

Reprint
as at 1 April 2021



**COVID-19 Response (Requirements For Entities—
Modifications and Exemptions) (Exemptions from
Companies Act 1993) Notice 2021**

(LI 2021/3)

COVID-19 Response (Requirements For Entities—Modifications and Exemptions) (Exemptions from Companies Act 1993) Notice 2021: revoked, on the close of 31 March 2021, by clause 3.

Pursuant to section 26 of the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020, the Registrar of Companies, having satisfied the requirements in section 27 of that Act, gives the following notice.

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Note

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

This notice is administered by the Ministry of Business, Innovation, and Employment.

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Notice

1 Title

This notice is the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) (Exemptions from Companies Act 1993) Notice 2021.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Revocation

This notice is revoked on the close of 31 March 2021.

4 Interpretation

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

Act means the Companies Act 1993

relevant provision, in relation to an exemption in this notice, means the provision of the Act in respect of which a person is relying on the exemption.

(2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

Application (including retrospective application)

5 Exemptions apply from 21 March 2020 to 31 March 2021

(1) The exemptions in this notice apply to acts or omissions that occur within the period that starts on 21 March 2020 and ends on 31 March 2021.

(2) For the purposes of this clause, an **omission** includes a failure to comply with a relevant provision within the time frame required by the Act.

6 Exemptions apply only if compliance affected by COVID-19

A company or an overseas company (**A**) or an administrator (**B**) of a company or an overseas company qualifies for an exemption from a relevant provision

only if a majority of A's directors or B (as applicable) believes, on reasonable grounds, that—

- (a) complying with the provision is unduly onerous or burdensome because of the effects of COVID-19; or
- (b) the provision is not reasonably capable of being complied with because of the effects of COVID-19.

Exemptions for meetings of shareholders

7 Exemption from time frame requirements for holding annual meeting of shareholders

A company (A) is exempted from section 120 of the Act (annual meeting of shareholders) to the extent that that section requires A to comply,—

- (a) for the first annual meeting of shareholders, within 18 months after A's registration; and
- (b) for any subsequent annual meeting,—
 - (i) not later than 6 months after A's balance date; and
 - (ii) not later than 15 months after the previous annual meeting.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that the company (A) complies with section 120 of the Act,—

- (a) for the first annual meeting of shareholders,—
 - (i) within 24 months after A's registration; and
 - (ii) not later than 31 March 2021; and
- (b) for any subsequent annual meetings,—
 - (i) not later than 12 months after A's balance date; and
 - (ii) not later than 21 months after the previous annual meeting; and
 - (iii) not later than 31 March 2021; and
- (c) gives notice to the Registrar as required under clause 15.

Financial reporting exemptions

9 Exemptions from time frame requirements for financial reporting

- (1) A company or an overseas company (A) is exempted from the following provisions of the Act to the extent that they require A to comply within 5 months after A's balance date:
 - (a) section 201 (financial statements must be prepared); and
 - (b) section 202 (group financial statements must be prepared); and
 - (c) section 207E (financial statements must be registered).

- (2) If an overseas company is exempted from section 201 or 202 of the Act, it is also exempted from section 204(1) and (2) of the Act (financial statements for overseas company must include financial statements for large New Zealand business) to the extent that the Act requires the overseas company to comply within 5 months after its balance date.

10 Conditions of exemptions in clause 9

The exemptions in clause 9 are subject to the conditions that the company or overseas company (A)—

- (a) complies with each relevant provision—
- (i) as soon as practicable after the expiry of the period of 5 months after A's balance date (whether that period expires before or after this notice comes into force); and
 - (ii) not later than 31 March 2021; and
- (b) gives notice to the Registrar as required under clause 15.

Exemptions for annual reports

11 Exemptions from time frame requirements for annual reports

- (1) A company (A) is exempted from section 208 of the Act (obligation to prepare annual report) to the extent that that section requires A to comply within 5 months after A's balance date.
- (2) A is exempted from section 209(1)(a) of the Act, which is about sending shareholders a copy of the annual report, to the extent that A must comply not less than 20 working days before the date fixed for holding the annual meeting of shareholders.

12 Conditions of exemptions in clause 11

The exemptions in clause 11 are subject to the conditions that the company (A)—

- (a) complies with section 208 of the Act—
- (i) within 11 months after A's balance date; and
 - (ii) not later than 31 March 2021; and
- (b) complies with section 209(1)(a) of the Act—
- (i) at least 10 working days before the date fixed for holding the annual meeting of shareholders (whether or not that date is fixed in reliance on an exemption in clause 7); and
 - (ii) not later than 16 March 2021 (which is 10 working days before 31 March 2021); and
- (c) gives notice to the Registrar as required under clause 15.

Exemptions for creditors' meetings under Part 15A of Act

13 Exemptions from certain requirements for creditors' meetings

- (1) The administrator (**B**) of a company or an overseas company is exempted from section 239AK of the Act to the extent that the Act, in relation to a creditors' meeting under Part 15A of the Act,—
 - (a) requires B to conduct the meeting in person; and
 - (b) requires a postal vote to be cast by sending a marked voting paper (*see* clause 7(4) of Schedule 5 of the Act).
- (2) B is exempted from the following provisions of the Act to the extent that they require a written notice:
 - (a) section 239AL (joint meetings of creditors of related companies in administration); and
 - (b) section 239AO (notice of first and subsequent creditors' meetings); and
 - (c) section 239AU (notice of watershed meeting).

14 Conditions of exemptions in clause 13

The exemptions in clause 13 are subject to the conditions that the administrator (**B**) of a company or an overseas company—

- (a) complies with section 239AK of the Act—
 - (i) as if the Act also allowed B to conduct a creditors' meeting by means of audio, or audio and visual, communication; and
 - (ii) as if clause 7 of Schedule 5 of the Act also allowed a postal vote to be cast using electronic means permitted by B; and
- (b) complies with sections 239AL, 239AO, and 239AU of the Act as if they also allowed a notice to be given to creditors by electronic means; and
- (c) gives notice to the Registrar as required under clause 15.

Notice requirements

15 Requirements for notice to Registrar

- (1) This clause applies if this notice requires a company or an overseas company (**A**) or an administrator (**B**) to give notice to the Registrar as a condition of an exemption.
- (2) A or B must give the notice to the Registrar—
 - (a) as soon as practicable after A or B (as applicable) decides to rely on the exemption; and
 - (b) not later than 31 March 2021.
- (3) The notice must—

- (a) identify each provision of the Act in respect of which A or B is relying on an exemption; and
 - (b) state why A or B qualifies for each exemption under clause 6; and
 - (c) be signed by a majority of A's directors or by B (as applicable).
- (4) To avoid doubt, the notice may be given in written or electronic form.

Dated at Wellington this 26th day of January 2021.

Ross van der Schyff,
Registrar of Companies.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and is revoked on the close of 31 March 2021, exempts companies, overseas companies, and administrators that were affected by COVID-19 (**affected persons**) from compliance with certain obligations under the Companies Act 1993 (the **Act**).

The effect of the exemption is to modify or relax the requirements for affected persons to comply with the following procedural and administrative matters in the Act:

- time frame requirements in relation to holding annual meetings of shareholders, preparing annual reports, and sending annual reports to shareholders (under sections 120, 208, and 209 of the Act respectively); and
- time frame requirements in relation to the financial reporting requirements under sections 201, 202, 204, and 207E of the Act; and
- certain meeting, voting, and notice requirements in sections 239AK, 239AL, 239AO, and 239AU of the Act that do not clearly provide for holding meetings remotely, voting electronically, and giving notices electronically.

The above time frame extensions do not allow the time for compliance to be extended beyond 31 March 2021, and some extensions are limited to a defined period.

The exemptions only apply—

- in respect of acts or omissions that occurred during the period that started on 21 March 2020 and that ends on 31 March 2021; and
- if the majority of directors or the administrator of the company or overseas company believes, on reasonable grounds, that—
 - complying with the relevant provision is unduly onerous or burdensome because of the effects of COVID-19; or
 - the relevant provision is not reasonably capable of being complied with because of the effects of COVID-19; and

- if the affected person—
 - notifies the Registrar of Companies that it is relying on the exemption; and
 - complies with the specified conditions.

The Registrar of Companies (the **Registrar**) considers it appropriate to grant the exemptions because the Registrar is satisfied that—

- granting the exemptions is necessary or desirable to enable the modification or relaxation of certain procedural or administrative requirements in the Act that—
 - are unduly onerous or burdensome because of the effects of COVID-19; or
 - may not be reasonably capable of being complied with because of the effects of COVID-19; and
- the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption; and
- the exemption is the most appropriate way of addressing those matters at this time.

The Registrar considers that the effects of COVID-19 mean that it has been or will be difficult to meet certain prescribed deadlines and requirements relating to holding meetings, voting, and giving notice.

The exemptions only apply in respect of acts or omissions in the period starting on 21 March 2020 (when many companies ceased or reduced operations as part of New Zealand’s COVID-19 public health response) and ending on 31 March 2021.

In addition, the exemptions only apply if the affected person notifies the Registrar that they intend to rely on the exemption and believes, on reasonable grounds, that the effects of COVID-19 mean that compliance with the relevant provision is unduly burdensome or onerous, or that they are not reasonably capable of complying with the relevant provision.

Extending time to meet deadlines and taking a flexible approach regarding meeting, voting, and notice requirements will help affected persons to meet their obligations in a safe, efficient, and orderly manner, without facing unreasonable compliance costs.

Reprints notes

1 *General*

This is a reprint of the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) (Exemptions from Companies Act 1993) Notice 2021 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

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

3 *Editorial and format changes*

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

4 *Amendments incorporated in this reprint*

COVID-19 Response (Requirements For Entities—Modifications and Exemptions) (Exemptions from Companies Act 1993) Notice 2021 (LI 2021/3): clause 3