

No 465

House of Representatives
Supplementary
Order Paper

Tuesday, 17 June 2014

Companies and Limited Partnerships
Amendment Bill

*Proposed amendments for the consideration
of the Committee of the whole House*

Proposed amendments to the
Companies and Limited Partnerships
Amendment Bill

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
 - **NOT have the status of an as-reported version of the Bill.**
-

Explanatory note

This Supplementary Order Paper amends the Companies and Limited Partnerships Amendment Bill (the **Bill**), a Bill that amends the Companies Act 1993 and the Limited Partnerships Act 2008. This Supplementary Order Paper supersedes and incorporates, with modifications, Supplementary Order Papers Nos 249 and 403.

Amendments to Companies Act 1993

Criminalisation of breaches of certain directors' duties

As introduced, the Bill amended the Companies Act 1993 (the **Companies Act**) to criminalise serious breaches of 2 duties of directors. *Clause 4* of the Bill inserted *new section 138A* into the Companies Act. *New section 138A* provided for offences in relation to serious breaches of—

- the duty provided for in section 131 of the Companies 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 Companies 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).

The Supplementary Order Paper removes the second offence (*new section 138A(2)*). Instead, the Supplementary Order Paper amends the existing offence provision in section 380 of the Companies Act (*see* the description of *new section 380(4)* below). The Supplementary Order Paper also changes the offence created by the Bill relating to the section 131 duty. Now, the offence is to become one of exercising powers or performing duties as a director of a company in bad faith towards the company and believing that the conduct is not in the best interests of the company. There must also be knowledge that the conduct will cause the company serious loss.

In a departure from Supplementary Order Paper No 403, this Supplementary Order Paper inserts a new clause (*new clause 4AAB*) amending section 378(a) of the Companies Act. Section 378 provides for the offence of the fraudulent use or destruction of company property by a director, employee, or shareholder. The amendment expands the scope of the offence to include fraudulently

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taking or applying company property for the use or benefit of a person other than the company.

New section 380(4) (inserted by *new clause 4AAC*) creates a new offence where a company incurs a debt at a time when the company is insolvent (insolvency in this context means unable to pay its debts: *new section 380(5)*) or incurs a debt that, on its own or taken with other debts, has the effect of tipping the company into insolvency. In those circumstances, a director of the company commits an offence if he or she knew of the existing insolvency or knew that the company would become insolvent, and if the director's failure to prevent the company incurring the debt was dishonest.

A director convicted of the offence is liable under section 373(4) of the Companies Act to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000. *New clause 4AAA* consequentially amends section 373(4)(f).

Rectification of register

The Supplementary Order Paper amends *clause 35(2)* to correct a drafting error. The amendment to section 360A(2) of the Companies Act 1993 made by the Commerce Committee inadvertently expands the requirement to give notice, which should be confined to the exercise of the Registrar's power of rectification under section 360A(1)(a) only.

Registrar's powers to identify controllers of company

The Supplementary Order Paper gives the Registrar new powers to identify the controllers of a company for defined law enforcement purposes. In order to achieve this, *new sections 365A to 365H* (inserted by *new clause 37A*) give the Registrar the powers to ascertain—

- who has (and who has the power to acquire) a control interest in shares of a company and full details of that interest (*new section 365F*)—control interest is defined in *new sections 365B to 365E*, in a similar way to the definition of relevant interest in sections 5 to 6 of the Securities Markets Act 1988; and
- control information relating to a company—this is defined in *new section 365G* as directions or instructions relating

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to the management and administration of a company or any delegation of powers relating to the management and administration of a company.

Arrangements, amalgamations, and compromises of code companies

The Supplementary Order Paper creates a transitional arrangement (in *new clause 24A*) for a code company that has already begun a process to amalgamate under Part 13 of the Companies Act before the Bill comes into force. If the boards of the amalgamating companies have agreed to an amalgamation, the law as it was before the Bill comes into force will apply to that amalgamation—as long as the amalgamation takes effect within a period of 180 days.

The Supplementary Order Paper amends *new section 236A* of the Companies Act (inserted by *clause 25* of the Bill) to clarify that the new Part 15 provisions about the reconstruction of code companies do not apply where there is no change in the relative holding or control of voting rights.

The Supplementary Order Paper also amends the Takeovers (Fees) Regulations 2001 (in *new clause 26B*) to include the ability for the Takeovers Panel to charge applicants for considering whether or not to provide a no-objection statement to applications under section 236(1) of the Companies Act.

Information about director's date and place of birth

The Supplementary Order Paper amends an amendment made to the Companies Act at select committee that required a director's date and place of birth to be sent to all shareholders of amalgamating companies. Instead, the Supplementary Order Paper requires these details to go only to the Registrar (*see the change to new section 220(1)(c) in clause 7F(1)*, the amendment to section 223 made by *new clause 7FA*, and the change to *clause 22A*).

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Amendments to Limited Partnerships Act 2008

Registrar's powers to identify controllers of limited partnership

The provisions enabling the Registrar to identify the controllers of companies are also inserted in the Limited Partnerships Act 2008 (the **Limited Partnerships Act**).

In order to achieve this, *new sections 78A to 78H* of the Limited Partnerships Act are inserted by *new clause 56A*. These new provisions are very similar to those inserted by *new clause 37A* into the Companies Act; the only changes relate to the differences between a limited partnership and a company (and between shares and partnership interests).

Requirements for general partner of limited partnership

The Supplementary Order Paper clarifies—

- the requirement in the Bill for limited partnerships to have at least 1 general partner with a substantive connection to New Zealand; and
- that the qualification requirements for general partners do not prevent overseas companies from being general partners.

This clarification is achieved by changes to *clauses 46 to 49A* of the Bill, which amend the Limited Partnerships Act.

The revisions in the Supplementary Order Paper reflect the policy that all natural persons who are general partners, or who are directors, partners, or general partners of a general partner, must be qualified under *new section 19A* of the Limited Partnerships Act. (*New section 19A* essentially requires that the person not be a minor and not have various criminal convictions.) This policy is articulated in *new section 8(5)* of the Limited Partnerships Act, which is inserted by a change in the Supplementary Order Paper to *clause 46* of the Bill.

**Name, address, and date and place of birth information:
general partners**

Various amendments in the Supplementary Order Paper to *clauses 49A, 49B, and 49C* of the Bill ensure that the following information must be provided in applications to become a limited partnership (and

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in annual returns) and must also appear on the register of limited partnerships:

- the full name and residential address of—
 - every general partner who is a natural person; and
 - every general partner’s director, partner, or general partner who is a natural person:
- the name and address of every general partner who is not a natural person:
- the date and place of birth of—
 - every general partner who is a natural person; and
 - every general partner’s director, partner, or general partner who is a natural person.

However, only the Registrar would be able to search the register for date and place of birth information.

Section 74 of the Limited Partnerships Act, which is about the records that a limited partnership must keep, is amended to require limited partnerships to keep records of the new types of name and address information, including the last known such information in respect of each person who has ceased to be a partner within the last 7 years.

Annual return information changes

The Supplementary Order Paper amends the requirements in the Limited Partnerships Act relating to the information to be contained in the annual returns of a limited partnership. The information required currently by section 76 is largely unchanged, but the requirements are placed instead into a *new Schedule 2* (mirroring Schedule 4 of the Companies Act). There are a few minor additions, which reflect the changes made elsewhere in the Supplementary Order Paper. One such addition is a *new paragraph (h)* in the *new Schedule 2*, which mirrors the requirements in relation to a company annual return (*see* the amendments to *clause 22A* of the Bill). That amendment requires a company annual return to include prescribed information in respect of the company or companies in an enforcement country of which the director is a director. In respect of a limited partnership, the requirement is that a limited partnership’s annual return must supply prescribed information about the company or companies in the enforcement country of which the natural person meeting the residency requirement is a director.

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Transitional provision relating to requirement for existing limited partnerships to provide place of birth information about partners

Clause 52B of the Bill requires existing limited partnerships to inform the Registrar of the place of birth of natural persons who are general partners. The Supplementary Order Paper extends that requirement to limited partners.

Miscellaneous amendments

The Supplementary Order Paper also makes consequential amendments associated with the changes described above. For example, it inserts into the Companies Act and the Limited Partnerships Act various cross-references to the Supplementary Order Paper's new provisions.

Updates resulting from enactment of Criminal Procedure Act 2011

A reference to the term indictment in *new sections 103A and 103B* of the Limited Partnerships Act 2008 (inserted by *clause 58* of the Bill) is no longer appropriate given the move away from that concept in the Criminal Procedure Act 2011. The Supplementary Order Paper replaces this reference with a reference to offences that are punishable by a term of imprisonment of not less than 3 months. Sections 382 and 383 of the Companies Act, on which *new sections 103A and 103B* of the Limited Partnerships Act are based, had already been changed in Schedule 3 of the Criminal Procedure Act 2011. However, these changed provisions are now adjusted in the Supplementary Order Paper to match the amended *new sections 103A and 103B* of the Limited Partnerships Act (*see new clauses 39AAA and 39AAB*).

The Bill amends Schedule 1 of the Summary Proceedings Act 1957 in *clauses 4A, 42, and 59*. However, that schedule was repealed on 1 July 2013 as part of the package of reforms relating to the Criminal Procedure Act 2011. The Supplementary Order Paper therefore deletes the redundant references to the repealed schedule.

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**Updates resulting from enactment of Financial Markets
(Repeals and Amendments) Act 2013**

Changes are made in the Supplementary Order Paper to reflect the amendments to be made to the Companies Act by the Financial Markets (Repeals and Amendments) Act 2013. That Act extends the allowable period for banning certain directors from company management from 5 years to 10 years, with a new ability for the court to make a permanent ban or a ban for a specified period over 10 years. *New section 385AA* of the Companies Act, which is inserted by *clause 39* of the Bill, is amended to the same effect by the Supplementary Order Paper. The changes made by the Financial Markets (Repeals and Amendments) Act 2013 to the Companies Act are then copied into the Bill's amendments to the Limited Partnerships Act by the Supplementary Order Paper.

The Financial Markets (Repeals and Amendments) Act 2013 also amends the Companies Act to set out requirements for a company's annual return if the company has been the offeror of financial products. These requirements are also put into the Limited Partnerships Act by the Supplementary Order Paper.

The relevant amendments in the Financial Markets (Repeals and Amendments) Act 2013 are not yet in force, and so the amendments made to the Companies Act and the Limited Partnerships Act by the Supplementary Order Paper are to commence when the relevant amendments in the Financial Markets (Repeals and Amendments) Act 2013 come into force (*see* the amendment to *clause 2* of the Bill in the Supplementary Order Paper).

**Updates resulting from enactment of State Sector Amendment
Act 2013**

The State Sector Amendment Act 2013 replaced the previous immunity in the State Sector Act 1988 that applied to the Registrar. The new immunity is in more comprehensive and certain terms. This means that the immunities in the Bill (*see new section 366C* of the Companies Act and *new section 63B* of the Limited Partnerships Act) are no longer required.

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Departmental disclosure statement

The Ministry of Business, Innovation, and Employment considers that a departmental disclosure statement is not required to be prepared for this SOP.

The Honourable Craig Foss, in Committee, to propose the amendments shown in the following document.

Hon Craig Foss

Companies and Limited Partnerships Amendment Bill

Government Bill

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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

- (1) **Subparts 2 and 4 of Part 1 and Part 2** come into force 6 months ~~months~~ Except as provided in **subsection (1A), subparts 2 and 4 of Part 1 and Part 2** come into force 365 days after the date on which this Act receives the Royal assent unless they are earlier brought into force on a date appointed by the Governor-General by Order in Council.
- (1A) **Sections 43, 43A, 48A, 52AA, 52AB, 58A, 60, and Schedules 2 to 3** come into force on a date appointed by the Governor-General by Order in Council.
- (1B) For the purposes of **subsection (1A)**,—
- (a) 1 or more orders may be made bringing different provisions into force on different dates and for different purposes; and
 - (b) **provision** includes any item, or any part of an item, in any of **Schedules 2 to 3**.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Companies Act 1993

3 Principal Act amended

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 breach of
director’s duty to act in good faith and in best interests
of company**

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

“(1) A director of a company commits an offence if the director
exercises powers or performs duties as a director of the com-
pany—

“(a) in bad faith towards the company and believing that the
conduct is not in the best interests of the company; and

“(b) knowing that the conduct will cause serious loss to the
company.

“(1A) However, a director does not commit an offence under
subsection (1) if the power or duty in question is exercised
or performed under any of section 131(2) to (4) or is a power
exercised under section 132.

“(2) Every director of a company who acts, or omits to act, in
breach of the duty in section 135 (reckless trading) commits
an offence if he or she knows that that conduct will result in
serious loss to the company’s creditors.

“(3) A person who commits an offence under this section is liable
on conviction to the penalties set out in section 373(4).”

4AAA Penalty for failure to comply with Act

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

4AAB Fraudulent use or destruction of property

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

4AAC Carrying on business fraudulently

(1) The heading to section 380 is amended by adding “or dishonestly incurring debt”.

(2) Section 380 is amended by adding the following subsections:

“(4) Every director of a company commits an offence and is liable on conviction to the penalties set out in section 373(4) if—

“(a) the company incurs a debt (the **debt**); and

“(b) the company—

“(i) is insolvent at the time that it incurs the debt; or

“(ii) becomes insolvent by incurring the debt; or

“(iii) is insolvent at the time that it incurs debts that include the debt; or

“(iv) becomes insolvent by incurring debts that include the debt; and

“(c) the director knows, at the time when the company incurs the debt, that the company is insolvent or will become insolvent as a result of incurring the debt or other debts that include the debt; and

“(d) the director’s failure to prevent the company incurring the debt is dishonest.

“(5) In **subsection (4), insolvent** means that the company is unable to pay its debts.”

4A Consequential amendment to Summary Proceedings Act 1957

(1) This section amends the Summary Proceedings Act 1957.

(2) The item relating to the Companies Act 1993 in Part 2 of Schedule 1 is amended by inserting the following item in its appropriate numerical order:

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Part 1 cl 5

~~138A(3)~~

Offence for serious breaches of certain duties

Subpart 2—One or more directors to live in
New Zealand and other measures

5 Interpretation

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

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

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

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

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

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

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

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

6 Essential requirements

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

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

“(i) live in New Zealand; or

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

7A Application for registration

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

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

- “(i) his or her full name and date and place of birth; and
 - “(ii) his or her residential address; and
 - “(iii) if the residential address is in an enforcement country, whether the director is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country and, if so, the prescribed information; and”.
- (2) Section 12(2) is amended by inserting the following paragraph after paragraph (c):
- “(ca) the proposed company’s ultimate holding company information; and”.

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

The following heading and sections are inserted after section 94:

“Ultimate holding company

“94A Meaning of ultimate holding company information

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

- “(a) the name of the ultimate holding company;
- “(b) the ultimate holding company’s country of registration;
- “(c) the ultimate holding company’s registration number or code (if any);
- ~~“(d) the ultimate holding company’s address for service;~~
- “(d) the registered office of the ultimate holding company;
- “(e) any other prescribed information.

“94B Notice of ultimate holding company changes

- “(1) The board of a company must ensure that notice (in the form and manner required by the Registrar) of any changes in the company’s ultimate holding company information is delivered to the Registrar for registration.
- “(2) A notice under **subsection (1)** must—
 - “(a) specify the date of the change; and

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Part 1 cl 7C

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

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

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

7C Number of directors

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

7D Notice of change of directors

Section 159(2) is amended by repealing paragraph (b) and sub-
stituting the following paragraph:

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

7E Public inspection of company records

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

“(ca) the company’s ultimate holding company informa-
tion.”.

7F Amalgamation proposal

(1) Section 220(1) is amended by repealing paragraph (c) and sub-
stituting the following paragraph:

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

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

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

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

7FA Registration of amalgamation proposal

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

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

7G Inspection and evidence of registers

Section 363 is amended by adding the following subsection:

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

7H New section 367A inserted

The following section is inserted after section 367:

“367A Confidentiality of director information

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

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

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

“Compare: 2008 No 1 s 115”.

18 New section 387A inserted

The following section is inserted after section 387:

“387A Service of documents on directors in legal proceedings

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

“(a) by delivery to the director; or

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

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

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

19 Service of other documents on companies

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

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

20 New section 388A inserted

The following section is inserted after section 388:

“388A Service of other documents on directors

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

- “(a) by any of the methods set out in **paragraphs (a), (c), (e), and (g) of section 387A**; or
- “(b) by posting it to the director at the director’s residential address (as that address is shown in the register) or delivering it to a box at a document exchange that the director is using at the time; or
- “(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
- “(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

- “(g) by sending it by fax machine to a telephone number used for the transmission of documents by fax at the company’s registered office or address for service or its head office or principal place of business; or
- “(h) by sending it by email to an electronic address used by the director; or
- “(j) by sending it by email to an electronic address used by the company.”

21 Additional provisions relating to service

- (1) Section 392(1) is amended by inserting the following paragraph after paragraph (c):
 - “(ca) a document sent by email is deemed to have been received on the working day following the day on which it was sent.”
- (2) Section 392(1) is amended by adding the following paragraph:
 - “(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.”

22 Regulations

- Section 395(1) is amended by inserting the following paragraphs after paragraph (b):
- “(ba) prescribing a country, State, or territory outside New Zealand as an enforcement country for the purposes of **section 10(d)** if the country, State, or territory has an agreement with New Zealand that allows for the recognition and enforcement there of New Zealand judgments imposing regulatory regime criminal fines:
 - “(bb) prescribing information required for the purposes of **section 12(2)(b)(iii) and paragraph (gaaa) of Schedule 4**:
 - “(bc) prescribing information required for the purposes of **section 94A(e)**.”

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22A Schedule 4 amended

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

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

22B Transitional provision relating to requirement for 1 or more directors to live in New Zealand, etc

- (1) ~~Until the expiry of 6 months~~ Before the close of the 180th day after the commencement of this section, **section 10(d)(i) and (ii)** of the principal Act do not apply to a company incorporated before the commencement of this section.
- (2) A company incorporated before the commencement of this section that does not comply with the requirements in **section 10(d)(i) or (ii)** of the principal Act must, ~~within 6 months~~ before the close of the 180th day after the commencement of this section, do the following in order to comply with those requirements:
 - (a) arrange for a director who complies with the requirements in **section 10(d)(i) or (ii)** of the principal Act; and
 - (b) in the manner required by the Registrar, notify the Registrar of the following:
 - (i) that a director complies with the requirements in **section 10(d)(i) or (ii)** of the principal Act; and
 - (ii) the information required under **section 12(2)(b)(i) to (iii)** in relation to that director.

- (3) If a company fails to comply with **subsection (2)**, the company does not comply with section 10 of the principal Act (*see section 318(1)(aaa)* of the principal Act).

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

22C Transitional provision relating to directors' date and place of birth information and company's ultimate holding company information

- (1) A company incorporated before the commencement of this section must provide the Registrar with the following information (at the time and in the manner required by the Registrar):
- (a) the date and place of birth of each director; and
 - (b) the company's ultimate holding company information.
- (2) If a company fails to comply with **subsection (1)**,—
- (a) the company commits an offence and is liable on conviction to the penalty set out in section 373(2) of the principal Act; and
 - (b) every director of the company commits an offence and is liable on conviction to the penalty set out in section 374(2) of the principal Act.
- (3) Sections 373(2), 374(2), and 375 to 380 of the principal Act apply as if this section were a section of the principal Act.

Subpart 3—Arrangements and amalgamations of code companies

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

23 Interpretation

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

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

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24 Amalgamations

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

*Transitional provision relating to amendments
to Part 13 of principal Act*

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

- (1) An amalgamation proposal involving 1 or more code companies that has been approved by the boards of all amalgamating companies in accordance with section 221(1) of the principal Act before the commencement of **section 24** of this Act is to be continued as if **section 24** of this Act had not been enacted, except if the amalgamation takes effect on or after the 180th day after the commencement of **section 24** of this Act.
- (2) **Section 24** of this Act applies to both—
 - (a) an amalgamation described in **subsection (1)** that takes effect on or after the 180th day after the commencement of **section 24**; and
 - (b) any other amalgamation proposal that has not been approved by the boards of all companies in accordance with section 221(1) of the principal Act before the commencement of **section 24**.
- (3) In this section, **takes effect**, in respect of an amalgamation, means the date when the amalgamation takes effect in accordance with sections 224 and 225 of the principal Act.

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

25 New sections 236A and 236B inserted

The following sections are inserted after section 236:

- “236A Arrangement or amalgamation involving code company**
- “(1) If a proposed arrangement or amalgamation affects the voting rights of a code company, the applicant for an order under section 236(1) must, at the same time as filing the application, notify the Takeovers Panel of the application.
- “(2) The court may not make an order under section 236(1) that affects the voting rights of a code company unless—
- “(a) the code company’s shareholders approve the arrangement or amalgamation in accordance with **subsection (4)**; and
- “(b) either of the following applies:
- “(i) the court is satisfied that the shareholders of the code company will not be adversely affected by the use of section 236(1) rather than the takeovers code to effect the change involving the code company; or
- “(ii) the applicant has filed a statement from the Takeovers Panel indicating that the Takeovers Panel has no objection to an order being made under section 236(1).
- “(3) The court need not approve a proposed arrangement or amalgamation merely because the Takeovers Panel has no objection to an order being made under section 236(1).
- “(4) For the purposes of **subsection (2)(a)**, the code company’s shareholders may only approve the arrangement or amalgamation in the following way:
- “(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) For the purposes of this section and **section 236B**,—
- “affects the voting rights, in respect of an arrangement or amalgamation, means an arrangement or amalgamation that involves a change in the relative percentage of voting rights held or controlled by 1 or more shareholders
- “**interest class** may be determined in accordance with the principles set out in **Schedule 10**

“**voting right** has the meaning set out in section 2(1) of the Takeovers Act 1993.

“**236B Takeovers code does not apply where court order under section 236**

The takeovers code does not apply where the court has made an order under section 236(1) that affects the voting rights of a code company.”

26 Consequential amendments to Takeovers Act 1993

(1) This section amends the Takeovers Act 1993.

(1A) Section 2(1) is amended by repealing the definition of **director** and substituting the following definition:

“**director**,—

“(a) in relation to a company, means a person occupying the position of a director of the company, by whatever name called; and

“(b) in relation to a partnership (other than a special partnership or a limited partnership), means a partner; and

“(c) in relation to a special partnership or a limited partnership, means a general partner; and

“(d) in relation to a body corporate or unincorporate not referred to in **paragraphs (a) to (c)**, means a person occupying a position in the body corporate that is comparable with that of a director of a company; and

“(e) in relation to any other person, means that person; and

“(f) includes a person in accordance with whose directions or instructions a person referred to in **paragraphs (a) to (e)** may be required or is accustomed to act in respect of the performance or exercise of duties or powers as, or comparable to those of, a director”.

(2) Section 8(1) is amended by inserting the following paragraph after paragraph (ea):

“(eb) to consider applications for an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in **section 236A** of the Companies Act

1993), and to indicate whether or not it has an objection to such an order.”.

- (3) The following section is inserted after section 23:

“23A Takeovers code does not apply where court order under section 236 of Companies Act 1993

The takeovers code does not apply where the court has made an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in **section 236A** of the Companies Act 1993).

26A Consequential amendments to takeovers code

- (1) This section amends the takeovers code set out in the Schedule of the Takeovers Code Approval Order 2000.
- (2) Paragraphs (b) and (c) of the definition of **director** in rule 3(1) are amended by inserting “or a limited partnership” after “special partnership”.
- (3) The definition of **director** in rule 3(1) is amended by repealing paragraph (d) and substituting the following paragraph:
“(d) in relation to a body corporate or unincorporate not referred to in paragraphs (a) to (c), means a person occupying a position in the body corporate that is comparable with that of a director of a company; and”.
- (4) The definition of **director** in rule 3(1) is amended by repealing paragraph (f) and substituting the following paragraph:
“(f) includes a person in accordance with whose directions or instructions a person referred to in **paragraphs (a) to (e)** may be required or is accustomed to act in respect of the performance or exercise of duties or powers as, or comparable to those of, a director”.

26B Consequential amendment to Takeovers (Fees) Regulations 2001

- (1) This section amends the Takeovers (Fees) Regulations 2001.
- (2) Regulation 4(2) is amended by inserting the following paragraph after paragraph (a):
“(aa) considering an application for an order under section 236(1) of the Companies Act 1993 that affects the vot-

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ing rights of a code company (within the meaning of that term in **section 236A** of the Companies Act 1993), and indicating whether or not the Panel has an objection to such an order.”.

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

New Schedule 10 added

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

Subpart 4—Enhanced powers of Registrar

28A Interpretation

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

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

28B Meaning of director

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

29 Grounds for removal from register

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

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

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

“(b) the Registrar has reasonable grounds to believe that—

“(i) the company is not carrying on business; and

“(ii) there is no proper reason for the company to continue in existence; or

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

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

“(bb) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has intentionally provided the Registrar with inaccurate information; or

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

“(bc) the Registrar has reasonable grounds to believe that the company, or 1 or more of its directors or shareholders, has failed in a persistent or serious way to comply with duties relating to the company—

“(i) under this Act; or

“(ii) under the Financial Reporting Act 1993 while in force, except that the Registrar may not rely on this ground after 5 years has elapsed after this subparagraph came into force; or”.

(2) Section 318 is amended by inserting the following subsection after subsection (1):

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- “(1A) The Registrar may choose not to proceed with the removal of a company from the New Zealand register despite **subsection (1)(aaa), (bab), (bb), or (bc)** applying.”
- (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)(aaa), (ba), (bab), (bb), or (bc)** only if—
- “(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
 - “(ii) if an objection to the removal has been received, has complied with section 322.”

30 Notice of intention to remove where company has ceased to carry on business or application fee not paid

- (1) The heading to section 319 is amended by omitting “**where company has ceased to carry on business or application fee not paid**” and substituting “**company under paragraph (aaa), (b), (ba), (bab), (bb), (bc), or (f) of section 318(1)**”.
- (2) Section 319(1) is amended by omitting “section 318(1)(b)” and substituting “section 318(1)(aaa), (b), (ba), (bab), (bb), (bc)”.
- (4A) Section 319 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) The notice to be given under subsection (1)(a) must state the section under, and the grounds on which, it is intended to remove the company from the New Zealand register and must include the following information in respect of the relevant grounds:
- “(a) if **section 318(1)(aaa)** applies, that the company will be removed from the New Zealand register unless—
 - “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or

- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that it complies with section 10:
- “(b) if **section 318(1)(b)** applies, that the company will be removed from the New Zealand register unless—
- “(ii) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(i) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that it is carrying on business or that there is a proper reason for it to continue in existence:
- “(c) if **section 318(1)(ba)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company (by notice in writing)—
- “(A) responds to the requirement made under **section 365(1)(caaa)** or (c) to the Registrar’s satisfaction; or
- “(B) satisfies the Registrar that there is a proper reason for it to continue in existence:
- “(ca) if **section 318(1)(bab)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that—
- “(A) information has been disclosed as required by the Registrar under **section 365F or**

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- 365G** (in accordance with any specification under **section 365H**); or
- “(B) there is a proper reason for the company to continue in existence:
- “(d) if **section 318(1)(bb)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that—
- “(A) the information provided is accurate; or
- “(B) the inaccurate information was provided unintentionally; or
- “(C) accurate information has since been supplied; or
- “(D) there is a proper reason for the company to continue in existence:
- “(e) if **section 318(1)(bc)** applies, that the company will be removed from the New Zealand register unless—
- “(i) the Registrar does not, in accordance with section 322, proceed to remove the company from the register; or
- “(ii) by the date specified in the notice, which must be at least 20 working days after the date of the notice, the company satisfies the Registrar (by notice in writing) that—
- “(A) there has been no persistent or serious failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993; or
- “(B) there is a proper reason for the company to continue in existence:
- “(f) if section 318(1)(f) applies, that the company will be removed from the New Zealand register unless the fee prescribed by regulations for the application for registration of the company under section 12 is paid in full

to the Registrar within 20 working days after the date of the notice.”

- (5) Section 319(3)(c) is amended by omitting “section 318(1)(b) applies” and substituting “section 318(1)(**aaa**), **(b)**, **(ba)**, **(bab)**, **(bb)**, or **(bc)** applies”.

30A Notice of intention to remove in other cases

The heading to section 320 is amended by omitting “in other cases” and substituting “company under paragraph (c), (d), or (e) of section 318(1)”.

31 Objection to removal from register

- (1) Section 321(1)(a) is amended by—
- (a) omitting “still”; and
 - (b) omitting “other” and substituting “a proper”.
- (2) Section 321(1) is amended by inserting the following paragraphs after paragraph (e):
- “(ea) that the company complies with section 10; or
 - “(eb) that the company has responded to the requirement made under **section 365(1)(caaa)** or (e); or
 - “(ec) that the company has provided accurate information or that inaccurate information was provided unintentionally; or
 - “(ed) that there has been no serious or persistent failure to comply with duties relating to the company under this Act or the Financial Reporting Act 1993; or”.
- (2) Section 321 is amended by adding the following subsection:
- “(4) Where a notice is given of an intention to remove a company from the New Zealand register, in addition to an objection to the removal on 1 or more of the grounds identified in subsection (1), in relation to any of the grounds for removal specified in the first column of the following table, any person may deliver to the Registrar, not later than the date specified in the notice, an objection to the removal on any of the corresponding grounds specified in the second column of the following table:

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Grounds for removal

The company does not comply with section 10

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

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

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

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

Grounds for objection

The company complies with section 10

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

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

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

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

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

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

32 Duties of Registrar if objection received

(1AAA) Section 322(1) is amended by omitting “section 321(1)(a), (b), or (c)”²² and substituting “section 321(1)(a), (b), (c), **(ea)**, **(eb)**, **(ec)**, or **(ed)**”²².

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

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

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

33 Registrar may restore company to New Zealand register

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

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

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

“(1A) The Registrar may, on the application of a person referred to in subsection (2), or on his or her own motion, restore a company that has been removed from the register to the register if the Registrar is satisfied that the company was carrying on business at the time of its removal and there is a proper reason for the company to continue in existence.”

(3) Section 328(3)(a) is amended by omitting “paragraph (b) or paragraph (c) of section 318(1)” and substituting “section 318(1)(aaa), (b), (ba)₁, (bab), (bb), (bc), or (c)”.

34 Court may restore company to New Zealand register

(1) Section 329(1)(a)(i) is amended by—

- (a) omitting “still”; and
- (b) omitting “other” and substituting “a proper”.

(2) Section 329 is amended by inserting the following subsection after subsection (1):

“(1A) In considering whether to restore a company to the register on the ground referred to in subsection (1)(a)(i) or (b), the court must have regard to the reasons for the company’s removal and whether those grounds existed at the time of removal or exist at the time of the hearing of the application.”

35 Rectification or correction of New Zealand register and overseas register

(1) Section 360A(1)(b) is amended by omitting “due to a clerical error by the Registrar”.

(2) Section 360A(2) is amended by omitting “Before the Registrar rectifies the New Zealand register or the overseas register

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under subsection (1)(a)” and substituting “Unless a rectification or correction relates solely to the individual who provided it”.

- (2) Section 360A(2) is amended by omitting “Before the Registrar rectifies the New Zealand register or the overseas register under subsection (1)(a), the Registrar must” and substituting “Unless the rectification or correction relates solely to the person who provided it, the Registrar, before rectifying the register under subsection (1)(a), must”.

36 Registration of documents

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

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

37 Registrar’s powers of inspection

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

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

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

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

- “(i) confirm that the information is correct; or
“(ii) correct the information; or”.

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

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

- “(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)(caaa)** or (c)”.

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

The following sections and headings are inserted after section 365:

“Registrar’s powers to identify controllers of company”

“365A Purpose of sections 365B to 365H

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

“(2) In this section,—

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

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

“365B Control interests in shares (basic rule)

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

“(a) is a shareholder; or

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

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

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

“(2) **Subsection (1)** applies regardless of whether the power or control is express or implied, direct or indirect, legally enforceable or not, related to a particular share or not, exercisable presently or in the future, or exercisable alone or jointly

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with another person or persons (but a power to cast merely 1 of many votes is not, in itself, a joint power of this kind).

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

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

“Compare: 1988 No 234 s 5

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

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

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

“Compare: 1988 No 234 s 5A

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

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

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

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

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

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

- “(e) A and B have an agreement, arrangement, or understanding to act in concert in relation to a power or control referred to in **section 365B**.
- “(2) For the purposes of **subsection (1)**,—
- “share includes—
- “(a) a share in a company:
- “(b) a share in an industrial and provident society:
- “(c) a share in a building society:
- “(d) a partnership interest in a partnership
- “shareholder means a holder of a share.
- “(3) For the purposes of **subsection (1)(a)**, **director** means,—
- “(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- “(b) in relation to a partnership (other than a limited partnership), any partner:
- “(c) in relation to a limited partnership, any general partner:
- “(d) in relation to a body corporate or unincorporate other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company.
- “(4) For the purposes of **subsection (1)(d)**, a body corporate (**A**) is **related** to another body corporate (**B**) if—
- “(a) B is A’s holding company or subsidiary; or
- “(b) more than half of A’s issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or
- “(c) more than half of the issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- “(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a sub-

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stantial part of that business, is not readily identifiable;

or

“(e) there is another body corporate to which A and B are both related.

“Compare: 1988 No 234 s 5B(1)

“365E Situations not giving rise to control interests

A person (A) does not have a control interest in a share under **section 365B** merely because—

“(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the control interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or

“(b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the share on behalf of that person in the ordinary course of A’s business of carrying out those trading activities; or

“(c) A has been authorised by resolution of the directors of a company to act as its representative at a particular meeting of shareholders, or of a class of shareholders, of the company, and a copy of the resolution is deposited with the company before the meeting; or

“(d) A is appointed as a proxy to vote at a particular meeting of shareholders, or of a class of shareholders, of a company and the instrument of A’s appointment is deposited with the company before the meeting; or

“(e) A is a shareholder of a company and the company’s constitution gives the shareholder pre-emptive rights on the transfer of the shares, if all shareholders have pre-emptive rights on the same terms.

“Compare: 1988 No 234 s 6

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

“(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in **section**

365A, require a specified person to disclose full details of all (or any class of)—

“(a) control interests that the specified person has in shares of a company and of the circumstances that give rise to those interests; or

“(b) powers that the specified person has or may at any time have to acquire a control interest in shares of a company and of the circumstances that give rise to that interest; or

“(c) control interests that any other person (whom the specified person must identify by name and with current contact details) has in shares of a company and of the circumstances that give rise to the other person’s interests.

“(2) However, a matter referred to in **subsection (1)(c)** need only be disclosed to the extent to which it is known to the specified person required to make the disclosure.

“(3) **Subsection (1)** applies regardless of whether the shares referred to in **subsection (1)** have voting rights or not or are issued or yet to be issued.

“(4) **Sections 365B to 365E** apply in determining whether or not a person has a power referred to in **subsection (1)(b)** (and for this purpose every reference in those sections to a control interest must be read as including a reference to the power to acquire a control interest).

“(5) The person must disclose the information required under **subsection (1)** in accordance with any specifications under **section 365H**.

“(6) For the purposes of this section, **specified person**, in relation to the company to which the requirement under **subsection (1)** relates, means—

“(a) a shareholder in the company;

“(b) a director of the company;

“(c) a person named in a previous disclosure under **subsection (5)** as having a control interest in shares of the company.

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“(7) If a person fails to comply with **subsection (5)**, he or she commits an offence and is liable on conviction to the penalty set out in section 373(2).

“Compare: 1988 No 234 ss 34, 35; Corporations Act 2001 ss 672A, 672B (Aust)

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

“(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in **section 365A**, require a specified person to disclose control information in relation to a company.

“(2) However, the following types of control information need only be disclosed to the extent to which they are known to the specified person:

“(a) directions or instructions given to any other person:

“(b) directions or instructions—

“(i) given to the board that were not provided to the specified person; or

“(ii) given to the board when the specified person was not a director.

“(3) A specified person must disclose the information required under **subsection (1)** in accordance with any specifications under **section 365H**.

“(4) If a specified person fails to comply with **subsection (3)**, he or she commits an offence and is liable on conviction to the penalty set out in section 374(2).

“(5) For the purposes of this section,—

“**control information**, in relation to the company to which the requirement under **subsection (1)** relates, means—

“(a) any directions or instructions relating to the management and administration of the company given to a specified person (**A**) (or to the board or to any other person who is responsible for the management and administration of the company) by another person (**B**); or

“(b) any delegation of powers relating to the management and administration of the company by a specified person to another person

“specified person, in relation to the company to which the requirement under **subsection (1)** relates, means—

“(a) a director of the company;

“(b) a person named in a previous disclosure under **subsection (3)** concerning that company.

“365H Registrar may specify deadlines, form, and verification for information required under section 365F or 365G

When exercising a power described in **section 365F or 365G**, the Registrar (or a person authorised by the Registrar) may specify—

“(a) a particular form in which the information must be provided; and

“(b) a date by which the information must be provided; and

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

“Other matters relating to Registrar’s powers”.

38AAA Disclosure of information and reports

(1) Section 366(1) is amended by—

(a) omitting “purpose” and substituting “purposes”; and

(b) inserting “**365F, 365G, or 365H**” after “section 365”.

(2) Section 366(1)(g) is amended by inserting “except in the case of an authorisation under **section 365F, 365G, or 365H**,” before “any person”.

(3) Section 366 is amended by inserting the following subsections after subsection (1):

“(1A) The Registrar or any person authorised by the Registrar may give information disclosed to the Registrar under **section 365F or 365G** to a government agency for law enforcement purposes if the Registrar is satisfied that the agency has a proper interest in receiving the information.

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

“government agency means—

“(a) the Crown Law Office;

“(b) the Department of Internal Affairs;

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- “(c) the Financial Markets Authority:
 - “(d) the Government Communications Security Bureau:
 - “(e) the Inland Revenue Department:
 - “(f) the Ministry of Business, Innovation, and Employment:
 - “(g) the Ministry of Justice:
 - “(h) the New Zealand Customs Service:
 - “(i) the New Zealand Security Intelligence Service:
 - “(j) the New Zealand Police:
 - “(k) the Reserve Bank of New Zealand:
 - “(l) the Serious Fraud Office:
 - “(m) any international counterpart of the entities in
paragraphs (a) to (l)
- “law enforcement purposes means—
- “(a) the administration of this Act and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:
 - “(b) the detection, investigation, and prosecution of—
 - “(i) any offence under this Act; or
 - “(ii) any offence under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; or
 - “(iii) a money laundering offence (within the meaning of section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009); or
 - “(iv) any offence under section 143B of the Tax Administration Act 1994; or
 - “(v) any serious offence (within the meaning of section 243(1) of the Crimes Act 1961):
 - “(c) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009:
 - “(d) the enforcement of the Misuse of Drugs Act 1975:
 - “(e) the enforcement of the Terrorism Suppression Act 2002:
 - “(f) the administration of the Mutual Assistance in Criminal Matters Act 1992:
 - “(g) the investigation of matters relating to security under the New Zealand Security Intelligence Service Act 1969:
 - “(h) any action referred to in **paragraphs (a) to (g)** taken in respect of legislation of an overseas jurisdiction that

is broadly equivalent to the enactments listed in those paragraphs.”

- (4) Section 366(2) and (3) are amended by inserting “, **365F, 365G, or 365H**” after “section 365”.
- (5) Section 366(3)(c) is amended by omitting “(1) or subsection (2)” and substituting “(1), **(1A), (1B)**, or (2)”.

38 New sections 366A to 366C inserted

The following sections are inserted after section 366:

“366A Registrar’s powers to insert note of warning in register

- “(1) The Registrar may, if the Registrar thinks it is appropriate, insert a note of warning in the register in relation to a company in any of the following circumstances:
- “(a) information or documents relating to the company are subject to a requirement made under **section 365(1)(caaa)** or (c), **365F, 365G, or 365H**;
 - “(b) any of the grounds described in section 318(1)(**aaa**) or (b) to (f) apply to the company.
- “(2) If the Registrar has inserted a note of warning in relation to a company (**company A**) under **subsection (1)**, the Registrar may, if the Registrar thinks it is appropriate, also insert a note of warning in relation to any other company that shares a director with company A.

“366B Registrar must remove note of warning

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

“366C Immunity of Registrar

Civil proceedings (other than an application for judicial review or an appeal under section 370) may not be brought against the Registrar in respect of things done in good faith in the performance or intended performance of the Registrar’s functions under **section 366A or 366B**.²²

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38A Inspector's report admissible in liquidation proceedings

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

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

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

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

39AAA Persons prohibited from managing companies

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

“(a) a person has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months); or”.

39AAB Court may disqualify directors

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

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

39 New section 385AA inserted

The following section is inserted after section 385:

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

- “(1) This section applies in relation to a company that has been removed from the New Zealand register on any of the grounds described in **section 318(1)(ba), (bab), (bb), or (bc)**.
- “(2) The Registrar or the FMA may, by notice in writing given to a person, prohibit that person from being a director or promoter of a company, or being concerned in, or taking part (whether directly or indirectly) in the management of a company, during such period not exceeding 5 10 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*.
- “(3) The power conferred by **subsection (2)** may be exercised in relation to any person who the Registrar or the FMA is satisfied was, within a period of 5 years before a notice was given to that person under **subsection (4)** (whether that period commenced before or after the commencement of this section), a director of, or concerned in, or a person who took part in, the management of, a company to which this section applies, unless that person satisfies the Registrar or the FMA—
- “(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
- “(b) that it would not be just or equitable for the power to be exercised.
- “(4) The Registrar or the FMA must not exercise the power conferred by **subsection (2)** unless—
- “(a) not less than 10 working days’ notice of the fact that the Registrar or the FMA intends to consider the exercise of it is given to the person; and
- “(b) the Registrar or the FMA considers any representations made by the person.
- “(5) No person to whom a notice under **subsection (2)** applies may be a director or promoter of a company, or be concerned or take part (whether directly or indirectly) in the management of a company.
- “(6) Where a person to whom the Registrar or the FMA has issued a notice under **subsection (2)** appeals against the issue of the notice under this Act or otherwise seeks judicial review of the

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notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.

- “(7) The Registrar or the FMA may, by notice in writing to a person to whom a notice under **subsection (2)** has been given,—
- “(a) revoke that notice; or
 - “(b) exempt that person from the notice in relation to a specified company or companies.
- “(8) The Registrar or the FMA must publish a notice under **subsection (7)** in the *Gazette*.
- “(9) Every person to whom a notice under **subsection (2)** is given who fails to comply with the notice commits an offence and is liable on conviction to the penalties set out in section 373(4).”

40 Appeals from FMA’s exercise of power under section 385

- (1) The heading to section 385A is amended by inserting “**or section 385AA**” after “**section 385**”.
- (2) Section 385A(1) is amended by inserting “**or section 385AA**” after “section 385”.

41 Liability for contravening section 385

- (1) The heading to section 386 is amended by inserting “**or section 385AA**” after “**section 385**”.
- (2) Section 386 is amended by omitting “section 385 of this Act” and substituting “section 385 or **385AA**”.

42 Consequential amendment to Summary Proceedings Act 1957

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

385AA(9)

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

Consequential amendments to principal Act

43 Consequential amendments to principal Act

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

43A Section 207R amended

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

“(2) If a company fails to comply with subsection (1),—

“(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).”

Part 2

**Amendments to Limited Partnerships Act
2008**

44 Principal Act amended

This Part amends the Limited Partnerships Act 2008.

Subpart 1—One or more general partners to
live in New Zealand and other measures

45 Interpretation

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

“**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

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

46 Requirements for limited partnership

(1AAA) Section 8(3) is amended by omitting “subsection (1)” and substituting “subsections (1) and **(4)**”.

(1) Section 8 is amended by adding the following subsection:

~~“(4) A limited partnership must have 1 or more of the following:~~

~~“(a) a general partner who is a natural person and who—~~

~~“(i) lives in New Zealand; or~~

~~“(ii) lives in an enforcement country and is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country; or~~

~~“(b) a general partner that is a partnership governed by the Partnership Act 1908 and that has 1 or more partners who comply with **paragraph (a)**; or~~

~~“(c) a general partner that is a company registered under the Companies Act 1993.~~

“(4) Subject to **subsection (5)**, a limited partnership must have 1 or more of the following:

“(a) a general partner who is a natural person who—

“(i) lives in New Zealand; or

“(ii) lives in an enforcement country and is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country;

“(b) a general partner that is a limited partnership and that has 1 or more general partners who are natural persons who—

“(i) live in New Zealand; or

“(ii) live in an enforcement country and are directors of a company that is registered (except as the equivalent of an overseas company) in that enforcement country;

“(c) a general partner that is a partnership governed by the Partnership Act 1908 and that has 1 or more partners who are natural persons who—

“(i) live in New Zealand; or

“(ii) live in an enforcement country and are directors of a company that is registered (except as the

equivalent of an overseas company) in that enforcement country:

“(d) a general partner that is a company:

“(e) a general partner that is an overseas company registered under the Companies Act 1993 and that has 1 or more directors who are natural persons who—

“(i) live in New Zealand; or

“(ii) live in an enforcement country and are directors of a company that is registered (except as the equivalent of an overseas company) in that enforcement country.

“(5) Every natural person who is a general partner, or who is a director, partner, or general partner of a general partner, must be qualified under **section 19A**.”

47 Who may be partner

(1AAA) Section 18(1) is amended by omitting “Any person” and substituting “Subject to **section 8(4)**, any person”.

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

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

(b) “general” before “partner”.

(1) Section 18(1) is amended by inserting “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.”

(3) Section 18(2) is amended by omitting “A partnership governed” and substituting “Subject to subsection (1) and **section 8(4)**, a partnership governed”.

48 New sections 19A and 19B inserted

The following sections are inserted after section 19:

“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.

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- “(2) The following persons are disqualified from being appointed or holding office as a general partner of a limited partnership:
- “(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 or promoter of, or being concerned or taking part in the management of, a company within the meaning of that Act:
 - “(d) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, 383, 385, or **385AA** of the Companies Act 1993:
 - “(e) a person who is prohibited from being a general partner or promoter of, or being concerned or taking part in the management of, a limited partnership under **section 103A, 103B, 103D, or 103E** of this Act:
 - “(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:
 - “(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:
 - “(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:
 - “(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:

- “(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.
- “(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.

“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.
- “(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.

“19B Disqualified general partner still has duties or obligations under Act

A 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.”

48A Qualifications of general partners: natural persons

Section 19A(2)(f) (as inserted by **section 48** of this Act) is amended by omitting “the Securities Act 1978, the Securities Markets Act 1988,” and substituting “the Financial Markets Conduct Act 2013”.

49A Application for registration

- (1) Section 52(1) is amended by repealing paragraph (d) and substituting the following paragraphs:
- “(d) in relation to every proposed general partner who is a natural person, state—

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- “(i) his or her full name and date and place of birth; and
 - “(ii) his or her residential address; and
 - “(iii) if the residential address is in an enforcement country, whether the general partner is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country and, if so, the prescribed information; and
- “(d) in relation to every natural person who is a proposed general partner or who is a director, partner, or general partner of a proposed general partner, state—
- “(i) his or her full name and date and place of birth; and
 - “(ii) his or her residential address; and
 - “(iii) if the residential address is in an enforcement country, whether the natural person is a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country and, if so, the prescribed information; and
- “(da) in relation to every proposed general partner who is not a natural person, state the general partner’s name and address; and”.
- (2) Section 52(1)(c) is amended by inserting “and places” after “dates”.
- (2) Section 52(1) is amended by repealing paragraph (e) and substituting the following paragraphs:
- “(e) contain a list of the full names, residential addresses, and dates and places of birth of the proposed limited partners who are natural persons; and
 - “(ea) contain a list of the names and addresses of the proposed limited partners who are not natural persons; and”.

49B Contents of registers

- (1) Section 57(1) is amended by repealing paragraph (e) and substituting the following paragraph:

- “(e) the information required by **section 52(1)(d)(i) to (iii)** in relation to each general partner who is a natural person:
- “(e) the full name and residential address of—
- “(i) every general partner who is a natural person; and
- “(ii) every general partner’s director, partner, or general partner who is a natural person:
- “(ea) the name and address of every general partner who is not a natural person:”.
- (2) Section 57(1)(f) is amended by inserting “and place” after “date”.
- (3) Section 57(1)(g) is amended by inserting “and place” after “date”.
- (2) Section 57(1) is amended by repealing paragraph (f) and substituting the following paragraph:
- “(f) the date and place of birth of—
- “(i) every general partner who is a natural person; and
- “(ii) every general partner’s director, partner, or general partner who is a natural person:”.
- (3) Section 57(1) is amended by repealing paragraph (g) and substituting the following paragraphs:
- “(g) the full name, residential address, and date and place of birth of every limited partner who is a natural person:
- “(ga) the name and address of every limited partner who is not a natural person:”.
- (4) Section 57(2) is amended by omitting “and (g)” and substituting “, **(g)**, and **(ga)**”.

49C Searches of register

- (1AAA) Section 64(2) is amended by repealing paragraph (g) and substituting the following paragraphs:
- “(g) the name and residential address of—
- “(i) a general partner who is a natural person; and
- “(ii) a general partner’s director, partner, or general partner who is a natural person:
- “(ga) the name and address of a general partner who is not a natural person:”.

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- (1) Section 64(3)(c) is amended by inserting “and place” after “date”.
- (2) Section 64(3)(d) is amended by inserting “and place” after “date”.
- (2) Section 64(3) is amended by repealing paragraph (d) and substituting the following paragraph:
 - “(d) the name and date and place of birth of—
 - “(i) a general partner who is a natural person; and
 - “(ii) a general partner’s director, partner, or general partner who is a natural person.”

49CA Records of limited partnership

Section 74(1) is amended by repealing paragraph (c) and substituting the following paragraphs:

- “(c) the full name and residential address of—
 - “(i) each current partner who is a natural person; and
 - “(ii) each current partner’s director, partner, or general partner who is a natural person:
- “(ca) the name and address of each current partner who is not a natural person:
- “(cb) the last known names and addresses required by paragraphs (c) and (ca) in respect of each person who has ceased to be a partner within the last 7 years:”.

49D Annual return

Section 76(2)(e) and (f) are amended by inserting “, dates and places of birth,” after “names”.

49D Annual return

- (1) Section 76(1) is amended by adding “that contains as much of the information specified in **Schedule 2** as is prescribed”.
- (2) Section 76 is amended by repealing subsection (2).

51A Use of name by overseas limited partnership

Section 109(1) is amended by omitting “full”.

52 Regulations

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:
- “(gb) prescribing countries, States, or territories outside New Zealand for the purposes of **section 19A(2)(g)**:
- “(gc) prescribing countries, States, or territories outside New Zealand for the purposes of **section 19A(2)(h)**:
- “(gca) prescribing information required for the purposes of **section 52(1)(d)(iii)** and **paragraphs (h) and (n) of Schedule 2**.”

New Schedule 2 added

52AA New Schedule 2 added

The principal Act is amended by adding as **Schedule 2** the **Schedule 2** set out in **Schedule 2A** of this Act.

52AB Schedule 2 amended

Schedule 2 of the principal Act (as inserted by **Schedule 2A** and **section 52AA** of this Act) is amended in the manner indicated in **Schedule 2B** of this Act.

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

52A Transitional provision relating to requirement for 1 or more general partners to live in New Zealand, etc

- (1) ~~Until the expiry of 6 months~~ Before the close of the 180th day after the commencement of this section, **section 8(4)** of the principal Act does not apply to a limited partnership registered before the commencement of this section.
- (2) A limited partnership registered before the commencement of this section that does not comply with the requirements in **sec-**

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tion 8(4) of the principal Act must, within 6 months before the close of the 180th day after the commencement of this section, do the following in order to comply with those requirements:

- (a) arrange for a general partner who complies with the requirements in **section 8(4)** of the principal Act; and
 - (b) in the manner required by the Registrar, notify the Registrar of the following:
 - (i) that a general partner complies with the requirements in **section 8(4)** of the principal Act; and
 - (ii) the information required under **section 52(1)(d)(i) to (iii)** of the principal Act in relation to that general partner.
- (3) If a limited partnership fails to comply with **subsection (2)**, the limited partnership does not comply with **section 8(4)** of the principal Act (*see* **section 98A(1)(aaa)** of the principal Act).

*Transitional provision relating to general and
limited partners' place of birth information*

52B Transitional provision relating to general and limited partners' place of birth information

- (1) A limited partnership registered before the commencement of this section must provide the Registrar with the place of birth of each general partner and each limited partner who is a natural person (at the time and in the manner required by the Registrar).
- (2) If a limited partnership fails to comply with **subsection (1)**,—
 - (a) the limited partnership commits an offence and is liable on conviction to a fine not exceeding \$10,000; and
 - (b) every general partner of the limited partnership commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Subpart 2—Enhanced powers of Registrar

52C Interpretation

Section 4 is amended by inserting the following definition in its appropriate alphabetical order:

“control interest has the meaning set out in **sections 78B to 78E**”.

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”.

53 Rectification or correction of register

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

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)(aaa)** or (a), **78F, 78G, or 78H**;
 - “(b) any of the grounds described in **section 98A(1)(aaa) 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 with limited partnership A.”

55 New sections 63A and 63B—section 63A inserted

The following sections are section is 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 (other than an application for judicial review or an appeal under section 103) 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**.²²

56 Registrar’s powers of inspection

(2) Section 78(1) is amended by inserting the following paragraph before paragraph (a):

“(aaa) 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:

“(c) detecting offences against this Act.”

(4) Section 78(2) is amended by inserting the following paragraph before paragraph (a):

“(aaa) requiring a person, in relation to information provided to the Registrar, to—

“(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):

“(2A) When exercising the powers described in **subsection (2)(aaa)**, 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.”

56A New sections 78A to 78H and headings inserted

The following sections and headings are inserted after section 78:

“Registrar’s powers to identify controllers of limited partnership

“78A Purpose of sections 78B to 78H

“(1) The purpose of **sections 78B to 78H** is to ensure that the Registrar may, for law enforcement purposes, obtain adequate, accurate, and timely information on the beneficial ownership and control of limited partnerships in order to conform with New Zealand’s obligations under the FATF Recommendations.

“(2) In this section,—

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

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

“78B Control interests in partnership interests (basic rule)

“(1) In **sections 78D to 78F**, a person has a **control interest** in a partnership interest if the person—

“(a) is a partner; or

“(b) has a right (other than under the partnership agreement) to any of the following:

“(i) to share in the assets of the partnership:

“(ii) to receive a share of the distributions from the partnership:

“(iii) to receive a share of other benefits provided by the partnership to partners; or

“(c) has the power to exercise, or to control the exercise of, any decision-making powers arising from the partnership interest (where that partnership interest relates to a general partner); or

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“(d) has the power to acquire or dispose of, or to control the acquisition or disposal of, all or part of a partnership interest (where that partnership interest relates to a general partner).

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

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

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

“Compare: 1988 No 234 s 5

“**78C Extension of basic rule to powers or controls exercisable through trust, agreement, etc**

“(1) A person has a power or control referred to in **section 78B** if the power or control is, or may at any time be, exercised under, by virtue of, by means of, or as a result of a revocation or breach of, a trust or an agreement (or any combination of them).

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

“Compare: 1988 No 234 s 5A

“**78D Extension of basic rule to interests held by other persons under control or acting jointly**

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

“(a) B or B’s directors are accustomed or under an obligation (whether legally enforceable or not) to act in accordance with A’s directions, instructions, or wishes in relation to a power or control referred to in **section 78B**; or

- “(b) A has the power to exercise, or control the exercise of, 20% or more of the votes that may be cast at a meeting of shareholders of B; or
- “(c) A has the power to acquire or dispose of, or to control the acquisition or disposal of, shares that have 20% or more of votes that may be cast at a meeting of shareholders of B; or
- “(d) A and B are related bodies corporate; or
- “(e) A and B have an agreement, arrangement, or understanding to act in concert in relation to a power or control referred to in **section 78B**.
- “(2) For the purposes of **subsection (1)**,—
- “share includes—
- “(a) a partnership interest in a partnership:
- “(b) a share in a company:
- “(c) a share in an industrial and provident society:
- “(d) a share in a building society
- “shareholder means a holder of a share.
- “(3) For the purposes of **subsection (1)(a)**, **director** means,—
- “(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- “(b) in relation to a partnership (other than a limited partnership), any partner:
- “(c) in relation to a limited partnership, any general partner:
- “(d) in relation to a body corporate or unincorporate other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company.
- “(4) For the purposes of **subsection (1)(d)**, a body corporate (A) is **related** to another body corporate (B) if—
- “(a) B is A’s holding company or subsidiary; or
- “(b) more than half of A’s issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or

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- “(c) more than half of the issued shares (other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- “(d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or
- “(e) there is another body corporate to which A and B are both related.

“Compare: 1988 No 234 s 5B(1)

“78E Situations not giving rise to control interests

A person (A) does not have a control interest in a partnership interest under **section 78B** merely because—

- “(a) the ordinary business of A consists of, or includes, the lending of money or the provision of financial services, or both, and A has the control interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of A; or
- “(b) A is authorised to undertake trading activities on a licensed market and A acts for another person to acquire or dispose of the partnership interest on behalf of that person in the ordinary course of A’s business of carrying out those trading activities; or
- “(c) A has been authorised by resolution of the limited partnership’s partners (or class of partners) to act as their representative at a particular meeting of partners (or a class of partners), and a copy of the resolution is deposited with the limited partnership before the meeting; or
- “(d) A is appointed as a proxy to vote at a particular meeting of the limited partnership’s partners (or a class of partners) and the instrument of A’s appointment is deposited with the limited partnership before the meeting; or
- “(e) A is a partner of a limited partnership and the limited partnership’s partnership agreement gives the partner

pre-emptive rights on the transfer of the partnership interest, if all partners have pre-emptive rights on the same terms.

“Compare: 1988 No 234 s 6

“78F Registrar may require persons to disclose control interests and powers to get control interests

“(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in **section 78A, require a specified person to disclose full details of all (or any class of)—**

“(a) control interests that the specified person has in partnership interests of a limited partnership and of the circumstances that give rise to those control interests; or

“(b) powers that the specified person has or may at any time have to acquire a control interest in partnership interests of a limited partnership and of the circumstances that give rise to that control interest; or

“(c) control interests that any other person (who the specified person must identify by name and with current contact details) has in partnership interests of a limited partnership and of the circumstances that give rise to the other person’s control interests.

“(2) However, a matter referred to in **subsection (1)(c) need only be disclosed to the extent to which it is known to the specified person required to make the disclosure.**

“(3) **Subsection (1) applies regardless of whether the partnership interests referred to in **subsection (1)** have voting rights or not or are issued or yet to be issued.**

“(4) **Sections 78B to 78E apply in determining whether or not a person has a power referred to in **subsection (1)(b)** (and for this purpose every reference in those sections to a control interest must be read as including a reference to the power to acquire a control interest).**

“(5) The person must disclose the information required under **subsection (1) in accordance with any specifications under **section 78H**.**

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- “(6) For the purposes of this section, **specified person**, in relation to the limited partnership to which the requirement under **subsection (1)** relates, means—
- “(a) a partner in the limited partnership;
- “(b) a person named in a previous disclosure under **subsection (5)** as having a control interest in shares of the limited partnership.
- “(7) If a person fails to comply with **subsection (5)**, he or she commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- “Compare: 1988 No 234 ss 34, 35; Corporations Act 2001 ss 672A, 672B (Aust)

“**78G Registrar may require disclosure about controllers or delegates of general partners**

- “(1) The Registrar (or a person authorised by the Registrar) may, by notice given after having regard to the purpose in **section 78A**, require a specified person to disclose control information in relation to a limited partnership.
- “(2) However, control information that is directions or instructions given to any other person need only be disclosed to the extent to which they are known to the specified person.
- “(3) A specified person must disclose the information required under **subsection (1)** in accordance with any specifications under **section 78H**.
- “(4) If a specified person fails to comply with **subsection (3)**, he or she commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- “(5) For the purposes of this section,—
- “**control information**, in relation to the limited partnership to which the requirement under **subsection (1)** relates, means—
- “(a) any directions or instructions relating to the management and administration of the limited partnership given to a specified person (A) (or any other person who is responsible for the management and administration of the limited partnership) by another person (B); or
- “(b) any delegation of powers relating to the management and administration of the limited partnership by a specified person to another person

“director means,—

“(a) in relation to a company, any person occupying the position of a director of the company by whatever name called:

“(b) in relation to a partnership (other than a limited partnership), any partner:

“(c) in relation to a limited partnership, any general partner:

“(d) in relation to a body corporate or unincorporate other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company

“specified person, in relation to the limited partnership to which the requirement under **subsection (1)** relates, means—

“(a) a general partner of the limited partnership:

“(b) a person named in a previous disclosure under **subsection (3)** concerning that limited partnership.

“78H Registrar may specify deadlines, form, and verification for information required under section 78F or 78G

When exercising a power described in **section 78F or 78G**, the Registrar (or a person authorised by the Registrar) may specify—

“(a) a particular form in which the information must be provided; and

“(b) a date by which the information must be provided; and

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

“Other matters relating to Registrar’s powers”.

56B Disclosure of information and reports

(1) Section 79(1) is amended by—

(a) omitting “purpose” and substituting “purposes”; and

(b) inserting “, **78F, 78G, or 78H**” after “**section 78**”.

(2) Section 79 is amended by inserting the following subsections after subsection (1):

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“(1A) The Registrar or any person authorised by the Registrar may give information disclosed to the Registrar under **section 78F or 78G** to a government agency for law enforcement purposes if the Registrar is satisfied that the agency has a proper interest in receiving the information.

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

“**government agency** means—

“(a) the Crown Law Office:

“(b) the Department of Internal Affairs:

“(c) the Financial Markets Authority:

“(d) the Government Communications Security Bureau:

“(e) the Inland Revenue Department:

“(f) the Ministry of Business, Innovation, and Employment:

“(g) the Ministry of Justice:

“(h) the New Zealand Customs Service:

“(i) the New Zealand Security Intelligence Service:

“(j) the New Zealand Police:

“(k) the Reserve Bank of New Zealand:

“(l) the Serious Fraud Office:

“(m) any international counterpart of the entities in **paragraphs (a) to (l)**

“**law enforcement purposes** means—

“(a) the administration of this Act and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009:

“(b) the detection, investigation, and prosecution of—

“(i) any offence under this Act; or

“(ii) any offence under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; or

“(iii) a money laundering offence (within the meaning of section 5 of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009); or

“(iv) any offence under section 143B of the Tax Administration Act 1994; or

“(v) any serious offence (within the meaning of section 243(1) of the Crimes Act 1961):

“(c) the enforcement of the Proceeds of Crime Act 1991 or the Criminal Proceeds (Recovery) Act 2009:

- “(d) the enforcement of the Misuse of Drugs Act 1975:
- “(e) the enforcement of the Terrorism Suppression Act 2002:
- “(f) the administration of the Mutual Assistance in Criminal Matters Act 1992:
- “(g) the investigation of matters relating to security under the New Zealand Security Intelligence Service Act 1969:
- “(h) any action referred to in **paragraphs (a) to (g)** taken in respect of legislation of an overseas jurisdiction that is broadly equivalent to the enactments listed in those paragraphs.”

- (3) Section 79(2) and (3) are amended by inserting “, or in relation to a disclosure under **78F, 78G, or 78H,**” after “**section 78**”.
- (4) Section 79(3)(a) is amended by omitting “(1) or subsection (2)” and substituting “(1), **(1A), (1B),** or (2)”.

56C Inspector’s report admissible in liquidation proceedings

Section 80 is amended by inserting “, or in relation to a disclosure under **section 78F, 78G, or 78H,**” after “**section 78**”.

56D Exercise of powers under section 78 not affected by appeal

- (1) The heading to section 81 is amended by inserting “, **78F, 78G, or 78H**” after “**section 78**”.
- (2) Section 81(1) is amended by inserting “, **78F, 78G, or 78H**” after “**section 78**”.

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—
 - “(aaa) the limited partnership does not comply with section 8(1) or **(4)**; or
 - “(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

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- “(b) the limited partnership has failed to respond to a requirement made under **section 78(2)(aaa)** or (a); or
 - “(ba) the Registrar has reasonable grounds to believe that the limited partnership, or 1 or more of its general partners, has failed to respond to a requirement made in relation to that or another limited partnership under **section 78F, 78G, or 78H**; or
 - “(c) the Registrar has reasonable grounds to believe that the limited partnership, or 1 or more of its general partners, has intentionally provided the Registrar with inaccurate information; or
 - “(d) the Registrar has reasonable grounds to believe that the limited partnership, or 1 or more of its general partners, has failed to comply with duties relating to the limited partnership under this Act in a persistent or serious way.
- “(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—
- “(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:
 - “(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:

“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 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 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
 - “(a) a person who has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months); or
 - “(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.
- “(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.
- “(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.
- “(6) In this section, **limited partnership** includes an overseas limited partnership that carries on business in New Zealand.
- “Compare: 1993 No 105 s 382

“**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 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 permanently or for a period specified in the order.

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- “(A) The court may make an order under this section permanent or for a period longer than 10 years only in the most serious of cases for which an order may be made.
- “(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 has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
 - “(a) a person who has been convicted of an offence in connection with the promotion, formation, or management of a company (being an offence that is punishable by a term of imprisonment of not less than 3 months), or has been convicted of a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961; or
 - “(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
 - “(c) a person who has, while a director 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
 - “(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
 - “(d) a person who has, while a general partner of a limited partnership and whether convicted or not,—
 - “(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
 - “(iii) acted in a reckless or incompetent manner in the performance of his or her duties as general partner; or
 - “(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.
- “(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.
- “(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
 - “(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.
- “(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.
- “(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.

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- “(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.
- “(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 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**

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
- “(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

“**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;
- “(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:
 - “(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 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.
- “(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.
- “(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 10 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*.
- “(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

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- limited partnership in relation to which this section applies; or
- “(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—
 - “(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
 - “(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—
- “(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 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 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,—
- “(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*.
- “(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 limited partnership.
“Compare: 1993 No 105 s 385

“**103E Additional power for Registrar or FMA to prohibit persons from being involved in 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), (ba), (c), or (d)**.
- “(2) 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 10 years after the date of the notice as is specified in the notice. Every notice must be published in the *Gazette*.
- “(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 of, or concerned in, or a person who took part in, the management of, a limited partnership 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 limited partnership being a limited partnership to which this section applies; or
- “(b) that it would not be just or equitable for the power to be exercised.

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- “(4) The Registrar or the FMA must not exercise the power conferred by **subsection (2)** unless—
- “(a) not less than 10 working days’ notice of the fact that the Registrar or 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.
- “(5) No person to whom a notice under **subsection (2)** applies 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.
- “(6) Where a person to whom the Registrar or the FMA has issued a notice under **subsection (2)** appeals against the issue of the notice under this Act or otherwise seeks judicial review of the notice, the notice remains in full force and effect pending the determination of the appeal or review, as the case may be.
- “(7) The Registrar or the FMA may, by notice in writing to a person to whom a notice under **subsection (2)** has been given,—
- “(a) revoke that notice; or
 - “(b) exempt that person from the notice in relation to a specified 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.
- “Compare: 1993 No 105 s 385AA

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

- “(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.
- “(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.
- “(3) Section 103 provides for appeals from the Registrar’s acts or decisions under **section 103D or 103E**.
“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
- “(b) a creditor of the limited partnership for a debt to that creditor incurred by the limited partnership.

“Compare: 1993 No 105 s 386”

58A Court may disqualify general partners

- (1) **Section 103B(2)(c)(i)** (as inserted by **section 58** of this Act) is amended by omitting “or the Companies Act 1955, the Securities Act 1978, the Securities Markets Act 1988” and substituting “, the Financial Markets Conduct Act 2013”.
- (2) **Section 103B(8)** (as inserted by **section 58** of this Act) is amended by omitting “section 43F of the Securities Markets Act 1988, section 44F of the Takeovers Act 1993, and section 60A of the Securities Act 1978” and substituting “section 44F of the Takeovers Act 1993, and subpart 6 of Part 8 of the Financial Markets Conduct Act 2013”.

59 Consequential amendment to Summary Proceedings Act 1957

- (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:

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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 management of limited partnerships

Consequential amendments to principal Act

- 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: principles

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

- (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:
- (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):
- (d) if the rights of different shareholders will be different under a proposed arrangement or amalgamation, then those shareholders are in different interest classes.

Schedule 2

s 43

**Consequential amendments to Companies
Act 1993**

Section 63(10)

Repeal and substitute:

“(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).”

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

Insert “**385AA**,” after “385,”.

Section 151(2)(e)

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

Section 151(2)

Insert the following paragraph after paragraph (e):

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

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:
 - “(i) being a general partner of an overseas limited partnership:
 - “(ii) being a promoter of an overseas limited partnership:
 - “(iii) being concerned or taking part in the management of an overseas limited partnership.”.

Section 196(3B)

Repeal and substitute:

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

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

Section 206(2)

Repeal and substitute:

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

Section 241(4)

Insert after paragraph (b):

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

Section 280(1)(k)

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

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Section 280(1)

Insert after paragraph (k):

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

Section 373(1)

Insert after paragraph (8):

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

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

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

Section 373(2)

Insert after paragraph (h):

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

Insert after paragraph (i):

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

Insert after paragraph (s):

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

Section 373(4)

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

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

Section 373(4)—*continued*

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

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

Section 374(1)

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

Section 374(2)

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

Insert after paragraph (10):

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

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

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

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

Insert after paragraph (31):

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

Section 395

Insert after paragraph (ca):

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

Schedule 4

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

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

Schedule 2A **s 52AA**
New Schedule 2 added
Schedule 2 **s 76(1)**
Information to be contained in annual
return

The information is—

- (a) the limited partnership's name:
- (b) its registered number:
- (c) the address of its registered office:
- (d) its address for service:
- (e) the full name, residential address, and date and place of birth of—
 - (i) every general partner who is a natural person; and
 - (ii) every general partner's director, partner, or general partner who is a natural person:
- (f) the name and address of every general partner who is not a natural person:
- (g) the full name, residential address, and date and place of birth of—
 - (i) every general partner who is a natural person and who has ceased to be a general partner since the last annual return; and
 - (ii) every general partner's director, partner, or general partner who is a natural person and who has ceased to be a general partner since the last annual return:
- (h) if the natural person meeting the residency requirement under **section 8(4)** is resident in an enforcement country, the prescribed information in respect of the company or companies in that country of which the natural person is a director:
 - (i) the name and address of every general partner who is not a natural person and who has ceased to be a general partner since the last annual return:
 - (j) the full name, address, and date and place of birth of every limited partner who is a natural person:
 - (k) the name and address of every limited partner who is not a natural person:

Schedule 2—continued

- (l) the full name, address, and date and place of birth of every limited partner who is a natural person and who has ceased to be a limited partner since the last annual return:
 - (m) the name and address of every limited partner who is not a natural person and who has ceased to be a limited partner since the last annual return:
 - (n) any other prescribed information.
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Schedule 2B **s 52AB**
**Schedule 2 of principal Act (as inserted
by Schedule 2A and section 52AA of this
Act) amended**

Insert after **paragraph (l)**:

- “(la) a statement as to whether the limited partnership at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products under a regulated offer (as defined in section 41 of the Financial Markets Conduct Act 2013):
- “(lb) a statement as to whether the limited partnership at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products for which a disclosure document was required to be provided under clause 26 of Schedule 1 of the Financial Markets Conduct Act 2013, and, if so, the exclusion under that schedule that the offeror relied on:
- “(lc) a statement as to whether the limited partnership at any time since the last annual return or, in the case of the first annual return, since the date of registration has been the offeror of financial products and has knowingly relied on an exclusion under clause 3(2)(b) or (3), 4(3), 8, 10, 11, 12, 15, 16, or 19 of Schedule 1 of the Financial Markets Conduct Act 2013, and, if so, which of those exclusions the offeror relied on:”.
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Schedule 3
**Consequential amendments to Limited
Partnerships Act 2008**

s 60

Section 65

Insert after paragraph (d):

“(db) by any person for the purpose of determining whether the Registrar has inserted a note of warning in relation to a limited partnership:”.

Section 90

Add:

“(j) the limited partnership, or 1 or more of its general partners, has intentionally provided the Registrar with inaccurate information:

“(k) the limited partnership, or 1 or more of its general partners, has failed to comply with duties relating to the company under this Act in a persistent or serious way.”
