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Corporate Governance Policy
Ministry of Business Innovation & Employment
Wellington

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Proposed exemptions to the Companies Act 1993 under the COVID-19 Response (Requirements for Entities – Modifications and Exemptions) Act 2020

- 1 We refer to the consultation paper on the above dated 22 December 2020 issued by the Ministry of Business, Innovation and Employment (*MBIE*) on behalf of the Registrar of Companies.
- 2 We support all of the proposed exemptions on substantially the conditions proposed.
- 3 In relation to the mechanics of the proposed further condition that a notice be provided to the Registrar signed by a majority of directors, we suggest that the drafting of the exemption provide for the company, overseas entity or administrator to lodge the notice by a "governing officer of the company or overseas company or by an administrator (as applicable) or a person authorised to do so by them".
- 4 We suggest that the proposal that notices of meetings to creditors under sections 239AL, 239AO, or 239AU of the Companies Act 1993 (*Act*) may be provided by email also be extended to notices required to be given to creditors "in writing" by proponents of a compromise under section 229(2) of the Act or by liquidators under section 243(2) of the Act, in each case in accordance with Schedule 5 of the Act, on the condition that the notice be sent to an email address used by the creditor. This would temporarily overcome a deficiency in s 391(1) of the Act that does not currently allow notice to be given to an email address used by a natural person creditor even though ss. 388(1)(d), 390(1)(d) and 391(3)(g) of the Act allow electronic notice to be provided to an email address used by a company, overseas company or body corporate.
- 5 While we recognise that the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) (Extension) Order 2020 currently limits the power to grant exemptions under s 26 of the COVID-19 Response (Requirements For Entities—Modifications and Exemptions) Act 2020 (*COVID Act*) to the period ending 31 March 2021, we would support an amendment to the COVID Act to, say, 31 March 2022, given the COVID-19 pandemic remains continues and that further lockdowns or other business disruptions in the short term remain possible.

Yours faithfully

Roger Wallis
Partner