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OFFICE OF THE MINISTER
FOR ECONOMIC DEVELOPMENT

The Chair
CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE

NEW ZEALAND COMPANY REGISTRATION PROCESS

PROPOSAL

1 This paper seeks direction from Cabinet regarding the possible introduction of a number of statutory measures aimed at strengthening the New Zealand company registration regime to:

a Address threats to the integrity and reputation of New Zealand's companies regime; and

b Give the Registrar of Companies ("Registrar") enhanced powers to respond effectively to risks which might arise in relation to the integrity of information recorded on the companies register.

2 The objective of these proposals would be to maintain and enhance the current high reputation of New Zealand as a place to do business, which is at least in part due to our company registration system and the New Zealand company form. The Companies Act 1993 has basic and adaptable requirements for the incorporation of companies. These are: a name, one or more shares, one or more shareholders (who may have limited liability), and one or more directors.

The implementation of these proposals requires amendment to existing legislation.

EXECUTIVE SUMMARY

4 There is evidence that individuals and groups (particularly offshore interests) are misusing the New Zealand company incorporation process and consequently threatening the international reputation of New Zealand. One recent case to receive significant publicity, both in New Zealand and internationally, is that of SP Trading Limited, where a New Zealand-incorporated company controlled from overseas was involved in chartering a plane later used in weapons trafficking in contravention of United Nations sanctions. High profile or repeated instances of foreign-controlled New Zealand companies

engaging in criminal activities overseas is likely to seriously impact New Zealand's international standing.

5 The particular phenomena that sit behind these concerns relating to New Zealand's company registration system are:

a The unprecedented promotion of New Zealand-incorporated companies to wholly overseas interests by New Zealand and overseas company formation agents and brokers; and

b The ability of persons based overseas to register companies in New Zealand via the internet, with no apparent intention of operating in New Zealand.

6 Officials in the Ministry of Justice are currently considering substantive reform in the context of Anti-Money Laundering (**AML**) reforms and in connection with New Zealand's evaluation by the Financial Action Task Force (**FATF**) report, to which New Zealand must respond by October 2011. In the present context, one of the significant proposed reforms is to bring company formation agents within the scope of AML legislation. This will require them to be supervised and to undertake due diligence on their customers. In conjunction with this work, further, more substantive reforms to legislation relating to the activities of companies will be considered. However, I seek the direction of Cabinet as to whether it would also be appropriate in the short term to implement a limited number of statutory measures aimed at strengthening the New Zealand company registration regime, given that the more substantive work already underway will take some time to complete.

7 Accordingly, these proposals should be seen as part of a wider overall package of reforms to strengthen New Zealand's company registration system, while at the same time maintaining its reputation as a good and easy place in which to conduct business. In the medium term there is a broader range of issues arising out of New Zealand's obligations as a member of FATF. As well as AML issues, in the corporate law area these include concerns around shell companies and difficulties in identifying beneficial ownership of companies. In this context a shell company refers to a company which is party to a number of transactions without itself having any significant assets or operations. Such companies are often formed to hide the true parties to the transaction. This lack of transparency is further underlined by practices such as the registered shareholder of the company holding the shares on trust for a third party and the registered directors granting wide-ranging powers of attorney over the management of the company. These act to obscure the ultimate managers and beneficial owners of the company.

8 It needs to be stressed that the measures recommended in this paper will not be a "silver bullet" to prevent all future cases such as SP

Trading Limited and other similar instances of criminal and suspect activity. They will, however, strengthen the ability of the Registrar to test the bona fides of directors and the integrity of information supplied by company incorporators, and facilitate investigation and more targeted consequential action as appropriate. This will help deter those minded to exploit the highly regarded New Zealand company incorporation process for criminal and other suspect activities.

9 There are four broad groups of proposals that could be implemented in the short term which I believe would go some way towards achieving this outcome:

a Requiring companies to appoint at least one director or an agent who is ordinarily resident in New Zealand:

b Requiring directors to supply date and place of birth information;

c Requiring all companies to apply for an IRD number as part of their registration application process; and

d Enhancing the ability of the Registrar to investigate, respond to or remedy issues arising in regard to the bona fides of directors and shareholders and any integrity or compliance issues relating to company registration.

10 These changes could be implemented relatively quickly and are consistent with the objective of maintaining New Zealand's reputation as an easy place in which to do business.

11 If all companies incorporated in New Zealand were to have either a director who is ordinarily resident in New Zealand, or a "local agent" who is resident in New Zealand, the Registrar and other parties would more easily be able to confirm the bona fides of those behind the company, test the accuracy of the personal particulars supplied as part of the registration process, and (where appropriate) hold someone to account for any breaches of the law. In order to minimise the cost to business emanating from well-regulated jurisdictions, certain exemptions to this requirement could apply where the company has directors resident in approved foreign jurisdictions, for example, Australia.

12 Requiring directors to provide information regarding their date and place of birth to the Registrar, while not constituting full identity verification, would provide an improvement to the ability of the Registrar to ensure that he is dealing with the correct individual. This birth information would not be available for public searching, however, but would be able to be used by the Registrar and enforcement agencies in order to carry out their statutory functions.

13 The third proposal is that all companies which register in New Zealand should be required to apply for an IRD number. About 80% of companies already do so as part of an optional service provided by the Companies Office; and a further significant percentage go on to obtain a number shortly after incorporation. The aim of this requirement would be to provide a disincentive to those seeking to take advantage of New Zealand's high international standing, but which do not intend to carry out lawful business in New Zealand.

14 Under the Companies Act 1993 the sanctions available to the Registrar to respond to recent cases which have attracted media interest are almost exclusively criminal. Where individuals are located offshore, the deterrent effect of and the ability to resort to such sanctions is clearly limited. The final proposal is therefore to introduce enhanced powers for the Registrar to enable him to undertake effective investigation and consequent administrative action, including:

a The power to require someone to confirm or correct information on the Companies register;

b The ability to "flag" a record on the Companies Office website as being under enquiry as to the integrity of the information or potential non-compliance with the Act;

c The power to remove from the register a disqualified or prohibited person who acts as a director in contravention of such disqualification or prohibition; and

d The power to ban a person from being involved as a director or manager of a company where they have provided inaccurate information to the Registrar or have persistently failed to comply with the requirements of the Companies Act or the Financial Reporting Act.

15 These proposals would impose relatively low additional compliance costs on companies. New Zealand-based companies would face almost no additional compliance costs, since such companies will already meet the requirements of a New Zealand-based director and an IRD number, and will only have to meet the additional requirement of supplying birth information of the directors. In the case of companies which have offshore directors, however, there would be some additional compliance costs by way of the requirement for a New Zealand based director or agent (although these would be mitigated by the proposed exemption for approved foreign jurisdictions). It should be noted, however, that the resident director proposal goes no further than the minimum requirements imposed by other comparable jurisdictions.

BACKGROUND

16 The media reporting of the SP Trading Limited case in late 2009/early 2010 highlighted certain issues with New Zealand's

company registration regime. SP Trading Limited is a New Zealand-registered company which was involved in the charter of a plane that was intercepted at Bangkok airport with a cargo of weapons. The flight originated in North Korea. UN Security Council sanctions prohibit trading in arms with North Korea. SP Trading Limited had no business presence in New Zealand. Its sole director was a New Zealand-based nominee director who had signed a power of attorney handing over all authority over the affairs of SP Trading Limited to two Ukrainian individuals. The sole shareholder was another New Zealand registered company, which held those shares on trust for the same two Ukrainians.

17 Investigations by the Organised and Financial Crime Agency of New Zealand (OFCANZ) in the SP Trading matter have provided further details on the scope of the problem. They confirm that the basic *modus operandi* employed in the formation of SP Trading has been followed by a number of New Zealand-based company formation agents, who sell a "package" of company documents to an overseas company broker. In many of the cases which have come to OFCANZ's attention, both the sole director and the sole shareholder are based overseas. OFCANZ considers that many of the clients of the formation agent responsible for the formation of SP Trading are involved in illegal activity. From January 2006 to February 2010 New Zealand Police and the New Zealand Customs Services received between them 134 enquiries relating to 143 New Zealand-registered companies. These companies were implicated in criminal activity overseas, including smuggling, money laundering and tax fraud.

18 IRD consider that if these companies are involved in criminal activity overseas, they are also likely to be involved in tax fraud or evasion. A New Zealand-registered company with its effective base in Panama recently committed a significant tax fraud in the United Kingdom. This sort of fraud affecting our OECD partners impacts negatively on New Zealand's international reputation. IRD is concerned that New Zealand will receive a poor report in an OECD forum later this year because it is unable to provide information which many other countries would be able to supply about such companies.

19 The Reserve Bank has similar concerns with respect to "overseas financial institutions", of which approximately 1000 have been incorporated in New Zealand over the past three years. These shell companies are used to carry on banking activities without the necessary regulatory controls, and many appear to be engaged in fraudulent activities.

20 New Zealand's highly-regarded company registration requirements are more straightforward than those of other similar jurisdictions, such as Singapore, Australia, and Canada. In particular, New Zealand makes extensive use of the internet for the process of company registration. It is unique in that it is a low-cost jurisdiction both in terms of entry costs and due to the fact that it does not impose an

annual licensing fee. As a result, it is an attractive jurisdiction in which to incorporate a company.

21 There is a risk that people who wish to conduct unlawful activities overseas may increasingly seek to incorporate companies in New Zealand, in order to benefit from New Zealand's positive reputation. This may provide a veneer of legitimacy with which to facilitate their unlawful conduct. The SP Trading case has became a very visible focus of such concerns.

22 While I believe that the prevalence of such cases is still relatively low in comparison to the total number of companies registered, and similar issues exist in other jurisdictions of equal standing, a number of agencies consider that New Zealand's international standing has already been affected and believe that further high-profile incidents could see it seriously damaged.

COMMENT

23 It is impossible to impose a set of requirements in the company registration process that will entirely prevent the establishment of companies which undertake criminal or suspect activity overseas. However, there are features of New Zealand's registration processes which could be improved to bring our companies law more into line with other comparable jurisdictions. Where New Zealand-registered companies are used for overseas criminal activities these changes will provide some deterrence to those using these companies (and their formation agents), and provide greater disincentives to use New Zealand as a country for this type of behaviour.

24 I therefore propose that Cabinet consider a limited number of measures relating to the company registration process. These measures are aimed at enhancing New Zealand's standing as a well-regulated jurisdiction in which to carry on business. The objective of these proposals is to better ensure that the current high reputation of New Zealand company registration system and New Zealand companies is maintained, while maintaining a system of low compliance costs for bona fide businesses. I believe they should be considered in light of the recent events and the threat they pose to New Zealand's international reputation.

25 I emphasise that these measures are limited in nature and relate to the company registration process only. Further work will need to be undertaken in order to resolve other issues around the abuse of the New Zealand corporate structure by offshore criminal interests. To that end, officials will consider a range of other mechanisms, including some in relation to AML and New Zealand's response to FATF, that could further deter the use of New Zealand registered companies for activities like those of SP Trading Limited. This might include matters such as:

a Regulation or prohibition of nominee directors;

b Recording the beneficial ownership of companies;

c Measures concerning open-ended powers of attorney;

d Identification or verification of the identity of directors and shareholders, for example by way of a unique identifier such as a passport number;

e Dealing with the issues of shell financial institutions; and

f Regulation of company formation agents by including them as reporting entities under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

26 Such measures require greater consideration and consultation than the measures proposed in this paper. They are therefore progressing on a slower timeframe. Justice have the lead on matters relating to New Zealand's obligations to FATF and wider justice sector-related issues, including international criminal activity. Officials have prepared a discussion paper on the regulation of company formation agents. In addition, the recent MED discussion paper on the Review of Securities Law seeks views on the public enforcement of directors' duties. It highlights the position in Australia, where directors of a company can be prosecuted if they are reckless and fail to exercise their powers for a proper purpose.

Ease of doing business

27 New Zealand possesses an enviable reputation for ease of doing business, ranked number one in the World Bank Doing Business indicators (for starting a business) in both 2008 and 2009 and and number two in the overall "Ease of Doing Business" ranking behind Singapore. It is necessary to ensure that any proposed measures do not unduly impede the activities of New Zealand companies with foreign ownership legitimately carrying on business. The measures set out below aim to strike an appropriate balance between deterring the sorts of activities highlighted above and ensuring ease of business for New Zealand companies.

New Zealand Resident Director or New Zealand Agent

28 The first option is to introduce a requirement for all New Zealand-registered companies to have at least one representative person resident in New Zealand. This could be achieved in one of two ways:

a Requiring all companies to have at least one director who is resident in New Zealand; or

b Where a company does not have at least one director resident in New Zealand, requiring it to appoint a "local agent" who is resident in New Zealand.

New Zealand Resident Director

29 New Zealand company law is out of step with that of comparable overseas jurisdictions (including Australia, Singapore and Canada) which require at least one director to be resident in the "home" country. Under this option New Zealand would align its company law to introduce a New Zealand resident director requirement.

30 This would have the benefit of ensuring that there is at least one person legally responsible for the affairs of the company resident in New Zealand. This would be within the existing, well-established framework of directors' duties. The Registrar would be able to look to the resident director to provide information about the company and be accountable for that information. The current prosecution of the New Zealand-based director in the SP Trading case shows that the New Zealand authorities will take strong action where those directors do not take their obligations seriously. However, that sanction is not available where the directors are based overseas. In this context, it is noteworthy that SP Trading Ltd's sole shareholder and sole director are now based in Vanuatu. The evidence from OFCANZ is that a number of New Zealand companies where neither the director nor shareholder has any connection with New Zealand are sold to overseas brokers.

31 This requirement would mean that companies that do not already have New Zealand-resident directors will need to appoint a director. They would then have a substantive connection with New Zealand and an identifiable individual available for New Zealand authorities to question if any issue concerning the registration or the overseas activities of the company arose. Those individuals would run the risk of prosecution if, for example, the information they provided to the Registrar was false or misleading. This would provide a disincentive to individuals acting for directors based outside of New Zealand, where the bona fides of those external directors was in doubt.

32 Such a requirement would not cause issues for New Zealand-based businesses, as most companies with a business presence in New Zealand will comply with this requirement. Some international companies, however, may have all of their directors residing offshore and may be reluctant to appoint a New Zealand resident director. The limited exemption proposal I set out below should resolve this issue for most businesses where they also have a presence in an approved jurisdiction.

New Zealand Local Agent

33 A less intrusive alternative to the New Zealand resident director proposal would be to require a New Zealand resident "local agent".

Local agents would be required to accept service of legal proceedings and ensure that the company met its disclosure and maintenance of records obligations under the Companies Act. They would not have any say in the operation of the company.

34 Such a local agent would be required to meet certain statutory qualifications (e.g. they must be a natural person and not be an undischarged bankrupt or disqualified from being a director). They would:

a Be required to provide evidence of their valid appointment and continuing authority;

b Be authorised to accept service or notices on the company's behalf;

c Be required to file or give any information about the company to the relevant regulatory agencies; and

d Be liable for any penalties imposed on the company for any breach by the company of the Companies Office filing requirements under the Companies Act (for example, the requirements to file documents, and to be responsible for custody and maintenance of share registers etc.)

35 As the local agent concept is new to New Zealand law, the rights and obligations on a local agent would need to be carefully considered to ensure that they are confined to being administrative in nature and not so onerous as to constitute de facto directors' duties, which would deter individuals from taking up an essentially representative role. As a result this option may take longer to implement than the requirement for a New Zealand resident director.

36 All public sector agencies consulted on this paper expressed reservations regarding this alternative. They considered that the accountability and liabilities of such a company officer are likely to be negligible, and thus the requirement is unlikely to provide an effective deterrent.

Exemptions for Approved Jurisdictions

37 For either the resident director or local agent options described above I propose to have certain exemptions, particularly for Australian-owned New Zealand companies and potentially for jurisdictions where there are reciprocal information sharing arrangements. Under this proposal, companies which have at least one director resident in an approved overseas jurisdiction which has reciprocal enforcement or information sharing arrangements with New Zealand would be exempt from the requirement to appoint a New Zealand resident director or local agent. It would mitigate the compliance costs to companies from approved jurisdictions which do not already have New Zealand-resident

directors, and enable New Zealand authorities to leverage off the registry integrity measures existing in approved jurisdictions, ensuring that the measure is only as burdensome as necessary to achieve the desired public policy objective.

Director Date and Place of Birth Information

38 Currently directors are required to submit to the Registrar information regarding their name and residential address. Directors are not required to submit their date or place of birth. I do not consider a residential address alone is a comprehensive tool for identification. It is not uncommon for more than one person with the same name (e.g. father and son) to reside at the same residential address. Where enforcement or compliance action is required against an individual director, clear and accurate identification is desirable. This proposal thus supports the proposal for New Zealand-resident directors or local agents, by helping to ensure that those individuals provide more information to allow the Registrar to verify their identity if required.

39 Other related registers in New Zealand also require this information. For example, the Limited Partnerships Act 2008 requires all general and limited partners to supply their dates of birth as part of the application for registration. To protect directors' privacy that information is not publicly accessible. These arrangements have been in force for almost two years without the Registrar having received any concerns or complaints regarding its operation.

40 The United Kingdom requires place and date of birth information from those consenting to act as directors. Singapore and Hong Kong in addition require passport or identity card numbers. Requiring directors to provide their date and place of birth would also bring New Zealand company law into line with the Australian Corporations Act. This will in turn facilitate the harmonisation of the registration process between New Zealand and Australia.

Mandatory IRD Numbers

41 Under this proposal all companies would be required to apply for an IRD number as part of their application for registration. Requiring a mandatory IRD number would provide an additional disclosure or verification step to off-shore interests selecting New Zealand as a jurisdiction of convenience, while at the same time providing a service for commercially minded companies which will be either cost neutral or actually reduce their compliance costs.

42 Currently the Companies Office offers the option of obtaining a company IRD number as part of the registration process. This removes the need to provide the same information twice to two separate agencies. About 80% of companies use this service.

43 The requirement for an IRD number entails submitting personal information relating to individual directors of companies. This information would be subjected to the usual checks carried out by IRD and would, therefore, provide another level of verification for those involved with New Zealand-registered companies based and operating overseas. It will not entail any change to the existing data sharing arrangements between the Companies Office and IRD.

44 Again, this measure does not offer a complete solution to the problem of New Zealand being used as a jurisdiction of convenience. Several New Zealand company formation agents apply for IRD numbers and bank account numbers as a matter of course for their clients, in an attempt to add further substance to the persona of the company as a New Zealand registered entity. Even so, the measure leaves open the opportunity for IRD to introduce enhanced verification procedures in the future.

Enhanced Powers for the Registrar

45 The Registrar currently has limited powers of inquiry and intervention to test the integrity of company information. This proposal would give the Registrar enhanced powers to investigate, respond to or remedy issues arising in relation to the bona fides of directors and shareholders, and any integrity or compliance issues relating to companies. In particular, the following powers could be given (or existing powers strengthened) to allow the Registrar to:

a Require companies, directors, shareholders and/or local agents to confirm or correct existing information on the Companies Register;

b "Flag" on the Companies Office website a company's registration in certain circumstances;

c Remove a company from the Companies Register in certain circumstances;

d Remove a director from a company if that person is disqualified under the Companies Act;

e Extend the criteria for the imposition of management banning orders to include persistent non-compliance with the filing and reporting obligations of the Companies and Financial Reporting Acts or where they have provided inaccurate information to the Registrar; and

f To the extent necessary, extend the Registrar's investigation powers to matters where a company or its directors have not complied with the disclosure requirements of the Companies Act.

46 As is the case with other proposals in this paper, these enhanced powers will not, in themselves, defeat the opportunity for off-shore interests to use New Zealand as a corporate jurisdiction of convenience. These proposals will, however, enable improved investigation and enforcement, and timely public notice of irregularities around information held on the Register about a company without imposing additional compliance costs on legitimate business activity.

Confirm or correct existing information

47 From time to time the Registrar becomes aware that certain information on the Register is inaccurate. This may be due to simple oversight. For example, a director's address was correct at the time of registration, but that director has since moved. However, sometimes inaccuracies are deliberate.

48 The Companies Act provides a criminal offence for providing false statements to the Registrar, and certain other criminal offences for failure to provide updated records to the Registrar. The Registrar also has the power to correct the Register in certain circumstances, but (with the exception of clerical error), only on application from a person and only after giving certain public notice. Finally, the Registrar has a limited power to inspect a company and its records. However this is a relatively formal process.

49 Given the importance of the accuracy of the information on the Register, the Registrar could be given wider authority to require a person (whether company, director or shareholder) to either confirm that the information about that person is correct, or to provide updated information. This would be a relatively simple and straightforward mechanism to improve the accuracy of the information on the Register, without the more complicated and formal processes of correction or inspection.

50 Further, the existing offence provisions relating to failure to provide information and providing false statements to the Registrar could be extended to apply to any information required by the Registrar. In addition, the new enforcement powers described below could be made applicable in cases of failure to provide information or providing false information. This would enable the Registrar to act quickly to deter and disrupt the activities of those who provide false information concerning the companies with which they are associated.

Flag registration

51 Under this proposal the Registrar would be given the discretionary power to "flag" a company's record on the Companies Office website to show that it is under investigation in certain circumstances. This would provide a public notice that there may be material concerns about information on the register relating to that company which is the subject of inquiry by the Registrar. It would not

indicate any actual wrongdoing or affect the legal powers of the company. This would ensure that persons dealing with the company are aware of the data integrity concerns of the registry. Accordingly, bona fide businesses would be alerted to such companies and the "flagged" companies would be subject to heightened scrutiny from the legitimate businesses with which they do business. As such, it provides a heightened level of awareness and scrutiny. The discretion to "flag" a company would be exercisable in the following circumstances:

a Where the Registrar has reasonable grounds to believe that the company or its directors or shareholders may have provided inaccurate information for the register, or in response to a request from the Registrar; or

b Where the Registrar has reasonable grounds to believe that the company or its directors or shareholders may be in persistent breach of the Companies Act or the related Financial Reporting Act. This would not apply to minor or transitory breaches of the Companies Act; or

c Where the Registrar has reasonable grounds to believe that the company may have ceased to carry on business. The Registrar already has the power to remove a company from the Register where it has ceased to carry on business; but as this process takes many weeks, as a precursor to removal I propose that the record be "flagged".

Removal from the Companies Register

52 The Registrar has the power to remove a company from the Register (strike it off) in certain circumstances, for example where the company has ceased to carry on business.

53 Under this proposal, the Registrar would also have the power to remove a company from the register for the grounds specified in paragraph 51, above. The removal provisions under the Companies Act contain a range of procedural safeguards to enable companies to have adequate notice of the intended removal of a company, to enable affected parties to object to an intended removal and to ensure a transparent and fair process. These safeguards would equally be applied to a removal of a company following its failure to resolve the issues raised in the "flagging" process. The proposal would allow the Registrar to take relatively quick and inexpensive administrative processes to end the activities of companies whose bona fides were in serious doubt, or which had persistently breached their legal obligations.

54 The Registrar would retain the existing powers to bring criminal prosecutions for breaches of the Companies Act.

Removal of director

55 As discussed above, the Companies Act 1993 provides that certain persons are disqualified from acting as company directors. For example, a person who has been convicted in New Zealand of a crime involving dishonesty is prohibited from managing a company. While the Act provides that it is an offence for a person to act as a director in contravention of this prohibition, the Registrar has no ability to simply remove the person from the Register. Furthermore the Act does not disqualify a director with equivalent convictions in another country.

56 The existence of the prohibition from acting as director, coupled with the ability to prosecute where a person acts in contravention of the prohibition, are in my view undermined by the fact that there is no legal ability for the Registrar to take simple administrative steps to prevent a disqualified person continuing to act as a director or being appointed as a director pending any prosecution and by the focus on New Zealand convictions.

57 I propose, therefore, that the Registrar would be empowered to remove from the public record a director of a company where the person is disqualified or prohibited under the Companies Act from being a director. Further work will need to be done on how best to deal with situations where directors have a criminal record or have been banned from serving as a director in another country.

58 This proposal will make it more difficult for suspect companies to find New Zealand-based directors or local agents to act for them. The evidence from OFCANZ, confirmed by searches of the Companies Register, is that limited numbers of people are engaged as the sole directors of a large number of suspect companies. If any of those people are banned as directors, the Registrar would be able to remove them as directors from all of the companies with which they are involved. This would then leave the company at risk of being "flagged" and ultimately removed from the Register for persistent breach of its legal obligations. Again, the proposal makes it more difficult for suspect companies to do business in New Zealand, while retaining the ease of business for legitimate companies which comply with their obligations.

Management banning orders

59 The Registrar has the power to ban certain persons from being a director or involved in the management of a company for up to five years.[1] This arises invariably from their mismanagement causing company failure. The Court has the power to ban persons in a wider range of circumstances, such as where the person has been convicted of a crime involving dishonesty, or has persistently failed to comply with

[1] The recent MED discussion paper on the Review of Securities Law seeks views on extending the maximum period for Registrar-imposed bans to ten years, and allowing the High Court to impose indefinite bans (increased from the current maximum of 10 years).

the requirements of a number of enactments which govern business such as the Companies Act 1993, the Securities Act 1978 or the Securities Markets Act 1988.

60 In practice, the Registrar has been far more active in issuing management bans than the Courts because the more expeditious and less expensive administrative process has served in most cases. Only the High Court, however, has the power to ban a director for persistently failing to comply with the requirements of the Companies Act.

61 Under this proposal the Registrar's power to make banning orders would expand to allow him to ban a person who has been a director of a company removed from the register on the grounds in paragraph 51(a) and (b) above, and whose acts or omissions have contributed to such removal. As is the case currently, the director would be banned for up to five years. As with the existing management bans imposed by the Registrar, where the person was the director of two or more companies that have been removed, the onus would shift to the director to show that he/she has not contributed to the circumstances giving rise to the removal of the companies.

62 The Companies Act provides a range of procedural safeguards that the Registrar must satisfy prior to banning a person. These include the requirements for notice to be given to the director and the ability for that person to make representations to the Registrar. The Companies Act also contains a right of appeal against decisions of the Registrar. These safeguards would equally apply to any extended power of the Registrar to prohibit directors.

63 The banning of a director would see that person removed as a director from all of the companies they were associated with, in accordance with the proposal at paragraphs 55 to 58, above

Banning local agents

64 If the proposals relating to local agents are adopted, to ensure consistency, the management banning orders discussed above would need to be extended to local agents. That is, a person banned from acting as a director would be banned from acting as a local agent too, and a person that is the local agent of a removed company could be banned from acting as either a director or local agent.

Limited Partnerships

65 My concerns relating to registration processes under New Zealand company law extend to the registration of limited partnerships under the Limited Partnerships Act 2008. My officials have noticed from the inception of the limited partnerships regime that there has been a high uptake by offshore partnerships which have no presence in New Zealand and carry out all of their business offshore. As with the

offshore companies, there is concern as to the activities of many of the limited partnerships. Officials are aware that some company formation agents (who register offshore shell companies) are also in the business of forming limited partnerships for foreign clients.

66 I therefore propose that, to the extent that Cabinet agrees to the proposals for reform suggested above, they should apply also to limited partnerships. Officials would need to carry out some further work to identify the necessary adjustments to take into account differences between the entities such as the fact that limited partnerships do not have directors, but instead have a combination of general and limited partners, and report to me with proposals to align the requirements for limited partnerships.

International Obligations

International Funds Service Development Group

69 The International Funds Services Development Group (IFSDG) was established to investigate the opportunities available to New

Zealand to become an Asia-Pacific funds domicile and funds administration centre where collective investment schemes can be incorporated and serviced. In their pending final report to Ministers, the IFSDG raises the issue that the registration and maintenance of a New Zealand company does not require a single resident director. In their view, this is incompatible with establishing New Zealand as a trusted location for international financial services, largely because of enforcement concerns. The requirement of at least one resident director would aid accountability and better protect New Zealand's business reputation. Therefore, the proposals within this Cabinet paper are consistent with the recommendations of the IFSDG and would facilitate New Zealand's endeavours in this area.

CONSULTATION

70 The Treasury, Ministry of Justice, New Zealand Police, Reserve Bank, OFCANZ, Department of Internal Affairs, IRD, Privacy Commissioner, Securities Commission and Ministry of Foreign Affairs and Trade have been consulted on the contents of this paper. The Department of Prime Minister and Cabinet has been informed. Their comments have been taken into account in the preparation of this paper.

71 Targeted consultation has been carried out with the Commercial and Business Law committee of the New Zealand Law Society, the New Zealand Institute of Chartered Accountants, the Institute of Directors and Business New Zealand.

Their comments were taken into account in the preparation of this paper.

FISCAL IMPLICATIONS

72 The enhanced powers of the Registrar may give rise to enforcement action. Any costs to the Companies Office arising out of these proposals would be absorbed within the current baseline funding for its current enforcement functions.

73 IRD has noted that a significant increase in company registration is within its present capability to manage, although it could affect its processing workflows. They consider that there is possibility that the proposal for mandatory IRD numbers could involve additional expense, although no costing work has been done.

HUMAN RIGHTS

74 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993.

LEGISLATIVE IMPLICATIONS

75 Amendments to the Companies Act 1993 and the Limited Partnerships Act 2008 would be required If these proposals are approved.

REGULATORY IMPACT ANALYSIS

76 Regulatory Impact Analysis Requirements

The Regulatory Impact Analysis requirements apply to the proposals contained in this paper, and therefore a Regulatory Impact Statement (RIS) is attached to this paper. The RIS has been reviewed by the regulatory impact analysis review panel of the Ministry of Economic Development.

77 Quality of the Impact Analysis

The Deputy Secretary, Economic Strategy Branch, Ministry of Economic Development, and members of the Regulatory Impact Analysis Review Panel have reviewed the RIS prepared by the Ministry of Economic Development and associated supporting material, and consider that the information and analysis summarised in the RIS is sufficiently comprehensive and robust, and effectively communicated to enable Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

78 Consistency with Government Statement on Regulation

I have considered the analysis and advice of my officials, as summarised in the attached RIS and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- Are required in the public interest
- Will deliver the highest net benefits of the practical options available, and
- Are consistent with our commitments in the Government Statement on Regulation

PUBLICITY

79 The Ministry of Economic Development will post a copy of this paper and the accompanying RIS on its website and that of the Companies Office.

RECOMMENDATIONS

80 It is recommended that the Committee

1 **NOTE** that there is a risk that New Zealand could become a jurisdiction of choice for criminal interests that wish to incorporate a company in a reputable jurisdiction, with the potential for harm to New Zealand's international reputation as a result;

2 **NOTE** that work on broader issues relating to corporate law and AML requirements will continue;

3 **NOTE** that other comparable jurisdictions require at least one director to be ordinarily resident in the jurisdiction in which the company is registered;

4 **NOTE** that the International Funds Services Development Group is likely raise the issue that the registration and maintenance of a New Zealand company does not require a single resident director as an obstacle to establishing New Zealand as a trusted location for international financial services;

5 **AGREE** that :

5.1 The Companies Act 1993 be amended so that all New Zealand-registered companies must have at least one director resident in New Zealand;

OR

5.2 While recognising that it may have limited deterrent effect, the Companies Act 1993 be amended to require all New Zealand-registered companies have at least one director *or a local agent* resident in New Zealand;

OR

5.3 There should be no new requirement for either a New Zealand resident director or local agent;

6 **AGREE** that, should Recommendation 5.1 or 5.2 be accepted, companies which have a director resident in a jurisdiction which has entered into information sharing arrangements with the Registrar of Companies (e.g. Australia) by exempted from the requirements of the Recommendation;

7 **AGREE** that:

7.1 The Companies Act 1993 be amended to require directors to provide date of birth and place of birth information to the Registrar when they are appointed;

OR

7.2 There should be no new requirement for directors to provide date and place of birth information to the Registrar when they are appointed;

8 **AGREE** that:

8.1 The Companies Act 1993 be amended to require all companies to apply for an IRD number as part of the company registration process;

OR

8.2 There should be no mandatory requirement for companies to apply for an IRD number as part of the company registration process;

9 **AGREE** that:

9.1 The Companies Act 1993 be amended to provide the following additional or enhanced powers for the Registrar:

9.1.1 The power to require companies to confirm or correct information on the Register;

9.1.2 The power to "flag" records on the Register as being under investigation, if:

9.1.2.1 The Registrar has reason to believe that the company or its directors or shareholders have provided inaccurate information on the Register, or in response to any request for information or inspection by the Registrar; or

9.1.2.2 The Registrar has reason to believe that the company or its directors or shareholders are in persistent or serious breach of the Companies Act 1993 or the Financial Reporting Act 1993; or

9.1.2.3 The Registrar has reasonable grounds to believe that the company has ceased to carry on business;

9.1.3 The power to remove the registration of a company for the grounds listed in Recommendation 9.1.2;

9.1.4 Amending the existing power of the Registrar to ban a person from being involved as a director or manager of a company to include the following as grounds for making such a banning order:

9.1.4.1 The person has been involved as a director or manager of a company or companies that have been removed from the Register under Recommendation 9.1.3 where that person has contributed to such removal; or

9.1.4.2 The person has been involved as a local agent of a company to which the power to make a banning order would otherwise apply;

OR:

9.2 The status quo should be retained and the Registrar should not be conferred any of the additional powers set out in Recommendation 9.1;

10 **NOTE** that the Companies Amendment Bill will implement any changes agreed to in recommendations 5.1, 5.2, 6, 7.1, 8.1 and 9.1, above;

13 **AGREE** in principle that the same decisions made in respect of companies apply also to limited partnerships;

14 **AGREE** that the Minister of Commerce may take decisions on minor policy issues that arise as the Bill is

drafted, including the application of these proposals to limited partnerships;

15 **INVITE** the Minister of Commerce to issue drafting instructions to Parliamentary Counsel Office to give effect to recommendations 5.1 or 5.2, 6, 7.1, 8.1 and 9.1, above; and

16 **AGREE** to the Ministry of Economic Development publishing this paper and the accompanying Regulatory Impact Statement on its website and that of the Companies Office.

Hon Simon Power
Minister for Economic Development

Date signed: _____

30 June 2010

REGULATORY IMPACT STATEMENT

COMPANY REGISTRATION PROCESSES

AGENCY DISCLOSURE STATEMENT

This Regulatory Impact Statement has been prepared by the Ministry of Economic Development. It provides an analysis of a limited range of statutory measures designed to strengthen company registration processes in order to improve the reputation of New Zealand's company registration system, and gives the Registrar of Companies enhanced powers to respond to risks which might arise in relation to the integrity of information recorded on the companies register.

There is separate work being undertaken by officials in the Anti-Money Laundering context which will make recommendations on other measures (including additional substantive changes to the operation of company formation agents) aimed at reducing the abuse of the New Zealand corporate form by offshore interests. The statutory measures in this paper deal only with a range of changes to the company registration regime under the Companies Act 1993 that can be made quickly.

The analysis undertaken includes consideration of the known crime statistics in relation to New Zealand registered companies operating offshore. In addition it takes into account the impact of the proposals on the overall body of New Zealand registered companies by reference to the statistics relating to the number of companies involved.

Targeted consultation, particularly with representatives of business interests such as Business NZ and the Business Law Committee of the New Zealand Law Society, also guided the options considered.

The main constraint on the achievement of the targeted outcomes is the requirement that compliance costs on legitimate businesses are not increased; that is, measures target, so far as practicable, only those offshore persons seeking to register a New Zealand company with no intention of conducting business here. A further constraint on assessing the true magnitude of the problem is the criminal nature of the activity which has given rise to the proposals. By its very nature this activity is covert and its true extent must be a matter of speculation, although it is probably safe to assume that the number of entities engaged in such activity is greater than the reported incidence brought to the attention of enforcement agencies.

The policy options will impose minimal costs on New Zealand based companies and low costs on legitimate overseas businesses from some jurisdictions which seek to operate via a New Zealand registered company. They will not impair private property rights. Whilst a very small proportion of companies (under 3% of companies on the companies register) may face a new barrier to operating in New Zealand by virtue of the requirement to appoint a New Zealand resident director or local agent, the benefits to New

Zealand's international reputation would outweigh such costs. The policy proposals will not override fundamental common law principles.

Liz Thomson
Manager, Legal Services, Business Services Branch

STATUS QUO AND PROBLEM

Status Quo

The registration and administration of companies is governed by the Companies Act 1993 and its subordinate legislation.

New Zealand's company registration regime is low-cost and straightforward by comparison to foreign jurisdictions. The incorporation process is highly electronic, can be entirely completed online, and does not require directors to be present in, or resident of, New Zealand. The registration requirements of the Companies Act impose no additional entry criteria for companies which register in New Zealand but which are controlled by offshore interests, including those who do not carry on business in New Zealand. In addition, the application fee for incorporation is low by international standards, and New Zealand is unique in not imposing an ongoing annual licensing fee.

The simplicity of the regime is a contributor to New Zealand's enviable reputation for ease of doing business. Coupled with its reputation as a well-regulated jurisdiction, this provides a comparative advantage that underpins New Zealand's ability to attract and retain internationally-mobile business investment.

Problem Definition

Ironically, the confluence of low entry barriers and high international standing also makes the New Zealand registration regime vulnerable to misuse by illegitimate offshore operations. A review of the circumstances surrounding the SP Trading Ltd event[2] has identified a number of areas where New Zealand's regime is out of step with comparable foreign counterparts. It has further identified an inability for the Registrar of Companies to take administrative and investigative steps to ensure the integrity of the information which appears on the companies register where he is aware that such information is inaccurate.

The lack of any requirements under the Companies Act registration criteria to address the issue of wholly offshore interests being able to use the New Zealand company structure makes it very easy for these operations to use the company registration process to create a false sense of association with New Zealand. In turn, this enables such operations to enjoy a lesser degree of scrutiny than might otherwise be applied when conducting their affairs around the globe. Where these affairs are unlawful, the reputation of New Zealand in general - and its company registration regime in particular - may be tarnished

[2] This New Zealand-registered company was recently implicated in a weapons smuggling operation in Thailand. It has no business presence in New Zealand and its sole nominee director had signed a comprehensive power of attorney regarding the control of the company to two Ukrainian nationals.

by association. This has implications for the integrity of the registration regime and its appeal to legitimate offshore investment.

Further, the Companies Act 1993 ("the Act") confers only limited powers on the Registrar of Companies to take action where he is aware that a company or its directors are failing to ensure that the information which appears on the register is accurate, and that the company is complying with its registration requirements. While the Act allows prosecution of individuals (including directors) who make or authorise false or misleading statements relating to the affairs of a company, there is no ability for the Registrar to take steps to ensure that the information relating to the company which appears on the companies register is accurate and complete.

The Organised and Financial Crime Agency of New Zealand ("OFCANZ") has advised that the New Zealand Police have, over the last three years, assisted overseas authorities with around 134 information requests relating to New Zealand registered companies operating from offshore believed to be engaging in criminal activity overseas. Each investigation may involve a web of companies, registered both in New Zealand and offshore. In addition, the Reserve Bank has received frequent complaints and enquiries about "offshore financial institutions" incorporated in New Zealand but with no other connection to the country. It estimates that there are at least 1000 such companies on the register, of which a number are suspected of carrying out fraudulent activities

New Zealand and overseas company law formation agents are known to be actively promoting New Zealand to offshore interests (including those of a dubious nature) as a jurisdiction of choice due to its lighter company regulatory environment in comparison with other jurisdictions.

There are currently around 530,000 companies on the companies register, so the number of suspect companies is a small proportion of the overall body of New Zealand registered companies. The repercussions of even a very small number of high profile cases however, has the potential to cause considerable reputational damage and reduction in confidence.

If the status quo is maintained the risk of repeat examples like SP Trading Limited under the current regime is high. In cases where the illegal activity being conducted by the company involves breaches of international obligations such as United Nations sanctions, such episodes are undesirable.

Concerns relating to the exploitation of the New Zealand companies registration regime by rogue offshore interests also extends to similar concerns with the limited partnerships regime established under the Limited Partnerships Act 2008. From the inception of this regime there has been a high uptake of the New Zealand limited partnership vehicle by offshore interests which have no business presence in New Zealand and general and limited partners who are located wholly offshore. Many of registered limited partnerships are known to be carrying on business as offshore financial institutions.

OBJECTIVE

The overall objective is to make low cost changes to the registration system that would reduce the risks of a recurrence of undesirable events similar to those that arose in the SP Trading case.

OPTIONS

Option 1 - Requiring Full Identity Verification of Directors

This option would involve requiring full verification of the identity of directors of companies at the time that they are appointed. Such verification would involve the checking of a number of corroborating identification documents such as birth certificates and passports. However, this option is not being recommended because:

- It is relatively straightforward for offshore individuals who are engaged in illegal activities to falsify identity information, and relatively difficult for agencies in New Zealand to check the bona fides of identity information provided from offshore;
- Even if law enforcement agencies are able to prove that identity information has been falsified, investigation and enforcement of individuals located offshore is problematic, costly and time-consuming;
- Although the Identity Verification Service will provide assurance as to the identity of New Zealand individuals, there is currently no sufficiently developed technology to accurately verify the identity of the higher risk category of offshore directors;
- Full identity verification in and of itself would not deter determined criminal elements from exploiting the good reputation of the New Zealand companies regime.

Option 2 - Requiring Disclosure of Beneficial Control of Companies

This option would require shareholders and directors of companies to disclose information regarding the beneficial ownership of shares held on trust, as well as the identity of those who control companies in cases where directors are acting pursuant to a power of attorney or other arrangement. Such disclosure could facilitate targeted crime prevention and enforcement. This option was discounted at this time because it will be considered by officials working on the report back to FATF in October 2011.

PREFERRED OPTION

The preferred option is to introduce a combination of measures to amend the Companies Act 1993.

A Enhancing the Powers of the Registrar

Under this measure the Registrar of Companies would have enhanced powers to take administrative and investigatory action if he has reasonable grounds to believe that the company or its directors are in breach of their registration requirements. Such powers would be additional to the ability to bring a prosecution for making or authorising the making of false statements which currently exists under the Companies Act 1993.[3]

[3] Section 377 Companies Act 1993

In summary, it is proposed that the Registrar be given the following powers:

a Require companies, directors, shareholders and/or local agents to confirm or correct existing information on the companies register in situations where the Registrar;

b "Flag" publicly a company's registration in circumstances where the Registrar has reasonable grounds to believe that:

- The company or its directors or shareholders have provided inaccurate information for the register, or in response to a request from the Registrar;
- The company or its directors or shareholders are in persistent breach of the Companies Act or Financial Reporting Act;
- The company has ceased to carry on business.

c Remove a company from the Companies Register for the same reasons that he would be able to flag their registration, following a range of procedural safeguards to ensure that the there is a power to object to such removal;

d Remove a director from a company if that person is disqualified under the Companies Act;

e Extend the criteria for the Registrar to impose management banning orders to include persistent non-compliance with the filing and reporting obligations of the Companies and Financial Reporting Acts or where they have provided inaccurate information to the Registrar; and

f Extend the Registrar's investigation powers to matters where a company or its directors have not complied with the disclosure requirements of the Companies Act.

Benefits

- Increased confidence for those searching the register regarding the accuracy and integrity of information on the register;
- Improved protection to investors, creditors and others who deal with companies by:

    - Providing a clear warning on the register when a company is under investigation for breaching its registration requirements under the Companies Act;
    - Enabling the removal of a company from the register if it fails to rectify breaches of its registration requirements;
    - Enabling the Registrar to ensure that companies do not continue to be recorded on the register as fulfilling their basic registration requirements (e.g. that they have at least one director) when in fact they do not;
    - Permitting the Registrar to remove persons who are disqualified from acting as a director from office due to the company's failure to remove them as a director;
    - Enabling the Registrar to ban directors for a period of up to five years if they repeatedly fail to ensure that a company is fulfilling its registration requirements;
    - Making it easer for the Registrar to confirm the bona fides of those persons behind any company, and to hold any company to account for breaches of law.

Limitations

This measure will not prevent New Zealand registered companies controlled by rogue offshore interests from carrying out illegal activities. It provides only

the means for ensuring that the consequences of such activities are not exacerbated by misinformation in relation to such companies being permitted to remain on the register.

Costs

The enhanced enforcement powers of the Registrar would have cost implications (both direct and indirect) for those firms suspected of failing to comply with compliance and disclosure requirements. Such costs would include the compliance cost of correcting information on the register and reputational costs for companies which are the subject to the exercise by the Registrar of the powers outlined. This compliance cost would range from a minimal cost for submitting forms containing, for example, a correct residential address (there is no fee for filing such documents, but if professional advisors are used a fee based on such a professional's hourly rate would be incurred), up to a significant cost due to loss of business opportunities arising from the action of the Registrar in alerting the public to the fact that the company is not meeting its registration requirements.

The costs of the increased functions of the Registrar would be absorbed from within existing baseline funding.

B New Zealand Resident Director/Agent

Under this measure all companies which register in New Zealand would require at least one director to be ordinarily resident in New Zealand. This requirement is contained in the company laws of other comparable jurisdictions such as Australia, Canada and Singapore. Alternatively, rather than requiring a New Zealand resident director, a local agent could be required, who would act as a New Zealand representative of the company, with limited functions such as being able to accept service on behalf of the company and holding information relating to the company. Unlike a director, the local agent would not be responsible for the governance of the company, and would not be subject to or liable for the directors' duties imposed under company law.

It is proposed that companies whose directors are resident in approved jurisdictions should be exempted from this requirement. Jurisdictions which have entered into information sharing arrangements with the Registrar of Companies (for example, Australia) would be eligible to be exempted from this requirement.

Benefits

- Introducing the resident director requirement would bring New Zealand company law into line with Australia, Canada and Singapore;
- The duties and liabilities imposed by company law on a New Zealand director would act as a deterrent to offshore interests who do not intend to carry out lawful business. Anecdotal evidence from staff of the Australian Securities and Investment Commission indicates that they do not experience a high incidence of the misuse of the Australian company structure by offshore interests. They attribute this to the deterrent effect of the requirement under the Australian Corporations Act for at least one company director to be ordinarily resident in Australia;
- The presence of a company representative in New Zealand would provide an entry point for enforcement agents to gain information regarding the activities of the company. Under the status quo it is

difficult and costly to effectively investigate a company if all individuals are located offshore;
- The company representative would provide a point of accountability for the activities of the New Zealand company. Under the status quo there is often no identifiable and/or available individual who is liable for the actions of the company. The accountability of the resident director measure would be greater than that of the local agent, given the director's greater responsibility for the actions of the company;
- It would overcome issues relating to service on directors located offshore, which is problematic for practical and logistical reasons.

Limitations
- The presence of a New Zealand resident director or local agent will not necessarily prevent a company from engaging in illegal activities;
- As the New Zealand resident director would in some cases be appointed merely to fulfil the registration requirements for incorporating in New Zealand, a nominee director with no real role in the business may be appointed. This was the case with SP Trading Limited, which had a nominee New Zealand resident director who executed a power of attorney handing all control of the company over to Ukrainian individuals;
- Even if a New Zealand resident director was not a nominee, there may not be a sufficient pool of well qualified and experienced directors available to take up directorships;
- In the case of the local agent alternative, the level of accountability of the local would be minimal given the restricted role of the agent in comparison with a company director.

Costs
This requirement would not impose a regulatory cost on New Zealand-based businesses since they will have New Zealand resident directors as a matter of course.

As both New Zealand resident directors and local agents would in many cases charge fees for their services, costs would be imposed on some international businesses. It is estimated that less than 3% of the total number of companies on the register would fall into this category. This number would reduce significantly if the exemption proposal is approved (i.e. companies whose directors reside in approved jurisdictions are not required to appoint a New Zealand-resident director or local agents).

The quantum of such a fee would vary according to the type and size of any business undertaken by a company. At the lower end of the scale the fee would be around a few hundred dollars. At the upper end, the fee would be much higher – for example in the case of company with operations the size of some of our largest listed companies, fees in the hundreds of thousands are occasionally paid. Based on Companies Office statistics, nearly 95% of companies on the register can be characterised as small or medium sized businesses. The higher fee levels would therefore apply to around 5% of affected companies. Based on the weighted average of the size of most companies involved, an estimate of the compliance cost is a range of between $500 up to $5000 per company, with a small number of larger multinational companies liable for the higher fee which directors of such entities could expect to charge. It should be emphasised that this is an estimate, however.

Given the vast range of businesses undertaken by companies it is difficult to calculate a standard fee for such services.

In the case of a local agent it is expected that the fee would be significantly lower. A local agent would not have a role in the governance of the company, and would not be subject to the directors' duties imposed under company law. The functions of a local agent would be confined to accepting service of documents and holding information relating to the company. An estimate of the fee for an agent is in the range of $500 to $2000 per annum.

The costs are a justifiable regulatory burden because:

- ***Other comparative jurisdictions to New Zealand impose such requirements, therefore New Zealand would not be at a competitive disadvantage;***
- ***A number of existing businesses will have access to agents already in the form of New Zealand employees or professional advisors. All companies are required to have an address for service and registered office, and it would be a small additional step to nominate a party at that address as a local agent or director;***
- ***The limited exemption proposal will remove these costs from businesses whose directors reside in approved low-risk jurisdictions.***

There is also an element of compliance imposition on the way in which some international businesses carry out their business. A number of international companies, particularly those based in Australia, prefer to incorporate a New Zealand subsidiary and control its operation from a parent company with all members of its board of directors located in its home jurisdiction. Such entities may be reluctant to appoint a New Zealand resident director for issues of convenience, such as the logistical requirements of holding board meetings where one director is resident in New Zealand.

C Director Birth Information

This measure would require all directors to provide their date and place of birth to the Registrar of Companies. In the same way that the Limited Partnerships Act is drafted, this information would form part of the register, but would not be available for public searching. It would be able to be used by the Registrar and other enforcement agencies in order to carry out their functions under the Companies Act. There will be privacy issues around the collection of this personal information, and consultation with the Privacy Commissioner will be required.

Benefits

- Better verification of individuals against whom action may be taken (for example, in situations where two people such as a father and son, reside at the same address);
- Alignment with Australian company law, which would in turn help in facilitating the harmonisation of New Zealand and Australian company registration processes.

Costs

There is a very low financial cost for this requirement. The date of birth information would be collected by way of a field on either the form for the

application for incorporation, or the form of consent to be appointed a director, either at the time that the company is formed or when the director is appointed. Consulted parties reported that international directors expect to provide this information in any event, as it is a common requirement for overseas jurisdictions.

D Mandatory Tax Numbers

This measure would make it mandatory for all companies to apply for a tax number as part of the registration process. Under the status quo this is an option for companies, and around 80% of companies currently do so.

Benefits

- All directors would be subjected to the standard Inland Revenue Department checking processes, including its "failsafe" systems;
- The requirement would send a signal to those seeking to incorporate in New Zealand that they should be doing so with the ultimate intention of carrying on business here.

Limitations

- not all companies will be taxpayers immediately upon incorporation. For example, shelf companies formed by organisations such as legal firms, accountants or company formation agencies for on-selling to clients may not be used for the conduct of a business for some time after their formation;
- the obtaining of an IRD number will not necessarily prevent the conduct of illegal offshore activity via a New Zealand company vehicle. It is not uncommon for company formation agents to include the obtaining of an IRD number as part of the "package" of services which they provide to offshore clients.

Costs

- There is no fee for applying for a tax number, and no related or downstream costs associated with obtaining a tax number. On the contrary, the removal of duplicate processes for applying for company registration and a tax number would result in a reduction in compliance costs to firms.

Benefits of the Preferred Option

Notwithstanding the limitations to the measures discussed above, the preferred option will improve the standing of New Zealand's company and limited partnerships registration regimes.

- Reputation: The proposals would address the perception that New Zealand's company registration system is particularly vulnerable to incidents;
- Comparability with similar jurisdictions: the proposals would bring New Zealand's company law registration requirements more into line with other similar jurisdictions, thus reducing the scope for it to be particular target jurisdiction for rogue offshore interests;
- Deterrence: the imposition of increased registration requirements are aimed at deterring those who view New Zealand as a jurisdiction of convenience. The fact that the registration requirements and the

Registrar's powers are being increased would send a signal that such activity is being subjected to increased scrutiny and enforcement;

- Compliance with international obligations: the preferred option would go towards reducing the risk that New Zealand companies or limited partnerships may engage in activities which may breach international obligations such as United Nations sanctions measures;
- Trans-Tasman harmonisation: the introduction of the resident director proposal and the date and place of birth proposal would bring New Zealand's company law into line with that of Australia. That in turn would facilitate the harmonisation of registration processes between New Zealand and Australia;
- Better enforcement: the resident director or agent requirement coupled with the date and place of birth information would enable enforcement agencies to undertake more effective enforcement.

LIMITED PARTNERSHIPS

Concerns relating to the exploitation of the New Zealand companies registration regime by rogue offshore interests also extends to similar concerns with the limited partnerships regime established under the Limited Partnerships Act 2006. It is therefore proposed that the same measures be applied to limited partnerships with the necessary modifications to take into account their differing legal structure (e.g. the fact that they have general partners rather than directors).

CONSULTATION

Departmental consultation

The Treasury, Ministry of Justice, New Zealand Police, Inland Revenue Department, Department of Internal Affairs, the Privacy Commissioner and Ministry of Foreign and Trade have been consulted on the contents of the paper.

Targeted Consultation

Targeted consultation has been carried out with the following groups: the Commercial and Business Law committee of the New Zealand Law Society ("NZLS"), the New Zealand Institute of Chartered Accountants ("NZICA"), the Institute of Directors and Business New Zealand.

IMPLEMENTATION

The proposals will require legislative amendments to the Companies Act 1993 and the Limited Partnerships Act 2008.

Enforcement will be undertaken through the enhanced powers of the Registrar, and by modifying the application process to ensure that all new incorporation applicants are subjected to the new regime.

Publicity would be given to legislative changes by way of a communications programme which would be delivered through the usual Companies Office systems. This would include website content, communication through the Ministry of Economic Development Monthly Business Update publication, media releases, and short articles in professional publications such as the New Zealand Law Society magazine *Law Talk.*

MONITORING, EVALUATION AND REVIEW

Quarterly statistics on the number of requests from offshore enforcement agencies to the New Zealand police for assistance in investigations into New Zealand registered companies will be compared pre- and post- intervention in order to ascertain whether there has been a drop in the number of such companies involved in suspected criminal activity.

Monitoring of the effect of compliance costs will take place via the regular Companies Office surveys of its clients (which will include a specific question regarding the new processes), and via feedback through its website and contact centre. In addition, feedback from the business.govt website (which is a cross-governmental business information website) will be monitored.

Monthly, quarterly, and annual registrations will be compared pre- and post-intervention to ascertain whether the intervention has had a material impact on the overall number of business registrations. These data will be collected by the Companies Office as a matter of course, and are able to be analysed in this manner at minimal marginal cost to the Ministry.