



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Modernising the Companies Act 1993 and Making Other Improvements for Business	Date to be published	15 August 2024

List of documents that have been proactively released

Date	Title	Author
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business	Office of the Minister for Commerce and Consumer Affairs
31 July 2024	Modernising the Companies Act 1993 and Making Other Improvements for Business ECO-24-MIN-0149 Minute	Cabinet Office
31 July 2024	Appendix 1: Proposals in the Companies Act, Limited Partnerships Act, and Insolvency Act with a Regulatory Impact Analysis Exemption	MBIE
31 July 2024	Appendix 2: Amendments to RSB 3 proposals	MBIE
31 July 2024	Appendix 3: Regulatory Impact Statement: Companies Act 1993 Modernisation and Simplification Changes	MBIE
31 July 2024	Appendix 4: Regulatory Impact Statement: Making it easier for government agencies to require an NZBN	MBIE
31 July 2024	Appendix 5: Better Visibility of Individuals Who Control Companies and Limited Partnerships CAB-21-MIN-0539.01 Minute	Cabinet Office
31 July 2024	Appendix 6: NZBN legislative proposals – additional detail	MBIE
31 July 2024	Appendix 7: Business registers and associated legislation in scope for NZBN changes	MBIE

Information redacted

YES / NO (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of Confidential advice to Government.



Cabinet Economic Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Modernising the Companies Act 1993 and Making Other Improvements for Business

Portfolios **Commerce and Consumer Affairs / Small Business and Manufacturing**

On 31 July 2024, the Cabinet Economic Policy Committee:

Context

- 1 **noted** that the Minister of Commerce and Consumer Affairs and Minister for Small Business and Manufacturing intends to progress targeted legislative reform to improve the Companies Act 1993 (the Companies Act) and other corporate governance legislation;
- 2 **noted** that the first phase of the above reforms is to introduce a package that would:
 - 2.1 modernise, simplify and digitise the Companies Act;
 - 2.2 introduce unique identifiers for directors and general partners;
 - 2.3 allow director and shareholder home addresses on the Companies Register to be replaced with an address for service;
 - 2.4 improve the effectiveness of corporate insolvency law;
 - 2.5 improve uptake of the New Zealand Business Number (NZBN);
 - 2.6 make technical changes that were proposed to be included in the Regulatory Systems (Economic Development) Amendment Bill;
 - 2.7 introduce a levy making power to help fund the Insolvency and Trustee Service;
- 3 **noted** that Cabinet has previously agreed some of the policy decisions required to progress the above package of reforms, and that further decisions are being sought as outlined below;

Modernising, simplifying and digitising the Companies Act

- 4 **agreed** to amend the Companies Act to provide a new process to reduce the share capital of a company without court approval subject to a resolution of the board and agreement of shareholders (modelled on the similar provision in the Australian legislation);
- 5 **agreed** to amend the Companies Act to clarify that the major transactions provisions do not apply to transactions relating solely to the capital structure of the company (share issues, buybacks, dividends and redemptions);

- 6 **agreed** to amend the Companies Act to strengthen the major transactions provisions so that companies cannot avoid the protections of section 129 of the Companies Act by implementing the transaction through a related series of transactions;
- 7 **agreed** to amend the Companies Act to permit the following actions other than by the usual processes set out in the Act if they have the unanimous assent of shareholders:
- 7.1 issue of options or convertible securities;
 - 7.2 crediting unpaid share capital;
 - 7.3 acquiring shares to be held as treasury stock;
- 8 **agreed** to amend the Companies Act to provide that, after a period of two years, and after reasonable efforts to contact the shareholder, unclaimed dividends can be mingled with other company money and used by the company, while the shareholder's claim still remains;
- 9 **agreed** to make further minor amendments to the Companies Act to:
- 9.1 clarify Parliament's intent;
 - 9.2 reduce unnecessary compliance burdens for businesses and implementation costs for agencies;
 - 9.3 address regulatory duplication, gaps, errors, ambiguities and inconsistencies;
 - 9.4 respond to the modern environment, including by ensuring that legislation responds to changing technology;
- 10 **noted** that an indicative form of the changes referred to above is outlined in Appendix 2 to the paper under ECO-24-SUB-0149, and that these include two related changes to the Limited Partnerships Act 2008 and Insolvency Act 2006;
- 11 **agreed** that, where a change to the Companies Act may cast doubt on the interpretation of a similar provision in any other Act in the Commerce and Consumer Affairs or Small Business and Manufacturing portfolios, a substantially similar change may be made to that other Act;

Unique identifiers and directors' addresses

- 12 **noted** that the previous government agreed to introduce a unique identifier for directors and other corporate role-holders and a beneficial ownership register, and permit directors and shareholders to have their residential addresses removed from the Companies Register and replaced with an address for service [CAB-21-MIN-0539.01];
- 13 **noted** that, at this stage, the Minister of Commerce and Consumer Affairs proposes to progress the unique identifier for directors and general partners of limited partnerships and the provisions relating to directors' and shareholders' addresses, but not create a beneficial ownership register;

Improvement to New Zealand's insolvency law

- 14 **noted** that the previous government agreed to improve aspects of insolvency law in response to the Insolvency Working Group's recommendations [CAB-19-MIN-0491.01];

- 15 **noted** that the Minister of Commerce and Consumer Affairs proposes that the insolvency reforms that have not otherwise been progressed be progressed as part of this package of reforms;

Improve uptake of the New Zealand Business Number (NZBN)

- 16 **agreed** that unincorporated entities' legal/trading names and owners/directors' names be made public by default via a direct amendment to the New Zealand Business Number Act 2016 (Cabinet has previously noted that this change would proceed via an Order in Council [CAB-18-MIN-0466]);
- 17 **noted** that the previous government agreed that the NZBN Registrar would have the power to suppress this information if releasing it would risk someone's personal safety or privacy [CAB-19-MIN-0362], and that the Minister for Small Business and Manufacturing intends to progress this change alongside that referred to in paragraph 16 above;
- 18 **agreed** to remove the Order in Council process for government agencies to require an NZBN as a condition of service, and to replace this with a provision enabling agencies to require an NZBN as a condition of service, so long as this is consistent with the purposes of the NZBN Act and the legislation under which the agency is providing the service;
- 19 **agreed** to revoke the New Zealand Business Number (Authority to Require NZBN) Regulations 2020, as part of the change referred to in paragraph 18 above;
- 20 **agreed** to introduce the NZBN as a permitted business identifier for the Ministry of Business, Innovation and Employment-administered registers listed in Appendix 7 to the paper under ECO-24-SUB-0149, and that publicly available core business information held on the NZBN register may be used to populate and/or update core business information on these registers;
- 21 **agreed** that the Registrar of each register listed Appendix 7 has sole discretion to decide what publicly available core business information will be accessed from the NZBN register, and when;
- 22 **agreed** to amend the primary and secondary legislation listed in Appendix 7, where needed, to allow the NZBN to be used as an identifier for these business registers, and to allow the relevant Registrar to update each register with public information held on the NZBN register;
- 23 **noted** that Cabinet has previously agreed to add bank account numbers to the NZBN register in 2018 [CAB-18-MIN-0635], but that the Ministry of Business, Innovation and Employment has not yet implemented this change;
- 24 **agreed** that Schedule 4 of the New Zealand Business Number Act 2016 also include a field for the name of the bank account, as banks are moving to be able to crosscheck account numbers with account names;
- 25 **agreed** that Schedule 4 of the New Zealand Business Number Act 2016 include a field enabling businesses to identify themselves as a small business for the purpose of facilitating business-to-business interactions ('Small Business Identifier');
- 26 **noted** that the NZBN Registrar will provide guidance to help businesses decide whether to identify as a small business, and that this will reflect the provisions of the voluntary code on payment times currently being developed by Business New Zealand;

- 27 **noted** that in 2020, Cabinet agreed to amend the NZBN register to allow for a Māori Business Identifier [LEG-20-MIN-0132], but that since then Statistics New Zealand has introduced a different definition ('data standard') for a Māori business;
- 28 **agreed** to amend Schedule 4 of the New Zealand Business Number Act 2016 so that the eligibility criteria for the Māori Business Identifier aligns with the Statistics New Zealand data standard for a Māori business;
- 29 **noted** that the Minister for Small Business and Manufacturing has considered the statutory criteria set out in section 22 of the New Zealand Business Number Act 2016 in respect of including in Schedule 4 of the Act the name of the bank account along with the bank account number, a Small Business Identifier, and a definition of a Māori business, and considers that the section 22 criteria is satisfied in all cases;
- 30 **noted** that the decisions in paragraphs 24, 25 and 28 above will be progressed by Order in Council;

Regulatory Systems (Economic Development) Amendment Bill (No. 3)

- 31 **noted** that in May 2024, the Cabinet Business Committee agreed that amendments to the Companies Act 1993, Insolvency Act 2006, Limited Partnerships Act 2008, New Zealand Business Number Act 2016 and Receiverships Act 1993 that were to proceed through the Regulatory Systems (Economic Development) Amendment Bill should instead be progressed through other Bills on the 2024 Legislation Programme [CBC-24-MIN-0037];
- 32 **noted** that the Minister of Commerce and Consumer Affairs and Minister for Small Business and Manufacturing proposes that the amendments referred to in paragraph 31 above be included in the current package of reforms;
- 33 **agreed** that some of the policy decisions relating to the changes referred to in paragraph 31 above be rescinded or amended, as set out in Appendix 2 to the paper under ECO-24-SUB-0149 (which also sets out the reasons for these changes);

Insolvency and Trustee Service Levy

- 34 **noted** that although the Insolvency and Trustee Service is able to recover its costs for providing liquidation services, these are often insufficient because there are not enough assets left in the companies being liquidated;
- 35 **agreed** to create a levy-making power in the Companies Act in order for companies to contribute to the cost of the Official Assignee's liquidation services as performed by the Insolvency and Trustee Service;

36 Confidential advice to Government



37 Confidential advice to Government



Legislative implications

- 38 **invited** the Minister of Commerce and Consumer Affairs and Minister for Small Business and Manufacturing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

- 39 Confidential advice to Government
[Redacted]
- 40 **authorised** the Minister of Commerce and Consumer Affairs and Minister for Small Business and Manufacturing to approve the release of an exposure draft of the legislation, if they consider it appropriate to do so;
- 41 **authorised** the Minister of Commerce and Consumer Affairs and Minister for Small Business and Manufacturing to further clarify and develop policy matters, and to make further decisions relating to the above paragraphs in a manner not inconsistent with Cabinet's decisions, including on any matters that might arise during the drafting process;
- 42 Confidential advice to Government
[Redacted]

Rachel Clarke
Committee Secretary

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters
Hon David Seymour
Hon Chris Bishop (Chair)
Hon Brooke van Velden
Hon Erica Stanford
Hon Paul Goldsmith
Hon Todd McClay
Hon Tama Potaka
Hon Melissa Lee
Hon Penny Simmonds
Hon Nicola Grigg
Hon Mark Patterson
Hon Andrew Bayly
Hon Andrew Hoggard
Simon Court MP

Officials present from:

Office of the Prime Minister
Office of Hon Andrew Bayly
Officials Committee for ECO