 14*).

Clauses 15 and 16 amend sections 382 and 383 of the principal Act. Those sections are concerned with prohibiting people from managing companies and with disqualifying people from being directors. Both sections are amended so that resident agents who have been convicted of certain offences are also caught by the sections.

Clauses 17 to 21 add resident agents into the principal Act's provisions about serving documents on companies in legal proceedings and otherwise. The clauses also amend the principal Act to provide for the service of documents on directors and resident agents in legal proceedings and otherwise.

Clause 22 amends the regulation-making power in section 395 of the principal Act. The amendments enable regulations to be made prescribing enforcement countries, and also to recognise banning orders from foreign countries so that such orders disqualify a person from being a resident agent under *new section 193D(2)(i) and (j)*.

Subpart 3—Arrangements, amalgamations, and compromises of code companies

Clause 23 adds into the principal Act the definition of a code company set out in the Takeovers Act 1993. Code companies are com-

panies that are listed on a stock exchange or that have 50 or more shareholders.

Clause 24 provides that a code company may not amalgamate under sections 220 and 221 of the principal Act. This amendment has the effect that code companies may not undertake under Part 13 of the principal Act what are known as long-form amalgamations. Short-form amalgamations are still permitted. Short-form amalgamations are amalgamations between subsidiary and parent under section 222 of the principal Act. Long-form amalgamations are amalgamations between unrelated companies.

Clause 25 inserts *new sections 236A and 236B* into the principal Act. *New section 236A* restricts the ability of a code company to apply to the High Court for approval of a scheme of arrangement, amalgamation, or compromise (**scheme**) under section 236(1). If a proposed scheme affects the voting rights of a code company, *new section 236A(1)* requires an applicant to notify the Takeovers Panel of the application. Under *new section 236A(2)*, the court may not make an order under section 236(1) that affects the voting rights of the code company unless the code company's shareholders have approved it and either of the following applies:

- 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; or
- the applicant has filed a statement of no objection from the Takeovers Panel.

New section 236A(3) provides that the court need not approve a proposed scheme merely because the Takeovers Panel has no objection to it.

New section 236A(4) sets out the manner in which the shareholders must provide approval and *new section 236A(5)* provides for relevant definitions.

New section 236B provides that 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.

Clause 26 consequentially amends the Takeovers Act 1993 to provide for the Takeover Panel's new function of considering whether to provide statements of no objection under *new section 236A*. The Takeovers (Fees) Regulations 2001 will be amended to enable the

Takeovers Panel to charge a fee for this. *Clause 26* also consequentially amends the Takeovers Act 1993 to the same effect as *new section 236B*.

Clause 27 is a transitional provision relating to the insertion of *new section 236A* into the principal Act.

Clause 28 adds *new Schedule 10* to the principal Act. This sets out the principles that may be used to determine interest classes for the purpose of shareholder voting on a proposed scheme.

Subpart 4—Enhanced powers of Registrar

Subpart 4 provides for enhancements to the Registrar's powers under the principal Act. The grounds on which the Registrar may remove a company from the register are expanded (in *clauses 29 to 34*).

Under *new section 318(1)(b)*, the Registrar must remove the company from the register where the Registrar has reasonable grounds to believe that the company is not carrying on business and there is no proper reason for the company to continue in existence.

Under *new section 318(1)(ba)*, the Registrar must remove the company from the register if the company has failed to respond to a requirement made under *new section 365(1)(caa)* (which enables the Registrar to require the confirmation or correction of information).

The Registrar is given 2 new grounds on which he or she has a discretion as to whether or not to remove the company from the register. The 2 new grounds are different from the other grounds in that the Registrar does not have to remove the company from the register if they apply. The 2 new grounds are if—

- the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors, officers, or shareholders, has intentionally provided the Registrar with inaccurate information (*new section 318(1)(bb)*); or
- the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors, officers, or shareholders, has failed to comply with duties relating to the company under the principal Act or the Financial Reporting Act 1993 in a persistent or serious way (*new section 318(1)(bc)*).

The Registrar is given a greater ability to rectify or correct registers by *clause 35*.

Clause 36 makes an amendment to section 362 of the principal Act that is consequential to the changes in *new section 365(1)(caa)*.

Clause 37 amends section 365 of the principal Act to expand the Registrar's powers of inspection. As mentioned above, *new section 365(1)(caa)* gives the Registrar the ability to seek the correction or confirmation of information.

Clause 38 inserts *new sections 366A to 366C* into the principal Act. The new sections enable the Registrar to insert notes of warning in the register if certain grounds for removing the company from the register apply, or if information or documents relating to the company are subject to a request by the Registrar under section 365 for information or documents.

Clause 39 inserts a *new section 385AA* into the principal Act. This gives the Registrar or Financial Markets Authority an additional power to ban persons from being involved in the administration or management of companies. A person can be banned where he or she has been involved in the administration or management of a company that has been removed from the registrar on 1 of the new grounds provided for in *new section 318(1)(ba), (bb), or (bc)*. The new power is otherwise similar to the existing power in section 385 of the principal Act.

Clauses 40 to 42 consequentially change sections 385A and 386 of the principal Act and Schedule 1 of the Summary Proceedings Act 1957 to take account of *new section 385AA*.

Clause 43 provides that the principal Act is consequentially amended in the manner indicated in *Schedule 2*.

Part 2 Amendments to Limited Partnerships Act 2008

Subpart 1—Resident agents

Part 2 amends the Limited Partnerships Acts 2008 (the **principal Act** in this Part).

Subpart 1 of Part 2 makes amendments of the same nature as *subpart 2 of Part 1* by providing that limited partnerships must have resident agents in the same circumstances as those in which companies must have resident agents. The only differences relate to the differences

between a limited partnership and a company (and between general partners and directors). An example of catering for such differences is *clause 46*, which amends the essential requirements for a limited partnership found in section 8 of the principal Act. A general partner of a limited partnership may be seen as performing the same function as a director of a company. However, unlike a director, who must be a natural person, a general partner may be a partnership or a company or a natural person. The amendments in *clause 46* to section 8 of the principal Act are therefore a little more complicated than the equivalent amendments to the Companies Act 1993. The amendments require a limited partnership to have a resident agent if the limited partnership does not have—

- a general partner who is a natural person living in New Zealand or in an enforcement country; or
- a general partner that is a partnership governed by the Partnership Act 1908 that has at least 1 partner who is a natural person living in New Zealand or in an enforcement country; or
- a general partner that is a company registered on the New Zealand register under the Companies Act 1993. (Such a company will be required by the changes to the Companies Act 1993 made in *subpart 2 of Part 1* either to have a director who is resident in New Zealand or an enforcement country or to have a resident agent.)

Clause 48 inserts qualification requirements into the principal Act that equate to the qualification requirements in the Companies Act 1993. Resident agents of limited partnerships should have the same qualifications as company resident agents. And it would be anomalous if such qualifications were more demanding than those for general partners. As there are currently no legislated qualifications for general partners, these are inserted by *new sections 19A and 19B*. General partners who are natural persons are covered by *new section 19A(2)*. General partners that are partnerships governed by the Partnership Act 1908 are covered by *new section 19B*, which requires at least 1 partner of such a partnership to meet the qualifications set out in *new section 19A(2)*.

Clause 49 amends section 48 of the principal Act to reflect the role of a resident agent, by making notice to a resident agent operate as notice to the limited partnership, except in the case of fraud by or with the consent of the resident agent.

Clause 50 inserts provisions relating to resident agents into the principal Act. These provisions are of a similar nature to the provisions inserted by *clause 8* into the Companies Act 1993. The effect is as described above in relation to *clause 8*.

Clause 51 amends the provision in the principal Act about service of documents, section 73, to enable service on a resident agent.

Clause 52 amends the regulation-making power in section 116 of the principal Act. The main changes are—

- to enable regulations to be made prescribing enforcement countries (*new section 116(1)(ga)*):
- prescribing countries, States, or territories outside New Zealand for the purposes of the new qualifications for general partners in *new section 19A(2)(g) and (h)*, so that people who are banned (in New Zealand or overseas) from being a director, general partner, promoter, or manager of a company in that overseas place are also banned from being a partner in New Zealand (*new section 116(1)(gb) and (gc)*):
- prescribing countries, States, or territories outside New Zealand to the same effect in relation to the resident agent qualifications in *new section 77C(2)(i) and (j)* (*new section 116(1)(gd) and (ge)*).

Subpart 2—Enhanced powers of Registrar

Subpart 2 of Part 2 makes amendments of a similar nature to those in *subpart 4 of Part 1* by providing for enhanced powers for the Registrar of limited partnerships. Again, the only differences relate to the differences between the principal Act and the Companies Act 1993. For example, the principal Act does not have equivalent provisions to sections 382 to 385 of the Companies Act 1993. And so equivalent provisions are inserted into the principal Act by *clause 58*. (Sections 382 and 383 of the Companies Act 1993 were amended in *subpart 4 of Part 1* to include resident agents, and therefore resident agents are also included in the equivalent provisions inserted into the principal Act.) An equivalent to *new section 385AA* of the Companies Act 1993 (inserted by *clause 39*) is also inserted into the principal Act.

The other changes made in *subpart 2 of Part 2* enable the Registrar to rectify or correct the register and insert notes of warning in the same way as provided for in *subpart 4 of Part 1* (see *clauses 53 to*

55). *Clause 56* gives the Registrar enhanced powers of inspection along the same lines as in the amendments to the Companies Act 1993 made in *subpart 4 of Part 1*. *Clause 57* inserts a *new section 98A* into the principal Act so that deregistration by the Registrar can follow along the same lines as provided for in the Companies Act 1993 (in *subpart 4 of Part 1*).

Clause 59 consequentially changes Schedule 1 of the Summary Proceedings Act 1957 to take account of *new sections 103A, 103B, 103D, and 103E*.

Clause 60 provides that the principal Act is consequentially amended in the manner indicated in *Schedule 3*.

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Companies and Limited Partnerships Amendment Act **2011**.
- 2 Commencement** 5
(1) **Subparts 2 and 4 of Part 1 and Part 2** come into force 1 year 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.
(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent. 10

Part 1
Amendments to Companies Act 1993

- 3 Principal Act amended** 15
This Part amends the Companies Act 1993.

Subpart 1—Criminalisation of breaches of certain directors' duties
- 4 New section 138A inserted**
The following section is inserted after section 138:
“138A Offence for serious breaches of certain duties 20
“(1) Every director of a company who does an act, or omits to do an 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 the act or omission is seriously detrimental to the interests of the company. 25
“(2) Every director of a company who does an act, or omits to do an act, in breach of the duty in section 135 (reckless trading) commits an offence if he or she knows that the act or omission will result in serious loss to the company's creditors.
“(3) A person who commits an offence under this section is liable on conviction to the penalties set out in section 373(4).” 30

Subpart 2—Resident agents

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(e)** 5

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

“**officer**, in relation to a company, includes a resident agent 10

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

“**resident agent** has the meaning set out in **section 193B**”.

6 Essential requirements

Section 10 is amended by adding “; and” and also by adding the following paragraph: 15

“(e) if no director lives in New Zealand or an enforcement country, a resident agent.”

7 Meaning of director

Section 126 is amended by adding the following subsection: 20

“(5) Paragraphs (b) to (d) of subsection (1) do not include a resident agent to the extent that he or she acts only as a resident agent.”

8 New headings and sections 193B to 193T inserted

The following headings and sections are inserted after section 193A: 25

“Appointment and removal of resident agent

“193B Meaning of resident agent

In this Act, **resident agent**, in relation to a company, means—

“(a) the person named as the resident agent on an application for registration or amalgamation proposal; or 30

“(b) the person appointed under **section 193I or 193T** (even if the appointment was defective).

“193C Number of resident agents

A company may not have more than 1 resident agent.

“193D Qualifications of resident agent

- “(1) A natural person who is not disqualified by **subsection (2)** may be appointed as a resident agent of a company. 5
- “(2) The following persons are disqualified from being appointed or holding office as a resident agent of a company:
- “(a) a person who does not live in New Zealand:
 - “(b) an auditor of the company:
 - “(c) a person who is under 18 years of age: 10
 - “(d) a person who is an undischarged bankrupt:
 - “(e) a person who is subject to an order made under the Companies Act 1955 that continues to have effect prohibiting him or her from being a director, officer, or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act: 15
 - “(f) a person who is prohibited from being a director, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a company under section 382, 383, or 385, or **385AA** of this Act: 20
 - “(g) a person who is prohibited from being a general partner, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a limited partnership under **section 103A, 103B, 103D, or 103E** of the Limited Partnerships Act 2008: 25
 - “(h) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978 or the Securities Markets Act 1988 or the Takeovers Act 1993: 30
 - “(i) 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:
 - “(i) being a director of an overseas company: 35
 - “(ii) being a promoter of an overseas company:
 - “(iii) being concerned or taking part in the management of an overseas company:

- “(j) 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:
- “(i) being a general partner of an overseas limited partnership: 5
- “(ii) being a promoter of an overseas limited partnership:
- “(iii) being concerned or taking part in the management of an overseas limited partnership: 10
- “(k) a person who is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988.
- “(3) A person that is not a natural person cannot be a resident agent of a company. 15
- “(4) A person who is disqualified from being a resident agent but who acts as a resident agent is a resident agent for the purposes of a provision of this Act that imposes a duty or an obligation on a resident agent of a company.
- “**193E Resident agent’s consent required** 20
- A person must not be appointed a resident agent of a company unless he or she has consented in writing to be a resident agent and certified that he or she is not disqualified from being appointed or holding office as a resident agent of a company.
- “**193F Application for registration if proposed company must have resident agent** 25
- “(1) If a proposed company must have a resident agent because of the requirements of **section 10(e)**, an application for registration of a company must—
- “(a) state the full name, residential address, and business address of the resident agent of the proposed company; 30
- and
- “(b) have attached the form of consent and certificate required pursuant to **section 193E**.
- “(2) The requirements in **subsection (1)** are in addition to the requirements of section 12. 35

“**193G Term of resident agency**

A resident agent holds office from the date of registration, the date the amalgamation proposal is effective, or the date of an appointment under **section 193I or 193T** (as the case may be) until that person ceases to hold office as a resident agent in accordance with this Act. 5

“**193H Resident agent ceasing to hold office**

- “(1) The office of resident agent is vacated if—
- “(a) the company no longer must have a resident agent; or
 - “(b) the person holding office as resident agent— 10
 - “(i) resigns in accordance with **subsection (2)**; or
 - “(ii) is removed from office; or
 - “(iii) becomes disqualified from holding office as a resident agent pursuant to **section 193D**; or
 - “(iv) dies. 15
- “(2) A resident agent of a company may resign office by signing a written notice of resignation and delivering it to the company’s address for service.
- “(3) The notice of resignation is effective when it is received at the company’s address for service or at a later time specified in the notice. 20
- “(4) The board of a company must ensure that notice (in the prescribed form) that a resident agent’s office is vacated under **subsection (1)(b)(iv)** is delivered to the Registrar for registration. 25
- “(5) The person no longer holding office as resident agent must ensure that notice (in the prescribed form) that a resident agent’s office is vacated under any of **subsection (1)(a), (1)(b)(i), (ii), or (iii)** is delivered to the Registrar for registration.
- “(6) If a board of a company fails to comply with **subsection (4)**, every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(1). 30
- “(7) If a person no longer holding office as a resident agent fails to comply with **subsection (5)**, the person commits an offence and is liable on conviction to the penalty set out in section 373(1). 35

“193I Post-registration appointment of resident agent

“(1) If a company must have a resident agent because of the requirements of **section 10(e)**, the company must, within the time required by **subsection (2)**, appoint a resident agent.

“(2) An appointment under **subsection (1)** must be made within 5
20 working days after—

“(a) the company first becomes aware of the death of its resident agent; or

“(b) the office of resident agent is vacated for any other reason referred to in **section 193H(1)**. 10

“(3) If a company fails to comply with **subsection (1)**, the Registrar may remove the company from the register under **section 193K**.

“(4) 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); and 15

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

“193J Notice of resident agent appointment or change 20

“(1) The board of a company must ensure that notice (in the prescribed form) of the following is delivered to the Registrar for registration:

“(a) an appointment of a resident agent after the registration of the company; or 25

“(b) a change in the name, residential address, or business address of the company’s resident agent.

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

“(a) specify the date of the appointment or change; and

“(b) include the full name, residential address, and business address of the resident agent; and 30

“(c) in the case of an appointment, have attached the form of consent and certificate required pursuant to **section 193E**; and

“(d) be delivered to the Registrar within 10 working days after— 35

“(i) the appointment; or

- “(ii) the date the company first becomes aware 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). 5
- “**193K Removal of company from register for failure to appoint resident agent**
If a company must appoint a resident agent but has failed to comply with **section 193I(1) or 193T(1)**, the Registrar may insert a note of warning against the company’s entry in the register and then remove the company from the register as if **section 318(1)(b)** applies, and sections 318(4), 319, 321, 322, 324 to 326, and 328 to 331 apply with all necessary modifications. 10
- “*Offences by resident agents* 15
- “**193L Offence by resident agent if director fails to comply with certain provisions**
- “(1) Subject to **subsection (2)**, if a director fails to comply with either section 90(1) or **section 206(2)**, the resident agent commits an offence and is liable on conviction to the penalty set out in section 373(1). 20
- “(2) Where the director’s failure to comply relates to the content of any document, the resident agent is not liable unless it is proved that the resident agent knew that the content was incorrect. 25
- “(3) The liability imposed on a resident agent by this section does not limit or affect the liability of the director.
- “(4) It is a defence to a resident agent charged with an offence under this section if the resident agent proves that—
- “(a) the director took all reasonable and proper steps to ensure that the requirements of the relevant subsection referred to in **subsection (1)** would be complied with; or 30
- “(b) the resident agent took all reasonable and proper steps to ensure that the director complied with the requirements of the relevant subsection referred to in **subsection (1)**; or 35

“(c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the director complied with the requirements of the relevant subsection referred to in **subsection (1)**.

“**193M Offence by resident agent if board fails to comply with certain provisions** 5

“(1) Subject to **subsection (2)**, if a board fails to comply with any of the following subsections, the resident agent commits an offence and is liable on conviction to the penalty set out in section 373(1): 10

“(a) section 32(3):

“(b) section 33(3):

“(c) section 33(4):

“(d) section 43(1):

“(e) section 44(3): 15

“(f) section 47(5):

“(g) section 49(3):

“(h) section 58(3):

“(i) section 159(1):

“(j) section 176(3): 20

“(k) section 190(2):

“(l) **section 193J(1)**:

“(m) section 194(1):

“(n) section 194(2):

“(o) section 194(3): 25

“(p) section 206(1):

“(q) section 214(1):

“(r) section 214(2):

“(s) section 236(4):

“(t) section 237(2). 30

“(2) Where the board’s failure to comply relates to the content of any document, the resident agent is not liable unless it is proved that the resident agent knew that the content was incorrect.

“(3) The liability imposed on a resident agent by this section does not limit or affect the liability of the board. 35

“(4) It is a defence to a resident agent charged with an offence under this section if the resident agent proves that—

- “(a) the board took all reasonable and proper steps to ensure that the requirements of the relevant subsection referred to in **subsection (1)** would be complied with; or
- “(b) the resident agent took all reasonable and proper steps to ensure that the board complied with the requirements of the relevant subsection referred to in **subsection (1)**; or
- “(c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the board complied with the requirements of the relevant subsection referred to in **subsection (1)**.

“**193N Offence by resident agent if company fails to comply with certain provisions**

- “(1) Subject to **subsection (2)**, if a company fails to comply with any of the following subsections, the resident agent commits an offence and is liable on conviction to the penalty set out in section 373(1):
 - “(a) section 87(1):
 - “(b) section 87(2):
 - “(c) section 88(2):
 - “(d) section 88(3):
 - “(e) section 188(1):
 - “(f) section 188(5):
 - “(g) section 189(1):
 - “(h) section 189(4):
 - “(i) section 195(2):
 - “(j) section 196(6):
 - “(k) section 215(1).
- “(2) Where the company’s failure to comply relates to the content of any document, the resident agent is not liable unless it is proved that the resident agent knew that the content was incorrect.
- “(3) The liability imposed on a resident agent by this section does not limit or affect the liability of the company.
- “(4) It is a defence to a resident agent charged with an offence under this section if the resident agent proves that—
 - “(a) the company took all reasonable and proper steps to ensure that the requirements of the relevant subsection

referred to in **subsection (1)** would be complied with;
or

- “(b) the resident agent took all reasonable and proper steps to ensure that the company complied with the requirements of the relevant subsection referred to in **subsection (1)**; or 5
- “(c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the company complied with the requirements of the relevant subsection referred to in **subsection (1)**. 10

“Duties of resident agents

“193O Use of company information by resident agents and restrictions on share dealing by resident agents

Sections 145(1) and 149(1) apply (with all necessary modifications) to a resident agent as if every reference to a director were a reference to a resident agent as well as a reference to a director. 15

“193P Duty to notify Registrar if no directors or no quorum of directors

- “(1) If the scenario described in section 154(1) arises (no directors or less than the quorum of directors), the company’s resident agent must notify the Registrar within 20 working days after the date the resident agent first becomes aware of it. 20
- “(2) The duty of the resident agent described in **subsection (1)** is in addition to the rights of a shareholder or creditor to apply to the court given by section 154. 25
- “(3) If a resident agent fails to comply with **subsection (1)**, the resident agent commits an offence and is liable on conviction to the penalty set out in section 373(1). 30

“Duty of directors and employees to provide information to resident agent 30

“193Q Duty of directors and employees to provide information to resident agent

- “(1) Directors and employees of a company must provide the company’s resident agent with the information the resident agent 35

thinks necessary for the performance of the resident agent's functions.

- “(2) A director or employee who fails to comply with **subsection (1)** commits an offence and is liable on conviction to the penalty set out in section 373(1). 5
- “(3) It is a defence for an employee charged with an offence against **subsection (2)** if he or she proves that he or she did not have the information required in his or her possession or under his or her control.

“Indemnity and insurance for resident agents 10

“193R Indemnity and insurance for resident agents

Section 162 applies (with all necessary modifications) to a resident agent as if every reference to an employee were a reference to a resident agent as well as a reference to an employee.

“Extent of resident agent's liability 15

“193S Extent of resident agent's liability

A person who is, or was, a company's resident agent—

- “(a) is liable under the provisions of this Act that impose liabilities on resident agents in respect of acts, omissions, and decisions made while that person was a resident agent; and 20
- “(b) is liable under the provisions of this Act that impose liabilities on former resident agents in respect of acts, omissions, and decisions made by the person after he or she was a resident agent; but 25
- “(c) is not liable under the provisions of this Act in respect of acts, omissions, and decisions of persons other than the resident agent that occur within 3 months before the resident agent resigns in accordance with **section 193H(2)**. 30

*“Transitional provision relating to resident agents***“193T Transitional provision relating to resident agents**

- “(1) A company incorporated before the commencement of this section that must have a resident agent because of the requirements of **section 10(e)** must, within 6 months after the commencement of this section, appoint a resident agent. 5
- “(2) If a company fails to comply with **subsection (1)**, the Registrar may remove the company from the register under **section 193K**. 10
- “(3) 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); and
 - “(b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2).” 15

*Other duties and offences that apply to resident agents***9 Power to obtain documents and information**

- (1) Section 261(1) is amended by inserting “, resident agent,” after “a director”. 20
- (2) Section 261(2) is amended by inserting the following paragraph after paragraph (a):
- “(aa) a resident agent or former resident agent of the company; or”. 25

10 Duty to identify and deliver property

Section 274(1) is amended by inserting “, resident agent,” after “former director”.

11 Power of court to require persons to repay money or return property

Section 301(1) is amended by inserting “resident agent,” after “present director,”. 30

12 False statements

- (1) Section 377(2) is amended by inserting “, resident agent,” after “Every director”.
- (2) Section 377(2)(a) is amended by inserting “resident agent,” after “a director,”. 5
- (3) Section 377(2)(c) is amended by inserting “resident agent,” after “a director,”.

13 Fraudulent use or destruction of property

Section 378 is amended by inserting “resident agent,” after “Every director,”. 10

14 Falsification of records

Section 379(1) is amended by inserting “resident agent,” after “Every director,”.

Prohibited persons and resident agents

15 Persons prohibited from managing companies 15

- (1) Section 382(1)(a) is amended by inserting “or with being a resident agent of a company” after “management of a company”.
- (2) Section 382(1) is amended by inserting “, resident agent,” after “be a director”. 20

16 Court may disqualify directors

- (1) Section 383(1)(a) is amended by inserting “or with being a resident agent of a company” after “management of a company”.
- (2) Section 383(1)(c) is amended by inserting “or resident agent” after “while a director”. 25
- (3) Section 383(1)(c)(iii) is amended by inserting “or resident agent” after “as director”.
- (4) Section 383(1) is amended by inserting “, resident agent,” after “be a director”. 30

Service and resident agents

- 17 Service of documents on companies in legal proceedings**
- (1) Section 387(1)(a) is amended by inserting “or resident agent” after “as a director”.
- (2) Section 387(1) is amended by inserting the following paragraph after paragraph (a):
- “(aa) by leaving it at the resident agent’s residential or business address (as those addresses are shown in the register); or”.
- 18 New sections 387A and 387B inserted** 10
- The following sections are inserted after section 387:
- “387A Service of documents on directors in legal proceedings**
- “(1) A document, including a writ, summons, notice, or order, in any legal proceedings involving the director in his or her capacity as director may be served on a director as follows: 15
- “(a) by delivery to the director; or
- “(b) by delivery to the company’s resident agent; or
- “(c) by leaving it at the director’s residential address (as that address is shown in the register); or
- “(d) by leaving it at the resident agent’s residential or business address (as those addresses are shown in the register); or 20
- “(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 25
- “(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. 30
- “(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. 35

“387B Service of documents on resident agents in legal proceedings

- “(1) A document, including a writ, summons, notice, or order, in any legal proceedings involving the resident agent in his or her capacity as resident agent may be served on a resident agent as follows: 5
- “(a) by delivery to the resident agent; or
 - “(b) by leaving it at the resident agent’s residential or business address (as those addresses are shown in the register); or 10
 - “(c) by leaving it at the company’s registered office or address for service; or
 - “(d) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceedings; or 15
 - “(e) in accordance with an agreement made with the resident agent; or
 - “(f) 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. 20
- “(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 resident agent in New Zealand.” 25

19 Service of other documents on companies

- (1) Section 388(a) is amended by inserting “or **paragraph (aa)**” after “paragraph (a)”. 30
- (2) Section 388 is amended by inserting the following paragraph after paragraph (b):
- “(ba) by posting it to the resident agent’s residential or business address (as those addresses are shown in the register) or delivering it to a box at a document exchange that the resident agent is using at the time; or”.
- (3) Section 388 is amended by adding “; or” and also by adding the following paragraphs: 35

- “(d) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the resident agent’s residential or business address (as those addresses are shown in the register); or
- “(e) by sending it by email to an electronic address used by the company; or 5
- “(f) by sending it by email to an electronic address used by the resident agent.”

20 New sections 388A and 388B inserted

The following sections are inserted after section 388: 10

“388A Service of other documents on directors

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 **paragraph (a), (b), (c), (d), (e), or (g) of section 387A**; or 15
- “(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
- “(c) by posting it to the resident agent’s residential or business address (as those addresses are shown in the register) or delivering it to a box at a document exchange that the resident agent is using at the time; or 20
- “(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 25
- “(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 30
- “(f) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the resident agent’s residential or business address (as those addresses are shown in the register); or
- “(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 35

- “(h) by sending it by email to an electronic address used by the director; or
- “(i) by sending it by email to an electronic address used by the resident agent; or
- “(j) by sending it by email to an electronic address used by the company. 5

“388B Service of other documents on resident agent

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

- “(a) by any of the methods set out in **paragraph (a), (b), (c), or (e) of section 387B**; or 10
- “(b) 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
- “(c) by posting it to the resident agent’s residential or business address (as those addresses are shown in the register) or delivering it to a box at a document exchange that the resident agent is using at the time; or 15
- “(d) 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 20
- “(e) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the resident agent’s residential or business address (as those addresses are shown in the register); or 25
- “(f) by sending it by email to an electronic address used by the company; or
- “(g) by sending it by email to an electronic address used by the resident agent.” 30

21 Additional provisions relating to service

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

“(ca) a document sent by email is deemed to have been received on the working day following the day on which it was sent.”. 35

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

- “(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

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

“(ba) prescribing a country, State, or territory outside New Zealand as an enforcement country for the purposes of **section 10(e)** 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

- (2) Section 395(1) is amended by inserting the following paragraphs before paragraph (cb):

“(cab) prescribing countries, States, or territories outside New Zealand for the purposes of **section 193D(2)(i)**:

“(cac) prescribing countries, States, or territories outside New Zealand for the purposes of **section 193D(2)(j)**.”

20

Subpart 3—Arrangements, amalgamations,
and compromises of code companies

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

23 Interpretation

25

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”.

24 Amalgamations

30

- (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):

“(2) A code company may not amalgamate under sections 220 and 221.”

*No court approval of arrangement,
amalgamation, or compromise involving code
company under Part 15 of principal Act except
in certain circumstances* 5

25 New sections 236A and 236B inserted

The following sections are inserted after section 236:

“**236A Arrangement, amalgamation, or compromise involving
code company** 10

“(1) If a proposed arrangement, amalgamation, or compromise 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.

“(2) The court may not make an order under section 236(1) that affects the voting rights of a code company unless— 15

“(a) the code company’s shareholders approve the arrangement, amalgamation, or compromise in accordance with **subsection (4)**; and

“(b) either of the following applies: 20

“(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 25

“(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, amalgamation, or compromise merely because the Takeovers Panel has no objection to an order being made under section 236(1). 30

“(4) For the purposes of **subsection (2)(a)**, the code company’s shareholders may only approve the arrangement, amalgamation, or compromise in the following way: 35

- “(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. 5
- “(5) For the purposes of this section,—
- “**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. 10
- “**236B Takeovers code does not apply where court order under section 236**
- 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.” 15
- 26 Consequential amendments to Takeovers Act 1993**
- (1) This section amends the Takeovers Act 1993.
- (2) Section 8(1) is amended by inserting the following paragraph after paragraph (ea):
- “(eb) to consider applications for an order under section 20
236(1) of the Companies Act 1993 that affects the voting rights of a code company, and to indicate whether or not it has an objection to such an order:”.
- (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** 25
- 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.”

*Transitional provision relating to amendments
to Part 15 of principal Act*

**27 Transitional provision relating to amendments to Part 15
of principal Act**

- (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. 5
- (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. 10

New Schedule 10 added

28 New Schedule 10 added

The **Schedule 10** set out in **Schedule 1** of this Act is added. 15

Subpart 4—Enhanced powers of Registrar

29 Grounds for removal from register

- (1) Section 318(1) is amended by repealing paragraph (b) and substituting the following paragraphs: 20
- “(b) the Registrar has reasonable grounds to believe that— 20
- “(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)(caa)**; or 25
- “(bb) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors, officers, or shareholders, has intentionally provided the Registrar with inaccurate information; or
- “(bc) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors, officers, 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”. 30

- (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)(bb) or (bc)** applying.” 5
- (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):
- “(4A) The Registrar may remove a company from the New Zealand register under **subsection (1)(ba), (bb), or (bc)** only if— 10
- “(a) the Registrar has complied with section 319; and
- “(b) the Registrar—
- “(i) is satisfied that no person has objected to the removal under section 321; or 15
- “(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 “has 20
- ceased to carry on business**” and substituting “**is not carrying on business**”.
- (2) Section 319(1) is amended by inserting “, **(ba), (bb), (bc),**” after “318(1)(b)”.
- (3) Section 319(2)(b) is amended by inserting “, **(ba), (bb), or 25**
- (bc)**” after “318(1)(b)”.
- (4) Section 319(2)(b)(i) is amended by—
- (a) omitting “still”; and
- (b) omitting “other” and substituting “a proper”.
- (5) Section 319(3)(c) is amended by inserting “, **(ba), (bb), or 30**
- (bc)**” after “318(1)(b)”.
- 31 Objection to removal from register**
- Section 321(1)(a) is amended by—
- (a) omitting “still”; and
- (b) omitting “other” and substituting “a proper”. 35

- 32 Duties of Registrar if objection received**
Section 322(1) is amended by inserting the following paragraph after paragraph (b):
“(ba) despite the objection, **section 318(1)(ba), (bb), or (bc)** applies; or”. 5
- 33 Registrar may restore company to New Zealand register**
Section 328(1)(a) is amended by—
(a) omitting “still”; and
(b) omitting “other” and substituting “a proper”.
- 34 Court may restore company to New Zealand register** 10
Section 329(1)(a)(i) is amended by—
(a) omitting “still”; and
(b) omitting “other” and substituting “a proper”.
- 35 Rectification or correction of New Zealand register and overseas register** 15
(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”. 20
- 36 Registration of documents**
Section 362(2) is amended by inserting the following paragraph after paragraph (b): 25
“(ba) is involved in a requirement made under **section 365(1)(caa)** or (c); or”.
- 37 Registrar’s powers of inspection**
(1) Section 365(1)(a)(i) is amended by inserting “or an officer” after “a director”. 30
(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”.
- (3) Section 365(1) is amended by inserting the following paragraph before paragraph (c):
- “(caa) require a person, in relation to information provided to the Registrar, to—
- “(i) confirm that the information is correct; or
- “(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)(caa)**, the Registrar may specify—
- “(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.”
- (5) Section 365(5)(a) is amended by omitting “subsection (1)(c)” and substituting “**subsection (1)(caa)** or (c)”.

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**
- “(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)(caa)** or (c):
- “(b) any of the grounds described in section 318(1)(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 or an officer with company A.

“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. 5

“366C Immunity of Registrar

Civil proceedings (other than 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.**” 10

*Additional power for Registrar or FMA
to prohibit persons being involved in
administration or management of companies*

39 New section 385AA inserted 15

The following section is inserted after section 385:

“385AA Additional power for Registrar or FMA to prohibit persons from being involved in administration or management of 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), (bb), or (bc).** 20

“(2) The Registrar or the FMA may, by notice in writing given to a person, prohibit that person from being a director, resident agent, or promoter of a company, or being concerned in, or taking part (whether directly or indirectly) in the administration or management of a company, during such period not exceeding 5 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*. 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 or resident agent of, or concerned in, or a person who 30 35

- took part in, the administration or management of, a company to which this section applies unless that person satisfies the Registrar or the FMA—
- “(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 5
- “(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— 10
- “(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. 15
- “(5) No person to whom a notice under **subsection (2)** applies may be a director, resident agent, or promoter of a company, or be concerned or take part (whether directly or indirectly) in the administration or 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. 20
- “(7) The Registrar or the FMA may, by notice in writing to a person to whom a notice under **subsection (2)** has been given,— 25
- “(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*. 30
- “(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 35**
- (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**”. 5
- (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. 10
- (2) The item relating to the Companies Act 1993 in Part 2 of Schedule 1 is amended by adding the following:
- 385AA(9)** Additional power for Registrar or FMA to prohibit persons from being involved in administration or 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**. 15

Part 2

Amendments to Limited Partnerships Act 2008

- 44 Principal Act amended** 20
- This Part** amends the Limited Partnerships Act 2008.

Subpart 1—Resident agents

45 Interpretation

Section 4 is amended by inserting the following definitions in their appropriate alphabetical order: 25

“**company** has the meaning set out in section 2(1) of the Companies Act 1993

“**enforcement country** means a country, State, or territory outside New Zealand prescribed for the purposes of **section 8(4)**

“**FMA** means the Financial Markets Authority established under Part 2 of the Financial Markets Authority Act 2011 5

“**officer** includes, in relation to a limited partnership, a resident agent

“**overseas company** has the meaning set out in section 2(1) of the Companies Act 1993

“**resident agent** has the meaning set out in **section 77A**”. 10

46 Requirements for limited partnership

Section 8 is amended by adding the following subsection:

“(4) A limited partnership must have either a resident agent or any of the following:

“(a) a general partner who is a natural person living in New Zealand or in an enforcement country; or 15

“(b) a general partner that is a partnership governed by the Partnership Act 1908 that has at least 1 partner who is a natural person living in New Zealand or in an enforcement country; or 20

“(c) a general partner that is a company registered on the New Zealand register under the Companies Act 1993.”

47 Who may be partner

(1) Section 18(1) is amended by inserting—

(a) “who is qualified under **section 19A or 19B**” after “any person”; and 25

(b) “general” before “partner”.

(2) Section 18 is amended by inserting the following subsection after subsection (1):

“(1A) Any person may be a limited partner of a limited partnership.” 30

(3) Section 18(2) is amended by omitting “A partnership governed” and substituting “Subject to this section, a partnership governed”.

48 New sections 19A and 19B inserted

The following sections are inserted after section 19: 35

“19A Qualifications of general partners: natural persons

- “(1) A natural person who is not disqualified by **subsection (2)** is qualified to be appointed as a general partner of a limited partnership.
- “(2) The following persons are disqualified from being appointed or holding office as a general partner of a limited partnership: 5
- “(a) a person who is under 18 years of age:
 - “(b) a person who is an undischarged bankrupt:
 - “(c) a person who is subject to an order made under the Companies Act 1955 that continues to have effect prohibiting him or her from being a director, officer, or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act: 10
 - “(d) a person who is prohibited from being a director, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a company under section 382, 383, 385, or **385AA** of the Companies Act 1993: 15
 - “(e) a person who is prohibited from being a general partner, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a limited partnership under **section 103A, 103B, 103D, or 103E** of this Act: 20
 - “(f) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993: 25
 - “(g) 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: 30
 - “(i) being a director of an overseas company:
 - “(ii) being a promoter of an overseas company:
 - “(iii) being concerned or taking part in the management of an overseas company: 35
 - “(h) 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:
- “(i) being a general partner of an overseas limited partnership:
 - “(ii) being a promoter of an overseas limited partnership: 5
 - “(iii) being concerned or taking part in the management of an overseas limited partnership:
 - “(i) a person who is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988. 10
- “(3) A natural person who is disqualified from being a general partner but who acts as a general partner is a general partner for the purposes of a provision of this Act that imposes a duty or an obligation on a general partner of a limited partnership. 15
- “19B Qualifications of general partners: partnerships**
- “(1) A partnership governed by the Partnership Act 1908 with at least 1 partner who is not disqualified by **section 19A(2)** is qualified to be appointed as a general partner of a limited partnership. 20
 - “(2) A partnership who is disqualified from being a general partner but who acts as a general partner is a general partner for the purposes of a provision of this Act that imposes a duty or an obligation on a general partner of a limited partnership.”
- 49 Notice to general partner is notice to limited partnership 25**
- (1) The heading to section 48 is amended by inserting “**or resident agent**” after “**general partner**”.
 - (2) Section 48 is amended by adding the following subsection as subsection (2):
 - “(2) Notice to a resident agent of any matter relating to the affairs of the limited partnership operates as notice to the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the resident agent.” 30

50 New headings and sections 77A to 77O inserted

The following headings and sections are inserted after section 77:

“Appointment and removal of resident agents

“77A Meaning of resident agent 5

In this Act, **resident agent**, in relation to a limited partnership, means—

“(a) the person named as the resident agent on an application for registration of a limited partnership; or

“(b) the person appointed under **section 77H or 77O** (even if the appointment was defective). 10

“77B Number of resident agents

A limited partnership may not have more than 1 resident agent.

“77C Qualifications of resident agent

“(1) A natural person who is not disqualified by **subsection (2)** may be appointed as a resident agent of a limited partnership. 15

“(2) The following persons are disqualified from being appointed or holding office as a resident agent of a limited partnership:

“(a) a person who does not live in New Zealand:

“(b) an auditor of the limited partnership: 20

“(c) a person who is under 18 years of age:

“(d) a person who is an undischarged bankrupt:

“(e) a person who is subject to an order made under the Companies Act 1955 that continues to have effect prohibiting him or her from being a director, officer, or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act: 25

“(f) a person who is prohibited from being a director, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a company under section 382, 383, 385, or **385AA** of the Companies Act 1993: 30

“(g) a person who is prohibited from being a general partner, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a 35

- limited partnership under **section 103A, 103B, 103D, or 103E** of this Act:
- “(h) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993: 5
- “(i) 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: 10
- “(i) being a director of an overseas company:
- “(ii) being a promoter of an overseas company:
- “(iii) being concerned or taking part in the management of an overseas company: 15
- “(j) 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:
- “(i) being a general partner of an overseas limited partnership: 20
- “(ii) being a promoter of an overseas limited partnership:
- “(iii) being concerned or taking part in the management of an overseas limited partnership: 25
- “(k) a person who is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988.
- “(3) A person that is not a natural person cannot be a resident agent of a limited partnership. 30
- “(4) A person who is disqualified from being a resident agent but who acts as a resident agent is a resident agent for the purposes of a provision of this Act that imposes a duty or an obligation on a resident agent of a limited partnership.
- “**77D Resident agent’s consent required** 35
- A person must not be appointed a resident agent of a limited partnership unless he or she has consented in writing to be a resident agent and certified that he or she is not disqualified

from being appointed or holding office as a resident agent of a limited partnership.

“77E Application for registration if proposed limited partnership must have resident agent

- “**(1)** If a proposed limited partnership must have a resident agent because of the requirements of **section 8(4)**, an application for registration of a limited partnership must—
- “**(a)** state the full name, date of birth, residential address, and business address of the resident agent of the proposed limited partnership; and
 - “**(b)** have attached the form of consent and certificate required pursuant to **section 77D**.
- “**(2)** The requirements in **subsection (1)** are in addition to the requirements of section 52.

“77F Term of resident agency

A person holds office as a resident agent from the date of registration or the date of appointment, as the case may be, until that person ceases to hold office as a resident agent in accordance with this Act.

“77G Resident agent ceasing to hold office

- “**(1)** The office of resident agent is vacated if—
- “**(a)** the limited partnership no longer must have a resident agent; or
 - “**(b)** the person holding office as a resident agent—
 - “**(i)** resigns in accordance with **subsection (2)**; or
 - “**(ii)** is removed from office; or
 - “**(iii)** becomes disqualified from holding office as a resident agent pursuant to **section 77C**; or
 - “**(iv)** dies.
- “**(2)** A resident agent of a limited partnership may resign office by signing a written notice of resignation and delivering it to the limited partnership’s address for service.
- “**(3)** The notice of resignation is effective when it is received at the limited partnership’s address for service or at a later time specified in the notice.

- “(4) The general partners must ensure that notice (in the prescribed form) that a resident agent’s office is vacated under **subsection (1)(b)(iv)** is delivered to the Registrar for registration.
- “(5) The person no longer holding office as resident agent must ensure that notice (in the prescribed form) that a resident agent’s office is vacated under any of **subsection (1)(a), (b)(i), (ii), or (iii)** is delivered to the Registrar for registration. 5
- “(6) If the general partners fail to comply with **subsection (4)**, every general partner commits an offence and is liable on summary conviction to a fine not exceeding \$5,000. 10
- “(7) If a person no longer holding office as a resident agent fails to comply with **subsection (5)**, the person commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.
- “**77H Post-registration appointment of resident agent** 15
- “(1) If a limited partnership must have a resident agent because of the requirements of **section 8(4)**, the limited partnership must, within the time required by **subsection (2)**, appoint a resident agent.
- “(2) An appointment under **subsection (1)** must be made within 20 working days after— 20
- “(a) the limited partnership first becomes aware of the death of its resident agent; or
- “(b) the office of resident agent is vacated for any other reason referred to in **section 77G(1)**. 25
- “(3) If a limited partnership fails to comply with **subsection (1)**, the Registrar may remove the limited partnership from the register under **section 77J**.
- “(4) If a limited partnership fails to comply with **subsection (1)**,— 30
- “(a) the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000; and
- “(b) every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000. 35

- “77I Notice of resident agent appointment or change**
- “(1) The general partners must ensure that notice (in the prescribed form) of the following is delivered to the Registrar for registration:
- “(a) an appointment of a resident agent after the registration of the limited partnership; or
 - “(b) a change in the name, residential address, or business address of the limited partnership’s resident agent.
- “(2) A notice under **subsection (1)** must—
- “(a) specify the date of the appointment or change; and
 - “(b) include the full name, date of birth, residential address, and business address of the resident agent; and
 - “(c) in the case of an appointment, have attached the form of consent and certificate required pursuant to **section 77D**; and
 - “(d) be delivered to the Registrar within 10 working days after—
 - “(i) the appointment; or
 - “(ii) the date the limited partnership first becomes aware of the change.
- “(3) If the general partners fail to comply with **subsection (1)**, every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- “77J Removal of limited partnership from register for failure to appoint resident agent**
- If a limited partnership must appoint a resident agent but has failed to comply with **section 77H(1) or 77O(1)**, the Registrar may insert a note of warning against the limited partnership’s entry in the register and then remove the limited partnership from the register as if section 98(1) applies and as if section 98(2) and (3) have been complied with; and section 98(4) and (5) apply with all necessary modifications.

*“Offences by resident agents***“77K Offence by resident agent if general partners fail to comply with certain provisions**

- “**(1)** Subject to **subsection (2)**, if a general partner fails to comply with any of the following subsections, the resident agent commits an offence and is liable on summary conviction to a fine not exceeding \$5,000: 5
- “(a) section 59(1):
 - “(b) section 60(1):
 - “(c) section 75(1): 10
 - “(d) section 76(1):
 - “(e) **section 77I(1)**.
- “**(2)** Where the general partner’s failure to comply relates to the content of any document, the resident agent is not liable unless it is proved that the resident agent knew that the content was incorrect. 15
- “**(3)** The liability imposed on a resident agent by this section does not limit or affect the liability of a general partner.
- “**(4)** It is a defence to a resident agent charged with an offence under this section if the resident agent proves that— 20
- “(a) the general partner took all reasonable and proper steps to ensure that the requirements of the relevant subsection referred to in **subsection (1)** would be complied with; or
 - “(b) the resident agent took all reasonable and proper steps to ensure that the general partner complied with the requirements of the relevant subsection referred to in **subsection (1)**; or 25
 - “(c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the general partner complied with the requirements of the relevant subsection referred to in **subsection (1)**. 30

“77L Offence by resident agent if limited partnership fails to comply with certain provisions

- “**(1)** Subject to **subsection (2)**, if a limited partnership fails to comply with any of the following subsections, the resident 35

agent commits an offence and is liable on summary conviction to a fine not exceeding \$5,000:

“(a) section 69(1):

“(b) section 69(5):

“(c) section 74(1):

“(d) section 74(3).

5

“(2) Where the limited partnership’s failure to comply relates to the content of any document, the resident agent is not liable unless it is proved that the resident agent knew that the content was incorrect.

10

“(3) It is a defence to a resident agent charged with an offence under this section if the resident agent proves that—

“(a) the limited partnership took all reasonable and proper steps to ensure that the requirements of the relevant subsection referred to in **subsection (1)** would be complied with; or

15

“(b) the resident agent took all reasonable and proper steps to ensure that the limited partnership complied with the requirements of the relevant subsection referred to in **subsection (1)**; or

20

“(c) in the circumstances he or she could not reasonably have been expected to take steps to ensure that the limited partnership complied with the requirements of the relevant subsection referred to in **subsection (1)**.

“Duty of directors and employees to provide information to resident agent

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“77M **Duty of general partners and employees to provide information to resident agent**

“(1) General partners and employees of a limited partnership must provide the limited partnership’s resident agent with the information the resident agent thinks necessary for the performance of the resident agent’s functions.

30

“(2) A general partner or employee who fails to comply with **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

35

“(3) It is a defence for an employee charged with an offence against **subsection (2)** if he or she proves that he or she did not have

the information required in his or her possession or under his or her control.

“Extent of resident agent’s liability

“77N Extent of resident agent’s liability

A person who is, or was, a limited partnership’s resident agent— 5

- “(a) is liable under the provisions of this Act that impose liabilities on resident agents in respect of acts, omissions, and decisions made while that person was a resident agent; and 10
- “(b) is liable under the provisions of this Act that impose liabilities on former resident agents in respect of acts, omissions, and decisions made by the person after he or she was a resident agent; but
- “(c) is not liable under the provisions of this Act in respect of acts, omissions, and decisions of persons other than the resident agent that occur within 3 months before the resident agent resigns in accordance with **section 77G(2)**. 15

“Transitional provision relating to resident agent amendments 20

“77O Transitional provision relating to resident agent amendments

- “(1) A limited partnership registered before the commencement of this section that must have a resident agent because of the requirements of **section 8(4)** must, within 6 months after the commencement of this section, appoint a resident agent. 25
- “(2) If a limited partnership fails to comply with **subsection (1)**, the Registrar may remove the limited partnership from the register under **section 77J**. 30
- “(3) If a limited partnership fails to comply with **subsection (1)**,—
 - “(a) the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000; and 35

“(b) every general partner of the limited partnership commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.”

Service and resident agents

- 51 Service of documents** 5
Section 73 is amended by adding “; or” and also by adding the following paragraph:
“(c) delivery of the document to a person named as the resident agent of the limited partnership in the register of limited partnerships.” 10
- 52 Regulations**
- (1) Section 116(1)(g) is amended by adding the following subparagraph:
“(v) notice of consent of a new resident agent to becoming a resident agent.” 15
- (2) Section 116(1) is amended by inserting the following paragraphs after paragraph (g):
“(ga) prescribing a country, State, or territory outside New Zealand as an enforcement country for the purposes of **section 8(4)** 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: 20
“(gb) prescribing countries, States, or territories outside New Zealand for the purposes of **section 19A(2)(g)**: 25
“(gc) prescribing countries, States, or territories outside New Zealand for the purposes of **section 19A(2)(h)**:
“(gd) prescribing countries, States, or territories outside New Zealand for the purposes of **section 77C(2)(i)**:
“(ge) prescribing countries, States, or territories outside New Zealand for the purposes of **section 77C(2)(j)**.” 30

Subpart 2—Enhanced powers of Registrar

53 Rectification or correction of register

Section 61(2) is amended by omitting “Before the Registrar rectifies a register under subsection (1)(a)” and substituting “Unless a rectification or correction relates solely to the individual who provided it”.

54 Registrar may note inactivity on register

(1) Section 63 is amended by omitting the heading and substituting the following heading: “**Registrar’s powers to insert note of inactivity or note of warning on register**”.

(2) Section 63 is amended by adding the following subsections as subsections (2) and (3):

“(2) The Registrar may, if the Registrar thinks it is appropriate, insert a note of warning against the entry on a register for a limited partnership in any of the following circumstances:

“(a) information or documents relating to the limited partnership are subject to a requirement made under **section 78(2)(aa)** or (a):

“(b) any of the grounds described in **section 98A(1)(a) to (d)** apply to the limited partnership.

“(3) If the Registrar has inserted a note of warning in relation to a limited partnership (**limited partnership A**) under **subsection (2)**, the Registrar may, if the Registrar thinks it is appropriate, also insert a note of warning in relation to any other limited partnership that shares a general partner or officer with limited partnership A.”

55 New sections 63A and 63B inserted

The following sections are inserted after section 63:

“63A Registrar must remove note of warning

The Registrar must remove a note of warning inserted under **section 63** if the Registrar is satisfied that the reasons for inserting it do not exist.

“63B Immunity of Registrar

Civil proceedings 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 63 or 63A.**”

56 Registrar’s powers of inspection

- (1) Section 78(1)(a) is amended by inserting “or an officer” after “a general partner”. 5
- (2) Section 78(1) is amended by inserting the following paragraph before paragraph (a):
 “(aa) ascertaining whether information provided to the Registrar is correct; or”.
- (3) Section 78(1) is amended by adding “; or” and also by adding the following paragraph: 10
 “(c) detecting offences against this Act.”
- (4) Section 78(2) is amended by inserting the following paragraph before paragraph (a):
 “(aa) requiring a person, in relation to information provided to the Registrar, to— 15
 “(i) confirm that the information is correct; or
 “(ii) correct the information.”
- (5) Section 78 is amended by inserting the following subsection after subsection (2): 20
 “(2A) When exercising the powers described in **subsection (2)(aa)**, the Registrar may specify—
 “(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 25
 “(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.” 30

57 New section 98A inserted

The following section is inserted after section 98:

“98A Deregistration by Registrar

- “(1) Subject to this section, the Registrar must deregister a limited partnership if— 35
 “(a) the Registrar has reasonable grounds to believe that—

- “(i) the limited partnership is not carrying on business; and
- “(ii) there is no proper reason for the limited partnership to continue in existence; or
- “(b) the limited partnership has failed to respond to a requirement made under **section 78(2)(aa)**; or 5
- “(c) the Registrar has reasonable grounds to believe that the limited partnership, or 1 or more of its general partners or officers, has intentionally provided the Registrar with inaccurate information; or 10
- “(d) the Registrar has reasonable grounds to believe that the limited partnership, or 1 or more of its general partners or officers, has failed to comply with duties relating to the limited partnership under this Act in a persistent or serious way. 15
- “(2) The Registrar may choose not to proceed with a deregistration despite **subsection (1)(c) or (d)** applying.
- “(3) Sections 318(4) and **(4A)**, 319, and 321 to 323 of the Companies Act 1993 apply, with such modifications as may be necessary, to the deregistration of a limited partnership under this section as if references to— 20
- “(a) a company were references to a limited partnership:
- “(b) a director were references to a general partner:
- “(c) a shareholder were references to a partner:
- “(d) the constitution were references to the partnership agreement: 25
- “(e) a board were references to the general partners.”

58 New heading and sections 103A to 103G inserted

The following heading and sections are inserted after section 103: 30

“Prohibited and disqualified persons

“103A Persons prohibited from managing limited partnerships

- “(1) The persons described in **subsection (2)** must not, during the period of 5 years after the relevant conviction or judgment, be a general partner, resident agent, or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a limited partnership, unless that person 35

first obtains the leave of the court which may be given on such terms and conditions as the court thinks fit.

“(2) **Subsection (1)** applies to the following persons:

“(a) a person who has been convicted on indictment of any offence in connection with the promotion, formation, or management of a company or a limited partnership or with being a resident agent of a company or a limited partnership; or 5

“(b) a person who has been convicted of an offence under any of sections 377 to 380 of the Companies Act 1993 or of any crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961. 10

“(3) A person intending to apply for the leave of the court under this section must give to the Registrar not less than 10 days’ notice of that person’s intention to apply. 15

“(4) The Registrar, and such other persons as the court thinks fit, may attend and be heard at the hearing of any application under this section.

“(5) A person who acts in contravention of this section, or of any order made under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000. 20

“(6) In this section, **limited partnership** includes an overseas limited partnership that carries on business in New Zealand.

“Compare: 1993 No 105 s 382

25

“**103B Court may disqualify general partners**

“(1) The court may make an order that a person described in **subsection (2)** must not, without the leave of the court, be a general partner, resident agent, or promoter of, or in any way, whether directly or indirectly, be concerned or take part in the management of, a limited partnership for such period not exceeding 10 years as may be specified in the order. 30

“(2) **Subsection (1)** applies to the following persons:

“(a) a person who has been convicted on indictment of an offence in connection with the promotion, formation, or management of a company or a limited partnership or with being a resident agent of a company or a limited 35

- partnership, or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
- “(b) a person who has committed an offence for which the person is liable (whether convicted or not) under Part 21 of the Companies Act 1993; or 5
- “(c) a person who has, while a director or resident agent of a company and whether convicted or not,—
- “(i) persistently failed to comply with the Companies Act 1993 or the Companies Act 1955, the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or the takeovers code in force under that Act or, if the company has failed to so comply, persistently failed to take reasonable steps to obtain compliance with those Acts or the code; or 10 15
- “(ii) been guilty of fraud in relation to the company or of a breach of duty to the company or a shareholder; or
- “(iii) acted in a reckless or incompetent manner in the performance of his or her duties as director or resident agent; or 20
- “(d) a person who has, while a general partner or resident agent of a limited partnership and whether convicted or not,— 25
- “(i) persistently failed to comply with this Act or, if the limited partnership has failed to so comply, persistently failed to take reasonable steps to obtain compliance with this Act; or
- “(ii) been guilty of fraud in relation to the limited partnership or of a breach of duty to the limited partnership; or 30
- “(iii) acted in a reckless or incompetent manner in the performance of his or her duties as general partner or resident agent; or 35
- “(e) a person who has been prohibited in a country, State, or territory outside New Zealand from carrying on activities that the court is satisfied are substantially similar to

- being a director or promoter of, or being concerned or taking part in the management of, a body corporate; or
- “(f) a person who has become of unsound mind.
- “(3) A person intending to apply for an order under this section must give not less than 10 days’ notice of that intention to the person against whom the order is sought, and on the hearing of the application the last-mentioned person may appear and give evidence or call witnesses. 5
- “(4) An application for an order under this section may be made by the Registrar, the FMA, the Official Assignee, or by the liquidator of the limited partnership, or by a person who is, or has been, a partner or creditor of the limited partnership. 10
- “(5) **Subsection (6)** applies on the hearing of—
- “(a) an application for an order under this section by the Registrar, the FMA, the Official Assignee, or the liquidator; or 15
- “(b) an application for leave under this section by a person against whom an order has been made on the application of the Registrar, the FMA, the Official Assignee, or the liquidator. 20
- “(6) The Registrar, the FMA, the Official Assignee, or the liquidator (as the case may be)—
- “(a) must appear and call the attention of the court to any matters that seem to him, her, or it to be relevant; and
- “(b) may give evidence or call witnesses. 25
- “(7) An order may be made under this section even though the person concerned may be criminally liable in respect of the matters on the ground of which the order is to be made.
- “(8) If conduct by a person constitutes grounds for making an order under any 1 or more of this section, section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 60A of the Securities Act 1978, proceedings may be brought against that person under any 1 or more of those provisions, but no person is liable to more than 1 order under those provisions for the same conduct. 30 35
- “(9) The Registrar of the court must, as soon as practicable after the making of an order under this section, give notice to the Registrar that the order has been made and the Registrar must

give notice in the *Gazette* of the name of the person against whom the order is made.

“(10) A person who acts in contravention of this section, or of any order made under this section, commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 5 years or to a fine not exceeding \$200,000.

“(11) In this section, **limited partnership** includes an overseas limited partnership.

“Compare: 1993 No 105 s 383

“**103C Liability for contravening section 103A or 103B** 10

A person who acts as a general partner of a limited partnership in contravention of **section 103A** or an order made under **section 103B** is personally liable to—

“(a) a liquidator of the limited partnership for every unpaid debt incurred by the limited partnership while that person was so acting; and 15

“(b) a creditor of the limited partnership for a debt to that creditor incurred by the limited partnership while that person was so acting.

“Compare: 1993 No 105 s 384 20

“**103D Registrar or FMA may prohibit persons from managing limited partnerships**

“(1) This section applies in relation to a limited partnership—

“(a) that has been put into liquidation because of its inability to pay its debts as and when they became due: 25

“(b) that has ceased to carry on business because of its inability to pay its debts as and when they became due:

“(c) in respect of which execution is returned unsatisfied in whole or in part:

“(d) in respect of the property of which a receiver, or a receiver and manager, has been appointed by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated: 30

“(e) in respect of which, or the property of which, a person has been appointed as a receiver and manager, or a judicial manager, or a statutory manager, or as a manager, or 35

- to exercise control, under or pursuant to any enactment, whether or not the appointment has been terminated:
- “(f) that has entered into a compromise or arrangement with its creditors:
 - “(g) that is in voluntary administration in accordance with section 100. 5
- “(2) This section also applies in relation to a limited partnership the liquidation of which has been completed whether or not the limited partnership has been removed from the New Zealand register. 10
- “(3) The Registrar or the FMA may, by notice in writing given to a person, prohibit that person from being a general partner, or promoter of a limited partnership, or being concerned in, or taking part (whether directly or indirectly) in the management of a limited partnership during such period not exceeding 5 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*. 15
- “(4) The power conferred by **subsection (3)** may be exercised in relation to—
- “(a) 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 (5)** (whether that period commenced before or after the commencement of this section), a general partner of, or concerned in, or a person who took part in, the management of, a limited partnership in relation to which this section applies if the Registrar or the FMA is also satisfied that the manner in which its affairs were managed was wholly or partly responsible for the limited partnership being a limited partnership in relation to which this section applies; or 20 25 30
 - “(b) 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 (5)** (whether that period commenced before or after the commencement of this section), a general partner of, or concerned in, or a person who took part in, the management of, 2 or more limited partnerships to which this section applies, unless that person satisfies the Registrar or the FMA— 35

- “(i) that the manner in which the affairs of all, or all but one, of those limited partnerships were managed was not wholly or partly responsible for them being limited partnerships in relation to which this section applies; or 5
- “(ii) that it would not be just or equitable for the power to be exercised.
- “(5) The Registrar or the FMA must not exercise the power conferred by **subsection (3)** unless— 10
- “(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.
- “(6) No person to whom a notice under **subsection (3)** applies 15 may be a general partner or promoter of a limited partnership, or be concerned or take part (whether directly or indirectly) in the management of a limited partnership.
- “(7) Where a person to whom the Registrar or the FMA has issued a notice under **subsection (3)** appeals against the issue of the 20 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.
- “(8) The Registrar or the FMA may, by notice in writing to a person to whom a notice under **subsection (3)** has been given,— 25
- “(a) revoke that notice; or
- “(b) exempt that person from the notice in relation to a specified limited partnership or limited partnerships.
- “(9) The Registrar or the FMA must publish a notice under **subsection (8)** in the *Gazette*. 30
- “(10) Every person to whom a notice under **subsection (3)** is given who fails to comply with the notice commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000.
- “(11) In this section, **limited partnership** includes an overseas 35 limited partnership.
- “Compare: 1993 No 105 s 385

“103E **Additional power for Registrar or FMA to prohibit persons from being involved in administration or management of limited partnerships**

- “(1) This section applies in relation to a limited partnership that has been deregistered on any of the grounds described in **section 98A(1)(b), (c), or (d)**. 5
- “(2) The Registrar or the FMA may, by notice in writing given to a person, prohibit that person from being a general partner, resident agent, or promoter of a limited partnership, or being concerned in, or taking part (whether directly or indirectly) in the administration or management of a limited partnership during such period not exceeding 5 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*. 10
- “(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 general partner or resident agent of, or concerned in, or a person who took part in, the administration or management of, a limited partnership to which this section applies unless that person satisfies the Registrar or the FMA— 15 20
- “(a) that the acts or omissions of that person were not wholly or partly responsible for the limited partnership being a limited partnership to which this section applies; or 25
- “(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— 30
- “(a) not less than 10 working days’ notice of the fact that the Registrar or FMA intends to consider the exercise of it is given to the person; and
- “(b) the Registrar or FMA considers any representations made by the person. 35
- “(5) No person to whom a notice under **subsection (2)** applies may be a general partner, resident agent, or promoter of a limited partnership, or be concerned or take part (whether di-

rectly or indirectly) in the administration or management of a limited partnership.

- “(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. 5
- “(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 10
- “(b) exempt that person from the notice in relation to a specified limited partnership or limited partnerships.
- “(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 imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000. 15
- “Compare: 1993 No 105 s 385AA

“**103F Appeals from FMA’s exercise of power under section 103D or 103E** 20

- “(1) A person who is aggrieved by the FMA’s exercise of a power under **section 103D or 103E** may appeal to the Court within 15 working days after the date that the notice is published in the *Gazette* under **section 103D(3) or 103E(2)**, or within any further time as the Court may allow. 25
- “(2) On hearing the appeal, the Court may—
- “(a) confirm, modify, or reverse the FMA’s act or decision or any part of it;
- “(b) exercise any of the powers that could have been exercised by the FMA in relation to the matter to which the appeal relates. 30
- “(3) Section 103 provides for appeals from the Registrar’s acts or decisions under **section 103D or 103E**. 35
- “Compare: 1993 No 105 s 385A

“103G Liability for contravening section 103D or 103E

If a person acts in contravention of a notice under **section 103D or 103E**, he or she is personally liable, during the period of contravention, to—

- “(a) a liquidator of the limited partnership for every unpaid debt incurred by the limited partnership; and 5
“(b) a creditor of the limited partnership for a debt to that creditor incurred by the limited partnership.

“Compare: 1993 No 105 s 386”

59 Consequential amendment to Summary Proceedings Act 1957 10

- (1) This section amends the Summary Proceedings Act 1957.
(2) Part 2 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order:

Limited Partnerships Act 2008	103A(5)	Persons prohibited from managing limited partnerships
	103B(10)	Court may disqualify general partners
	103D(10)	Registrar or FMA may prohibit persons from managing limited partnerships
	103E(9)	Additional power for Registrar or FMA to prohibit persons from being involved in administration or management of limited partnerships

Consequential amendments to principal Act 15

60 Consequential amendments to principal Act

The principal Act is consequentially amended in the manner indicated in **Schedule 3**.

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

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, amalgamation, or compromise, then those shareholders are in different interest classes:
 - (e) if a proposed arrangement, amalgamation, or compromise amounts to what is in effect a takeover, shareholders who are associates (within the meaning set out in the takeovers code) with the offeror (within the meaning set out in the takeovers code) are in a different interest class from other shareholders. 20
-

Schedule 2 **s 43**
**Consequential amendments to Companies
Act 1993**

Section 63(10)

Repeal and substitute: 5

“(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).” 10

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

Insert “**385AA**,” after “385,”.

Section 151(2)(e)

Insert “, resident agent,” after “director”. 15

Insert “administration or” after “concerned or taking part in the”.

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

Section 151(2)

Insert the following paragraph after paragraph (e): 20

“(eaa) a person who is prohibited from being a general partner, resident agent, or promoter of, or being concerned or taking part in the administration or management of, a limited partnership under **section 103A, 103B, 103D, or 103E** of the Limited Partnerships Act 2008:” 25

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: 30

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

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

Section 151(2)—*continued*

“(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),— 5
 “(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).” 10

Section 199(2)(a)

Insert “, resident agent,” after “a director”.

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.” 15

Section 241(4)

Insert after paragraph (b): 20

“(ba) the company, or 1 or more of its directors, shareholders, or officers, has intentionally provided the Registrar with inaccurate information; or
 “(bb) the company, or 1 or more of its directors, shareholders, or officers 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” 25

Section 280(1)(c)

Insert “resident agent,” after “director,”.

Section 280(1)(k)

Insert “, resident agent,” after “director”.

Insert “administration or” after “concerned or taking part in the”.

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

5

Section 280(1)

Insert after paragraph (k):

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

10

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):”.

15

Insert after paragraph (24):

“(24A) **section 193H(7)** (which relates to the obligation to notify the Registrar if the office of resident agent is vacated):

20

“(24B) **section 193L(1)** (which relates to a director’s failure to comply with certain subsections):

“(24C) **section 193M(1)** (which relates to a board’s failure to comply with certain subsections):

25

“(24D) **section 193N(1)** (which relates to a company’s failure to comply with certain subsections):

“(24E) **section 193P(3)** (which relates to the duty to notify the Registrar if there are no directors or no quorum of directors):

30

“(24F) **section 193Q(2)** (which relates to the duty of directors and employees to provide information to a resident agent):”.

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

Section 373(2)

Insert after paragraph (g):

“(ga) **section 193I(4)(a)** (which relates to the obligation to appoint a resident agent):

“(gb) **section 193T(3)(a)** (which relates to the obligation on companies incorporated before that section commences to appoint a resident agent within 6 months after the commencement of that section):”.

Insert after paragraph (h):

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

Section 373(4)

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

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

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

Section 374(1)

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

Insert after paragraph (n):

“(na) **section 193H(6)** (which relates to the obligation to notify the Registrar if the office of resident agent is vacated):”.

Section 374(2)

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

Insert after paragraph (14):

“(14A) **section 193I(4)(b)** (which relates to the obligation to appoint a resident agent):

“(14B) **section 193J(3)** (which relates to the obligation to notify the Registrar about a resident agent change):

“(14C) **section 193T(3)(b)** (which relates to the obligation on companies incorporated before that section commences to appoint a resident agent within 6 months after the commencement of that section):”.

Section 374(2)—*continued*

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

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

Section 395

Insert after paragraph (ca):

“(caa) prescribing countries, States, or territories outside New Zealand for the purposes of **section 151(2)(ec)**.” 5

Schedule 4

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

Third paragraph of the notes to Schedule 4: omit “within the meaning of section 2 of the Takeovers Act 1993”. 10

Schedule 3**s 60****Consequential amendments to Limited
Partnerships Act 2008****Section 57(1)**

Insert after paragraph (g):

5

“(ga) the date of birth of any resident agent.”

Section 57(2)Omit “(1)(f) and (g)” and substitute “(1)(f), (g), and **(ga)**”.**Section 64(2)**

Insert after paragraph (g):

10

“(ga) the name of a resident agent:

“(gb) the name, residential address, and business address of a
resident agent.”**Section 64(3)**

Add “; or”.

15

Add:

“(e) the name and date of birth of a resident agent.”

Section 65

Insert after paragraph (d):

“(da) by any person for the purpose of determining whether 20
a limited partnership has a resident agent, and if so, for
the purpose of determining that resident agent’s name,
residential address, and business address:“(db) by any person for the purpose of determining whether 25
the Registrar has inserted a note of warning in relation
to a limited partnership.”**Section 86(1)**

Insert after paragraph (c):

“(ca) there has been no resident agent of the limited partner-
ship for 10 working days or more.”

30

Section 90

Add:

- “(j) the limited partnership, or 1 or more of its general partners or officers, has intentionally provided the Registrar with inaccurate information: 5
- “(k) the limited partnership, or 1 or more of its general partners or officers, has failed to comply with duties relating to the company under this Act in a persistent or serious way.”